

AUSTRALIAN CAPITAL TERRITORY

Public Trustee Ordinance 1985

No. 8 of 1985

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AUSTRALIAN CAPITAL TERRITORY

Public Trustee Ordinance 1985

No. 8 of 1985

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 22 February 1985.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

LIONEL BOWEN
Attorney-General

An Ordinance relating to the appointment of a public trustee and the powers and duties of the Public Trustee, and for other purposes

PART I—PRELIMINARY

Short title

1. This Ordinance may be cited as the *Public Trustee Ordinance 1985*.¹

Commencement

2. (1) This section and section 1 shall come into operation on the day on which this Ordinance is notified in the *Gazette*.

(2) The remaining provisions of this Ordinance shall come into operation on such date as is, or such dates as respectively are, fixed by the Minister of State for Territories by notice in the *Gazette*.

Crown to be bound

3. This Ordinance binds the Crown.

Interpretation

4. (1) In this Ordinance, unless the contrary intention appears—

“Administration Ordinance” means the *Administration and Probate Ordinance 1929*;

“barrister and solicitor” has the same meaning as in the *Legal Practitioners Ordinance 1970*;

“Board” means the Public Trustee Investment Board established under section 46;

“common fund” means the common fund established under section 55;

“Court” means the Supreme Court;

“Deputy Public Trustee” means a person appointed under section 5 to be a Deputy Public Trustee;

“member” means a member of the Board;

“person under disability” means a person who has not attained full age or a person who is of unsound mind or incapable;

“public servant” means a person who is an officer or employee within the meaning of the *Public Service Act 1922*;

“Public Trustee” means—

- (a) subject to paragraph (b), the person holding office as the Public Trustee for the Australian Capital Territory; and
- (b) in relation to the exercise of the powers and the performance of the functions of the Public Trustee for the Australian Capital Territory—the corporation referred to in section 8;

“senior member” means the senior member of the Board.

(2) Where an expression is used in this Ordinance that is defined in the Administration Ordinance, then, unless the contrary intention appears, that expression has the same meaning for the purposes of this Ordinance as it has in the Administration Ordinance.

PART II—THE PUBLIC TRUSTEE

Division 1—Administration

Public Trustee and Deputy Public Trustees

5. (1) For the purposes of this Ordinance, there shall be a Public Trustee for the Australian Capital Territory.

(2) The Attorney-General shall appoint a person to be the Public Trustee.

(3) There shall be such Deputy Public Trustees as are appointed by the Attorney-General for the purposes of this Ordinance.

(4) A person is not eligible for appointment as the Public Trustee or as a Deputy Public Trustee unless the person is a public servant.

(5) A Deputy Public Trustee may, subject to any directions of the Public Trustee, exercise any power or perform any function of the Public Trustee, whether under this Ordinance or another law in force in the Territory, and any reference in this Ordinance or that other law to the Public Trustee shall, so far as may be necessary for the purpose of giving effect to this sub-section, be read as including a reference to a Deputy Public Trustee.

(6) A person dealing with a Deputy Public Trustee is not bound to enquire whether the Deputy Public Trustee, in exercising a power or performing a function in connection with the dealing—

- (a)** was subject to a direction of the Public Trustee; or
- (b)** complied with a direction of the Public Trustee to which the Deputy Public Trustee was subject.

Termination of offices

6. (1) The Attorney-General may at any time terminate the appointment of a person as Public Trustee or as a Deputy Public Trustee.

(2) If a person appointed as Public Trustee or as a Deputy Public Trustee ceases to be a public servant, the person ceases to hold office as Public Trustee or Deputy Public Trustee, as the case may be.

Acting appointments

7. (1) The Attorney-General may appoint a person to act as Public Trustee—

- (a)** during a vacancy in the office of Public Trustee, whether or not an appointment has previously been made to the office; or

- (b) during any period, or during all periods, when the Public Trustee is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of the office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) The Attorney-General may appoint a person to act as a Deputy Public Trustee—

- (a) during vacancy in the office of a Deputy Public Trustee, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when a Deputy Public Trustee is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of the office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(3) A person is not eligible for appointment under this section unless the person is a public servant.

(4) The appointment of a person under this section may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(5) The Attorney-General may at any time terminate the appointment of a person under this section.

(6) Where—

- (a) a person is acting in the office of Public Trustee in accordance with paragraph (1) (b); or
- (b) a person is acting in the office of a Deputy Public Trustee in accordance with paragraph (2) (b),

and that office becomes vacant while that person is so acting, then, subject to sub-section (4), that person may continue so to act until the Attorney-General otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(7) The appointment of a person to act as the Public Trustee or as a Deputy Public Trustee ceases to have effect if the person resigns the appointment by writing signed by the person and delivered to the Attorney-General.

(8) If a person appointed to act as Public Trustee or as a Deputy Public Trustee ceases to be a public servant, the appointment of the person so to act ceases to have effect.

(9) While a person is acting as the Public Trustee or as a Deputy Public Trustee, the person has, and may exercise, all the powers and shall perform all the functions under this Ordinance or any other law in force in the Territory of the Public Trustee or a Deputy Public Trustee, as the case may be, and, for the purposes of the exercise of those powers and the performance of those functions, this Ordinance or that other law has effect as if a reference to the Public Trustee or a Deputy Public Trustee included a reference to a person acting in the office of Public Trustee or as a Deputy Public Trustee, as the case may be.

(10) The validity of anything done by a person purporting to act under this section shall not be called in question on the ground that the occasion for the appointment of the person had not arisen, that there is a defect or irregularity in or in connection with the appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

Public Trustee a corporation sole

8. (1) The Public Trustee—

- (a) is a corporation sole by the name of the Public Trustee for the Australian Capital Territory;
- (b) has perpetual succession;
- (c) shall have an official seal; and
- (d) is capable, in the corporate name of the Public Trustee, of acquiring, holding and disposing of real and personal property and of suing and being sued.

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

Agent of Public Trustee

9. (1) The Public Trustee may, from time to time, appoint a person to be an agent of the Public Trustee.

(2) A person who is appointed under this section as an agent is subject to the direction, control, supervision and inspection of the Public Trustee in all matters relating to the business for which the person is appointed.

Division 2—Protection and liability of Public Trustee**Protection of Public Trustee and other officers**

10. (1) A person who holds, or has held, the office of Public Trustee is not liable, personally, to an action or other proceeding for or in relation to an act done or omitted to be done in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power or authority, conferred on the person as the holder of that office.

(2) A person who is, or has been, a Deputy Public Trustee, and acting Public Trustee or Deputy Public Trustee, an agent of the Public Trustee or a public servant exercising a power or performing a function relating to the business or affairs of the Public Trustee is not liable to an action or other proceeding for or in relation to an act done or omitted to be done in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power or authority, conferred on the person in that capacity.

Protection of Public Trustee where mistakes as to death, &c.**11. Where—****(a) the Public Trustee—**

- (i)** has obtained a grant of probate of the will, or administration of the estate, of a person under the Administration Ordinance;
- (ii)** is otherwise administering the estate of a person under the Administration Ordinance; or
- (iii)** is acting as executor or trustee under the will of a person; and

(b) it is found—

- (i)** that the person is alive;
- (ii)** in a case in which the person was believed to have died intestate—that the person died testate;
- (iii)** in a case in which the person was believed to have died testate—that the person died intestate and that the document that was believed to be his or her last will has no testamentary validity or effect; or
- (iv)** that a document that was believed to be the person's last will is not the person's last will,

all acts done or omitted to be done by the Public Trustee in good faith while acting in any capacity in connection with the grant, estate or will are as valid and effectual as if the Public Trustee had been lawfully entitled to act in that capacity.

Liability of Public Trustee

12. Where, by an act or omission of the Public Trustee or another person acting or purporting to act in good faith for the Public Trustee, a person sustains a loss or injury that would have entitled that person to a remedy in respect of the loss or injury if the act or omission were an act or omission of a natural person—

- (a) the person sustaining the loss or injury is entitled to the same remedy against the Public Trustee in the corporate capacity of the Public Trustee as the person would have been entitled to against a natural person; and
- (b) the liability of the Public Trustee shall be discharged by the Commonwealth.

PART III—APPOINTMENT OF THE PUBLIC TRUSTEE

Division 1—General

Capacities in which Public Trustee may act

13. (1) Subject to this Ordinance, the Public Trustee may be appointed and act under that name as—

- (a) a trustee;
- (b) an executor or administrator, including administrator pendente lite;
- (c) a collector of an estate of a person under an order to collect and administer that estate;
- (d) a receiver;
- (e) an agent or attorney;
- (f) a manager of property, whether real or personal; or
- (g) a guardian of the estate of any person.

(2) Subject to this Ordinance, the Public Trustee may become may become (whether by election or otherwise) and may act under that name as a manger of property, whether real or personal.

(3) The Public Trustee shall not accept a trust established exclusively or primarily for religious purposes.

(4) The Public Trustee may decline to accept, or accept subject to such conditions as the Public Trustee thinks fit, a trust or an appointment to act in any capacity.

(5) The Public Trustee is not entitled to exercise a power under sub-section (4)—

- (a) in relation to a trust that devolves on the Public Trustee or an appointment of the Public Trustee that is made specifically by law;
- (b) in relation to an appointment that was made by order of the Court; or
- (c) on the ground only of the small value of the relevant property or estate.

Public Trustee may act jointly with another person

14. (1) Subject to sub-section (3), the Public Trustee may be appointed and act jointly with another person in any of the capacities referred to in section 13.

(2) Subject to any other law in force in the Territory, where the Public Trustee is appointed and acts jointly with another person—

- (a) the Public Trustee and that other person jointly have and may exercise or perform all or any of the powers, duties and functions that the Public Trustee, if acting alone, would have or be entitled to exercise or perform;
- (b) all moneys under the control of the Public Trustee and that other person jointly shall be dealt with in the same manner as money under the control of the Public Trustee alone; and
- (c) the receipt in writing of the Public Trustee alone for any moneys, securities or other personal property or effects required to be paid, transferred or delivered to the Public Trustee and that other person jointly—
 - (i) shall be a sufficient discharge; and
 - (ii) shall fully and effectually exonerate the person by whom that property or those effects was or were paid, transferred or delivered from seeing to the application, or being answerable for any loss or misapplication, of that property or those effects.

(3) The Public Trustee may not be appointed or act jointly with another person as manager of property under Part V.

Appointment of Public Trustee upon order of Court

15. Where the consent of a person is required for the appointment of a trustee, executor or administrator and the person—

- (a) refuses to consent to the Public Trustee being appointed;
- (b) is absent from the Territory; or
- (c) is a person under disability,

the Court may, upon an application made to it, order that the appointment of the Public Trustee be made without the consent of that person.

Effect of appointment or election

16. Subject to this Ordinance, the Public Trustee, when acting in a capacity referred to in section 13—

- (a) has the same powers, duties and liabilities and is entitled to the same rights and immunities as a natural person acting in that capacity; and
- (b) is subject to the control and orders of any court in the same manner as if the Public Trustee were a natural person acting in that capacity.

Division 2—Appointment of the Public Trustee as a trustee

Appointment

17. (1) the Public Trustee may be appointed as an original, new or additional trustee in the same cases, in the same manner and by the same persons or court as if the Public Trustee were a natural person.

(2) Notwithstanding sub-section (1), the Public Trustee shall not be appointed as a trustee if the instrument creating the trust contains a direction to the contrary.

Appointment of Public Trustee as sole trustee

18. (1) Notwithstanding that an instrument provides for or directs the appointment of 2 or more trustees, the Public Trustee may be appointed as sole trustee under the instrument unless the appointment is expressly prohibited by the instrument.

(2) The appointment of the Public Trustee as a sole trustee under an instrument for the purposes of sub-section (1) may be made by—

- (a) the trustees appointed under the instrument;
- (b) where there is another person who has the power to appoint a new trustee under the instrument—that person;
- (c) where there are 2 or more other persons who have the power to appoint a new trustee under the instrument—those persons; or
- (d) the Court.

(3) An application for an order of the Court appointing the Public Trustee as sole trustee under an instrument may be made by—

- (a) any one of the trustees appointed under the instrument;
- (b) where there are 2 or more other persons who have the power to appoint a new trustee under the instrument—any one of those persons; or
- (c) any person who has an interest in any property to which the instrument relates.

Vesting of property

19. Upon an appointment of the Public Trustee as a trustee taking effect, all the property in respect of which the Public Trustee is so appointed is, subject to the trusts applicable to it, by virtue of the appointment and without other assurances in law, vested in the Public Trustee.

PART IV—POWERS AND DUTIES OF PUBLIC TRUSTEE

Powers of Public Trustee under this Ordinance additional to powers under other laws

20. The powers conferred on the Public Trustee under this Ordinance when acting in any of the capacities in which the Public Trustee is authorized to act are in addition to and not in substitution for or in derogation of any other power conferred on or exercisable by the Public Trustee in that capacity under any other law in the Territory.

Express powers of Public Trustee

21. (1) Where the Public Trustee is acting as an executor, administrator or trustee or is otherwise acting in connection with the administration of an estate, without limiting the generality of any other power conferred on the Public Trustee under this Ordinance, the Public Trustee may, unless expressly

prohibited by the terms of any instrument affecting the authority of the Public Trustee to act in that capacity—

- (a) sell property by public auction or private contract, altogether or in parts, and subject to such conditions, if any, as the Public Trustee thinks fit;
- (b) exchange property or join in a partition of property;
- (c) grant a lease of property for such period as the Public Trustee thinks fit—
 - (i) being a period not exceeding 10 years; or
 - (ii) if the lease is granted with an option for renewal—being a period that, together with the term of the option, does not exceed 10 years;
- (d) enter into a share-farming agreement for a period not exceeding 3 years;
- (e) insure property, real or personal, against any contingency;
- (f) expend money for the repair, maintenance or renovation of property;
- (g) pay rates, taxes, insurance premiums and any other outgoings, charges and expenses in respect of property;
- (h) pay or discharge all debts, liabilities, costs, expenses and other obligations;
- (i) borrow money, with or without giving security;
- (j) set off against the claim of a person in respect of an estate any amount owed by the person to that estate or another estate being administered by the Public Trustee;
- (k) bring or defend any proceedings;
- (l) take proceedings to cause a person to become a bankrupt or a company to be wound up;
- (m) vote or otherwise act either in person or by proxy at or in connection with a meeting of creditors or shareholders;
- (n) carry out contracts entered into before the commencement of this Ordinance in the same manner as if the contracts had been entered into after the commencement of this Ordinance;

- (o) At the expense of an estate being administered by the Public Trustee, engage such persons as the Public Trustee thinks fit for the purpose of assisting or advising the Public Trustee in the administration or management of the estate; and
- (p) do all such acts, matter and things as are necessary or convenient for carrying out any of the powers conferred under this section.

(2) In exercising the power referred to in paragraph (1) (f), the Public Trustee may charge the costs of repair, maintenance or renovation, as the case may be, either to capital or to income or apportion the costs between capital and income on such basis as the Public Trustee thinks fit.

(3) Where the Public Trustee has been appointed to act as trustee, executor or administrator of the estate of a deceased person, whether alone or jointly with another person, the Public Trustee may exercise the power referred to in paragraph (1) (h) for the purpose of paying the reasonable costs of—

- (a) the erection of a memorial or tombstone over the grave of the deceased person; or
- (b) where the deceased person has been cremated—a memorial or otherwise suitably preserving the ashes of the deceased person.

(4) Without limiting the generality of the power referred to in paragraph (1) (i), the Public Trustee may exercise that power for the purpose of repaying a debt or other liability that was incurred before the commencement of this Ordinance.

(5) In exercising the power referred to in paragraph (1) (i), the Public Trustee may pay any interest payable in respect of money borrowed by the Public Trustee out of income or, if the income is insufficient, out of capital.

(6) Where, in the exercise of the power referred to in paragraph (1) (j), the Public Trustee sets off against the claim of a person in respect of an estate an amount owed by the person to another estate being administered by the Public Trustee, the Public Trustee shall transfer from the estate to which the claim related to the estate to which the amount was owed an amount equal to the amount that was owed by the person to that last-mentioned estate.

Wills

22. (1) The Public Trustee may, either without charging a fee or for a fee not exceeding the fee determined under section 75 for the purposes of this section, draw a will or other testamentary instrument for a person.

(2) Subject to sub-section (3), the Public Trustee may accept a will for deposit with the Public Trustee.

(3) The Public Trustee shall not accept a will for deposit under this section unless the Public Trustee is appointed executor or an executor of the will.

Safe custody of documents and chattels

23. (1) The Public Trustee may accept for safe custody any trust instrument, a debenture or other security, any document of title to property, any other document and any chattel.

(2) The Public Trustee's liability in respect of any thing deposited for safe custody under sub-section (1) is—

- (a) where a charge is made by the Public Trustee in connection with the keeping of that thing by the Public Trustee—that of a bailee for reward; and
- (b) where a charge is not made by the Public Trustee in connection with the keeping of that thing by the Public Trustee—that of a gratuitous bailee.

Representation of parties in legal proceedings

24. (1) The Court may, in relation to proceedings in the Court, upon an application made to it by a party to the proceedings or on its own motion, direct the Public Trustee to represent—

- (a) a party to those proceedings; or
- (b) a person or class of persons interested in those proceedings.

(2) Where a direction is given under sub-section (1)—

- (a) the Public Trustee may be represented in the proceedings in connection with which the direction is given by a barrister and solicitor; and
- (b) the costs and expenses of the representation, as between solicitor and client, together with a reasonable fee for the services of the Public Trustee, shall be paid to the Public Trustee out of any estate, funds or property the subject matter of the proceedings, or otherwise as the Court may direct.

Payment of money, &c., to Public Trustee on behalf of a person under disability

25. (1) Where, in proceeding it is adjudged or ordered, or it is agreed, that money, not being money to which sub-section (3) applies, be paid to a person under disability (whether or not that person is a party to a cause or matter), the money—

- (a) shall be paid into court; and
- (b) shall, unless the court otherwise directs, be paid out to the Public Trustee.

(2) Where money, not being money to which sub-section (3) applies—

- (a) is paid into court—
 - (i) before the commencement of this Ordinance; or
 - (ii) after the commencement of this Ordinance is pursuance of a judgement, order or agreement given, entered or made before the commencement of this Ordinance; and
- (b) the money is being held in court on behalf of a person under disability,

the court may, by order, direct that the money be paid out to the Public Trustee.

(3) Where—

- (a) money payable as compensation under the *Workmen's Compensation Ordinance 1951* is paid into court, whether before or after the commencement of this Ordinance; and
- (b) the money is being held in court on behalf of a person under disability,

the court may, by order, direct that the money be paid out to the Public Trustee.

(4) Where, as a result of a direction given in pursuance of sub-section (1), money in court is not paid out to the Public Trustee, the court may, by order, direct that the money be paid out to the Public Trustee and may make such other order as it thinks fit.

(5) Where a court adjudges or orders that property (whether real or personal) be delivered up or transferred to a person under disability (whether or not that person is a party to a cause or matter), the court—

- (a) may order that the property be delivered up or transferred to the Public Trustee on behalf of that person; and

- (b) may give such directions for the service of the order on the Public Trustee as it thinks fit.

(6) Where an order under sub-section (5) is serviced on the Public Trustee, the Public Trustee shall accept delivery or transfer of the property to which the order relates and the acceptance of the property shall be a sufficient discharge to the person delivering or transferring the property.

(7) Where money is paid to, or property is accepted by, the Public Trustee under this section, the Public Trustee—

- (a) shall hold the money or property upon trust; and
- (b) shall, subject to any direction of the court, apply the money or property, together with any interest or income derived from it, for the maintenance, advancement or benefit of the person in whose favour the relevant judgment, order or agreement was given, entered or made or such other person, being a dependant of that person, as the court directs.

(8) Nothing in this section applies in relation to—

- (a) money ordered or agreed to be paid in proceedings in the Court of Petty Sessions, being money due to a person who has not attained full age as salary, wages or otherwise in respect of the person's employment; or
- (b) money payable as compensation—
 - (i) under the *Workmen's Compensation Ordinance 1951* by way of a weekly payment; or
 - (ii) under paragraph 9A of the First Schedule to that Ordinance.

Power of Public Trustee to sue self when acting in different capacities

26. (1) Notwithstanding any rule of law or practice to the contrary, the Public Trustee, acting in one capacity, may, subject to sub-section (2), commence proceedings against the Public Trustee acting in another capacity.

(2) Before commencing proceedings under sub-section (1), the Public Trustee shall apply to the Court for directions as to the manner in which the respective interests of the Public Trustee are to be represented in the proceedings.

Power of Public Trustee to contract with self in certain circumstances

27. (1) The Public Trustee, while acting in any capacity in connection with a trust or estate, may enter into a contract, deed or covenant with the Public Trustee while acting in any capacity in connection with another trust or estate or as manager of property.

(2) The Public Trustee, while acting as manager of property, may enter into a contract, deed or covenant with the Public Trustee while acting as manager of other property or in any capacity in connection with a trust or estate.

Fees and expenses of Public Trustee

28. (1) The Public Trustee—

- (a)** may, in respect of a service rendered by the Public Trustee for which no other provision for the payment of a fee is made under this Ordinance, charge such fee, whether by way of commission or otherwise, as is determined under section 75 for the purposes of this section; and
- (b)** is entitled to the reasonable expenses incurred by the Public Trustee in rendering a service.

(2) The fees and expenses payable under sub-section (1) in respect of a service rendered by the Public Trustee in connection with an estate, trust or fund—

- (a)** may be paid by the Public Trustee from moneys in the estate, trust or fund; and
- (b)** are, subject to any other law in force in the Territory, payable in priority to any other debts or liabilities of the estate, trust or fund.

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

(4) Where, but for this sub-section, there would be payable to the Public Trustee under this section an amount in respect of fees or expenses, the Public Trustee may dispense with the payment of that amount or reduce the amount that would otherwise be payable where the Public Trustee is satisfied that payment of the amount would impose hardship on a person or that other circumstances exist that justify taking such action.

Payments to persons outside Australia

29. (1) Where any moneys or chattels are payable or deliverable by the Public Trustee to a person in a country other than Australia, the Public Trustee may pay those moneys or deliver those chattels, on behalf of that person—

- (a) to a consular officer of that country resident in Australia; or
- (b) if there is no such officer—to an official of that country, wherever the official is resident, who appears to the Public Trustee to be a suitable person to receive those moneys or chattels.

(2) The receipt of a consular officer or official of moneys or chattels paid or delivered to him or her under sub-section (1) is a complete and sufficient discharge to the Public Trustee and the Public Trustee has no further concern to see to the application of those moneys or chattels.

Dealings with other Public Trustees

30. (1) Where—

- (a) the Public Trustee is administering the estate in the Territory of a person who, at the time of the person's death, was domiciled outside the Territory; and
- (b) the estate of the person in the place in which the person was, at the time of the person's death, domiciled is being administered by the Public Trustee or other like official of the place of domicile,

the Public Trustee may, after payment of creditors and the fees, charges and expenses provided for under this Ordinance, pay the balance of the proceeds of the estate in the Territory to the Public Trustee or other like official of the place of domicile, without incurring any liability in relation to the payment, and without any obligation to see to the application, of that balance.

(2) Where—

- (a) the estate of a deceased person who, at the time of the person's death, was domiciled in the Territory is being administered by the Public Trustee; and
- (b) the Public Trustee or other like official of a place other than the Territory has obtained administration of the estate of the deceased person in that place,

the Public Trustee may receive from that Public Trustee or other like official the balance of the estate of the deceased person in that place.

(3) The balance of an estate received by the Public Trustee under sub-section (2) shall form part of the estate of the deceased person in the Territory.

Unclaimed moneys

31. (1) Where—

- (a) the Public Trustee has been administering an estate for a period of not less than 6 years;
- (b) moneys forming part of the estate are being held by the Public Trustee; and
- (c) the Public Trustee—
 - (i) has no knowledge of the existence or whereabouts of a person who is, or claims to be, entitled to the moneys; or
 - (ii) in a case in which the existence and whereabouts of the person entitled to receive the moneys are known to the Public Trustee—is unable, for any reason whatsoever, to effect payment of the moneys to the person,

the Public Trustee shall pay those moneys to the Commonwealth.

(2) A person who claims to be entitled to any moneys paid to the Commonwealth under sub-section (1) may apply to the Court for an order declaring the person to be so entitled and, if the Court is satisfied that the person is entitled to the moneys or a part of the moneys, it may make an order accordingly.

(3) Where an order is made under sub-section (2), there is payable to the person in whose favour the order is made by the Commonwealth an amount equal to the amount specified in the order.

Allowance of claims

32. The Public Trustee may—

- (a) at any time, require a person to make a statutory declaration or produce other sufficient evidence to support a claim in connection with—
 - (i) an estate or trust being administered by the Public Trustee; or
 - (ii) property of which the Public Trustee is manager; and

- (b) refuse to admit or take any further action in relation to the claim until the declaration or evidence is produced.

Dispute involving claims

33. (1) The Public Trustee may, in connection with the administration of a deceased estate, cause a notice to be published in a newspaper circulating in the Territory requiring any person who claims to be a creditor against the estate to notify the Public Trustee in writing of the claim within such period as is specified in the notice.

(2) Where—

- (a) the Public Trustee causes a notice to be published under sub-section (1);
- (b) a claim is made by a person in accordance with the notice; and
- (c) the Public Trustee disputes, in whole or in part, the claim of the person,

the Public Trustee shall give to the person a notice, in writing—

- (d) setting out the decision of the Public Trustee;
- (e) calling upon the person to institute proceedings to enforce the claim within 6 months after the receipt by the person of the notice; and
- (f) containing a statement informing the person of the effect of a refusal or failure by the person to comply with the notice.

(3) If a person to whom a notice is given under sub-section (2) does not, within the period specified in the notice, or within such further period as the Court, upon an application made to it by the person before the expiration of that first-mentioned period, allows, institute proceedings to enforce the person's claim—

- (a) the Public Trustee may deal with the estate in connection with which the notice under sub-section (1) was published without taking into consideration the claim or so much of the claim as the Public Trustee disputes; and
- (b) the right of the person to recover the amount of the claim or that part of the claim that the Public Trustee disputes shall be absolutely barred.

PART V—UNCLAIMED PROPERTY

Application for appointment as manager of property

34. (1) The Public Trustee may apply to the Court for an order appointing the Public Trustee manager of property where—

- (a) the owner of the property is unknown;
- (b) the whereabouts of the owner of the property are unknown;
- (c) it is not known whether the owner of the property is alive or dead;
- (d) the owner of the property is dead or permanently or indefinitely absent from the Territory and—
 - (i) it is not known whether the person has a personal representative or agent in the Territory with authority to take possession of and administer the property;
 - (ii) the whereabouts of the person's personal representative or agent are unknown; or
 - (iii) it is not known whether the person's personal representative or agent is alive or dead;
- (e) the owner of the property is a corporation and an officer or agent of the corporation cannot be found; or
- (f) the property appears to have been abandoned.

(2) Upon an application being made to it under this section, the Court may, by order, appoint the Public Trustee manager of the property in respect of which the application is made if the Court is satisfied that the appointment is necessary or desirable—

- (a) in the interests of the owner of the property or of any other person; or
- (b) in order to properly protect or preserve the property.

(3) In making an order under this section appointing the Public Trustee manager of property, the Court may specify the powers that may be exercised by the Public Trustee in connection with the property.

Election to become manager of property

35. (1) Where, in respect of property in connection with which an application could be made under section 34, the Public Trustee—

- (a) estimates that the gross value of the property does not exceed \$10,000; and

- (b) is satisfied that—
- (i) in the interests of the owner of the property or of any other person; or
 - (ii) in order to properly protect or preserve the property,
- it is necessary or desirable that the Public Trustee should become the manager of the property,

the Public Trustee may, without making an application to the Court, elect to become manager of the property by filing in the office of the Court a notice of election.

(2) Upon a notice of election being filed by the Public Trustee under sub-section (1), the Public Trustee shall become the manager of the property in respect of which the election is made.

Notice of appointment or election

36. Forthwith after making an application under section 34 or filing a notice of election under section 35, the Public Trustee shall cause a notice of the application or election, as the case may be, to be published in a newspaper circulating in the Territory.

Property does not vest in Public Trustee as manager

37. Where the Public Trustee—
- (a) is appointed or elects to become manager of property under this Part; or
 - (b) becomes manager of property under this Part by virtue of sub-section 40 (1),

the property does not vest in the Public Trustee.

Powers of Public Trustee as manager

38. (1) Unless the Court in a particular case otherwise orders, the Public Trustee as manager of property under this Part may—

- (a) take or recover possession of the property and recover all sums of money (including sums of money payable in respect of damages and mesne profits) payable to the owner of the property in connection with the property, whether the money became payable before or after the Public Trustee became manager of the property;

- (b) do all things necessary for obtaining or perfecting the title to the property;
- (c) carry out or enforce, in such manner as the Public Trustee thinks fit, any contract affecting the property and exercise any powers conferred by the contract;
- (d) perform or discharge any obligation or duty imposed upon the owner of the property;
- (e) apply the property, or any moneys received by the Public Trustee as manager of the property, for the maintenance, education, advancement or benefit of the spouse, children or other dependants of the owner of the property;
- (f) pay, out of moneys received or borrowed by or advanced to the Public Trustee as manager of the property—
 - (i) any mortgages, charges or other obligations on or attached to the property; and
 - (ii) any debts, liabilities, costs, expenses or other obligations of the owner of the property;
- (g) exercise any power conferred by or under an instrument or any law in force in the Territory upon the owner of the property;
- (h) subject to this Ordinance, sell the property;
- (i) cut, gather and sell crops growing or situated on the property;
- (j) erect or contribute to the cost of erecting fences on or around the property;
- (k) in the name of the owner of the property or, if the Public Trustee thinks fit, in the corporate name of the Public Trustee, bring or defend any proceedings relating to the property;
- (l) exercise such other powers as may be conferred upon the Public Trustee by the Court under sub-section 34 (3); and
- (m) subject to the provisions of this Part relating to the sale of property by the Public Trustee, exercise such powers that the Public Trustee, if the Public Trustee were the trustee of the property, could, by virtue of this Ordinance or any other law in force in the Territory, exercise in relation to the property.

(2) An instrument executed by the Public Trustee as manager of property in the exercise of any of the powers conferred on the Public Trustee under this Part shall have effect and may be registered in all respects as if it had been executed by the owner of the property.

Application for directions and sale of property in special circumstances

39. (1) The Court may, upon an application made to it in relation to property of which the Public Trustee is manager under this Part, give directions relating to—

- (a) the property;
- (b) the management or administration of the property; or
- (c) the exercise of any of the powers conferred on the Public Trustee under this Part in respect of the property.

(2) An application under sub-section (1) may be made by—

- (a) the Public Trustee;
- (b) the spouse, a child or any other person who is a dependant of the owner of the property to which the application relates; or
- (c) any person who has an interest in the property to which the application relates.

(3) The Court may, upon an application made to it by the Public Trustee in relation to property of which the Public Trustee is manager under this Part, make an order authorizing the Public Trustee to sell the property upon such conditions as it thinks fit.

(4) Before determining an application under this section, the Court may direct that notice of the application—

- (a) be served on such person as it thinks fit; or
- (b) be published in such manner as it thinks fit.

(5) For the purpose of determining an application under this section, the Court shall have regard to—

- (a) the need for preservation of the property to which the application relates;
- (b) the likelihood of the property deteriorating;
- (c) the interest of any person having an interest in the property;

- (d) the interest of the spouse, a child or any other person who is a dependant of the owner of the property;
 - (e) in the case of an application under sub-section (3)—whether continued management of the property by the Public Trustee might, for any reason, be unduly onerous; and
 - (f) such other matter as it thinks fit.
- (6)** Where—
- (a) the Public Trustee is acting as manager of property under this Part;
 - (b) the gross value of the property does not exceed \$5,000; and
 - (c) the Public Trustee considers that it is necessary or desirable to sell the property having regard to—
 - (i) the likelihood of the property deteriorating;
 - (ii) the interest of any person having an interest in the property;
 - (iii) the interest of the spouse, a child or any other person who is a dependant of the owner of the property; or
 - (iv) the likelihood that continued management of the property by the Public Trustee might, for any reason, be unduly onerous,

the Public Trustee may sell the property.

(7) Where the Public Trustee sells property in pursuance of this section, the Public Trustee ceases to be manager of that property.

Management of certain moneys by Public Trustee

40. (1) Where the Public Trustee—

- (a) receives moneys as the proceeds of a sale of property effected in pursuance of section 39; or
- (b) receives or recovers any moneys (including moneys received or recovered as income, damages or mesne profits) in respect of property of which the Public Trustee is manager,

the Public Trustee shall, by virtue of this sub-section, become manager under this Part of those moneys.

(2) Sub-section (1) does not apply in relation to moneys received as the proceeds of a sale of property under section 43.

Property to be held for owner

41. Where the Public Trustee takes possession of property of which the Public Trustee—

- (a) has been appointed, or has elected to become, manager under this Part; or
- (b) has become manager under this Part by virtue of sub-section 40 (1),

the property shall, after payment of all moneys authorized to be applied, expended or charged by the Public Trustee, be held by the Public Trustee for the owner or person beneficially entitled to the property.

Charge over property

42. (1) Where any fees, costs or expenses are incurred by or payable to the Public Trustee as manager of property under this Part, there is created, by force of this sub-section, a charge on that property to secure the payment of those fees, costs or expenses.

(2) The charge created on property by sub-section (1)—

- (a) is subject to any mortgage or charge to which the property was subject immediately before the fees, costs or expenses were incurred or became payable; and
- (b) subject to sub-section (3), has priority over all other mortgages or charges whatsoever.

(3) The Public Trustee may postpone, wholly or in part, a charge created on property by sub-section (1) in favour of a mortgage or charge created after the first-mentioned charge was created.

(4) The amount of money for the time being charged on property under sub-section (1) shall bear interest at such rate as is prescribed.

Disposal of property

43. (1) Where—

- (a) the Public Trustee is satisfied that a person is the owner or beneficially entitled to property of which the Public Trustee is manager under this Part; and
- (b) the whereabouts of the person are known to the Public Trustee,

the Public Trustee shall transfer the property to the person or, where for any reason the Public Trustee considers that it is not reasonably practicable to

transfer the property to the person, the Public Trustee shall give to the person a notice—

- (c) describing the property;
- (d) specifying the location of the property;
- (e) informing the person that the Public Trustee is acting as manager of the property;
- (f) requesting that the person, within such period as is specified in the notice, being a period of not less than 2 months after the date of the notice, take delivery of, or make arrangements, satisfactory to the Public Trustee, for taking delivery of, the property; and
- (g) informing the person of the action that may be taken by the Public Trustee under this section in connection with the property in the event of the request referred to in paragraph (f) not being complied with.

(2) Where—

- (a) a notice relating to property is given to a person under sub-section (1); and
- (b) the person—
 - (i) does not comply with the request contained in the notice; or
 - (ii) having complied with the request by making arrangements for taking delivery of the property—does not give effect to those arrangements,

the Public Trustee shall give to the person a further notice—

- (c) requiring the person, within such period as is specified in the notice, being a period of not less than 3 months after the date of the notice, to take delivery of, or make arrangements, satisfactory to the Public Trustee, for taking delivery of, the property;
- (d) informing the person of the relevant action that may be taken by the Public Trustee in connection with the property under sub-section (3) if the requirement referred to in paragraph (c) is not complied with; and
- (e) where appropriate, informing the person that the proceeds of sale of the property will be paid to the Commonwealth.

(3) Where—

- (a) a notice relating to property is given to a person under sub-section (2); and
- (b) the person—
 - (i) does not comply with the requirement contained in the notice; or
 - (ii) having complied with the requirement by making arrangements for taking delivery of the property—does not give effect to those arrangements,

the Public Trustee—

- (c) if the property is not money—
 - (i) where the gross value of the property exceeds \$5,000—may apply to the Court for an order to sell the property and the Court may make an order accordingly; or
 - (ii) where the gross value of the property does not exceed \$5,000—may sell the property; or
- (d) if the property is money—shall, after deduction of all costs and charges lawfully due to the Public Trustee or any other person in connection with the property, pay it to the Commonwealth.

(4) Where, upon an application made to it by a person, the Court is satisfied that—

- (a) the applicant or another person is the owner of or beneficially entitled to property of which the Public Trustee is manager under this Part; and
- (b) the whereabouts of the applicant or that other person are known,

the Court shall order that the property be transferred to the applicant or that other person, as the case requires, or make such other order as it thinks fit.

(5) Where—

- (a) the Public Trustee has continued to act as manager of property for a period of not less than 7 years;
- (b) the owner of or person beneficially entitled to the property has not been ascertained or, if ascertained, has not been located; and
- (c) the gross value of the property does not exceed \$5,000,

the Public Trustee—

- (d) if the property is not money—may sell or otherwise dispose of the property in such manner as the Public Trustee thinks fit; or
- (e) if the property is money—shall, after deduction of all costs and charges lawfully due to the Public Trustee or any other person in connection with the property, pay it to the Commonwealth.

(6) Where, upon an application made to it by the Public Trustee, the Court is satisfied that—

- (a) the Public Trustee has continued to act as manager of property for a period of not less than 7 years; and
- (b) the owner of or person beneficially entitled to the property has not been ascertained or, if ascertained, has not been located,

the Court shall order—

- (c) if the property is not money—that the property be sold or otherwise disposed of in such manner as it thinks fit; or
- (d) if the property is money—that, after deduction of all costs and charges lawfully due to the Public Trustee or any other person in connection with the property, it be paid to the Commonwealth.

(7) Before selling or otherwise disposing of property under sub-section (5), the Public Trustee shall cause a notice of the proposed sale or disposal to be published—

- (a) in a newspaper circulating in the Territory; and
- (b) where the last known place of residence of the person lawfully entitled to the property is a place in a State or another Territory—in a newspaper circulating in that State or Territory.

(8) Before determining an application under sub-section (6), the Court may direct—

- (a) that notice of the application be served on such person as it thinks fit; and
- (b) that notice of the application be published in such manner as it thinks fit.

Cessation of management

44. (1) The Public Trustee shall cease to be manager of property where—

- (a) the property is transferred to a person under sub-section 43 (1);
- (b) the property is transferred to a person in consequence of a notice having been given to the person under sub-section 43 (1) or (2);
- (c) the property is sold in pursuance of sub-section 43 (3);
- (d) the property, being money, is paid to the Commonwealth under sub-section 43 (3), (5) or (6);
- (e) the property is transferred to a person in pursuance of, or effect is otherwise given to, an order made under sub-section 43 (4); or
- (f) the property is sold or otherwise disposed of in pursuance of sub-section 43 (5) or (6).

(2) Upon ceasing to be manager of property by virtue of paragraph (1) (c) or (f), the Public Trustee shall, after deduction of all costs and charges lawfully due to the Public Trustee or any other person in connection with the property, pay to the Commonwealth any proceeds of sale of the property.

(3) The cessation under this section or sub-section 39 (7) of the authority of the Public Trustee to act as manager of property under this Part does not affect any charge acquired by the Public Trustee in respect of the property, or the validity of any act or thing done by the Public Trustee in connection with the property, while acting in that capacity.

Claims made after cessation of management

45. (1) Where, upon the Public Trustee ceasing to be manager of property, money is paid to the Commonwealth under sub-section 43 (3), (5) or (6) or 44 (2), a person may apply to the Court for an order under this section in relation to the property.

(2) Where, upon an application made to the Court under this section, the Court is satisfied that, at the time the Public Trustee ceased to be manager of the property in connection with which the application is made, the applicant was the owner or one of the owners of the property or beneficially entitled or one of the persons beneficially entitled to the property, the Court may make an order to that effect.

(3) Upon an order being made by the Court under this section in connection with property, there is payable by the Commonwealth to the person in relation to whom the order was made—

- (a) where the Court was satisfied that the person was the sole owner of or the only person beneficially entitled to the property—an amount equal

to the amount or the aggregate of the amounts paid to the Commonwealth in connection with the property; and

- (b) where the Court was satisfied that the person was one of the owners of or persons beneficially entitled to the property—an amount equal to such part of the amount or the aggregate of the amounts paid to the Commonwealth in connection with the property as bears the same proportion to that last-mentioned amount, or that aggregate, as the case requires, as the interest of the person in the property bears to the interest that the person would have if the person were the sole owner of or the only person beneficially entitled to the property.

PART VI—FINANCIAL

Division 1—Public Trustee Investment Board

Establishment of Board

46. There is established by this Ordinance a Board by the name of the Public Trustee Investment Board.

Function and powers of Board

47. (1) The function of the Board is to control the investment of money that is from time to time in the common fund or otherwise in the hands of the Public Trustee and available for investment.

(2) The Board has power to do all things necessary or convenient to be done for or in connection with the performance of its function.

Membership of Board

48. (1) The Board shall consists of—

- (a) the Public Trustee; and
- (b) 2 other members appointed by the Attorney-General.

(2) Subject to this Ordinance, a member referred to in paragraph (1) (b) holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

(3) The performance of the function or the exercise of the powers of the Board is not affected by reason only of there being a vacancy in the office of a member.

(4) In this section, a reference to the Public Trustee shall, if a person is acting as Public Trustee in pursuance of an appointment under section 7, be read as including a reference to the person so acting.

Senior member of Board

49. The Public Trustee shall be the senior member of the Board.

Acting members

50. (1) The Attorney-General may appoint a person to act as a member, other than the senior member—

- (a) during a vacancy in the office of a member, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when a member is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of the office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) The appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) The Attorney-General may at any time terminate the appointment of a person to act under this section.

(4) Where a person is acting in the office of a member in accordance with paragraph (1) (b), and that office becomes vacant while that person is so acting, then, subject to sub-section (2), that person may continue so to act until the Attorney-General otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(5) The appointment of a person to act as a member ceases to have effect if the person resigns the appointment by writing signed by the person and delivered to the Attorney-General.

(6) If the person appointed to act as a member is a public servant, the appointment of the person so to act ceases to have effect if the person ceases to be a public servant.

(7) While a person is acting as a member, the person has, and may exercise, all the powers and shall perform all the functions of a member.

(8) The validity of anything done by a person purporting to act under sub-section (1) shall not be called in question on the ground that the occasion for the appointment of the person had not arisen, that there is a defect or irregularity in or connection with the appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

Fees and allowances

51. The Board is a prescribed authority for the purposes of the *Remuneration Ordinance 1976*.

Resignation

52. A member, other than the Public Trustee, may resign his or her office by writing signed by the member and delivered to the Attorney-General.

Termination of office

53. (1) The Attorney-General may terminate the appointment of a member, other than the Public Trustee, by reason of misbehaviour or physical or mental incapacity.

(2) If a member, other than the Public Trustee—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (b) is absent, except on leave granted by the Attorney-General, from 3 consecutive meetings of the Board,

the Attorney-General shall terminate the appointment of the member.

(3) A member who is a public servant ceases to hold office as a member if the member ceases to be a public servant.

Meetings of Board

54. (1) The senior member shall convene such meetings of the Board as the senior member considers necessary for the efficient performance of its function.

(2) At a meeting of the Board, 2 members constitute a quorum.

(3) The senior member shall preside at all meetings of the Board at which the senior member is present.

(4) If the senior member is not present at a meeting of the Board, the members present shall choose one of the 2 to preside at that meeting.

(5) Subject to sub-section (7), questions arising at a meeting of the Board shall be determined by a majority of the votes of the members present and voting.

(6) Subject to sub-section (7), the person presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(7) Where only 2 members are present at a meeting of the Board and they differ on a question arising at the meeting, that question shall be deferred until the next meeting at which more than 2 members are present.

(8) In this section, a reference to a member shall, if a person is acting as a member, be read as including a reference to the person so acting.

Division 2—Common Fund

Establishment of, and payment of money into, common fund

55. (1) The Public Trustee shall establish and maintain a common fund.

(2) Subject to this Ordinance and any order of the Court, the Public Trustee shall pay into the common fund all moneys received by the Public Trustee on behalf of an estate, trust or person, including moneys received by the Public Trustee as manager of property.

(3) The Public Trustee shall not pay money into the common fund where—

- (a) investment in the common fund is expressly prohibited by the terms of a trust under which the money is received by the Public Trustee; or
- (b) property of an estate or trust in connection with which the money is received is held by the Public Trustee jointly with another person and that other person, by notice in writing given to the Public Trustee, objects to the application of the money in that manner.

(4) The Public Trustee shall, in respect of each estate, trust or person on whose behalf money is paid into the common fund, keep proper accounts showing the amount for the time being at the credit of that estate, trust or person in the common fund.

Investment of money held in common fund

56. (1) Moneys in the common fund shall be invested by the Public Trustee in accordance with the directions of the Board.

(2) Investments made from money in the common fund shall not be made in the name or on account of, or belong to, any particular estate, trust or person.

(3) The Public Trustee may sell or otherwise convert into money any investments acquired under this section.

Investment of money not required to be held in common fund

57. Where money received by the Public Trustee is not, by virtue of section 55, required to be paid into the common fund—

- (a) the money shall belong to and be held in the name of the estate, trust or person on whose behalf the money is received;
- (b) the Public Trustee shall invest the money—
 - (i) in accordance with any directions applicable to it; or
 - (ii) if there are no such directions—in accordance with the directions of the Board;
- (c) interest received in respect of an investment made under paragraph (b) shall be credited to the estate, trust or person on whose behalf the investment is made; and
- (d) any loss arising out of an investment made under paragraph (b) shall be debited to the estate, trust or person on whose behalf the investment is made.

Withdrawal of money from common fund

58. (1) The Public Trustee may withdraw an amount from the common fund at the credit of an estate, trust or person and—

- (a) apply the amount for any purpose relating to the exercise or performance, in connection with that estate, trust or person, of any of the powers or functions of the Public Trustee; or
- (b) in accordance with directions of the Board, invest the amount separately for the benefit of that estate, trust or person.

(2) The Public Trustee shall withdraw from the common fund an amount paid into the fund in accordance with section 55 on behalf of an estate or trust in respect of which property is held by the Public Trustee jointly with another

person where that other person, by notice in writing given to the Public Trustee, objects to the retention of that amount in the fund.

(3) An amount withdrawn from the common fund under this section shall, as from the date of withdrawal, cease to bear interest or have a claim for any other benefit from the common fund.

Interest payable in respect of moneys in common fund

59. (1) Interest is payable in respect of money held in the common fund at such rate as is, from time to time, determined by the Board.

(2) Interest payable by virtue of sub-section (1) in respect of an estate, trust or person on whose behalf money is held in the common fund—

- (a) shall be calculated on the balance at credit in the common fund for that estate, trust or person on each day during the period for which the interest is payable;
- (b) shall be credited to that estate, trust or person in the common fund;
- (c) shall be paid—
 - (i) on 31 March and 30 September of each year;
 - (ii) at such other times, if any, as the Public Trustee from time to time determines; and
 - (iii) in the case of an estate or trust—on completion of the administration of that estate or trust; and
- (d) shall be paid out of money held in the Common Fund Interest Account.

Common Fund Interest Account

60. (1) The Public Trustee shall establish and maintain an account to be called the Common Fund Interest Account.

(2) The Common Fund Interest Account shall not form part of the common fund.

(3) The Public Trustee shall pay into the Common Fund Interest Account—

- (a) interest received in respect of investments made from the common fund; and

- (b) interest received in respect of advances made from the common fund under section 64 or 65.

(4) Where there is an amount at credit in the Common Fund Interest Account that is not for the time being required to be applied for the payment of interest under section 59 or transferred to the Common Fund Guarantee and Reserve Account under section 61, that amount, or such part of that amount as the Board determines, shall be invested by the Public Trustee in accordance with the directions of the Board.

(5) Interest received in respect of investments made under sub-section (4) shall be paid into the Common Fund Interest Account.

Common Fund Guarantee and Reserve Account

61. (1) The Public Trustee shall establish and maintain an account to be called the Common Fund Guarantee and Reserve Account.

(2) The Common Fund Guarantee and Reserve Account shall not form part of the common fund.

(3) Where, after payment of interest under section 59, a balance remains in the Common Fund Interest Account, the Public Trustee shall transfer from that Account to the Common Fund Guarantee and Reserve Account such amount as may be determined by the Board.

(4) The Public Trustee shall pay into the Common Fund Guarantee and Reserve Account the amount of any capital profit made upon the realization of investments made from the common fund.

(5) The Common Fund Guarantee and Reserve Account may, with the approval of the Board, be applied by the Public Trustee for any of the following purposes:

- (a) payment to the common fund of an amount equal to the amount of any loss sustained upon the realization of an investment made from the common fund;
- (b) payment of costs and expenses incurred in protecting investments made from the common fund;
- (c) payment of any other expenses or charges incurred in connection with—
 - (i) the maintenance or administration of the common fund; or
 - (ii) investments made from the common fund,

not being expenses or charges that are properly chargeable against a particular estate or trust;

- (d) payment of costs and expenses incurred in legal proceedings involving an estate or trust in respect of which moneys are held in the common fund, other than—
 - (i) costs and expenses ordered by the Court to be charged against a particular estate or trust; and
 - (ii) in the case of costs and expenses properly chargeable against a particular estate or trust—so much of those costs and expenses as are able to be met by the estate or trust;
- (e) payment of the costs and expenses or part of the costs and expenses incurred by the Public Trustee in obtaining legal advice or in, or in connection with, legal proceedings in which the Public Trustee is a party where, by reason of general interest in, and importance of, the subject-matter of the advice or proceedings, it is not appropriate for any or all of those costs and expenses to be charged against a particular estate or trust.

(6) Where there is an amount at credit in the Common Fund Guarantee and Reserve Account that is not for the time being required to be applied for any of the purposes referred to in sub-section (5), that amount shall be invested by the Public Trustee in accordance with the directions of the Board.

(7) Interest received in respect of investments made under sub-section (6) shall be paid into the Common Fund Guarantee and Reserve Account.

Directions of Board relating to investments

62. (1) In giving a direction for the purposes of section 56, 57, 58, 60 or 61 relating to the making of an investment by the Public Trustee, the Board shall not authorize the investment of money except in a manner that is for the time being authorized for the investment of trust funds under the Trustee Act, 1925-1942, in its application in the Territory.

(2) In this section “the Trustee Act, 1925-1942” has the same meaning as in the *Trustee Ordinance 1957*.

Application of surplus funds

63. Where, after making payment of each amount that, under any other provision of this Part, is required to be made from the Common Fund Interest Account, a balance remains in that Account, that balance or such part of that

balance as the Board determines shall be applied by the Public Trustee towards the costs and expenses necessarily incurred by the Public Trustee in the exercise of the powers or the performance of the functions of the Public Trustee under this Ordinance.

Advances from common fund

64. (1) The Public Trustee may, with the approval of the Board, make advances from the common fund for any purpose relating to—

- (a) an estate or trust being administered by the Public Trustee; or
- (b) property of which the Public Trustee is manager.

(2) An advance under sub-section (1) shall bear interest at such rate, and shall be made on such other terms and conditions, as the Board from time to time determines.

(3) An advance under sub-section (1), together with the interest payable under sub-section (2) in respect of the advance, shall be a charge upon—

- (a) all of the property of the estate or trust in connection with which the advance is made or all of the property being managed, as the case requires; or
- (b) if the advance is made in respect of part only of that property—the particular property in respect of which the advance is made.

(4) A charge upon property created under this section in connection with an advance shall rank next in priority to any mortgage or other charge registered against or secured on the property of which the Public Trustee has notice at the time of making the advance.

Advances to beneficiaries

65. (1) Where—

- (a) a person is beneficially entitled in an estate or trust being administered by the Public Trustee; and
- (b) the person applies, in writing, to the Public Trustee for an advance against the person's beneficial interest,

the Public Trustee may make an advance or advances in accordance with this section to the person from the common fund.

(2) The Public Trustee shall not make an advance or advances to a person under sub-section (1) that exceeds or that, in the aggregate, exceed—

- (a) if the advance or advances is or are made without obtaining the approval of the Board—
 - (i) one-fourth of such amount as is estimated by the Public Trustee to be the value of the beneficial interest of the person in the estate or trust against which the advance or advances is or are made; or
 - (ii) \$5,000,

whichever is the lesser; and

- (b) if the advance or advances is or are made with the approval of the board—one-half of such amount as is estimated by the Public Trustee to be the value of the beneficial interest of the person in the estate or trust against which the advance or advances is or are made.

(3) An advance under sub-section (1) shall bear interest at such rate, and shall be made on such other terms and conditions (if any) in respect of matters not provided for by this Ordinance as the Board from time to time determines.

(4) An advance under sub-section (1), together with the interest payable under sub-section (3) in respect of the advance, shall be a charge 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, before making the advance, received notice in writing.

(5) An advance under sub-section (1), together with the interest payable under sub-section (3) in respect of the advance and any costs, charges or expenses incurred by the Public Trustee in connection with the advance or the recovery of the advance shall, unless expressly agreed to the contrary, be

repayable on demand to the Public Trustee by the person to whom the advance was made.

PART VII—MISCELLANEOUS

Sale of goods by auction

66. (1) Where—

- (a) the Public Trustee proposes to realize—
 - (i) personal property of an estate or trust being administered by the Public Trustee; or
 - (ii) property of which the Public Trustee is manager; and
- (b) the value of the property does not, in the opinion of the Public Trustee, exceed \$2,000,

the property may be offered for sale by auction by the Public Trustee or by a person authorized, in writing, by the Public Trustee.

(2) A person who carries out an auction under sub-section (1) is not, for the purposes of that auction, required to hold a licence under the *Auctioneers Ordinance 1959*.

Notices to be given to Public Trustee

67. (1) Where an application is made to the Court by a person other than the Public Trustee for an order—

- (a) directing that a sum of money be paid to the Public Trustee;
- (b) vesting property in the Public Trustee; or
- (c) appointing the Public Trustee as trustee, executor, administrator, manager or guardian,

the Court shall not make an order unless—

- (d) the Public Trustee consents to the order being made; or
- (e) the applicant has served upon the Public Trustee a notice informing the Public Trustee of the application and a period of 14 days has elapsed after the service of the notice.

(2) Where the Court makes an order of a kind referred to in sub-section (1), the applicant shall, within 28 days after the order is made, serve upon the Public Trustee—

- (a) a sealed copy of the order; and
- (b) a statement of any property affected by the order.

Penalty: \$500.

(3) A statement relating to property referred to in sub-section (2) shall—

- (a) specify the place at which the property is situated;
- (b) specify the person by whom the property is held;
- (c) contain details of any liabilities existing in respect of the property; and
- (d) contain such other details (if any) as are prescribed.

Costs in legal proceedings

68. (1) Where, in proceedings in which the Public Trustee is a party or is in any way interested, the Public Trustee is represented by a barrister and solicitor who is a public servant, the Public Trustee is entitled to the same costs and allowances as if the Public Trustee had been represented by a barrister and solicitor who was not a public servant.

(2) Where, in proceedings in which the Public Trustee is a party or is in any way interested, the person for the time being holding the office of Public Trustee, being a barrister and solicitor, appears in person, the Public Trustee is entitled to the same costs and allowances as if the Public Trustee had been represented by another person who was a barrister and solicitor.

Costs arising out of certain applications

69. Where the Public Trustee applies under the Administration Ordinance for the grant of probate of the will, or administration of the estate, of a deceased person—

- (a) the Public Trustee is entitled to the costs of the Public Trustee of and incidental to the application out of the estate of the deceased person; and
- (b) the Public Trustee is not liable for the costs of any other person.

Jurisdiction of Court

70. Jurisdiction to hear and determine applications under this Ordinance is vested in the Court.

Certain covenants void

71. A covenant, stipulation or condition contained in a mortgage—

- (a) whereby the money secured by the mortgage becomes due and payable;
- (b) whereby a power of sale or entry into possession becomes exercisable; or
- (c) adversely affecting, or likely to affect adversely, the estate or interest of the mortgagor,

in the event of the Public Trustee becoming entitled, in any capacity, to administer the estate of the mortgagor or of the estate of the mortgagor coming under the control of the Public Trustee, is null and void.

Lien in respect of insurance premiums

72. Where the Public Trustee pays a premium in respect of a policy of insurance relating to—

- (a) property the subject of an estate or trust being administered by the Public Trustee; or
- (b) property of which the Public Trustee is manager,

the Public Trustee shall have a lien on moneys paid out under the policy for the amount of the premium so paid.

Manner of giving notices

73. A document that is required or permitted by this Ordinance to be given to or served upon a person by the Public Trustee may be given or served by sending it by post to the person at the last known place of residence of that person.

Evidence

74. (1) Where the Public Trustee is acting in any of the capacities in which the Public Trustee is, by virtue of this Ordinance, authorized to act, a certificate under the seal of the Public Trustee stating—

- (a) the capacity in which the Public Trustee is authorized to act;
- (b) the manner in which the Public Trustee became authorized to act in that capacity;
- (c) the time at which the Public Trustee became authorized to act in that capacity; and

- (d) that the real or personal property described in the certificate is property in respect of which the Public Trustee may, while acting in that capacity, exercise powers,

is evidence of the matters so stated.

(2) Where the Public Trustee is executor or administrator of, or is authorized by law to administer, the estate of a deceased person, a certificate under the seal of the Public Trustee stating all or any of the following matters, namely—

- (a) the name of the deceased;
- (b) the residential address of the deceased at the time of death;
- (c) the occupation of the deceased immediately prior to death;
- (d) the nature or form of the authority by virtue of which the Public Trustee is administering the estate;
- (e) the date of granting of the authority referred to in paragraph (d);
- (f) the manner in which the Public Trustee became authorized to administer the estate;
- (g) the time at which the Public Trustee became authorized to administer the estate,

is evidence of the matters so stated.

(3) Where the Public Trustee is acting jointly with another person in any capacity, a certificate under the seal of the Public Trustee stating, in connection with the authority of the Public Trustee and that other person to act jointly in that capacity—

- (a) the matters referred to in sub-section (1); or
- (b) any or all of the matters referred to in sub-section (2),

is evidence of the matters so stated.

Power to determine fees and charges

75. The Attorney-General may, by notice in writing published in the *Gazette*, determine fees and charges for the purposes of this Ordinance.

Regulations

76. The Attorney-General may make regulations, not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or

permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 8 March 1985.