

VICTORIA.



ANNO VICESIMO

ELIZABETHÆ SECUNDÆ REGINÆ

No. 8125.

An Act to amend the *Public Trustee Act* 1958 and for other purposes.

[4th May, 1971.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

1. (1) This Act may be cited as the *Public Trustee (Amendment) Act* 1971. Short title.

(2) In this Act the *Public Trustee Act* 1958 is called the Principal Act. Principal Act
No. 6350.
Reprinted to
Act No. 6961.

2. Section 6 of the Principal Act is hereby amended as follows :— Amendment of
No. 6350 s. 6.

(a) After sub-section (1) there shall be inserted the following section :—

“(1A) During the absence of the Public Trustee through illness or other cause or during any vacancy in the office of Public Trustee the person holding office as Deputy Public Trustee or if there is more than one such person, the person whose appointment under this section as Deputy Public Trustee preceded the appointment of the other such person or persons, shall be the Acting Public Trustee and

Acting Public
Trustee.

discharge

discharge the duties of the Public Trustee until the Governor in Council appoints an Acting Public Trustee under sub-section (1).” ; and

- (b) In sub-section (9) the words “ or Acting Public Trustee ” shall be repealed.

Amendment of
No. 6350 s. 16.
Power to
executor &c.
to appoint
Public Trustee
to discharge
duties &c.

3. In section 16 of the Principal Act for the words “ with the consent of the Court ” there shall be substituted the words “ apply to the Court for consent and, if the Court, after giving to the Public Trustee the opportunity to be heard in relation to the application, consents, may ”.

Amendment of
No. 6350 s. 17.
Election by
Public Trustee
to administer
intestates’
estates.

4. Section 17 of the Principal Act is hereby amended as follows :—

- (a) In sub-section (1) for the expression “ \$2,000 ” there shall be substituted the expression “ \$10,000 ” ;
(b) In sub-section (2) for the expression “ \$2,000 ” there shall be substituted the expression “ \$10,000 ” ;
(c) For sub-section (3) there shall be substituted the following sub-section :—

Time for filing
election.

“ (3) No election shall be filed in pursuance of sub-section (1) or (2) until the expiration of a period of 14 days after the publication in a daily newspaper circulating in the neighbourhood of the last place of residence of the deceased of a notice of intention to file the election.” ; and

- (d) In sub-section (8) for the expression “ \$2,800 ” there shall be substituted the expression “ \$12,000 ”.

Amendment of
No. 6350 s. 19.

5. For section 19 of the Principal Act there shall be substituted the following section :—

Distribution of
estate of
deceased
intestate
illegitimate
persons.

“ 19. (1) Where the Public Trustee is the executor of the will or the administrator of the estate of a deceased illegitimate person and the whole or any part of that estate belongs to the Crown as *bona vacantia* in pursuance of section 55 of the *Administration and Probate Act 1958* the Public Trustee shall report the facts to the Treasurer.

(2) Upon receiving a report from the Public Trustee under sub-section (1) the Treasurer shall obtain an Order from the Governor in Council directing how the estate or part of the estate that belongs to the Crown as *bona vacantia* shall be dealt with and effect shall be given to the Order.”

6. Section

6. Section 20 of the Principal Act is hereby amended as follows :— Amendment of No. 6350 s. 20.

(a) For sub-section (2) there shall be substituted the following sub-section :—

“(2) The duty shall within one year after the grant of the probate or administration to the Public Trustee be assessed by him on the final balance of the estate being the final balance within the meaning of section 4 of the *Probate Duty Act 1962* and be paid into the Consolidated Fund on an account to be certified by him.” ; and Duties payable on estates administered by Public Trustee.

(b) In sub-section (3) for the words “shall be payable thereon” there shall be substituted the words “shall be payable on any property or amount included in the final balance referred to in sub-section (2)”.

7. The Principal Act is hereby amended as follows :—

(a) For sub-section (3) of section 28 there shall be substituted the following sub-section :— Amendment of No. 6350 ss. 28 and 29.

“(3) The Public Trustee may make such inquiries and take such evidence (whether orally or by statutory declaration) as he thinks fit.” ; and Certification of infirm persons.

(b) In sub-section (1) of section 29 for the words “the Public Trustee shall make such inquiries” there shall be substituted the words “the Public Trustee may make such inquiries”.

8. Section 48A of the Principal Act is hereby amended as follows :— Amendment of No. 6350 s. 48A.

(a) In sub-section (1) for the words “by writing in the prescribed form” there shall be substituted the words “by instrument duly completed in the prescribed form and executed by that person” ; Election of voluntary patients to be protected persons.

(b) In sub-section (2) for the words “by writing under his hand” there shall be substituted the words “by instrument duly completed in the prescribed form and executed by that person” ;

(c) After sub-section (2) there shall be inserted the following sub-section :—

“(2A) A form under sub-section (1) or (2) shall include a certificate by a medical practitioner to the effect that at the time the instrument was executed by the person referred to in sub-section

(1) or

(1) or (2) as the case may be that person appeared to the medical practitioner fully to understand the nature and effect of the instrument.” ; and

(d) For sub-section (3) there shall be substituted the following sub-section :—

“ (3) On the completion and execution of an instrument under sub-section (1) the voluntary patient who executed the instrument shall for all purposes be deemed to be a protected person and shall continue to be a protected person until he revokes the instrument under sub-section (2).”

Amendment of
No. 6350 ss. 50
and 50A.

9. The Principal Act is hereby amended as follows :—

(a) In paragraph (p) of section 50 for the words “ while sane or not infirm ” there shall be substituted the words “ if he were not under a legal disability ” ; and

(b) In section 54D—

(i) the words “ the death of the protected person or ” shall be repealed ; and

(ii) for the words “ while sane or not infirm ” there shall be substituted the words “ if he were not under a legal disability ”.

Amendment of
No. 6350 s. 50A.
Protected
persons.

10. In section 50A of the Principal Act for the words “ patient or infirm person ” (where twice occurring) there shall be substituted the words “ protected person ”.

Amendment of
No. 6350 s. 54E.
Sale of personal
effects.

11. In section 54E of the Principal Act for the words “ space of two years from the date of his death or ceasing to be a protected person ” there shall be substituted the words “ period of two years after the date of his ceasing to be a protected person ”.

Amendment of
No. 6350 s. 54J.
Seal of Public
Trustee.

12. In section 54J of the Principal Act for the words “ corporate seal ” there shall be substituted the words “ common seal ”.

Amendment of
No. 6350
new s. 56A.

13. After section 56 of the Principal Act there shall be inserted the following section :—

Power of Public
Trustee to
invest moneys
&c.

‘ 56A. (1) The Public Trustee may with the consent in writing of the Governor in Council on the recommendation of the Minister first obtained apply any part or parts of the Common Fund referred to in section 56 for or in connexion with either or both of the following purposes :—

(a) The acquisition by the Public Trustee of land the whole or part of which may be used in connexion with the duties powers and functions of the Public Trustee under this Act ; and

(b) The

- (b) The erection construction or alteration of a building on land referred to in paragraph (a) the whole or part of which may be used by the Public Trustee in connexion with his duties powers or functions under this Act.

(2) The total amount applied from the Common Fund for the purposes of sub-section (1) shall not at any time exceed the sum of \$5,000,000.

(3) Where under sub-section (1) land is acquired or a building is erected constructed or altered and the whole of that land or building is not required by the Public Trustee for or in connexion with his duties powers or functions under this Act he may with the consent in writing of the Minister first obtained grant a lease or leases of the land or building or of part of the land or building to such person as is or such persons as are approved in writing by the Minister on such terms and conditions as the Minister approves in writing.

(4) There shall be payable by equal monthly instalments in advance out of the Consolidated Fund such amounts in respect of a building or part of a building used by the Public Trustee under this section as are from time to time determined by the Minister to be fair monthly rents in respect of that building or part, having regard to the prevailing rates of rents in respect of similar accommodation and the Consolidated Fund is hereby to the necessary extent appropriated accordingly.

(5) There shall be established and kept in the books of the Public Trustee—

- (a) an account to be called the “Building Operations Account”; and
- (b) an account to be called the “Building Depreciation Account”.

(6) There shall be paid into the Building Operations Account—

- (a) rent received under leases granted under sub-section (3);
- (b) amounts received from the Consolidated Fund under sub-section (4); and
- (c) where in a financial year any part of a building acquired or erected under this section is not let or used by the Public Trustee, such amount as the Minister determines would have been a fair rent for that period in respect of that part, having regard to the prevailing rates of rents in respect of similar accommodation, and that amount shall be paid from the Estates Guarantee and Reserve Account referred to in section 57.

(7) There

(7) There shall be paid out of the Building Operations Account—

- (a) the cost of repair maintenance alterations and other out-goings of or in connexion with land acquired by the Public Trustee under this section or of or in connexion with a building on that land that is payable by the Public Trustee ; and
- (b) such amounts as the Minister from time to time determines as amounts to be paid into the Building Depreciation Account.

(8) Moneys in the Building Operations Account at the end of each financial year shall be paid into the Interest Suspense Account referred to in section 57.

(9) Moneys paid into the Building Depreciation Account under sub-section (6) or this sub-section may be invested in the Common Fund and interest on those moneys shall be paid into the Building Depreciation Account.

(10) The Building Depreciation Account shall be applied in such manner and for such purposes as the Minister approves for or in connexion with the renewal of a building on land acquired by the Public Trustee under this section and upon the sale of that land the balance remaining in the account shall, subject to sub-section (12), be paid to the credit of the Estates Guarantee and Reserve Account.

(11) Land acquired by the Public Trustee under this section may be sold by him and out of the net proceeds of sale all amounts applied under this section from the Common Fund in connexion with that land shall be paid to the Common Fund and the balance of the net proceeds of sale shall be paid to the Estates Guarantee and Reserve Account.

(12) Where land is sold under sub-section (11) and the amount of the net proceeds of sale is less than the amount applied from the Common Fund in respect of the acquisition erection construction and alteration of a building on that land, a sum equal to the difference between those amounts shall be paid to the Common Fund from the Building Depreciation Account and if the amount in that account is insufficient, the balance of the sum shall be paid from the Estates Guarantee and Reserve Account.'

14. Section 60 of the Principal Act is hereby amended as follows :—

(a) In paragraph (a) of sub-section (1)—

(i) the words " charged and " shall be repealed ;
and

(ii) after

- (ii) after the word "fees" there shall be inserted the words "and charges";
- (b) For paragraph (b) of sub-section (1) there shall be substituted the following paragraph :—
 - "(b) Whenever prescribed fees or charges are varied the Public Trustee shall forthwith cause a notice to be published in the *Government Gazette* and in two daily newspapers generally circulating throughout Victoria to the effect that there has been a variation of the prescribed fees or charges and that copies of the fees or charges as varied may be obtained from the Office of the Public Trustee."
- (c) In sub-section (2) after the word "fees" there shall be inserted the words "and charges";
- (d) In sub-section (3) after the word "fees" there shall be inserted the words "and charges";
- (e) In sub-section (4)—
 - (i) after the word "fees" (where twice occurring) there shall be inserted the words "and charges"; and
 - (ii) for the words "patient or infirm" there shall be substituted the word "protected"; and
- (f) In sub-section (5) for the words "fees shall be charged or" there shall be substituted the words "fees or charges".

15. At the end of section 73 of the Principal Act there shall be inserted the following sub-section :—

Amendment of
No. 6350 s. 73.

"(2) Where it is not practicable to specify fees or charges in respect of certain matters or services the regulations may provide that the fee or charge in respect of that matter or service be such reasonable fee or charge as is fixed by the Public Trustee."