

EXPLANATORY STATEMENT  
AUSTRALIAN CAPITAL TERRITORY  
PUBLIC TRUSTEE ORDINANCE 1985  
No. 8 of 1985

The purpose of this Ordinance is to establish a Public Trustee for the A.C.T.

The basic functions of the Public Trustee are to act as executor, administrator and trustee of estates of deceased persons, to act as trustee of money or property payable to persons under disability as a result of court proceedings, to act as a trustee inter vivos, and to manage unclaimed property.

For a number of years, there has been in the A.C.T. a Curator of Estates of Deceased Persons who administers estates of deceased persons. The A.C.T. Public Trustee takes over the existing functions of the Curator.

A significant activity to be undertaken by the Public Trustee is the investment of moneys paid into court for the benefit of infants and other persons under a disability. This is an alternative to the existing system under which the Registrar of the A.C.T. Supreme Court and the Clerk of the Court of Petty Sessions invest such moneys.

The Public Trustee will be operating a Common Fund (see sections 55 to 65) which will be large enough for him to take advantage of a wide range of investment opportunities within the constraints imposed on him by law as a trustee.

Another activity to be undertaken by the Public Trustee is the management of unclaimed or abandoned property.

Formerly, if the ownership of property could not be ascertained, or if the owner could not be located, there was no public official who could take care of the property for the owner or any other person with an interest in the property. Part V (sections 34-45) enables the Public Trustee to fill this need. Public Trustees in some of the States and the Northern Territory have a similar function.

The Ordinance does not contain detailed financial provisions, as these will be dealt with in Regulations to be made under the Audit Act 1901.

Details of the Ordinance are as follows:

Section 1 provides that the Ordinance may be cited as the Public Trustee Ordinance 1985.

Section 2 provides for the Minister for Territories to set a commencement date for the Ordinance by notice in the Gazette. This is to enable necessary administrative arrangements to be completed before the Ordinance comes into operation.

Section 3 provides for the Ordinance to bind the Crown.

Section 4 defines a number of words and phrases used in the Ordinance.

Certain other words and phrases are to have the same meaning as they are given in the Administration and Probate Ordinance 1929. Much of the Public Trustee's work as executor, administrator and trustee and as successor to the Curator of Estates of Deceased Persons will be regulated by that Ordinance.

Section 5 provides that there shall be a Public Trustee for the A.C.T., to be appointed by the Attorney-General. The Attorney-General is also able to appoint Deputy Public Trustees.

Only a public servant may be appointed as Public Trustee or Deputy Public Trustee. This will not preclude a person who is not a public servant from being appointed to the public service and then appointed as Public Trustee.

A Deputy Public Trustee is to have the same powers as the Public Trustee, subject to any directions given by the Public Trustee.

A person dealing with a Deputy Public Trustee will not need to enquire whether there is any direction by the Public Trustee to the Deputy Public Trustee relevant to the transaction.

Section 6 enables the Attorney-General to terminate the appointment of the Public Trustee or a Deputy Public Trustee. Termination of appointment would be needed, for example, when the Public Trustee or a Deputy Public Trustee is promoted to another position in the Public Service.

If the Public Trustee or a Deputy Public Trustee ceases to be a public servant, he ceases also to be Public Trustee or a Deputy Public Trustee.

Section 7 provides for the appointment of a person to act as the Public Trustee or as a Deputy Public Trustee. The Attorney-General may make such an appointment if the position is vacant, or if the holder is absent from duty or from the A.C.T., or if for any reason he cannot perform the functions

of his office. The duration of an acting appointment may not exceed 12 months.

Only a public servant will be eligible to act as Public Trustee or as a Deputy Public Trustee.

The instrument of appointment may specify the circumstances under which a person may act as Public Trustee or Deputy Public Trustee. This will enable a standing appointment to be made (to take effect whenever circumstances listed above occur).

If an Acting Public Trustee or Acting Deputy Public Trustee ceases to be a public servant his appointment as Acting Public Trustee or Acting Deputy Public Trustee will cease to have effect.

The validity of anything done by an Acting Public Trustee or Acting Deputy Public Trustee shall not be questioned on a ground relating to the circumstances or formalities of his appointment or the circumstances in which he has acted.

Section 8 provides that the Public Trustee is a corporation sole with perpetual succession and an official seal. He will be able to acquire, hold and dispose of real and personal property, and to sue and be sued.

Section 9 enables the Public Trustee to appoint an agent from time to time. Such an agent will be subject to the direction and control of the Public Trustee. This section enables the Public Trustee to employ persons with special expertise to carry out particular tasks.

Section 10 protects the Public Trustee, Deputy Public Trustee, and the Public Trustee's staff against personal

liability for any of their actions, provided that the act or omission complained of was done in good faith. The Public Trustee is still liable in his official capacity under section 12.

Section 11 protects the Public Trustee from any claim if it is discovered that he is administering the estate of a person who is subsequently found to be alive, or to have left a will, unknown to the Public Trustee, or to have left a document purporting to be a will which has no effect as a will, or to have made a later will than that upon which the Public Trustee has relied. This protection applies only where the Public Trustee has acted in good faith, being unaware of the true position.

Section 12 protects the interests of a person who sustains a loss or injury as the result of an act or omission of the Public Trustee or somebody acting on his behalf. The person sustaining the loss or injury is entitled to the same remedy against the Public Trustee as he would have had against a natural person. The liability of the Public Trustee in these circumstances is to be met by the Commonwealth.

Section 13 sets out the capacities in which the Public Trustee may act. They are listed in sub-section 13(1). Paragraphs 13(1) (a), (b) and (c) relate to functions which the Curator of Estates of Deceased Persons has exercised. Paragraphs 13(1) (d) - (g) inclusive give a new role to the Public Trustee.

The Public Trustee will not be able to accept a trust set up for religious purposes.

The Public Trustee may decline to accept any particular trust or appointment to act. He may not do so where a trust devolves upon him or an appointment is made of him specifically by law, where he is appointed by an order of the Court, or by reason only of the small value of the property or estate.

Section 14 enables the Public Trustee to act jointly with another person or persons in any of the capacities mentioned in section 13 other than as manager of property under Part V.

Where he is acting jointly with another person they may jointly exercise all powers that the Public Trustee could exercise if acting alone. Also, moneys under their joint control shall be dealt with in the same manner as money under the control of the Public Trustee alone.

Section 15 specifies certain circumstances in which the Court may order that the Public Trustee be appointed as a trustee, executor or administrator, although the consent of a person who is required to consent to the appointment has not been obtained. The Court may exercise this power if the person refuses to consent to the appointment of the Public Trustee, if he is absent from the A.C.T. or if he is under disability.

Section 16 provides that the Public Trustee has the same powers, duties and liabilities when acting in a capacity referred to in section 13 as a natural person acting in that capacity would have and is subject to the control and orders of any court in the same manner as such a person.

Section 17 authorises the appointment of the Public Trustee as a trustee unless the instrument creating the trust contains a direction to the contrary.

Section 18 provides that even though an instrument provides for the appointment of two or more trustees, the Public Trustee may be appointed as sole trustee unless the appointment is expressly prohibited by the instrument.

Section 19 provides that when the Public Trustee is appointed as a trustee, all the property in respect of which he is so appointed vests in him without the necessity for any transfer or formalities.

Section 20 provides that the powers conferred on the Public Trustee under the Ordinance are in addition to any other power which he may exercise under any other law in force in the A.C.T..

Section 21 sets out the powers of the Public Trustee when he is acting in connection with the administration of an estate. These powers are additional to any other power conferred on him. He may, however, be prohibited from acting in any of the capacities specified in this section by the express terms of an instrument affecting his authority to act.

These powers include, in general terms, powers to sell property, to lease property for periods up to 10 years, to discharge obligations, to maintain property, to bring legal proceedings, and to set off claims.

Section 22 enables the Public Trustee to prepare a will either for a fee or free of charge, and to accept for deposit a will of which he is an executor.

Section 23 empowers the Public Trustee to accept documents and chattels for safe custody. Where he makes a charge in connection with holding the document or chattel, his liability is to be that of a bailee for reward. If he does not make a charge, his liability is to be that of a gratuitous bailee (who has a lesser liability).

Section 24 empowers the Supreme Court, either on its own motion or upon application, to direct the Public Trustee to represent a party to court proceedings or to represent a person or a class of persons interested in those proceedings.

Where such a direction is given, the Public Trustee may be represented in the proceedings by a barrister and solicitor. The costs and expenses of the representation and a reasonable fee for the services of the Public Trustee are to be paid out of the estate or property which is the subject of the proceedings, or otherwise as the Court directs.

Section 25 provides that where a court orders money to be paid to a person under disability (other than money payable as compensation under the Workmen's Compensation Ordinance) that money shall be paid into the court. Then, unless the court otherwise directs, that money is to be paid by the court to the Public Trustee.

Where money (other than money payable as compensation under the Workmen's Compensation Ordinance) is paid into Court, either before the commencement of the Ordinance or pursuant to a judgment, order or agreement given, entered or made before the commencement of the Ordinance, and the money is held in Court for a person under a disability, the Court may order that the money be paid to the Public Trustee.



Where compensation is paid into Court under the Workmen's compensation Ordinance for a person under a disability, the Court may order that that money be paid to the Public Trustee.

Where the Court has given an earlier direction that money in Court be not paid out to the Public Trustee it may, by order, direct that the money be paid out to the Public Trustee.

Where a court orders property to be delivered up or transferred to a person under disability, the court may order that the property be delivered up or transferred to the Public Trustee on behalf of the person. The Public Trustee will be required to accept delivery or transfer of the property to which the order relates.

The Public Trustee is required to hold any money or property paid to or accepted by him under this section upon trust and, subject to any direction of the court, to apply the money or property for the maintenance, advancement or benefit of the person in whose favour the judgment or order was made, or for the benefit of a dependant of that person (if the court so directs).

Sub-section 25(8) excludes from the operation of the section, salary, wages and other money due to a person who has not attained full age in respect of his or her employment, weekly payments under the Workmen's Compensation Ordinance and payments made under that Ordinance on a person attaining the age of 16 years.

Section 26 enables the Public Trustee to sue

himself. This situation could arise, for example, where the Public Trustee is the executor or administrator of an estate which has a claim against another estate of which he is executor or administrator.

The Public Trustee must apply to the Court for directions as to how the respective interests of the Public Trustee should be represented in proceedings in which he is suing himself.

Section 27 enables the Public Trustee to enter into a contract with himself while acting in connection with two or more trusts, estates or properties under his management. This power would be needed, for example, where the Public Trustee is trustee of the estates of both mortgagor and mortgagee of property and it is desirable that the mortgage be renewed.

Section 28 provides that except where other provision is made under the Ordinance for the payment of a fee the Public Trustee may charge for his services, by commission or otherwise, such fee as is determined under section 75 of the Ordinance. In accordance with usual practice, a separate determination of fees will be made, to come into effect at the same time as the Ordinance.

The Public Trustee is also to be entitled to his reasonable expenses.

The fees and expenses of the Public Trustee may be paid from moneys in the estate trust or fund and will, subject to other laws in force in the A.C.T., be payable in priority to any other debts or liabilities of the estate, trust or fund.

The Public Trustee is able to dispense with payment

of fees or to reduce fees where he considers that payment of the full amount would impose hardship on a person, or where there are other circumstances that justify his doing so.

Section 29 provides that where money is payable, or chattels are to be delivered, to a person in a country other than Australia, the Public Trustee may pay the money or deliver the chattels to a consular officer or official of the country in which the person is resident. This enables the Public Trustee to pay over moneys or deliver chattels for a person outside Australia where there are practical difficulties in paying the money or delivering the chattels directly to the person.

Section 30 enables the Public Trustee, where he is administering the estate in the A.C.T. of a person who dies domiciled outside the A.C.T., and whose estate in his place of domicile is being administered by another Public Trustee or similar official, to pay the proceeds of the estate in the A.C.T. to the other Public Trustee or similar official.

Conversely, where a person dies domiciled in the A.C.T. and the Public Trustee or similar official of another place is administering his estate in that place, the Public Trustee of the A.C.T. may receive from the other Public Trustee or similar official the balance of the estate of the deceased person in the other place.

Section 31 provides that where the Public Trustee has been administering an estate for not less than 6 years and does not know of the existence or whereabouts of a person entitled to moneys included in the estate, or is unable to

effect payment of such moneys to a person entitled to them, he shall pay those moneys to the Commonwealth.

Any person who claims to be entitled to money paid to the Commonwealth is able to apply to the Supreme Court for an order declaring his right to the money.

Section 32 enables the Public Trustee to insist on a statutory declaration or other evidence to support a claim in connection with an estate or trust being administered by him, or property of which he is manager, and to refuse to deal with a claim until the statutory declaration or further evidence is produced. This provision will assist the Public Trustee where he has doubts about the validity of a claim.

Section 33 enables the Public Trustee to publish a notice requiring creditors to notify him in writing of claims against an estate. Where the Public Trustee disputes a claim which he has received he shall give the claimant a notice in writing calling upon him to bring proceedings to enforce his claim within six months after the receipt by him of the notice, and informing him of the effect of his failing to do so.

If a person does not bring proceedings to enforce his claim within the period specified in the notice, or within such further period as the Supreme Court may allow, the Public Trustee will be able to deal with the estate without taking the claim into account, in which case the right of the claimant will then be barred.

Part V deals with the role of the Public Trustee in relation to unclaimed property in the A.C.T.

Section 34 provides that the Public Trustee may apply to the Supreme Court for an order appointing him as manager of property, broadly where the owner of the property is unknown, or his whereabouts are unknown, or the property appears to have been abandoned.

The Court may make an order appointing the Public Trustee as manager of property if it is satisfied that the appointment is necessary or desirable in the interests of the owner of the property or of another person, or to preserve the property.

The Court may specify particular powers to be exercised by the Public Trustee in relation to particular properties.

Section 35 provides a simplified procedure where the value of the property concerned does not exceed \$10,000. In those circumstances, the Public Trustee may become manager of property by filing a notice of election in the Supreme Court. In deciding whether or not to become manager under this procedure, the Public Trustee will be required to apply the same criteria as would the Court on an application under section 34.

Section 36 obliges the Public Trustee, as soon as he applies for an order to become manager of property or files a notice of election, to give notice of what he has done by advertising in a newspaper circulating in the A.C.T.

Section 37 provides that property of which the Public Trustee becomes manager does not vest in the Public Trustee.

Section 38 sets out the powers which the Public Trustee may exercise as manager of property. These powers are

generally similar to those the Public Trustee may exercise as Trustee (excluding the power to sell the property) adapted to his role as manager. As well, the Public Trustee is able to use the property to provide for the spouse or other dependants of the owner of the property.

Section 39 enables the Public Trustee to obtain directions from the Supreme Court relating to the management of property and, in special circumstances, to sell the property.

The Supreme Court may give directions to the Public Trustee regarding the property, its management or administration, or the exercise of any of the Public Trustee's powers in relation to it.

An application for directions may be made by the Public Trustee or by a spouse, child or other dependant of the owner of the property or by any person who has an interest in the property.

The Court will also be able to authorize the Public Trustee to sell the property upon such conditions as the Court thinks fit.

The criteria to which the Court must have regard in determining an application for directions or for an order to sell a property are set out in sub-section 39(5).

A simplified procedure is provided in relation to property which does not exceed \$5,000 in value. The Public Trustee may sell such property without application to the Court if he considers it necessary or desirable to do so, having regard to the criteria specified in paragraph

39(6)(c). These criteria are similar to those the Court would be required to take into account on an application for an order to sell.

Where the Public Trustee sells property pursuant to this section he ceases to be manager of the property.

Section 40 provides that where the Public Trustee receives money upon the sale of a property pursuant to section 39, or receives money in respect of property of which he is manager, the Public Trustee becomes manager of that money.

This section does not apply in relation to money received as the proceeds of a sale of property under section 43.

Section 41 provides that where the Public Trustee takes possession of property as manager, the property is to be held for the owner of, or person beneficially entitled to, the property.

Section 42 provides that any fees, costs or expenses due to the Public Trustee as manager of property are to be charged on the property. This will enable the Public Trustee to recover from the property money due to him.

Any charge is to be subject to any prior mortgage or charge but will have priority over other mortgages or charges. The Public Trustee is to be able to postpone a charge on property in favour of himself to a later mortgage or charge. This will facilitate the renewal or obtaining of a loan charged on the property.

Money due to the Public Trustee under a charge is to bear interest at such rate as is prescribed.

Section 43 provides for a variety of circumstances in which the Public Trustee may dispose of property managed by him and for the consequences of such disposal. These are first, where the owner of the property is located, and the property is transferred to him; secondly, where the owner is located but difficulties are experienced in transferring the property to him; thirdly, where the entitlement of a claimant to the property is determined by the Court, and fourthly where the Public Trustee has managed property for at least 7 years.

Where the Public Trustee is aware of the whereabouts of the owner of property he will be obliged to transfer the property to the owner. If he considers that it is not practicable to do so, he is required to give a notice to the owner describing the property, specifying its location, informing the owner that the Public Trustee is acting as manager of the property, asking him to take delivery or to arrange to take delivery of the property, and advising him what may happen if he does not comply with the notice.

The immediate consequence of non-compliance with the notice will be that the Public Trustee may give to the owner a further notice. Where the owner does not comply with the second notice or, having complied, does not give effect to an arrangement to take delivery of the property, the Public Trustee may apply to the Supreme Court for an order to sell the property or, where the gross value of the property does not exceed \$5,000, sell the property without a Court order, or, if the property is money, pay it to the Commonwealth.



Where a person applies to the Supreme Court, and the Court is satisfied that the applicant or another person owns or is beneficially entitled to the property, the Court shall order that the property be transferred to the applicant or the other person, whichever is appropriate, or make such other order as it thinks fit.

Where the Public Trustee has been acting as manager of property for not less than seven years, and the ownership of the property has not been ascertained or the owner has not been located, the Court shall order that the property be sold or disposed of or, if it is money, paid to the Commonwealth. Alternatively, if the gross value of the property does not exceed \$5,000 the Public Trustee may sell or otherwise dispose of the property or, if it is money, pay it to the Commonwealth, without a Court order.

Provision is made for notice to be given both of an application to the Court for an order to sell, and of an intended sale where the property is less than \$5,000 in value.

Section 44 sets out the circumstances in which the Public Trustee ceases to be manager of property. These are:

- . where the property is transferred to the owner, or person beneficially entitled to it;
- . where the property is sold and the proceeds are paid to the Commonwealth, or, where the property is money, and it is paid to the Commonwealth; and
- . where the property has been sold, having been managed by the Public Trustee for not less than seven years.

Section 45 deals with claims in relation to property made after the Public Trustee has ceased to be manager of the property.

Where the Public Trustee has ceased to be manager of property and has paid money to the Commonwealth in respect of the property, a person who was entitled to the property may obtain an order from the Supreme Court.

Where an order is made the Commonwealth is to pay the person in relation to whom the order was made an amount equivalent to the amount paid to the Commonwealth in connection with the property.

Part VI contains financial provisions and, in particular, provides for the establishment of a Common Fund to enable the Public Trustee to obtain the best possible return on trust moneys under the control of the Public Trustee consistent with complete security. It also contains provisions setting up certain Accounts which will facilitate administration and the crediting of investment income from the Common Fund to individual estates and trusts.

Section 46 provides for the establishment of the Public Trustee Investment Board.

Section 47 provides that the function of the Board is to control the investment of money in the Common Fund, or in the hands of the Public Trustee, which is available for investment.

Section 48 provides that the Board shall consist of the Public Trustee and two other members appointed by the

Attorney-General. These members shall hold office for a period not exceeding three years but may be re-appointed.

Section 49 provides that the Public Trustee shall be the chairman of the Board.

Section 50 makes provision for the appointment of acting members of the Board.

Section 51 provides that the Board is a prescribed authority for the purposes of the Remuneration Ordinance 1976. This will enable allowances for members to be prescribed under that Ordinance.

Section 52 provides that members of the Board, other than the Public Trustee, may resign from the Board by writing to the Attorney-General.

Section 53 enables the Attorney-General to terminate the appointment of a member of the Board, other than the Public Trustee, for misbehaviour or physical or mental incapacity.

The Attorney-General is obliged to terminate the appointment of a member (other than the Public Trustee) who becomes bankrupt or legally insolvent or is absent without leave for three consecutive meetings of the Board.

A Board member who is a public servant will cease to be a member if he ceases to be a public servant.

Section 54 contains procedural requirements for meetings of the Investment Board.

Section 55 provides for the establishment of the Common Fund.

The Public Trustee shall establish and maintain a Common Fund. He is to be generally required to pay into the

Common Fund all moneys received by him on behalf of an estate, trust or person or held by him as manager of property.

However, the Public Trustee may not pay money into the Common Fund where it is received under a trust expressly prohibiting investment in the Common Fund or where the money is held by the Public Trustee jointly with another person and the other person objects to the money being held in the Common Fund.

The Public Trustee is to keep proper accounts showing the amount at all times held for an estate, trust or person.

Section 56 deals with investment of money held in the Common Fund.

Money in the Common Fund is to be invested by the Public Trustee as directed by the Board. The Public Trustee may sell or convert to money any investments made by him from money in the Common Fund.

Investments from the Common Fund are not to be made on behalf of, or belong to, any particular estate, trust or person.

Section 57 deals with the investment of money which is not required to be held in the Common Fund.

Such money is to be held in the name of the estate, trust or person on whose behalf it is received and is to be invested in accordance with any directions applicable to it or, if none, in accordance with the directions of the Board. Interest received in respect of such investment is to be credited to the estate, trust or person concerned while any loss arising from an investment is to be debited to the estate, trust or person.

Section 58 deals with withdrawal of money from the Common Fund.

The Public Trustee will be empowered to withdraw money from the Common Fund belonging to an estate, trust or person and to apply that money in connection with the estate, trust or person or, in accordance with the directions of the Board, to invest the money separately.

The Public Trustee shall withdraw money paid into the Common Fund if the Public Trustee receives notice in writing from another person, who holds the money jointly with the Public Trustee, that that person objects to the retention of the money in the Fund.

Section 59 provides for the payment of interest in respect of money in the Common Fund.

Interest is to be payable in respect of money held in the Common Fund at rates determined from time to time by the Board.

Interest is to be calculated on a daily basis and credited to the estate, trust or person on 31 March and 30 September of each year and at such other times (if any) as the Public Trustee may determine. Interest is also to be paid on completion of the administration of an estate or trust. Interest will be paid from money held in the Common Fund Interest Account established under section 60.

Section 60 provides for the Common Fund Interest Account.

The Public Trustee is to establish and maintain an account called the Common Fund Interest Account. This Account is not to form part of the Common Fund.

The Public Trustee is to pay into the Common Fund Interest Account interest received on investments and on advances made from the Common Fund.

Any surplus in the Common Fund Interest Account, after payment of interest and after the appropriate amount is transferred to the Common Fund Guarantee and Reserve Account, is to be invested as directed by the Board.

Interest received from investment of that surplus is to be paid into the Common Fund Interest Account.

Section 61 provides for the Common Fund Guarantee and Reserve Account.

The Public Trustee is to establish and maintain a Common Fund Guarantee and Reserve Account.

This Account is not to form part of the Common Fund.

Where a balance remains in the Interest Account after payment of interest under section 59 the Board may direct that all or part of that balance is to be transferred from the Common Fund Interest Account to the Common Fund Guarantee and Reserve Account.

Also, the Public Trustee is to pay into the Common Fund Guarantee and Reserve Account any capital profit made upon realization of any investments in the Common Fund.

The Common Fund Guarantee and Reserve Account may be applied (with the approval of the Board) for any of the following purposes:-

- . to meet any loss on realization of an investment from the Common Fund;
- . to pay costs and expenses incurred in protecting investments made from the Common Fund;

- . to pay any other expenses or charges incurred in connection with the maintenance or administration of the Common Fund, or investments made from the Common Fund, other than expenses or charges properly chargeable against a particular estate or trust;
- . to pay costs and expenses incurred in legal proceedings, other than costs and expenses to be charged against a particular estate or trust; or
- . to pay costs and expenses of obtaining legal advice or legal proceedings in matters of general interest and importance where it is not appropriate that a particular estate or trust be charged.

Any money in the Common Fund Guarantee and Reserve Account which is not required at any time is to be invested as directed by the Board. Interest on any such investment is to be paid into the Common Fund Guarantee and Reserve Account.

Section 62 requires the Board not to authorize an investment that is not an authorized trustee investment under the Trustee Act 1925 - 1942 of New South Wales, as modified and applied in the A.C.T.

Section 63 provides that after the Public Trustee has made all payments from the Common Fund Interest Account which the Public Trustee is required to make under any other provision (viz sections 59, 60 and 61) the balance, or such part of the balance as the Board determines, is to be applied by the Public Trustee towards operating costs.

Section 64 enables the Public Trustee, with the approval of the Board to make advances from the Common Fund

for any purpose relating to an estate or trust that the Public Trustee is administering. This will enable the Public Trustee, for example, to advance money to replace a maturing mortgage over property comprised in an estate he is administering.

Any such loan is to bear interest at such rate and to be made on such conditions as the Board from time to time determines.

A loan from the Common Fund and interest on the loan shall be a charge upon all property of the estate or trust concerned, unless it is made in respect of particular property in which case the charge will be over that property.

Such a charge is to rank next in priority to any mortgage or charge on the property of which the Public Trustee has notice when he makes the advance.

Section 65 enables the Public Trustee to make advances to beneficiaries. This may be appropriate, for example, where a beneficiary is in immediate need of money but estate assets can not yet be realized.

The Public Trustee may only make advances to a person up to whichever is the lesser of \$5,000, or one quarter of the person's estimated beneficial interest in the estate or trust, unless the advances are made with the approval of the Board, in which case they are not to exceed one half of the estimated value of the beneficial interest.

Advances are to bear interest at such rate, and to be made on such other terms and conditions, as the Board may determine.



An advance to a beneficiary and interest on it are to be charged against the beneficial interest of the person to whom the advance is made, subject only to any prior charges upon that interest of which the Public Trustee has received notice in writing.

An advance, interest and any costs and expenses relating to it, are to be repayable on demand to the Public Trustee by the person to whom the advance was made, unless it has been expressly agreed to the contrary.

Section 66 deals with the sale of goods by auction.

The Public Trustee or a person authorized by him is to be able to offer for sale by auction property up to a value of \$2,000.

The person who carries out an auction under this section is not required to hold a licence under the Auctioneers Ordinance 1959.

Section 67 prevents a court, where any person other than the Public Trustee applies to the court for an order transferring property to the Public Trustee or conferring responsibilities on the Public Trustee, making such an order unless the Public Trustee has received prior notice of the application, or consents to the order.

Where an order is made on such an application, the applicant will be required to serve on the Public Trustee a copy of the order and a statement giving particulars of any property affected by the order.

Section 68 provides that where in legal proceedings the Public Trustee either is represented by a barrister and

solicitor who is a public servant or, being a barrister or solicitor, appears in person, the Public Trustee will be entitled to the same costs and allowances as if the Public Trustee had been represented by a barrister and solicitor in private practice.

Section 69 provides that where the Public Trustee applies for probate or administration of the estate of a deceased person the Public Trustee is entitled to his costs in relation to the application from the estate and is not liable for the costs of any other person.

Section 70 provides that jurisdiction under the Ordinance is vested in the Supreme Court.

Section 71 provides that in the event of the Public Trustee becoming entitled to administer the estate of a mortgagor, or in the event of the estate of the mortgagor coming under the control of the Public Trustee, any covenant, or condition in the mortgage whereby the money becomes due and payable, or a power of sale or entry into possession becomes exercisable, or any covenant or condition which adversely affects the interests of the mortgagor, in the event of the Public Trustee becoming entitled to administer the estate, is null and void.

Section 72 provides that where the Public Trustee pays a premium on an insurance policy in respect of property in an estate or trust which he is administering, or which he is managing, he has a lien on money paid under the policy for the amount of the premiums.

Section 73 provides that a document to be given or served by the Public Trustee may be given or served by sending

it by post to the person concerned at his last known place of residence.

Section 74 contains evidentiary provisions, similar in nature to those applicable in N.S.W. and other jurisdictions, enabling the Public Trustee to issue certificates under the seal of the Public Trustee stating all or any of the matters listed in the section. Those certificates will be (prima facie) evidence of the matters stated in them.

Section 75 provides that the Attorney-General may make determinations, which are to be published in the Gazette, of fees and charges payable under the Ordinance.

Section 76 gives the Attorney-General power to make regulations under the Ordinance prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to the Ordinance.

Authorised by the  
Attorney-General

13/84