

Queensland



# **PUBLIC TRUSTEE ACT 1978**

**Reprinted as in force on 26 October 1999  
(includes amendments up to Act No. 19 of 1999)**

**Reprint No. 2A**

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This Act is reprinted as at 26 October 1999. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

# Queensland



## PUBLIC TRUSTEE ACT 1978

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# **PUBLIC TRUSTEE ACT 1978**

[as amended by all amendments that commenced on or before 26 October 1999]

## **An Act about the public trustee**

### **PART 1—PRELIMINARY**

#### **Short title**

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

#### **Commencement**

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

#### **Crown to be bound**

4. 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.

#### **Definitions**

6. In this Act—

“**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 a common fund established under section 19.<sup>1</sup>

**“corporation”** means the corporate sole constituted by the public trustee under the name The Public Trustee of Queensland.

**“court”** means the Supreme Court or a judge thereof.

**“election to administer”** means an election filed pursuant to section 30 or 31.<sup>2</sup>

**“estate under administration”** means any property held, administered, managed or controlled by the public trustee in any capacity (including, for example, as personal representative, trustee, administrator, guardian, committee, manager, liquidator or receiver), and includes—

- (a) an estate under management as defined in section 64; and
- (b) an estate under administration that is administered jointly with someone else.

**“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.

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<sup>1</sup> Section 19 (Common fund and investment thereof and of other moneys)

<sup>2</sup> Section 30 (Election to administer estates under \$100 000 without grant of administration) or 31 (Appointment of public trustee in the place of existing personal representative)

**“officialsolicitor”** means the official solicitor to the public trustee provided for in section 16.<sup>3</sup>

**“order to administer”** means an order of the court made pursuant to part 3<sup>4</sup> authorising the public trustee, either solely or jointly with someone else 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 and wherever situated, 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—

- (a) as an individual—the Public Trustee of Queensland; or
- (b) in any other case—the corporation.

**“registering authority”** means the registrar of titles or anyone else required or permitted to record interests in property.

**“stock”** includes stock (whether debenture, inscribed or otherwise), shares, debentures, units and notes (secured or otherwise) and other like investments.

**“trust”** includes—

- (a) implied and constructive trusts; and

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<sup>3</sup> Section 6 (Employment of solicitors etc.)

<sup>4</sup> Part 3 (Appointment as trustee or personal representative)

- (b) cases where the trustee has a beneficial interest in the trust property; and
- (c) the duties incidental to a personal representative's office; but does not include the duties incidental to a mortgaged interest.

**“trustee”** means a person who administers a trust.

**“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.

## **PART 2—THE PUBLIC TRUSTEE AND PUBLIC TRUST OFFICE**

### **Public trustee and Public Trust Office**

**7.(1)** There is a Public Trustee of Queensland and an office called the Public Trust Office.

**(2)** The Public Trust Office consists of the public trustee and the office's staff.

### **Corporation sole of public trustee**

**8.(1)** The corporation sole constituted by the public trustee is continued under the name The Public Trustee of Queensland (the **“corporation”**).

**(2)** The corporation—

- (a) is a body corporate with perpetual succession; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

**(3)** The corporation represents the State.

**(4)** Without limiting subsection (3), the corporation—

- (a) has all the State's privileges and immunities; and
- (b) is an exempt public authority for the purposes of the Corporations Law.

(5) The corporation has all the powers of an individual and may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, dispose of, and deal with, property; and
- (c) appoint agents and attorneys; and
- (d) engage consultants; and
- (e) fix charges, and other terms, for services it supplies; and
- (f) do anything necessary or convenient to be done in the performance of the public trustee's functions under this or another Act.

(6) The corporation also has the powers conferred on it by this or another Act.

(7) The corporation may exercise its powers inside and outside Queensland.

(8) Without limiting subsection (7), the corporation may exercise its powers outside Australia.

### **Provisions about public trustee**

**9.(1)** The public trustee is to be appointed by the Governor in Council.

(2) The public trustee is to be appointed for a term of not longer than 5 years.

(3) The public trustee is subject to the Minister, but is not subject to any officer or employee of the department.

(4) The public trustee is entitled to be paid the remuneration and allowances decided by the Governor in Council.

(5) The public trustee ceases to hold office if the public trustee—

- (a) resigns by signed notice given to the Minister; or

- (b) finishes a term and is not reappointed; or
- (c) is removed from office by the Governor in Council under subsection (6).

**(6)** The Governor in Council may remove the public trustee if the public trustee—

- (a) is found guilty of an indictable offence or an offence against this Act; or
- (b) engages in misbehaviour; or
- (c) becomes incapable of performing the duties of the public trustee because of physical or mental incapacity; or
- (d) is incompetent; or
- (e) contravenes subsection (7); or
- (f) without the Minister's leave and without reasonable excuse, is absent for 14 consecutive days or 28 days in a year.

**(7)** The public trustee must give written notice to the Minister of all direct or indirect financial interests that the public trustee has or acquires in a business or in an entity carrying on a business.

**(8)** The public trustee holds office on the terms not provided for by this Act as are decided by the Governor in Council.

**(9)** The public trustee is to be appointed under this Act, and not under the *Public Service Act 1996*.

### **Acting public trustee**

**10.** The Governor in Council may appoint a person to act as public trustee during—

- (a) a vacancy, or all vacancies, in the office; or
- (b) a period, or all periods, when the public trustee is absent from duty or is, for another reason, unable to perform the functions of the office.



**Staff of Public Trust Office**

**11.** The staff of the Public Trust Office are to be employed under the *Public Service Act 1996*.

**Delegation by public trustee**

**11A.(1)** The public trustee may delegate the public trustee's powers under this Act to any person.

**(2)** A power may be subdelegated if the delegation expressly allows the subdelegation of the power.

**(3)** Without limiting subsections (1) and (2), the following powers may be delegated (and subdelegated)—

- (a) making an affidavit or statutory declaration required or permitted to be made by the public trustee, signing a document to be filed in a court, verifying an account or personally attending a court instead of the public trustee;
- (b) executing a transfer of property for the public trustee;
- (c) giving or signing a notice, consent, certificate, instrument or other document the public trustee is required or permitted to give or sign.

**(4)** If, when exercising a power under a delegation or subdelegation under this section, the delegatee signs a document, the delegatee may add after the delegatee's signature the following statement or a statement to the following effect—

‘Signed as delegate for the public trustee under section 11A of the *Public Trustee Act 1978*’.

**(5)** A document purporting to be a document mentioned in subsection (4) is taken to have been properly signed by a delegatee of the public trustee under a delegation made under this section unless the contrary is proved.

**(6)** Subsections (4) and (5) do not limit section 27A<sup>5</sup> of the *Acts Interpretation Act 1954*.

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<sup>5</sup> *Acts Interpretation Act 1954*, section 27A (Delegation of powers)

**Public trustee's seal**

**11B.(1)** The public trustee's seal may be kept in as many facsimiles as the public trustee considers are necessary for the Public Trust Office's business.

(2) The seal and any facsimile are to be kept in the custody directed by the public trustee and may be used only as authorised by the public trustee.

**Contracts and transactions of public trustee not under seal**

**11C.** Section 227<sup>6</sup> of the *Property Law Act 1974* applies to the public trustee as if—

- (a) the public trustee were a body corporate within the meaning of the section; and
- (b) all necessary changes, and any changes prescribed by regulation, were made to the section.

**Evidentiary provisions**

**11D.(1)** Judicial notice must be taken of the appointment and signature of the public trustee.

(2) Judicial notice must be taken of the imprint of the public trustee's seal appearing on a document and the document must be presumed to have been properly sealed unless the contrary intention is proved.

(3) In any proceeding, anything done, or omitted to be done, by or purportedly by the public trustee, or someone else for or purportedly for the public trustee, must be taken to have been properly done, or omitted to be done, in the absence of evidence to the contrary.

**Bond or other security not to be required**

**11E.** A bond or other security must not be required from the public trustee for appointment to or acting in an office or capacity under this Act.

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<sup>6</sup> *Property Law Act 1974*, section 227 (Corporate contracts and transactions not under seal)

**Sale of property by auction by authorised persons**

**12.** 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 20 km 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 authorised 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.

**Declaration of secrecy**

**15.** 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 form approved by the public trustee.

**Employment of solicitors etc.**

**16.(1)** The public trustee may, subject to the regulations, consult with and employ such solicitors, counsel, financial institutions, accountants and brokers or other persons as the public trustee 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 financial institution 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.

**(2A)** 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.

(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 the official solicitor’s 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 subsections (1) to (4), 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 endorsed 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, the solicitor’s 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.

(7) To remove any doubt, nothing in this section prevents the official solicitor from acting as barrister or solicitor for a person other than the public trustee.

### **Public trustee may fix fees and charges**

**17.(1)** The public trustee may, by gazette notice, fix fees and charges for services the public trustee performs or provides.

(2) The fees and charges have effect from the day the notice is gazetted or a later day stated in the notice.

(3) The fees and charges must be reasonable having regard to the circumstances in which the service is provided.

(4) In particular, and without limiting subsection (3), the amount of a fee or charge must be decided having regard to the following—

- (a) the type and complexity of the service performed;
- (b) the degree of care, responsibility, skill or special knowledge

required to perform the service.

(5) Also, the gazette notice may provide that a fee or charge for a service is to be worked out according to—

- (a) a stated hourly, daily or other rate; or
- (b) the number or type of documents perused.

(6) A gazette notice under this section is subordinate legislation and exempt subordinate legislation.

### **Priority etc. of fees and charges**

**17A.(1)** The public trustee may retain or pay out of an estate the public trustee is administering, in priority to any other claims—

- (a) expenses (including liabilities) a trustee may retain or pay out of trust property; and
- (b) fees payable for a service the public trustee provides.

(2) The public trustee is to decide whether the fees and expenses payable under this section are to be paid from capital or income.

(3) The public trustee has a general lien on all property comprised in an estate the public trustee is administering for the payment of—

- (a) fees and expenses for the administration of the estate; and
- (b) costs, fees and allowances and charges earned by the official solicitor or another lawyer who is a public service officer for the public trustee in connection with a proceeding relating to the estate.

(4) The public trustee has the same rights of lien a lawyer who is not a public service officer would have for costs and charges for work of a legal nature—

- (a) done by the public trustee or the official solicitor; or
- (b) done for the public trustee by a lawyer who is a public service officer.

**Costs etc. for proceedings**

**17B.(1)** This section applies to a proceeding—

- (a) in which the public trustee is a party or is in any way interested; and
- (b) in relation to which the official solicitor or another lawyer who is a public service officer acts on behalf of, or otherwise represents, the public trustee.

(2) The public trustee is entitled to costs and allowances for the acting or representation as if the official solicitor or lawyer were a lawyer in private practice and not a public service officer.

(3) For taxing any bill of costs, fees for a barrister are to be allowed the public trustee and no item is to be disallowed (whether for barristers' fees or otherwise) merely because the fees were not paid before taxation.

(4) The rules relating to costs in any court apply subject to this subsection.

**Accounting**

**18.(1)** Fees paid or retained out of an estate the public trustee is administering and costs, fees, allowances and charges earned by the official solicitor or another lawyer who is a public service officer for 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 the Treasurer.

(2) Where by reason of any act or omission on the part of the public trustee or any of the public trustee's 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.

**Common fund and investment thereof and of other moneys**

**19.(1)** Subject to this Act—

- (a) all moneys vested in or coming into the hands of the public

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trustee, howsoever arising, and whether directed to be invested or not, shall be held in 1 or more common funds (the “**common fund**”) and shall be invested by the public trustee;

- (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 authorised to invest trust funds and also in any class of investments from time to time approved for the purposes of this Act by regulation;
  - (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 authorised 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 the public trustee;
  - (b) invest moneys held by the public trustee on trust for any person under a legal disability or, when for special reason the public trustee considers it desirable that moneys should be separately invested, moneys belonging to any other estate under administration, in any investment in which trustees are authorised by law to invest trust funds;
  - (c) when the public trustee is the committee or manager of an estate under management or the manager of the estate of a prisoner under part 77 continue investments in the form in which they are when the public trustee becomes authorised to manage that estate,

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<sup>7</sup> Part 7 (Administration of property of prisoners)

reinvest from time to time in similar investments and exercise, as fully and effectually as that person could do if the person were not under a legal disability or a prisoner to whom part 7 applies and if the person's 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 last mentioned 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 realised thereby shall be borne by the estate under administration.

### **Advances in course of administration**

**20.(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 the public trustee.

(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 the public trustee is authorised or required to pay.

(3) Where a person entitled to a share in an estate under administration desires an advance against the person's 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 12% 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 signed by 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.

### **Public Trust Office Investment Board**

**21.(1)** All investments of the common fund shall be controlled and managed by a board to be called The Public Trust Office Investment Board (the “**board**”).

(2) The board shall consist of at least 3 members 1 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 1 of whom shall be an officer of the department administered by the Treasurer.

(3) At a meeting of the board 2 members thereof shall form a quorum.

(4) The chairperson 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 the chairperson is present and in the chairperson’s absence or during any vacancy in the office of chairperson such 1 of those present shall preside as they shall choose between them.

(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 the public trustee is legally authorised and that the public trustee

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has done and executed or caused to be done and executed all such acts, matters, and things as the public trustee 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 the public trustee 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 the public trustee 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 the public trustee as the board shall direct, and account to the board for the due and proper exercise by the public trustee 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 the public trustee;
- (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 authorised to issue such debentures by the Act constituting such corporation or instrumentality, or in any loan issued by the Government of the Commonwealth or of any State;
  - (ii) on account of a particular estate, whether made pursuant to the provisions of section 19(2)<sup>8</sup> or otherwise in exercise of the public trustee's powers;

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<sup>8</sup> Section 19 (Common fund and investment thereof and of other moneys)

- (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;<sup>9</sup>
- (v) on interest bearing deposit with a financial institution;
- (vi) with a dealer in the short-term money market, approved by the Reserve Bank of Australia as an authorised dealer, who has established lines of credit with that bank as a lender of last resort;
- (vii) prescribed by regulation.

### **Temporary advances to the public trustee**

**22.(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 the public trustee 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.

**(2A)** However, 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 1 time shall not exceed \$1 000 000.

### **Deficiency in common fund**

**23.** 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 fund as are necessary to meet the deficiency.

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<sup>9</sup> Section 25 (Unclaimed moneys fund)

**Inspection and audit of books of public trustee**

**24.(1)** The Minister, and any officer of the Minister's department authorised by the Minister 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.

**Unclaimed moneys fund**

**25.(1)** The public trustee must continue to keep the account called the Unclaimed Moneys Fund (the "**fund**").

**(2)** The Minister may direct that the whole or part of amounts that have been credited to the fund for 20 years or more be paid to the consolidated fund.

**(3)** The Minister may also direct that the whole or part of amounts credited to the fund that have not been paid to the consolidated fund be invested in the following investments—

- (a) investments mentioned in section 21(6)(b)(i);<sup>10</sup>
- (b) investments that may be prescribed by regulation.

**(4)** Interest on the investments must be paid to the consolidated fund.

**Balance sheet and accounts to be laid before Parliament**

**26.** The public trustee shall in every year not later than 31 August or the later day the Minister, by written notice, specifies 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 30 June last preceding or such other date as may be prescribed;
- (b) a balance sheet setting forth the assets and liabilities as at 30 June

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<sup>10</sup> Section 21 (Public Trust Office Investment Board)

- last preceding or such other date as may be prescribed;
- (c) a statement showing the position and investment of the unclaimed moneys fund.

### **PART 3—APPOINTMENT AS TRUSTEE OR PERSONAL REPRESENTATIVE**

#### **Rights and duties to which public trustee may be appointed**

**27.(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 subsections (1) and (2), 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 the public trustee consenting thereto.

**(4)** The public trustee may charge and receive such fees and remuneration as are fixed under this Act, or if not fixed under this Act, as may be allowed by law, for acting in any capacity to which the public trustee may be appointed under this section.

#### **Joint administration etc. by public trustee**

**27A.(1)** The public trustee may apply under section 29 or 31(1)<sup>11</sup> for an order to administer an estate, and may be granted the order, jointly with someone else.

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<sup>11</sup> Section 29 (Circumstances in which public trustee may apply for order to administer) or 31 (Appointment of public trustee in the place of existing personal representative)

(2) The public trustee may file an election under section 30<sup>12</sup> to administer an estate jointly with someone else.

(3) The court may, with the public trustee's agreement, consent under section 31(2) to the appointment of the public trustee to administer an estate jointly with someone else.

(4) If the public trustee is appointed under section 31(2) to administer an estate and the consent of the court is unnecessary, the public trustee may, when filing in the court an election to administer, elect to administer the estate jointly with someone else.

(5) The court may, with the public trustee's agreement, appoint the public trustee under section 31(3) to administer an estate jointly with someone else.

(6) The public trustee may act under section 35<sup>13</sup> jointly with someone else.

(7) This section does not limit the application of this Act when the public trustee acts alone.

(8) If the public trustee jointly administers an estate or otherwise acts with someone else, this Act applies with all necessary changes and any changes prescribed by regulation.

### **The public trustee may hold as trustee for the Crown**

**28.(1)** If in the opinion of the Minister 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 Minister may authorise 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 in or by any name, style, title, or description other

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<sup>12</sup> Section 30 (Election to administer estates under \$100 000 without grant of administration)

<sup>13</sup> Section 35 (Administration of small estates)

than The Public Trustee of Queensland.

(3) Any person desirous of surrendering to the Crown any freehold land in Queensland which is under the *Land Title Act 1994* may, with the approval of the Minister, 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 under the *Land Title Act 1994* accepted or taken by the public trustee under subsection (1) may be transferred under the *Land Title Act 1994* to the public trustee as trustee under this section.

(5) If in the opinion of the Minister 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 Minister 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 the public trustee of any trust declared by this section, and no person dealing with the public trustee in relation to the execution of any such trust shall be bound to inquire whether the public trustee is acting in the proper execution of the public trustee's powers hereunder.

(7) The Minister may give to the public trustee such authorities and directions to purchase, accept, hold and deal with property to which this section applies as the Minister shall think fit, including either general directions as to the manner in which the public trustee shall exercise powers and perform 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 the public trustee shall exercise powers or perform duties in respect of any particular matter or property, including a direction that the public trustee 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.

### **Circumstances in which public trustee may apply for order to administer**

**29.(1)** Where any person has died, whether before or after the commencement of this Act, being at the time of the person's 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 3 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 subsection (1)(a) no further proof of the



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death and intestacy of the deceased shall be required than an affidavit that, after due inquiries, the public trustee is satisfied of the death and intestacy.

(4) On an application under subsection (1) or (2)(a) the public trustee shall be entitled as of right to an order to administer.

(4A) However, 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 subsection (1)(b)(v) or an application under subsection (2)(b).

(5A) However, the court may in either of such last mentioned 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 the public trustee 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, the public trustee shall, unless the court otherwise orders in exceptional circumstances, be entitled to the public trustee's costs out of the estate and not be liable for the costs of any other person.

**Election to administer estates under \$100 000 without grant of administration**

**30.(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 the person's property in Queensland which would pass to the person's personal representative is estimated by the public trustee at the time of the election hereinafter mentioned not to exceed \$100 000, and there is no grant of administration in force in Queensland, the public trustee may, in all cases where the public trustee is entitled to obtain an order to administer, in lieu thereof file in the court an election, in the form approved by the public trustee, 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 \$100 000, 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 the public trustee would be entitled to obtain an order to administer, in lieu thereof, file in the court an election, in the form approved by the public trustee, to administer the estate so left unadministered.

**Appointment of public trustee in the place of existing personal representative**

**31.(1)** 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.

**(1A)** The applicant, before making any such application, shall give 7 days

notice thereof to the existing executor or administrator.

**(1B)** However, 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 executor or administrator, notwithstanding that any consent which would otherwise be requisite has not been obtained.

**(2A)** However, if the gross value of the assets requiring administration, as estimated by the public trustee, does not exceed \$100 000 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 1, the court may, on the application of any of such executors or administrators, appoint the public trustee respectively executor or administrator, notwithstanding that any consent which would otherwise be requisite has not been obtained.

**(4)** 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.

**(4A)** 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 the form approved by the public trustee.

**(5)** 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.

**(5A)** Subsections (2) to (3) applies to an executor whether or not the executor 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 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.

### **Effect of order to administer**

**32.(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 the public trustee would have had if probate or letters of administration of such property had been granted to the public trustee 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.

(3) However, 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.

### **Consequences of election**

**33.(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 \$120 000, the public trustee shall, as soon as practicable thereafter, file in the court a memorandum under the public trustee's 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 the public trustee's 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.

### **Court may order administration of estate by public trustee instead of by court**

**34.** 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.

**Administration of small estates**

**35.** 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 the public trustee would be entitled to file an election does not, apart from the value of any interest in land, exceed \$50 000, the public trustee may apply such assets in or towards the payment of any claim of which the public trustee has knowledge or to the persons entitled thereto, without filing an election to administer and it shall not be necessary for the public trustee to cause advertisements to be published calling on creditors to prove their debts.

**Powers of public trustee pending grant**

**36.(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 the public trustee would have or could exercise or do if the deceased had died intestate and the public trustee had obtained an order to administer.

**(1A)** However, the public trustee may only sell, exchange, mortgage or partition a part of the property, or let or lease a part of the property (other than under a periodic tenancy from year to year or for a shorter period or a fixed period of not longer than 1 year), with the court's leave.

**(1B)** In subsection (1)—

**“acts and things”** includes withdrawing an amount from an account of the deceased person with a financial institution.

**(2)** Despite subsection (1A), the public trustee may sell, without the court's leave, a part of the personal estate if the public trustee considers—

- (a) that the property is perishable, likely to deteriorate or likely to decrease substantially in value if kept; or
- (b) that, for another reason, it is in the estate's interest that the public trustee immediately dispose of the property.

(3) Before the public trustee first acts under this section, the public trustee shall give notice in writing 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 the public trustee intends to so act unless such person forthwith proceeds to apply for probate or letters of administration.

(4) If such person does not, within 21 days after the posting of such notice, give notice, in writing, to the public trustee that the person intends to apply for probate or letters of administration, or if such person gives such notice but fails for 14 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 1 are entitled to take out probate or letters of administration, it shall be sufficient to give notice to 1 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) the public trustee shall in no wise be deemed to be or be liable as an executor *de son tort*;
- (b) the public trustee 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 the public trustee;
- (c) all expenses incurred by and all payments due to the public trustee shall be a first charge upon the property of the deceased person;
- (d) it shall not be necessary for the public trustee to register with any registering authority the public trustee's authority so to act, and the recital by the public trustee in any instrument that the public trustee is acting pursuant to this section shall be sufficient evidence of the public trustee's authority to execute that instrument.

**Power of public trustee in relation to devises in certain cases**

**37.** 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 the testator's 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 the person is alive or dead, or who has died and who has no person acting in the administration of the person's estate; or
- (c) the testator had before the testator's 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 the public trustee 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 the public trustee upon trust and, without limiting the powers of the public trustee in other respects, the public trustee shall, notwithstanding any provision of the testator's will to the contrary, have power to raise such sum or sums of money as the public trustee 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 the public trustee thinks proper, of the land so devised or any part thereof.

**Public trustee may be appointed new or additional trustee**

**38.(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 the public trustee were a private person.



**(1A)** However, 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, the public trustee shall, subject to this Act, have the same powers, authorities and discretions and act as if the public trustee had been originally appointed a trustee.

### **Appointment of public trustee as sole trustee**

**39.(1)** Notwithstanding the fact that any governing instrument may provide for or direct the appointment of 2 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 1, any 1 trustee, or any 1 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.

### **When public trustee being custodian trustee or statutory trustee may act as general trustee**

**40.(1)** Where by reason of any of the events enumerated in

section 12(1)(a) to (h)<sup>14</sup> 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, the public trustee may act as managing trustee and shall have all the powers given to managing trustees by section 19<sup>15</sup> of the *Trusts Act 1973* until such time as new managing trustees are appointed, but it shall not be obligatory for the public trustee 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*, the public trustee 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.

### **Advisory trustees**

**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 the public trustee shall have the sole management and administration thereof as fully and effectually as if the public trustee were the sole trustee.

(3A) However—

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<sup>14</sup> *Trusts Act 1973*, section 12 (Power of appointing new trustees)

<sup>15</sup> *Trusts Act 1973*, section 19 (Custodian trustees)

- (a) the public trustee 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 the public trustee 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.

### **Delegation of powers of trustees to public trustee**

**42.(1)** Where a trustee is empowered to delegate all or any of the trustee's powers and functions to any person, the trustee may delegate them to the public trustee with the public trustee's 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.

**Legacies or shares of person under a disability etc. may be paid to public trustee**

**43.(1)** A trustee may, with the consent of the public trustee, pay any moneys or transfer any investment held by the trustee 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, \$50 000 in value, for any person (other than an infant) who, in the opinion of the public trustee, on evidence produced to the public trustee by such trustee or otherwise, is incapable of giving a discharge therefor or whose whereabouts or whether the person 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 inquire 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 subsections (1) to (5) 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 the public trustee by this Act (including, in a case to which it is applicable, the

provisions of section 19<sup>16</sup>).

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

### **Public trustee may receive and hold moneys of person under a disability**

**44.(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 the person's 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 or 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.

### **Administration of benefit funds**

**45.(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 the public trustee.

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

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<sup>16</sup> Section 19 (Common fund and investment thereof and of other moneys)

**(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)** The public trustee may settle a scheme of administration if—

(a) where there is a committee—the majority of the members thereof consent and the fund does not exceed \$50 000; or

(b) where there is no committee—the fund does not exceed \$25 000.

**(5A)** 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.

**(5B)** Subject to subsections (5D) to (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.

**(5C)** The public trustee may modify such scheme if the public trustee thinks fit to do so at any time, but, if there are then, to the public trustee's 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.

**(5D)** The public trustee may revoke any such trust instrument if the public trustee 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.

**(5E)** However, on the application of the committee, the court may review any action of the public trustee pursuant to subsection (5D) 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.

### **Consequences regarding previous personal representatives or trustees on public trustee becoming authorised**

**46.(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 the person 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 4—POWERS AS PERSONAL REPRESENTATIVE, TRUSTEE ETC.**

### **Application of part**

**47.** This part shall apply whether or not a contrary intention is expressed in any instrument creating or governing the trust.

### **General powers**

**48.** Notwithstanding the provisions of any other Act, the public trustee when acting as a trustee, may at the public trustee's discretion, in addition to the powers which the public trustee has under any other Act—

- (a) enter into any sharefarming agreement for any period not exceeding 3 years and renew any such sharefarming agreement;

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- (b) subject, where the sum to be expended exceeds \$50 000 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 account at a financial institution and of such nature for the purposes of any estate under administration as the public trustee 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 the public trustee 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 the public trustee, if personally present, could do;
- (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



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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 1 month from the giving of notice; and

(iv) any such person to whom such notice has been given may—

(A) within 1 month after receipt of the notice or of the notice of amendment where amendment is notified; or

(B) upon the person's 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 1 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.

**Provision of dwelling house**

**49.(1)** The public trustee may expend from the capital of an estate under administration such sum or sums as the public trustee thinks necessary for any 1 or more of the following purposes—

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- (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 the public trustee thinks fit;
- (e) the purchase for a dwelling house of such furnishings and fittings as the public trustee 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 the public trustee thinks fit.

(2) When the public trustee purchases a dwelling house or other land in exercise of the power conferred by subsection (1), the public trustee 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 the public trustee 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; and
- (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) In this section—

“**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.

### **Maintenance of infant beneficiary out of capital**

**50.(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 the public trustee in the public trustee's 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.

**(2A)** However, 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 the infant 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 the infant 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.

**Public trustee may hold property to which mentally incapable beneficiary is entitled**

**51.** 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 \$50 000, 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.

**Co-trustee may receive income**

**52.** The public trustee may, if the special circumstances of the case appear to the public trustee to render it desirable, pay to the public trustee's co-trustee or allow the public trustee 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.

**Priority in insolvent estates**

**53.** 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) the public trustee shall pay all proper expenses attending the due administration of the estate;
- (b) the public trustee shall pay such funeral expenses as the public trustee considers properly payable out of the estate;
- (c) the public trustee 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) the public trustee shall distribute the remaining assets among the persons beneficially entitled thereto.

**Where residue may be paid to spouse**

**54.(1)** Where the net residue of an intestate estate under administration does not exceed \$20 000 in money or in value as estimated by the public trustee, and the intestate is survived by a spouse, the public trustee may, if the public trustee 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 3 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.

**Public trustee may pay over to principal administrator and receive property from ancillary administrator**

**55.(1)** Where the public trustee is administering the estate in Queensland of a deceased person who at the time of the person's 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 (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 thereout, 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 (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 the public trustee 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 the public trustee's 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 the public trustee in relation to any such property, with such ancillary powers, and with and subject to such provisions and restrictions, as the public trustee may think fit, including a power to appoint substitutes, and shall not, by reason only of the public trustee having made any such appointment, be responsible for any loss arising thereby.

## **PART 5—SPECIAL FUNCTIONS OF A PUBLIC NATURE**

### **Public trustee may oppose grant**

**57.(1)** The public trustee may, if the public trustee 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.

### **Public trustee may be appointed guardian**

58. 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.

### **Compromise of actions by or on behalf of persons under a legal disability claiming moneys or damages valid only with sanction of court or public trustee**

59.(1A) In this section—

“**court**” means a court within whose jurisdiction an amount or damages are claimed by or for a person under a legal disability suing either alone or with others, and includes a judge or magistrate of the court.

“**taxing officer**” of a court means an officer of the court whose duties include the taxation or other assessment of costs in the court.

(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 court or 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 person other than the public trustee unless the 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 a court upon application made in that behalf.

(3) Every settlement, compromise, or acceptance of money paid into court when sanctioned by a court or 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 a court upon application made in that behalf, be held and applied by the public trustee on trust for the person under a legal disability.

(4A) However, in addition to the public trustee's 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 the public trustee would have under part 6<sup>17</sup> 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) The costs of the plaintiff or, if more than 1, 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, in the form approved by the public trustee, of the public trustee or of the plaintiff or the plaintiff's

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<sup>17</sup> Part 6 (Management of estates of incapacitated persons)



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.

**(6A)** 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.

**(6B)** However, the public trustee may, without requiring any such taxation, in any case in which the public trustee 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 the public trustee 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 court 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.

### **Public trustee may direct audit of trusts**

**60.(1)** Any person may make a request in writing to the public trustee for an investigation and audit of the condition and accounts of a trust.

**(2)** If, in the public trustee's opinion, the person's interests are, or may be, adversely affected by the trust's operation, the public trustee may serve a notice of such request on such trustees and beneficiaries other than the applicant as the public trustee 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 14 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 the person to pay as security for any costs and expenses of the investigation and audit, the public trustee may, if it appears to the public trustee desirable, appoint, by writing under the public trustee's hand and seal, some person (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 the auditor's 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 the auditor considers reasonably necessary for the performance of the auditor's duties; and
- (b) on production to any other person or body of such writing evidencing the auditor's 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 the person)—

- (a) being a trustee, shall furnish to the auditor any information or explanation required by the person 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.

Maximum penalty—10 penalty units.

Daily penalty—2 penalty units.

(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 the beneficiary's 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 the auditor's 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 2 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.

Maximum penalty—

- (a) on indictment—10 penalty units or imprisonment for 2 years;
- (b) on summary conviction—5 penalty units or imprisonment for 6 months.

(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—

“**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* is a trustee.

### **Circumstances when public trustee may release mortgage or encumbrance for another**

**61.(1)** Where the mortgagee of property—

- (a) is absent from Queensland; or
- (b) is dead and the mortgagee’s 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 the person 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 inquiries as the public trustee considers reasonable that there is no person in Queensland authorised to give such a discharge, the public trustee may, if the public trustee considers it reasonable to do so, sign a memorandum of discharge (in the form approved by the public trustee) in regard to the moneys secured by the mortgage or execute a reconveyance (in the form approved by the public trustee) of any mortgaged property—

- (g) if the public trustee is satisfied that the whole of the moneys payable under the mortgage have been paid; or
- (h) if the whole of the moneys payable have not been paid—on payment to the public trustee of such amount as the public trustee 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 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 the public trustee 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.

### **Circumstances where public trustee may execute transfer for another**

**62.(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

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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 the owner's 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 the person is alive or dead; or
- (d) can not 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 authorised to execute such transfer, the public trustee may, if the public trustee considers it reasonable to do so, after giving such public notice (if any) of the public trustee's intention so to do as the public trustee thinks proper—

- (g) upon proof to the public trustee's satisfaction of the payment of the whole of the purchase money; or
- (h) upon the payment to the public trustee of such amount as the public trustee 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—

“**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 the public trustee in trust for the vendor of the land or other person entitled thereto.

### **Wills, deeds and documents may be deposited**

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

(2) Any testator may deposit the testator’s 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.

### **Adult guardian resources**

**63A.(1)** The public trustee must give the adult guardian,<sup>18</sup> in accordance with the adult guardian’s budget approved by the Minister for the financial year, the financial and other resources (including professional and administrative services and support) necessary or desirable for the

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<sup>18</sup> The adult guardian is constituted under the *Powers of Attorney Act 1998*.

performance of the adult guardian's functions.

(2) The resources must also include any resources the Minister may specify in writing to the public trustee.

## **PART 6—MANAGEMENT OF ESTATES OF INCAPACITATED PERSONS**

### *Division 1—Preliminary*

#### **Definitions**

64. In this part—

**“estate under management”** means the estate of a patient of which the public trustee has been appointed committee, or which the public trustee is authorised to manage pursuant to the *Mental Health Act 1974*, or a protected estate, or an estate which the public trustee is authorised to manage pursuant to division 4<sup>19</sup> or pursuant to the *Intellectually Disabled Citizens Act 1985*.

**“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* or a protected person, or a person whose estate the public trustee is authorised to manage pursuant to division 4 or pursuant to the *Intellectually Disabled Citizens Act 1985*.

**“patient”** means a person who is a patient within the meaning of schedule 5, clause 1<sup>20</sup> to the *Mental Health Act 1974*.

**“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).

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<sup>19</sup> Division 4 (Authority where other jurisdictions involved)

<sup>20</sup> *Mental Health Act 1974*, schedule 5, clause 1 (Meaning of terms)



**“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*

#### **Power of court to make protection order**

**65.(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 the person’s 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 the person’s affairs; or
  - (ii) subject to, or liable to be subjected to, undue influence in respect of the person’s 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 the person that the person’s 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).

**Court may direct investigations**

**66.(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 (the “**person in question**”) may be a person in respect of whom a protection order should be made for 1 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; and
- (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 24 hours after the making of the protection order serve on the public trustee notice in writing of the making of the protection order.

### **Protection order in damages action**

**67.(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 the person it appears to the court that that person (the “**plaintiff**”) is a person in respect of whom a protection order might be made under section 65,<sup>21</sup> 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;
- (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 24 hours after the making of the protection order serve on the public trustee notice in writing of the making of the protection order.

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<sup>21</sup> Section 65 (Power of court to make protection order)

(5) In this section—

“court” includes the District Court.

### **Court may give directions**

**68.(1)** The Supreme Court or, if the District Court has made or is making a protection order under section 67, the District 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, authorise 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.

(2) Jurisdiction given to the District Court under subsection (1) extends only in relation to the protected person.

(3) The Supreme Court’s jurisdiction is not limited by the jurisdiction conferred on the District Court under subsection (1).

### **Variation and duration of protection order**

**69.(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 the public trustee in and by the protection order, or by this Act, or by any order of the court.

(3) However, 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),<sup>22</sup> proceedings have been commenced by originating summons, in those proceedings, a notice of cessation of management, in the form approved by the public trustee, and thereupon the powers and duties of the public trustee pursuant to the protection order shall cease.

### **Where public trustee may file certificate of disability after notice**

70.(1) If the public trustee is satisfied from information available to the public trustee that a person (the “**person in question**”) is a person in respect of whom jurisdiction to make a protection order is conferred by section 65<sup>23</sup> and that the estate in Queensland of such person does not exceed in value \$25 000, the public trustee may, subject to subsections (2) to (5), sign and seal and file in the court a certificate of disability, in the form approved by the public trustee.

(2) The public trustee shall not sign a certificate of disability under this section unless there are produced to the public trustee in respect of the person in question reports from 2 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 the public trustee’s 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 14 days of such service, written notification by that person that the person objects to the signing of a certificate of disability is received by the public trustee, the public trustee shall refrain from signing such certificate.

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<sup>22</sup> Section 74 (Originating summons remains open for further applications and where no previous summons, summons to be filed)

<sup>23</sup> Section 65 (Power of court to make protection order)

(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 the public trustee's intention to do so, accompanied by copies of this section and of sections 72 and 73,<sup>24</sup> to be served on that spouse and if, within 14 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, the public trustee 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, the public trustee shall not give further notice, pursuant to this section, of intention to sign a certificate of disability, within 12 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).

### **Where public trustee may file certificate of disability after request**

**71.** If the public trustee is satisfied from information available to the public trustee 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 the form approved by the public trustee.

### **Effect of certificate of disability**

**72.** 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

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<sup>24</sup> Sections 72 (Effect of certificate of disability) and 73 (Duration and variation of authority under certificate of disability)

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.<sup>25</sup>

### **Duration and variation of authority under certificate of disability**

**73.(1)** If at any time after the filing of a certificate of disability—

- (a) in the case of a certificate filed under section 70<sup>26</sup>—the value of the estate of the protected person is found to be then in excess of \$30 000; or
- (b) the public trustee is satisfied that the public trustee should no longer continue to manage the protected estate;

the public trustee shall as soon as practicable file in the court a revocation of such certificate of disability and thereupon the public trustee's authority shall cease.

(2) A revocation of certificate of disability shall be in the form approved by the public trustee 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 lifetime of the protected person, or at such time after the death of the protected person as the court determines.

(4) 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 authorised 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 the public trustee in and by this part, or by any order of the court.

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<sup>25</sup> Section 65 (Power of court to make protection order)

<sup>26</sup> Section 70 (Where public trustee may file certificate of disability after notice)

**Originating summons remains open for further applications and where no previous summons, summons to be filed**

**74.(1)** An application under section 65 or 66<sup>27</sup> 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<sup>28</sup> or a certificate of disability has been filed under section 70 or 71<sup>29</sup> 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)** 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.

**(4)** 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.

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<sup>27</sup> Section 65 (Power of court to make protection order) or 66 (Court may direct investigations)

<sup>28</sup> Section 67 (Protection order in damages action)

<sup>29</sup> Section 70 (Where public trustee may file certificate of disability after notice) or 71 (Where public trustee may file certificate of disability after request)



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

(6) 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.

### **Costs of public trustee to be paid out of property**

**75.(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 4—Authority where other jurisdictions involved*

#### **Definitions**

**77.** In this division—

“**proper officer**” means the officer of a reciprocating state who is authorised 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, and includes, in respect of any State (other than Queensland and New South Wales), the Northern Territory 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 a regulation declares to be an office the holder of which is a proper officer in respect of such

reciprocating state.

**“reciprocating state”** means any State (other than Queensland) any Territory, New Zealand, and any other state, country or territory that a regulation declares to be a reciprocating state for the purposes of this part.

### **Public trustee may request management in reciprocating state**

**78.(1)** Where the public trustee is authorised to manage the estate of a patient or a protected person and it appears to the public trustee that that person is possessed of, entitled to, or has an interest in or rights in respect of property in a reciprocating state the public trustee may, by instrument under the public trustee’s hand directed to the proper officer of that reciprocating state, certify that the public trustee is authorised 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.

### **Public trustee may be authorised to manage in Queensland**

**79.(1)** Where the proper officer of a reciprocating state by instrument under the proper officer’s hand directed to the public trustee certifies, by whatever verbal formula, that the proper officer is, as such proper officer, authorised 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 authorised to manage in Queensland the estate of that person.

**(2)** The public trustee may, without seeing to the application thereof and without liability there for, 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 the public trustee’s notice that that person has died;
- or

- (b) if such proper officer notifies the public trustee 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***

**Management by public trustee of property of incapacitated person**

**80.(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 the public trustee;
- (b) the public trustee shall be entitled to the possession and management of the same in accordance with the provisions of this division;
- (c) the public trustee shall be deemed to be a trustee;
- (d) subject to subsections (3) and (3A), the public trustee 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 the public trustee's corporate name or in the name of the incapacitated person, anything which the incapacitated person could do if the incapacitated person were not under a legal disability;
- (e) without limiting the generality of the foregoing, but subject to the other provisions of this part, the public trustee may apply any property of the incapacitated person or otherwise exercise any of the public trustee's powers under this division for any of the following purposes—

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- (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;
- (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 the incapacitated person 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 the incapacitated person were not under a legal disability;
- (d) demanding, receiving and recovering all documents, including wills and other testamentary instruments, belonging to the incapacitated person or of which the incapacitated person 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 5 of the *Succession Act 1867* or any other Act, which the incapacitated person would be entitled to make if the incapacitated person were not under a legal disability, or instituting any proceedings under the *Maintenance Act 1965* or any other Act or law;
- (g) borrowing a sum of money or increasing the amount of any overdraft, loan or advance or securing the payment of an amount by mortgage or charge and entering into such covenants, provisions and agreements relating thereto as the public trustee considers reasonable.

(4) The court may authorise 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.

### **Miscellaneous provisions as to formal authority**

**81.(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 authorised 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 the public trustee 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 the incapacitated person 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 authorised 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.

**Public trustee may under order of the court exercise powers or give consent on behalf of incapacitated persons**

**82.** 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.

**Limitation of contractual powers of incapacitated person**

**83.(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 the incapacitated person's behalf.

**(2)** The court may by order give leave to an incapacitated person to make any transfer, lease, mortgage, or other disposition of the incapacitated person's 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 the incapacitated person 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 the other party 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 the incapacitated person became an incapacitated person, and the public trustee may, in the public trustee's corporate name, or in the name of the incapacitated person, do all such acts and take all such proceedings as the public trustee may think fit to avoid any such contract, transfer, lease, mortgage or disposition.

### **Proceedings for protection of property of incapacitated persons**

**84.(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 the public trustee's 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.

**(1A)** However, 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.

### **Public trustee may complete matters commenced before authority ceased**

**85.** If, immediately prior to a time when the authority of the public trustee to manage the estate of an incapacitated person ceases pursuant to schedule

5, clause 6(1)<sup>30</sup> of the *Mental Health Act 1974* or to section 34<sup>31</sup> of the *Intellectually Disabled Citizens Act 1985* or to section 69, 73 or 79,<sup>32</sup> there is anything within the powers of the public trustee in relation to the estate which, having been commenced by the public trustee, 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 the public trustee as if the public trustee's authority still continued, and for this purpose the provisions of this Act with all necessary adaptations shall apply and extend accordingly.

### **Expenses payable out of estate**

**86.** 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.

### **Public trustee exempt from personal liability**

**87.** The public trustee, acting in pursuance of any provision of this part or exercising any power conferred or carrying out any duty imposed upon the public trustee 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.

### **Disposal of property on death where value under \$50 000**

**88.(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

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<sup>30</sup> *Mental Health Act 1974*, schedule 5, clause 6 (Termination of management)

<sup>31</sup> *Intellectually Disabled Citizens Act 1985*, section 34 (Cessation of management)

<sup>32</sup> Section 69 (Variation and duration of protection order), 73 (Duration and variation of authority under certificate of disability) or 79 (Public trustee may be authorised to manage in Queensland)



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- (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 \$50 000;

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—

- (d) who is the husband, wife, father, mother, child, brother, sister, nephew or niece of the incapacitated person; or
- (e) who satisfies the public trustee that in consequence of the death of the incapacitated person the person is entitled to property under the incapacitated person's will or on intestacy or that the person 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, the public trustee may require that person to give sufficient security by bond or otherwise that the money or property will be so applied.

**Court may order provision made out of estate where property sold etc.**

**89.(1)** Where any property of an incapacitated person has been dealt with under this part by the public trustee or under part 3A of the *Public Curator Act 1915*, the *Mental Hygiene Act 1938*, the *Mental Health Act 1962* 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 1 place to another, the application of money in acquiring property, the transfer of money from 1 account to another or otherwise howsoever) and the incapacitated person has died and under the incapacitated person's will, or on intestacy, or by any disposition taking effect on the incapacitated person's 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 the person's 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 the person's estate.

(2) The provisions of section 90(2) to (10) and of sections 92, 93 and 94 of the *Succession Act 1867* shall apply to any such application and any order made thereon as if such application was an application under part 5 of the said Act by a person entitled to make such an application.

## **PART 7—ADMINISTRATION OF PROPERTY OF PRISONERS**

### **Application of this part**

**90.** 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 3 years or upwards or for such term as, together with any other sentence or sentences imposed upon the prisoner, has rendered the prisoner liable to imprisonment for a period of 3 years or upwards; or
- (b) a person subject to an indefinite sentence within the meaning of part 10<sup>33</sup> of the *Penalties and Sentences Act 1992*; or
- (c) a person directed to be detained pursuant to part 4<sup>34</sup> of the *Criminal Law Amendment Act 1945*;

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

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<sup>33</sup> *Penalties and Sentences Act 1992*, part 10 (Indefinite sentences)

<sup>34</sup> *Criminal Law Amendment Act 1945*, part 4 (Indeterminate detention and probation of offenders convicted of sexual offences)

### **Public trustee to manage property of certain prisoners**

**91.** 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.

### **Public trustee may discontinue management after notice**

**92.(1)** Where the public trustee is of the opinion that it is not desirable that the public trustee should continue to manage the estate of a prisoner, the public trustee shall give to the chief executive (corrective services)<sup>35</sup> notice in duplicate, in the form approved by the public trustee, of the public trustee's intention to discontinue such management from a date to be stated in the notice, being not less than 8 weeks after the date of signing of the notice.

**(2)** Within 7 days of the receipt of any such notice, the chief executive (corrective services) shall cause a copy of the notice to be delivered to—

- (a) the prisoner if the prisoner is not at liberty;
- (b) the prisoner if the prisoner is at liberty as a result of a parole order made pursuant to the provisions of the *Corrective Services Act 1988* (a “**parole order**”);
- (c) the prisoner or such officer or other person as the chief executive (corrective services) considers reasonable if the prisoner is a person mentioned in section 90(b) who is released on a re-integration program under section 174<sup>36</sup> of the *Penalties and Sentences Act 1992*.

**(3)** Such officer or other person shall take such steps as appear to the officer or other person to be reasonable to bring the contents and effect of any such notice received by the officer or other person pursuant to subsection (2)(c) to the attention of the prisoner without delay.

**(4)** The chief executive (corrective services) or the prisoner or any other person appearing to the public trustee to have a proper interest may, within

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<sup>35</sup> For the definition of “**chief executive (corrective services)**”, see *Corrective Services (Administration) Act 1988*, section 7(6).

<sup>36</sup> *Penalties and Sentences Act 1992*, section 174 (Re-integration programs for offenders)

6 weeks of the receipt of the notice by the chief executive (corrective services), 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 chief executive (corrective services) 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 the public trustee should continue to manage the estate of such prisoner, the public trustee shall, prior to the date stated in the notice of intention to discontinue, revoke such notice and give notice to the chief executive (corrective services) in duplicate, in the form approved by the public trustee, of such revocation.

(6) The chief executive (corrective services) shall cause a copy of the notice of revocation to be delivered to the prisoner, or, for a prisoner mentioned in subsection (2)(c), to the prisoner or to such officer or other person as the chief executive (corrective services) considers reasonable.

(7) Where a notice of revocation has been delivered to the chief executive (corrective services) pursuant to the provisions of subsection (5) or to an officer or other person pursuant to the provisions of subsection (6), the chief executive (corrective services) or, as the case may be, officer or other person shall take such steps as appear to him or her 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 the public trustee's 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).

### **Public trustee may resume management by notice**

**93.(1)** If, after the authority of the public trustee to manage the estate of a prisoner has ceased pursuant to section 92—

- (a) the chief executive (corrective services) certifies in writing to the public trustee that the prisoner is not at liberty by virtue of a parole order or a reintegration program mentioned in section 92(2)(c) 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 the form approved by the public trustee, to the chief executive (corrective services) that the public trustee intends to resume such management, and thereupon, after a date to be stated in the notice (being not less than 6 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 7 days of receipt of such notice, the chief executive (corrective services) shall cause a copy of the notice to be delivered to the prisoner.

(3) The prisoner may, within 4 weeks of such delivery, make written representations to the public trustee that the notice should be revoked, and the chief executive (corrective services) 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 the public trustee should not again become the manager of such estate, the public trustee may, before the notice referred to in subsection (1) takes effect, revoke it and give notice of such revocation in duplicate, in the form approved by the public trustee, to the chief executive (corrective services) who shall cause a copy to be delivered to the prisoner.

### **Powers of public trustee**

**94.(1)** When the public trustee is manager of the estate of a prisoner under this part the public trustee 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 the prisoner were not a prisoner; and in particular—

(a) the public trustee may in the name and on behalf of the prisoner execute all such assurances and take all such proceedings as the public trustee 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;

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- (b) the public trustee 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 the public trustee's satisfaction and may cause any property which comes into the public trustee's 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 the public trustee's satisfaction;
- (c) the public trustee may cause such payment or other satisfaction to be made out of the property of the prisoner as the public trustee 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) the public trustee may, in such manner as the public trustee 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 exnuptial 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 the public trustee is authorised to manage the estate of the prisoner;
- (f) the public trustee may, in the public trustee's 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 the public trustee 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 the public trustee 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 the public trustee 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 the public trustee in such order and course as to priority of payments or otherwise as the public trustee thinks fit.

### **Restrictions on property dealings or proceedings**

**95.** During the time when the public trustee is manager of the prisoner's 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.

### **Cessation of public trustee's authority**

**97.(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 the prisoner was convicted; or
- (b) has undergone the full term or terms of imprisonment to which the prisoner has been sentenced or such other punishment as by competent authority has been substituted for such term or any of such terms; or
- (c) for a prisoner mentioned in section 90(b)<sup>37</sup>—has been released to a reintegration program under section 174<sup>38</sup> of the *Penalties and Sentences Act 1992* and the program has ended or been discharged; or
- (d) dies; or

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<sup>37</sup> Section 90 (Application of this part)

<sup>38</sup> *Penalties and Sentences Act 1992*, section 174 (Re-integration programs for offenders)

(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 the public trustee, 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 the public trustee as if the public trustee's authority still continued, and for this purpose the provisions of this part with all necessary adaptations shall apply and extend accordingly.

## **PART 8—UNCLAIMED PROPERTY**

### *Division 1A—Object*

#### **Object of pt 8**

**97A.(1)** The object of this part is to provide a scheme for paying or giving unclaimed property held by particular persons to the public trustee and for returning unclaimed property to persons lawfully entitled to it.

(2) For unclaimed superannuation benefits, the object is to be achieved by satisfying the requirements of the *Superannuation Industry (Supervision) Act 1993* (Cwlth) to enable the benefits to be paid to the public trustee instead of the commissioner of taxation.

#### **Application of unclaimed superannuation benefit provisions**

**97B.** A regulation may regulate the application of this part in relation to unclaimed superannuation benefits according to specified circumstances connected with the State, whether arising within or outside the State.



***Division 1—Unclaimed money******Subdivision 1—Interpretation*****Definitions**

**98.** 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*;
- (d) an entity prescribed by regulation to be an entity to which this division applies.

**“owner”** means the person entitled to any unclaimed moneys and the executors, administrators or assigns of such person and his, her or their lawful attorney or agent in Queensland.

**“unclaimed moneys”** means—

- (a) 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 the person’s trade, business or profession, to the owner and the whole or part of which have been in the possession of the accountable person for 2 years or more; and
- (b) an unclaimed superannuation benefit.

**Meaning of “unclaimed superannuation benefit”**

**98A.(1)** An **“unclaimed superannuation benefit”** is a benefit, other than an annuity or a pension, that—

- (a) the trustee of an approved deposit fund or a regulated

superannuation fund decides, under the fund's governing rules, is payable immediately to a member of the fund who has reached the eligibility age for a pension; and

- (b) the trustee can not pay to the member because the trustee, after making reasonable efforts to find the member, can not find the member.

(2) Subsection (1) applies whether or not the member has asked the trustee to pay the benefit to the member.

(3) An **“unclaimed superannuation benefit”** is also a benefit, other than an annuity or a pension, that—

- (a) the trustee of an approved deposit fund or a regulated superannuation fund decides, under the fund's governing rules, is payable immediately to a person (the **“beneficiary”**) in relation to a member of the fund who has died; and
- (b) before the member died, the member—
  - (i) had not asked the trustee to pay to the member; or
  - (ii) had asked the trustee to pay to the member, but was not paid before the member died; and
- (c) the trustee can not pay to the beneficiary because the trustee, after making reasonable efforts to find the beneficiary, can not find the beneficiary.

(4) In this section—

**“approved deposit fund”** see the *Superannuation Industry (Supervision) Act 1993* (Cwlth), section 10(1).

**“regulated superannuation fund”** see the *Superannuation Industry (Supervision) Act 1993* (Cwlth), sections 10(1) and 19.<sup>39</sup>

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<sup>39</sup> *Superannuation Industry (Supervision) Act 1993* (Cwlth), sections 10 (Definitions) and 19 (Regulated superannuation fund)

***Subdivision 2—Registers and other matters about unclaimed moneys*****Dividends not to be forfeited**

**99.** 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.

**Public trustee's register of unclaimed moneys**

**99A.(1)** The public trustee must keep a register of unclaimed moneys paid to the public trustee under this division.

**(2)** The register must contain the following details—

- (a) the name, and last known address, of the person for whom the moneys are held;
- (b) the amount held for the person;
- (c) if the moneys are an unclaimed superannuation benefit—
  - (i) the name of the fund in which the unclaimed moneys were held;
  - (ii) the following particulars about the member of the fund to whom, or in relation to whom, the amount was payable—
    - (A) membership number;
    - (B) date of birth;
    - (C) last known address;
- (d) any other detail prescribed under a regulation.

**(3)** A person may, on payment of the fee prescribed under a regulation—

- (a) inspect the register at the public trustee's head office when the

office is open to the public;<sup>40</sup> and

- (b) take extracts from, or obtain a copy of details in, the register.

### **Accountable person's register of unclaimed moneys**

**100.(1)** Every accountable person shall keep and maintain a register, in the form approved by the public trustee, at the person's principal place of business in Queensland.

**(1A)** On 14 February in every year each accountable person shall enter in such register the particulars specified, in the form approved by the public trustee, of all unclaimed moneys which have not previously been entered in the corresponding register for any previous year.

**(2)** On and after 15 February in every year and for a period of 2 years after the entry is made, the entry 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 the person's 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.

**(3A)** However, 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 \$500 or, if the public trustee consents in writing, \$1 000.

**(4)** An accountable person who fails to keep or advertise such register, or who refuses inspection thereof, shall be liable to a maximum penalty of 1 penalty unit for every day during which such default or refusal continues.

### **Statement about unclaimed superannuation benefits**

**100A.(1)** After the end of each half-year, an accountable person must give the public trustee a statement about unclaimed superannuation benefits held by the accountable person at the end of the half-year.

- (2)** The statement must be in the form approved by the public trustee and

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<sup>40</sup> The public trustee's head office address is 444 Queen Street, Brisbane Q 4000.

must be given to the public trustee by—

- (a) for the half-year ending on 30 June in a year—31 October in that year; and
- (b) for the half-year ending on 31 December in a year—30 April in the next year.

(3) However, the public trustee may, by written notice given to the accountable person before or after the day by which the statement must be given under subsection (2), allow the accountable person to give the statement by a later stated day.

(4) If the public trustee gives the accountable person a notice under subsection (3), the accountable person, instead of giving the statement by the day mentioned in subsection (2), must give the statement by the day stated in the notice.

(5) If, after the end of the half-year to which the statement relates but before the statement is given to the public trustee, the accountable person pays a person an amount of unclaimed superannuation benefits mentioned in the statement, the statement must contain the particulars about the amount required by the public trustee on the approved form.

(6) For this section, the form of statement the public trustee may approve includes a disc, tape or other article or any material from which sounds, images, writings or messages are capable of being produced or reproduced (with or without the aid of another article or device).

### **Public trustee may examine documents**

**101.(1)** The public trustee may at any time, if the public trustee has reason to believe that an entry should have been made as required by section 100,<sup>41</sup> or statement should have been given under section 100A, examine any books, vouchers, accounts, documents, or papers as may in the public trustee's opinion be necessary for the public trustee to determine whether the entry or statement has, or should have, been made, or given, and may for that purpose require the production before the public trustee or before such person as the public trustee may appoint, of all books, vouchers, accounts, documents or papers.

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<sup>41</sup> Section 100 (Accountable person's register of unclaimed moneys)

(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 maximum penalty of 1 penalty unit 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.

(4) If an error is found in a statement given under section 100A, the public trustee may ask the accountable person who gave the statement to amend it and give the amended statement to the public trustee by a stated day.

(5) The accountable person must comply with the request.

Maximum penalty—100 penalty units.

(6) If, as a result of the error, the accountable person would have been required to pay a further amount to the public trustee under section 102(1A), the accountable person must pay the amount to the public trustee when giving the amended statement under subsection (4).

Maximum penalty—200 penalty units.

### **Unclaimed moneys to be paid to public trustee**

**102.(1A)** When an accountable person gives a statement to the public trustee under section 100A,<sup>42</sup> the accountable person must pay to the public trustee the amount equalling the difference between the following amounts specified in the statement—

- (a) the unclaimed superannuation benefits held by the accountable person at the end of the half-year to which the statement relates;
- (b) the unclaimed superannuation benefits paid to a person after the end of the half-year to which the statement relates, the particulars of which must be contained in the statement under section 100A(5).

Maximum penalty—200 penalty units.

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<sup>42</sup> Section 100A (Statement about unclaimed superannuation benefits)

(1) All unclaimed moneys, other than unclaimed superannuation benefits, which have not been paid by an accountable person to the owner thereof within 1 year after they have been or should have been entered in the register kept by the accountable person under section 100 shall be paid by such person to the public trustee.

Maximum penalty—200 penalty units.

(2) However, an accountable person may deduct out of all unclaimed moneys, other than unclaimed superannuation benefits, payable by the accountable person to the public trustee the expenses paid by the accountable person 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 maximum penalty of 1 penalty unit 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.

(5) However, 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.

### **Public trustee may refund certain amounts to accountable persons**

**102A.(1)** This section applies if an accountable person—

- (a) has paid an unclaimed superannuation benefit to the public trustee under this subdivision; and
- (b) satisfies the public trustee that the amount of the benefit paid to the public trustee is more than the amount that would have been paid to the person entitled to its payment had section 102(1A) not been enacted.

(2) The public trustee must refund the amount of the overpayment, less the public trustee's reasonable expenses, to the accountable person.

### *Division 2—Other unclaimed property*

#### **Application of division**

**103.(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; and
- (b) any debt or other thing in action; and
- (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.

**(1A)** However, 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 inquiry who the owner of the property is, or where the owner is, or whether the owner 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 inquiry it is not known whether the owner 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 inquiry no officer or agent is known or can be found; or



(d) it is delivered to the public trustee pursuant to section 105.<sup>43</sup>

(3) Property which is by subsection (2) deemed to be unclaimed is hereinafter in this division referred to as “**unclaimed property**”.

### **Manner in which public trustee may become administrator**

**104.(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 utilisation thereof, or otherwise.

(2) If the public trustee is of the opinion that the gross value of any unclaimed property does not exceed \$50 000 and is satisfied that it is desirable for the reasons specified in subsection (1) that the public trustee should become the administrator thereof, the public trustee may, without making application to the court as provided by subsection (1), elect to be such administrator and thereupon the public trustee shall become the administrator under this division of such unclaimed property without any order of the court.

(3) Before making application to the court pursuant to subsection (1) or electing pursuant to subsection (2) the public trustee shall give 2 months notice of the public trustee’s intention to do so by advertisement in such newspaper as the public trustee considers suitable.

(3A) 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.

(3B) If the public trustee is of the opinion that the gross value of the unclaimed property does not exceed \$2 000, the public trustee may elect to become, and thereafter shall become, the administrator of such property under this division without giving such notice.

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<sup>43</sup> Section 105 (Unclaimed property held by hospitals)

(4) The public trustee shall not be obliged to take any steps or proceedings to be appointed or to become administrator of any unclaimed property.

### **Unclaimed property held by hospitals**

**105.(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 3 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 acknowledgment 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 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 the public trustee had been appointed by the court pursuant to section 104(1).

(4) In this section—

**“governing body”**, of a hospital, means—

- (a) for a public sector hospital within the meaning of the *Health Services Act 1991*—the chief executive of the department in which that Act is administered; or
- (b) for a private hospital—the licensee of the hospital within the meaning of the *Health Act 1937*.

**Person in possession of instruments of title shall deliver them to public trustee**

**106.** 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.

**Powers as administrator of unclaimed property**

**107.(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 the public trustee, all powers which as trustee the public trustee 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 exnuptial 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 the public trustee 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 the public trustee may think necessary for effectuating any of the powers conferred on the public trustee 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

inquire 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 the public trustee shall, subject to any direction of the court, have a complete discretion as to whether or not the public trustee exercises any of the powers conferred on the public trustee by or under this division, and shall not be liable for anything done or omitted to be done by the public trustee in good faith in the exercise of that discretion or power.

### **Property to be held on trust for owner**

**108.** 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 authorised to be applied, expended or charged by the public trustee, shall be held by the public trustee for the person entitled thereto.

### **Expenses of public trustee a charge on the property**

**109.(1)** All expenses incurred by the public trustee in the execution of the powers conferred on the public trustee 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.<sup>44</sup>

(3) Where—

- (a) the public trustee has given notice of the public trustee's intention—
  - (i) to make application to the court to be appointed administrator

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<sup>44</sup> Section 20 (Advances in course of administration)

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 the person's 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 the public trustee out of the consolidated fund.

### **Termination of administration**

**110.(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 the owner's personal representative or duly authorised agent or by any person having any interest in the property or in any part thereof; or
- (b) the public trustee decides that it is desirable that the public trustee should cease to be the administrator of the property; or
- (c) the public trustee transfers or delivers property to the owner or the owner's personal representative or duly authorised 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 the public trustee 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 the public trustee 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 the public trustee's name or in the

public trustee's possession the public trustee shall transfer or deliver the property to the person entitled thereto.

### **Evidence in respect of unclaimed property**

**111.** 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; and
- (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 the claimant 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.

### **Mistake of fact not to affect validity**

**112.** 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.

### **Limitations not affected**

**113.** Nothing in this division shall affect the *Limitation of Actions Act 1974* or any other Act by which a period of limitation is prescribed.

*Division 3—Payment into and out of unclaimed moneys fund***Unclaimed moneys to be credited to fund**

**115.** All moneys paid to the public trustee pursuant to section 102<sup>45</sup> shall be placed by the public trustee to the credit of the unclaimed moneys fund.

**Funds held by public trustee to be transferred**

**116.** 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 previous 2 years, and all interest accrued in respect thereof, shall be placed to the credit of the unclaimed moneys fund.

**Public trustee may pay claimant**

**117.(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 pay the same to the person 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.

**Treasurer to pay claimant**

**117A.(1)** If—

- (a) a person (the “**claimant**”) claims to be entitled to receive an amount paid into the unclaimed moneys fund 20 years or more before the claim is made; and
- (b) the public trustee advises the Treasurer that the public trustee is satisfied the claimant is entitled to receive the amount claimed;

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<sup>45</sup> Section 102 (Unclaimed moneys to be paid to public trustee)

the Treasurer must pay the amount claimed to the claimant out of the consolidated fund.

(2) If the amount or part of the amount is later claimed by someone else (the “**later claimant**”)—

- (a) the State, the Treasurer and the public trustee are not responsible for the payment to the later claimant of the amount claimed by the later claimant; but
- (b) the later claimant may have recourse against the claimant to whom the amount was paid.

#### *Division 4—Enforcement*

##### *Subdivision 1—Inspectors*

### **Appointment**

**117B.** The public trustee may appoint a public service officer as an inspector if, in the public trustee’s opinion, the person has the necessary expertise or experience to be an inspector.

### **Limitation of inspector’s powers**

**117C.** The powers of an inspector may be limited—

- (a) under a regulation; or
- (b) under a condition of appointment; or
- (c) by written notice of the public trustee given to the inspector.

### **Inspector’s conditions of appointment**

**117D.(1)** An inspector holds office on the conditions specified in the instrument of appointment.

(2) An inspector—

- (a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and



- (b) may resign by signed notice of resignation given to the public trustee; and
- (c) if the conditions of appointment provide—ceases holding office as an inspector on ceasing to hold another office stated in the conditions of appointment.

### **Inspector’s identity card**

**117E.(1)** The public trustee must give each inspector an identity card.

**(2)** The identity card must—

- (a) contain a recent photograph of the inspector; and
- (b) be in a form approved by the public trustee; and
- (c) be signed by the inspector; and
- (d) identify the person as an inspector under this Act.

**(3)** A person who ceases to be an inspector must return the person’s identity card to the public trustee within 21 days after the person ceases to be an inspector, unless the person has a reasonable excuse for not returning it.

Maximum penalty—10 penalty units.

### **Production or display of inspector’s identity card**

**117F.(1)** An inspector may exercise a power in relation to someone else (the “**other person**”) only if the inspector—

- (a) first produces the inspector’s identity card for inspection by the other person; or
- (b) has the identity card displayed so it is clearly visible to the other person.

**(2)** However, if for any reason, it is not practicable to comply with subsection (1) before exercising the power, the inspector must produce the identity card for the other person’s inspection at the first reasonable opportunity.

***Subdivision 2—Inspectors’ powers*****Entry to places**

**117G.(1)** An inspector may enter a place if—

- (a) its occupier consents to the entry or the purpose of the entry is to get the occupier’s consent; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) it is an accountable person’s place of business and is—
  - (i) open for carrying on the business; or
  - (ii) otherwise open for entry; or
- (d) the entry is permitted by a warrant.

**(2)** Subsection (1)(c) does not apply if the accountable person’s place of business is, or is part of, a dwelling house.

**Consent to entry**

**117H.(1)** This section applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place.

**(2)** Before asking for the consent, the inspector must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

**(3)** If the consent is given, the inspector may ask the occupier to sign an acknowledgment of the consent (a “**consent acknowledgment**”).

**(4)** The acknowledgment must state—

- (a) the occupier was told—
  - (i) the purpose of the entry; and
  - (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) the occupier gives the inspector consent to enter the place and

exercise powers under this part; and

(d) the time and date the consent was given.

(5) If the occupier signs a consent acknowledgment, the inspector must promptly give a copy to the occupier.

### **Evidence of consent**

**117I.(1)** Subsection (2) applies if—

- (a) an issue arises in a court proceeding whether the occupier of a place consented to an inspector entering the place under this part; and
- (b) a consent acknowledgment is not produced in evidence for the entry; and
- (c) it is not proved the occupier consented to the entry.

(2) The court may presume the occupier did not consent.

### **Application for warrant**

**117J.(1)** An inspector may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

### **Issue of warrant**

**117K.(1)** The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may

provide evidence of an offence against this Act; and

- (b) the evidence is at the place, or may be at the place within the next 7 days.

**(2)** The warrant must state—

- (a) that a stated inspector may, with necessary and reasonable help and force, enter the place and exercise the inspector's powers under this division; and
- (b) the offence for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when the place may be entered; and
- (e) the date, within 14 days after the warrant's issue, the warrant ends.

### **General powers after entering places**

**117L.(1)** This section applies to an inspector who enters a place.

**(2)** However, if an inspector enters a place to get the occupier's consent to enter premises, this section applies to the inspector only if the consent is given or the entry is otherwise authorised.

**(3)** For enforcing compliance with this Act, the inspector may—

- (a) search any part of the place; or
- (b) inspect, measure, test, photograph or film any part of the place or anything at the place; or
- (c) copy a document at the place; or
- (d) take into or onto the place any persons, equipment and materials the inspector reasonably requires for exercising a power under this division; or
- (e) require the occupier of the place, or a person at the place, to give the inspector reasonable help to exercise the inspector's powers under paragraphs (a) to (d); or
- (f) require the occupier of the place, or a person at the place, to give the inspector information to help the inspector ascertain whether

this Act is being complied with.

(4) When making a requirement mentioned in subsection (3)(e) or (f), the inspector must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

### **Failure to help inspector**

**117M.(1)** A person required to give reasonable help under section 117L(3)(e) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(2) If the requirement is to be complied with by the person giving information, or producing a document (other than a document required to be kept by the person under this Act), it is a reasonable excuse for the person to fail to comply with the requirement, if complying with the requirement might tend to incriminate the person.

### **Failure to give information**

**117N.(1)** A person of whom a requirement is made under section 117L(3)(f) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(2) It is a reasonable excuse for the person to fail to comply with the requirement if complying with the requirement might tend to incriminate the person.

### **Role of police officers**

**117O.(1)** An inspector may ask a police officer to help the inspector in the exercise of a power under this division.

(2) The police officer must give the inspector the reasonable help the inspector requires, if it is practicable to give the help.

### **Seizing evidence at places**

**117P.(1)** If an inspector enters a place under this division with the occupier's consent, the inspector may seize a thing at the place if—

- (a) the inspector reasonably believes the thing is evidence of an offence against this Act; and
- (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.

**(2)** If the inspector enters the place with a warrant, the inspector may seize the evidence for which the warrant was issued.

**(3)** The inspector also may seize anything else at the place if the inspector reasonably believes—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being—
  - (i) hidden, lost or destroyed; or
  - (ii) used to continue, or repeat, the offence.

**(4)** Also, the inspector may seize a thing at the place if the inspector reasonably believes it has just been used in committing an offence against this Act.

### **Securing seized things**

**117Q.** Having seized a thing, an inspector may—

- (a) move the thing from the place where it was seized (the “**place of seizure**”); or
- (b) leave the thing at the place of seizure, but take reasonable action to restrict access to it.

*Examples of restricting access to a thing—*

1. Sealing a thing and marking it to show access to it is restricted.
2. Sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted.

**Tampering with seized things**

**117R.** If an inspector restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing, or something restricting access to the thing, without an inspector's approval.

Maximum penalty—40 penalty units.

**Receipt for seized things**

**117S.(1)** As soon as practicable after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.

**(2)** However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.

**(3)** The receipt must describe generally each thing seized and its condition.

**(4)** This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt (given the thing's nature, condition and value).

**Return of seized things**

**117T.(1)** The inspector must return a seized thing to its owner—

- (a) at the end of 3 months; or
- (b) if a proceeding for an offence involving the thing is started within 3 months—at the end of the proceeding and any appeal from the proceeding.

**(2)** Despite subsection (1), the inspector must promptly return a thing seized as evidence to its owner if the inspector stops being satisfied its continued retention as evidence is necessary.

**Access to seized things**

**117U.(1)** Until a seized thing is returned, an inspector must allow its owner to inspect it and, if it is a document, to copy it.

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

## **PART 9—GENERAL**

### *Division 1—Notice and consequences of appointment*

#### **Notice to be given to public trustee of appointment as trustee**

**118.(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 the public trustee 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 the public trustee and to supply the public trustee with a copy thereof;
- (b) require any person who appears to the public trustee to be in a position to do so to supply the public trustee 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 the public trustee 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 the person to facilitate the public trustee's becoming registered as proprietor or owner of or as entitled to deal with any such property.

### **Rejection of appointment**

**119.(1)** The public trustee may decline, either absolutely or except upon conditions, to accept any trust or to act in any capacity to which the public trustee may be appointed under this Act.

(2) If any appointment of the public trustee to any such capacity is not accepted by the public trustee, the public trustee shall give notice thereof to such persons as the public trustee 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.

### **Effect of appointment**

**120.(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 part 6, 7 or 8<sup>46</sup>) taking effect, all the estate in respect of which the public trustee is so appointed or authorised shall, by virtue of such appointment and without other assurances in law, become vested in the public trustee (or, if there is a co-trustee, in the public trustee 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*

#### **Notice to be given to public trustee of property**

**121.** 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.

#### **Public trustee may require property to be transferred and may summon persons for examination**

**122.(1)** The public trustee may require all persons to deliver, convey, or transfer to the public trustee or to the public trustee and the public trustee's co-trustee (if any) all property to which the public trustee is or they are entitled.

**(2)** For the purpose of ascertaining whether any person has in the

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<sup>46</sup> Part 6 (Management of estates of incapacitated persons), 7 (Administration of property of prisoners) or 8 (Unclaimed property)

*Public Trustee Act 1978*

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person's possession or under the person's control any property which should be so delivered, conveyed, or transferred, the public trustee may institute such inquiries as the public trustee thinks proper and, in addition to any other rights the public trustee 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 the public trustee's hand to require any person to appear before the public trustee or before some person appointed in writing by the public trustee 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 the person been summoned as a witness in proceedings before a Magistrates Court constituted under the *Magistrates Courts Act 1921* 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 the person's 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 the person 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.

Maximum penalty—20 penalty units.

(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 the person to produce any documents in the person's custody or power relating thereto, but where the person 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 the public trustee's 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 the person would have been entitled to had the person been summoned as a witness in proceedings before a Magistrates Court at the place to which the person 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 the person 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 the person 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 or Magistrates 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 or Magistrates 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—

“documents” includes books, papers, deeds, documents, and any writings whatsoever.

### **Moneys and assets of public trustee deemed Crown property**

**123.(1)** Moneys paid or payable to the public trustee—

- (a) other than on behalf of an estate under administration; and
- (b) 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 the public trustee 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.

### **Searches**

**124.** The registrar-general and the department within which the *Land Act 1962* is administered and every officer of the court and every registrar of titles, 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 authorised by the public trustee 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.

**Registration of stock in name of public trustee**

**125.(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 the public trustee 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, the public trustee 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.

**Notice of trust not constituted only by entry of public trustee on any register of ownership**

**126.(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 1 of the persons, dealt with is the public trustee shall not, of itself, constitute notice of a trust.

**Public trustee may bring land under the Land Title Act 1994**

**127.** When freehold land not under the provisions of the *Land Title Act 1994* is an asset in an estate under administration, the public trustee,

notwithstanding that such land has not vested in the public trustee, may take proceedings to have such land brought under the provisions of the *Land Title Act 1994*.

### *Division 3—Indemnities etc.*

#### **Remedy against public trustee**

**128.(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 or her, sustains any loss or injury which would have entitled such first mentioned 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 the public trustee's corporate capacity as the person 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 fund shall be liable to make good all sums required to discharge any liability of the public trustee in the public trustee's corporate capacity.

#### **Advertisement for claims and payment**

**129.(1)** The public trustee may, at such times as the public trustee thinks fit, cause advertisements to be published in such newspapers as the public trustee 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 the public trustee 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 the public trustee has notice at the time of distribution and the public trustee shall not, in regard to any part of an estate so distributed or disposed of, be liable to any person of whose claim the public trustee had no notice at the time of the distribution or disposal.

**Allowance of claims**

**130.(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)** The public trustee 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)** The public trustee may allow any claim which is made upon or before the public trustee upon the evidence of the claimant alone or, where the public trustee thinks fit to call for further evidence, upon such further evidence as the public trustee requires.

**(4)** Acting in good faith, the public trustee shall not be liable for accepting as correct and acting upon any written statement or declaration by any person whom the public trustee 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.

**Barring of claims**

**131.(1)** Where—

- (a) the public trustee refuses to recognise, 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 the public trustee being under any liability in respect of which the public trustee would be entitled to reimbursement 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 the public trustee's possession or under the public trustee's control and which appears to the public trustee 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 1 month so to lodge the person's claim;

the public trustee may give notice in writing to the claimant or the person called upon to claim of the public trustee's refusal to recognise any such claim, in whole or in part, or of the public trustee's non-receipt of such claim, whichever the case may be.

(2) If such claimant or person called upon does not, within 3 months after the service of such notice, either satisfy the public trustee of the validity of the person's 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 the public trustee has not given notice of refusal to recognise, 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.

### **Cases where estate may be distributed after inquiries**

**132.(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 the public trustee, or as to the identity of any person entitled to any estate or part of an estate, the public trustee may, after such inquiries, including newspaper advertisements, as the public trustee considers necessary, pay, deliver or distribute the assets in the estate having regard only to the persons whose claims have then been established to the public trustee's satisfaction, or who then appear to the public trustee 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 first mentioned 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.

### **Payment of moneys etc. to persons abroad**

**133.(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, the public trustee may pay or deliver the same to the chief consular officer for that place in Queensland or in the Commonwealth, 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, the public trustee may pay or deliver the same to any person who is authorised by the law of that place to manage the estate or affairs of such first mentioned person on the ground of such first mentioned person's lack of capacity to manage the person's own affairs.

### **Public trustee may take opinion of court on question arising in course of duties**

**134.(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 the public trustee's duties.

**(3)** Any such question shall be submitted to a judge of the court in such manner and at such time as the public trustee may direct, and shall be accompanied by such statement of facts, affidavits, documents, and other information as the public trustee may require and the public trustee or anyone authorised by the public trustee shall, if the judge so desires, attend upon the judge at such time and place as the public trustee may appoint.

**(4)** The judge may, before giving the judge's 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 the judge's 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 the person the effect of such opinion or direction.

### **Validation of acts of public trustee under administration granted in error**

**135.(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 the public trustee 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 the public trustee 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.

### **Protection of public trustee acting under court order**

**136.** 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 the public trustee's own responsibility, to have discharged the public trustee's 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*****Public trustee may sue himself or herself in different capacity**

**137.(1)** Notwithstanding any rule of law or practice to the contrary, the public trustee, acting in 1 capacity, may maintain proceedings against himself or herself acting in another capacity.

**(2)** However, 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.

**Certificate or recital of authority evidence**

**138.(1)** A certificate under the hand of the public trustee, certifying the nature of the public trustee's 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 *Land Title Act 1994*, or of registering the public trustee as owner or proprietor of land under that Act 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 the public trustee's 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

I shall be concerned to inquire beyond such recital.

(4) If the public trustee is jointly administering an estate with someone else, the provisions of this section apply equally to matters done jointly with the other person.

### **Service of notices**

**139.(2)** If a person is absent from the State, a notice may be given to the person's agent in the State.

(2A) If a person is deceased, a notice may be given to the person's personal representative.

(3) If a person to whom a notice is to be given 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 given in the way directed by an order of the court.

### **Offences and penalties**

**140.(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 maximum penalty of 10 penalty units.

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

### **Relation to other Acts and instruments**

**141.(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 the public trustee 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 the public trustee 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 1 of the other but, nevertheless, the provisions of this Act shall not be restricted by any other Act or law.

### **Public trustee may approve forms**

**141A.** The public trustee may approve forms for use under this Act.

### **Regulation making power**

**142.(1)** The Governor in Council may make regulations under this Act.

(2) A regulation may be made about the following matters—

- (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;
- (h) providing for the fixing of fees for legal, conveyancing and other

professional services rendered to the public trustee or the official solicitor, or by the public trustee or the public trustee's officers to the public;

- (ha) the remission by the public trustee of all or part of any fees or other charges fixed or otherwise provided for under this Act;
- (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.

## **PART 10—TRANSITIONAL PROVISIONS**

### **References to public curator**

**143.** A reference in an Act, instrument or other document to the public curator is taken to be a reference to the public trustee.

### **Public Curator Act 1915 references**

**144.** In an Act or document, a reference to the *Public Curator Act 1915* may, if the context permits, be taken to be a reference to this Act.

### ***Transitional provision about fees and charges***

**145.(1)** *On the commencement of this section, the fees prescribed under a regulation for section 17 as in force immediately before the commencement are taken to be fees fixed by the public trustee.*

**(2)** *However, fees taken under subsection (1) to have been fixed by the public trustee are repealed on the commencement of a gazette notice under*

*section 17.*

*(3) This section expires 2 years after it commences.<sup>47</sup>*

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<sup>47</sup> This provision has expired and is included for information purposes only. It will be omitted in the next reprint.



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## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 26 October 1999. Future amendments of the Public Trustee Act 1978 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	prev	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

## 4 Table of earlier reprints

### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 24 of 1994	20 June 1994
1A	to Act No. 57 of 1995	22 July 1996
1B	to Act No. 79 of 1996	3 March 1997
1C	to Act No. 82 of 1997	17 December 1997
1D	to Act No. 22 of 1998	1 June 1998
2	to Act No. 22 of 1998	7 August 1998

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	1
Changed names and titles	1
Comparative legislation	1
Corrected minor errors	1
Obsolete and redundant provisions	1
Renumbered provisions	1

## 6 List of legislation

### **Public Trustee Act 1978 No. 73**

date of assent 8 December 1978

commenced 1 January 1979 (proc pubd gaz 23 December 1978 p 1970)

as amended by—

### **Succession Act 1981 No. 69 s 3(1) sch 1**

date of assent 7 October 1981

commenced 1 January 1982 (proc pubd gaz 19 December 1981 p 1622)

### **Intellectually Handicapped Citizens Act 1985 No. 11 s 3(2) sch**

date of assent 25 March 1985

commenced 1 January 1986 (proc pubd gaz 28 September 1985 p 391)

### **Public Trustee Act Amendment Act 1988 No. 73**

date of assent 28 October 1988

commenced on date of assent

**Corrective Services (Consequential Amendments) Act 1988 No. 88 s 3 sch 1**

date of assent 1 December 1988

commenced 15 December 1988 (see s 2(2) and o in c pubd gaz 10 December 1988 p 1675)

**Intellectually Handicapped Citizens Act Amendment Act 1989 No. 33 s 45**

date of assent 28 April 1989

commenced 1 July 1989 (proc pubd gaz 24 June 1989 p 1822)

**Public Service (Administrative Arrangements) Act 1990 (No. 2) No. 80 s 3 sch 1**

date of assent 14 November 1990

commenced on date of assent

**Statute Law (Miscellaneous Provisions) Act 1990 No. 88 s 3 sch**

date of assent 6 December 1990

commenced on date of assent

**Health Services Act 1991 No. 24 s 7.3 sch 3**

date of assent 5 June 1991

commenced 1 July 1991 (proc pubd gaz 22 June 1991 p 974)

**Statute Law (Miscellaneous Provisions) Act 1991 No. 97 ss 1–3 sch 2**

date of assent 17 December 1991

commenced on date of assent

**Land Title Act 1994 No. 11 ss 1–2, 194 sch 2**

date of assent 7 March 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 24 April 1994 (1994 SL No. 132)

**Justice and Attorney-General (Miscellaneous Provisions) Act 1994 No. 24 ss 1–3 sch (as amd by 1994 No. 87 ss 1–3 sch 2 (as from 30 May 1994) (see s 2))**

date of assent 10 May 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 30 May 1994 (1994 SL No. 168)

**Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 1 (as amd by 1995 No. 58 ss 1–2, 4 sch 1 (as from 28 November 1995) (see s 2(1) sch 1))**

date of assent 28 November 1995

commenced on date of assent

**Public Service Act 1996 No. 37 ss 1–2, 147 sch 2**

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

**Health Legislation Amendment Act (No. 2) 1996 No. 61 pts 1, 4, sch**

date of assent 9 December 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 20 December 1996 (1996 SL No. 402)

**Justice Legislation (Miscellaneous Provisions) Act 1996 No. 79 pts 1, 27**

date of assent 12 December 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 28 February 1997 (1997 SL No. 35)

**Justice and Other Legislation (Miscellaneous Provisions) Act 1997 No. 9 ss 1, 2(5) pt 18**

date of assent 15 May 1997

ss 1, 2(5) commenced on date of assent

remaining provisions commenced 20 June 1997 (1997 SL No. 155)

**Miscellaneous Acts (Non-bank Financial Institutions) Amendment Act 1997 No. 17 ss 1–2 pt 6**

date of assent 15 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1997 (1997 SL No. 163)

**Justice and Other Legislation (Miscellaneous Provisions) Act (No. 2) 1997 No. 82 ss 1–2, pt 21**

date of assent 5 December 1997

commenced on date of assent

**Powers of Attorney Act 1998 No. 22 ss 1–2 ch 9 pt 6**

date of assent 14 May 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 1 June 1998 (1998 SL No. 123)

**Corrective Services Legislation Amendment Act 1999 No. 9 pt 1 sch**

date of assent 30 March 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 May 1999 (1999 SL No. 72)

**Statute Law (Miscellaneous Provisions) Act 1999 No. 19 ss 1–3 sch**

date of assent 30 April 1999

commenced on date of assent

## 7 List of annotations

**Long title**

sub 1994 No. 24 s 3(1) sch

**Arrangement of Act**

s 3 om 1991 No. 97 s 3 sch 2

**Repeals, amendments and savings**

s 5 amd 1991 No. 97 s 3 sch 2

om 1994 No. 24 s 3 sch

AIA s 20A applies to s 5(7) (see 1994 No. 24 s 3(2))

**Definitions**

prov hdg sub 1995 No. 57 s 4 sch 1

s 6 def “**corporation**” ins 1994 No. 24 s 3(1) sch

- def “**common fund**” sub 1997 No. 9 s 52
- def “**deputy public trustee**” om 1994 No. 24 s 3(1) sch
- def “**estate under administration**” sub 1994 No. 24 s 3(1) sch
- def “**land**” om 1991 No. 97 s 3 sch 2
- def “**Minister**” sub 1990 No. 80 s 3 sch 1  
om 1991 No. 97 s 3 sch 2
- def “**mortgage**” sub 1994 No. 24 s 3(1) sch  
om 1995 No. 57 s 4 sch 1
- def “**mortgagee**” ins 1994 No. 24 s 3(1) sch  
om 1995 No. 57 s 4 sch 1
- def “**mortgagor**” ins 1994 No. 24 s 3(1) sch  
om 1995 No. 57 s 4 sch 1
- def “**order to administer**” amd 1994 No. 24 s 3(1) sch
- def “**property**” amd 1994 No. 24 s 3(1) sch
- def “**public trustee**” sub 1994 No. 24 s 3(1) sch
- def “**Real Property Acts**” om 1994 No. 11 s 194 sch 2
- def “**registering authority**” amd 1994 No. 11 s 194 sch 2  
sub 1994 No. 24 s 3(1) sch
- def “**trust**” sub 1994 No. 24 s 3(1) sch
- def “**trustee**” ins 1994 No. 24 s 3(1) sch
- def “**will**” om 1994 No. 11 s 194 sch 2

**PART 2—THE PUBLIC TRUSTEE AND PUBLIC TRUST OFFICE**

**pt hdg** sub 1994 No. 24 s 3(1) sch

**Public trustee and Public Trust Office**

**s 7** sub 1994 No. 24 s 3(1) sch

**Corporation sole of public trustee**

**s 8** sub 1994 No. 24 s 3(1) sch

**Provisions about public trustee**

**s 9** sub 1994 No. 24 s 3(1) sch  
amd 1996 No. 37 s 147 sch 2

**Acting public trustee**

**s 10** sub 1994 No. 24 s 3(1) sch

**Staff of Public Trust Office**

**s 11** sub 1994 No. 24 s 3(1) sch  
amd 1996 No. 37 s 147 sch 2

**Delegation by public trustee**

**s 11A** ins 1994 No. 24 s 3(1) sch

**Public trustee’s seal**

**s 11B** ins 1994 No. 24 s 3(1) sch

**Contracts and transactions of public trustee not under seal**

**s 11C** ins 1994 No. 24 s 3(1) sch

**Evidentiary provisions**

**s 11D** ins 1994 No. 24 s 3(1) sch

**Bond or other security not to be required**

s 11E ins 1994 No. 24 s 3(1) sch

**Delegation by public trustee**

s 13 om 1994 No. 24 s 3(1) sch

**Vacancy or change in office not to terminate authority**

s 14 om 1994 No. 24 s 3(1) sch

**Declaration of secrecy**

s 15 amd 1994 No. 24 s 3(1) sch

**Employment of solicitors etc.**

s 16 amd 1997 No. 9 s 53; 1997 No. 17 s 28

**Public trustee may fix fees and charges**

s 17 sub 1996 No. 79 s 96

**Priority etc. of fees and charges**

s 17A ins 1996 No. 79 s 96

**Costs etc. for proceedings**

s 17B ins 1996 No. 79 s 96

**Accounting**

s 18 amd 1994 No. 24 s 3(1) sch; 1996 No. 79 s 97

**Common fund and investment thereof and of other moneys**

s 19 amd 1994 No. 24 s 3(1) sch; 1997 No. 9 s 54

**Advances in course of administration**

s 20 amd 1994 No. 24 s 3(1) sch

**Public Trust Office Investment Board**

s 21 amd 1994 No. 24 s 3(1) sch; 1997 No. 17 s 29

**Unclaimed moneys fund**

s 25 sub 1994 No. 24 s 3(1) sch

**Balance sheet and accounts to be laid before Parliament**

s 26 amd 1996 No. 79 s 98

**Rights and duties to which public trustee may be appointed**

s 27 amd 1996 No. 79 s 99

**Joint administration etc. by public trustee**

s 27A ins 1994 No. 24 s 3(1) sch

**The public trustee may hold as trustee for the Crown**

s 28 amd 1994 No. 11 s 194 sch 2; 1994 No. 24 s 3(1) sch

**Election to administer estates under \$100 000 without grant of administration**

prov hdg amd 1988 No. 73 s 9; 1994 No. 24 s 3(1) sch

s 30 amd 1988 No. 73 s 9; 1994 No. 24 s 3(1) sch

**Appointment of public trustee in the place of existing personal representative**

s 31 amd 1988 No. 73 s 9; 1994 No. 24 s 3(1) sch

**Consequences of election**

s 33            amd 1988 No. 73 s 9; 1994 No. 24 s 3(1) sch

**Administration of small estates**

s 35            amd 1988 No. 73 s 9; 1994 No. 24 s 3(1) sch

**Powers of public trustee pending grant**

s 36            amd 1994 No. 24 s 3(1) sch

**When public trustee being custodian trustee or statutory trustee may act as general trustee**

s 40            amd 1994 No. 24 s 3(1) sch

**Legacies or shares of person under a disability etc. may be paid to public trustee**

s 43            amd 1988 No. 73 s 9; 1994 No. 24 s 3(1) sch

**Public trustee may receive and hold moneys of person under a disability**

s 44            amd 1994 No. 24 s 3(1) sch

**Administration of benefit funds**

s 45            amd 1994 No. 24 s 3(1) sch

**General powers**

s 48            amd 1988 No. 73 s 2; 1994 No. 24 s 3(1) sch; 1997 No. 17 s 30

**Public trustee may hold property to which mentally incapable beneficiary is entitled**

s 51            amd 1988 No. 73 s 9; 1994 No. 24 s 3(1) sch

**Where residue may be paid to spouse**

s 54            amd 1988 No. 73 s 9; 1994 No. 24 s 3(1) sch

**Property of deceased person deemed to vest in public trustee until grant**

s 56            om 1981 No. 69 s 3(1) sch 1

**Compromise of actions by or on behalf of persons under a legal disability claiming moneys or damages valid only with sanction of court or public trustee**

prov hdg    amd 1994 No. 24 s 3(1) sch

s 59            amd 1988 No. 73 s 3; 1994 No. 24 s 3(1) sch

**Public trustee may direct audit of trusts**

s 60            amd 1994 No. 24 s 3(1) sch; 1997 No. 9 s 55

**Circumstances when public trustee may release mortgage or encumbrance for another**

s 61            amd 1994 No. 24 s 3(1) sch

**Circumstances where public trustee may execute transfer for another**

s 62            amd 1994 No. 24 s 3(1) sch

**Adult guardian resources**

s 63A        ins 1998 No. 22 s 184

**Definitions**

s 64            amd 1985 No. 11 s 3(2) sch; 1989 No. 33 s 45(2)(a)

**Protection order in damages action**

**s 67** amd 1997 No. 9 s 56; 1999 No. 19 s 3 sch

**Court may give directions**

**s 68** amd 1997 No. 9 s 57; 1999 No. 19 s 3 sch

**Variation and duration of protection order**

**s 69** amd 1994 No. 24 s 3(1) sch

**Where public trustee may file certificate of disability after notice**

**s 70** amd 1988 No. 73 s 9; 1994 No. 24 s 3(1) sch

**Where public trustee may file certificate of disability after request**

**s 71** amd 1994 No. 24 s 3(1) sch

**Duration and variation of authority under certificate of disability**

**s 73** amd 1988 No. 73 s 9; 1994 No. 24 s 3(1) sch

**Division 3—Amendments of Mental Health Act 1974**

**div hdg** om R1 (see RA s 40)

**Amendments**

**s 76** amd 1988 No. 73 s 4  
om R1 (see RA s 40)

**Definitions**

**s 77** amd 1994 No. 24 s 3(1) sch (as amd by 1994 No. 87 s 3 sch 2)

**Management by public trustee of property of incapacitated person**

**s 80** amd 1988 No. 73 s 9; 1994 No. 24 s 3(1) sch; 1997 No. 9 s 58

**Public trustee may complete matters commenced before authority ceased**

**s 85** amd 1985 No. 11 s 3(2) sch; 1989 No. 33 s 45(2)(b)  
sub 1990 No. 88 s 3 sch  
amd 1991 No. 97 s 3 sch 2

**Disposal of property on death where value under \$50 000**

**prov hdg** amd 1988 No. 73 s 5(a); 1994 No. 24 s 3(1) sch  
**s 88** amd 1988 No. 73 s 5(b); 1994 No. 24 s 3(1) sch

**Application of this part**

**s 90** amd 1994 No. 24 s 3(1) sch

**Public trustee may discontinue management after notice**

**s 92** amd 1988 No. 88 s 3(1) sch 1; 1994 No. 24 s 3(1) sch; 1999 No. 9 s 3 sch

**Public trustee may resume management by notice**

**s 93** amd 1988 No. 88 s 3(1) sch 1; 1994 No. 24 s 3(1) sch; 1999 No. 9 s 3 sch

**Transitional**

**s 96** om 1994 No. 24 s 3(1) sch

**Cessation of public trustee's authority**

**s 97** amd 1988 No. 88 s 3(1) sch 1; 1994 No. 24 s 3(1) sch

**Division 1A—Object**

**div hdg** ins 1997 No. 9 s 59(1)



**Object of pt 8**

s 97A ins 1997 No. 9 s 59(1)

**Application of unclaimed superannuation benefit provisions**

s 97B ins 1997 No. 9 s 59(1)  
amd 1997 No. 82 s 80

**Subdivision 1—Interpretation**

sdiv hdg ins 1997 No. 9 s 59(2)

**Definitions**

prov hdg sub 1997 No. 9 s 60(1)  
s 98 amd 1994 No. 24 s 3(1) sch; 1997 No. 9 s 60(2)–(3)  
def “unclaimed moneys” amd 1997 No. 82 s 81

**Meaning of “unclaimed superannuation benefit”**

s 98A ins 1997 No. 9 s 61

**Subdivision 2—Registers and other matters about unclaimed moneys**

sdiv hdg ins 1997 No. 9 s 61

**Public trustee’s register of unclaimed moneys**

s 99A ins 1997 No. 9 s 62

**Accountable person’s register of unclaimed moneys**

prov hdg sub 1997 No. 9 s 63(1)  
s 100 amd 1988 No. 73 s 9; 1994 No. 24 s 3(1) sch; 1997 No. 9 s 63(2)–(4)

**Statement about unclaimed superannuation benefits**

s 100A ins 1997 No. 9 s 64

**Public trustee may examine documents**

prov hdg amd 1997 No. 9 s 65(1)  
s 101 amd 1994 No. 24 s 3(1) sch; 1997 No. 9 s 65(2)–(4)

**Unclaimed moneys to be paid to public trustee**

s 102 amd 1994 No. 24 s 3(1) sch; 1997 No. 9 s 66

**Public trustee may refund certain amounts to accountable persons**

s 102A ins 1997 No. 9 s 67

**Manner in which public trustee may become administrator**

s 104 amd 1988 No. 73 s 9; 1994 No. 24 s 3(1) sch

**Unclaimed property held by hospitals**

s 105 amd 1991 No. 24 s 7.3 sch 3; 1996 No. 61 s 15 sch

**Transitional**

s 114 om 1994 No. 24 s 3(1) sch

**Funds held by public trustee to be transferred**

s 116 amd 1997 No. 82 s 82

**Public trustee may pay claimant**

s 117 amd 1988 No. 73 s 6

**Treasurer to pay claimant**

s 117A ins 1994 No. 24 s 3(1) sch

**Division 4—Enforcement**

div hdg ins 1997 No. 9 s 68

**Subdivision 1—Inspectors**

sdiv hdg ins 1997 No. 9 s 68

**Appointment**

s 117B ins 1997 No. 9 s 68

**Limitation of inspector's powers**

s 117C ins 1997 No. 9 s 68

**Inspector's conditions of appointment**

s 117D ins 1997 No. 9 s 68

**Inspector's identity card**

s 117E ins 1997 No. 9 s 68

**Production or display of inspector's identity card**

s 117F ins 1997 No. 9 s 68

**Subdivision 2—Inspectors' powers**

sdiv hdg ins 1997 No. 9 s 68

**Entry to places**

s 117G ins 1997 No. 9 s 68

**Consent to entry**

s 117H ins 1997 No. 9 s 68

**Evidence of consent**

s 117I ins 1997 No. 9 s 68

**Application for warrant**

s 117J ins 1997 No. 9 s 68

**Issue of warrant**

s 117K ins 1997 No. 9 s 68

**General powers after entering places**

s 117L ins 1997 No. 9 s 68

**Failure to help inspector**

s 117M ins 1997 No. 9 s 68

**Failure to give information**

s 117N ins 1997 No. 9 s 68

**Role of police officers**

s 117O ins 1997 No. 9 s 68

**Seizing evidence at places**

s 117P ins 1997 No. 9 s 68

**Securing seized things**

s 117Q ins 1997 No. 9 s 68

**Tampering with seized things**

s 117R ins 1997 No. 9 s 68

**Receipt for seized things**

s 117S ins 1997 No. 9 s 68

**Return of seized things**

s 117T ins 1997 No. 9 s 68

**Access to seized things**

s 117U ins 1997 No. 9 s 68

**Public trustee may require property to be transferred and may summon persons for examination**

s 122 amd 1994 No. 24 s 3(1) sch; 1997 No. 9 s 69

**Searches**

s 124 amd 1994 No. 24 s 3(1) sch

**Public trustee may bring land under the Land Title Act 1994**

prov hdg amd 1994 No. 11 s 194 sch 2

s 127 amd 1994 No. 11 s 194 sch 2

**Public trustee may take opinion of court on question arising in course of duties**

s 134 amd 1994 No. 24 s 3(1) sch

**Certificate or recital of authority evidence**

s 138 amd 1994 No. 11 s 194 sch 2; 1994 No. 24 s 3(1) sch

**Service of notices**

s 139 amd 1994 No. 24 s 3(1) sch; 1997 No. 9 s 70

**Offences and penalties**

s 140 amd 1994 No. 24 s 3(1) sch

**Public trustee may approve forms**

s 141A ins 1994 No. 24 s 3(1) sch

**Regulation making power**

prov hdg sub 1995 No. 57 s 4 sch 1

s 142 amd 1988 No. 73 s 7; 1994 No. 24 s 3(1) sch; 1995 No. 57 s 4 sch 1 (as amd by 1995 No. 58 s 4 sch 1); 1996 No. 79 s 100

**PART 10—TRANSITIONAL PROVISIONS**

pt hdg ins 1994 No. 24 s 3(1) sch

**References to Public Curator**

s 143 ins 1994 No. 24 s 3(1) sch

**Public Curator Act 1915 references**

s 144 ins 1995 No. 57 s 4 sch 1

**Transitional provision about fees and charges**

**s 145** ins 1996 No. 79 s 101  
exp 28 February 1999 (see s 145(3))

**SCHEDULE 1**

amd 1988 No. 73 s 8; 1991 No. 97 s 3 sch 2  
om 1994 No. 24 s 3(1) sch

**SCHEDULE 2**

amd 1988 No. 73 s 9; 1988 No. 88 s 3(1) sch 1; o in c pubd gaz 17 June  
1989 pp 1210–1  
om 1994 No. 24 s 3(1) sch