



ANNO TRICESIMO
ELIZABETHAE SECUNDAE REGINAE
VICTORIA

Public Trustee (Amendment) Act 1981

No. 9625

An Act to amend the *Public Trustee Act* 1958 and the
Public Service Act 1974 and for other purposes.

[Assented to 8 December 1981]

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):

Short title.

1. (1) This Act may be cited as the *Public Trustee (Amendment) Act* 1981.

Commence-
ment.

(2) The several provisions of this Act shall come into operation on the day or on the respective days to be fixed by proclamation or successive proclamations of the Governor in Council published in the *Government Gazette*.

Principal Act
No. 6350.
Reprinted to
No. 8125.
Subsequently
amended by
Nos. 9019, 9059,
9075, 9421, 9554
and 9576.

(3) In this Act the *Public Trustee Act* 1958 is referred to as the Principal Act.

Amendment of
No. 6350 ss. 4
and 6.

2. (1) For section 4 of the Principal Act there is substituted the following section:

Appointment
of Public
Trustee.

"4. Subject to the *Public Service Act* 1974 a Public Trustee may be appointed to carry out the duties and functions vested by or under this or any other Act in the Public Trustee."

(2) For

(2) For sub-sections (1), (1A), (2), (3), (4), (5), (6), (7) and (8) of section 6 of the Principal Act there are substituted the following sub-sections:

(1) Subject to the *Public Service Act* 1974 there may be appointed such Deputy Public Trustees as are required for the purposes of this Act. Appointment of Deputy Public Trustees.

(2) During the absence of the Public Trustee through illness or other cause, or during a vacancy in the office of Public Trustee, the senior Deputy Public Trustee shall be the Acting Public Trustee and perform and exercise the duties, obligations, rights and powers of the Public Trustee.

(3) A person who is the Acting Public Trustee by virtue of sub-section (2) shall continue as Acting Public Trustee until the Minister makes a direction pursuant to section 69 of the *Public Service Act* 1974 with respect to the duties, obligations, rights and powers of the Public Trustee.

(4) In this section, "senior Deputy Public Trustee" means—

- (a) if there is only one Deputy Public Trustee on duty, that Deputy Public Trustee; or
- (b) if there is more than one Deputy Public Trustee on duty—
 - (i) the Deputy Public Trustee on duty whose salary is higher than the salary of every other Deputy Public Trustee on duty; or
 - (ii) if the salaries of all the Deputy Public Trustees on duty are equal, the Deputy Public Trustee on duty whose appointment as such preceded the appointments of every other Deputy Public Trustee on duty.

(3) A person who immediately before the commencement of this section held the office of Public Trustee or Deputy Public Trustee— Persons holding office at commencement of Act.

- (a) shall continue to hold office as such subject to the *Public Service Act* 1974; and
- (b) shall not, by reason of the operation of this Act, be in any worse position with regard to any accrued or accruing rights relating to tenure of office, emolument, long service leave, pension or superannuation than he would have been if this Act had not been passed.

(4) In section 6 (10) of the Principal Act, after the words "Deputy Public Trustee" (where twice appearing) there are inserted the words "or Acting Public Trustee".

(5) In section 4 (1) of the *Public Service Act* 1974, paragraph (d) is repealed. Amendment of No. 8656 s. 4 (1).

3. After

No. 6350.
New s. 16A.

3. After section 16 of the Principal Act there is inserted the following section:

Public Trustee
may deal with
estates of less
than \$1000.

“16A. (1) Where—

- (a) the net value as estimated by the Public Trustee of the estate of a deceased person does not exceed \$1000; and
- (b) the Public Trustee may apply under section 9, 10, 11 or 13 for a grant of probate or administration of the estate or may elect under section 17 to administer the estate—

the Public Trustee, after giving such notice by advertisement or otherwise as he deems appropriate, may sell, call in and convert into money the property of the estate, pay the debts and liabilities of the deceased person of which he has notice and deal with the residue in all respects as if probate of the will or administration of the estate (as the case may be) had been duly granted to him.

(2) Upon payment of any sum or delivery of any property to any person under this section the Public Trustee shall be discharged from all liability in respect of that sum or property.

(3) This section shall not prejudice the right of any person to recover the whole or any portion of any sum paid under this section, or any property delivered under this section, from the person or persons who have received it from the Public Trustee.

(4) In this section, “net value” in relation to the estate of a deceased person, means the amount remaining after deducting from the gross value of the estate all debts, funeral and testamentary expenses of the deceased person and all other lawful liabilities and charges to which the estate may be subject.”.

Amendment of
No. 6350, s. 17.
Election by
Public Trustee
to administer
intestate's
estate under
\$50 000 in
value.

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

- (a) In sub-sections (1) and (2), for the expression “\$10,000” there shall be substituted the expression “\$50 000”; and
- (b) In sub-section (8), for the expression “\$12,000” there is substituted the expression “\$60 000”.

No. 6350.
New s. 20

5. (1) For section 20 of the Principal Act there is substituted the following section:

Duty payable
on estates
administered
by Public
Trustee.

“20. (1) Every estate in respect of which probate or administration is granted to the Public Trustee shall be liable to pay the same duty as would be payable in respect of the estate under

the

the *Probate Duty Act* 1962 if probate or administration in respect thereof were granted to a person other than the Public Trustee.

(2) The duty payable under this section in respect of an estate shall within one year after the grant of 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.

(3) Where, if an estate to which this section applies were being administered by a person other than the Public Trustee, the amount of duty that would be payable under the *Probate Duty Act* 1962 in respect of the estate would be assessed by the Commissioner of Probate Duties having regard to the opinion, belief or state of mind of the Commissioner of Probate Duties as to a particular matter or circumstance, the amount of duty payable under this section in respect of the estate shall be assessed by the Public Trustee having regard to the opinion, belief or state of mind (as the case may be) of the Public Trustee as to that matter or circumstance.

(4) Where, if an estate to which this section applies were being administered by a person other than the Public Trustee, an election could have been made under the proviso to section 24 (8) of the *Probate Duty Act* 1962 in relation to the estate, the Public Trustee shall make the election in the manner which will in his opinion result in the least amount of duty being payable under this section in respect of the estate.

(5) The Public Trustee shall, as soon as is practicable after making an assessment under sub-section (2) in respect of an estate, give notice that the assessment has been made—

- (a) to every person who is a beneficiary of the estate or who has received or is entitled to receive property in respect of which an amount has been included in the final balance of the estate under this section; and
- (b) to every person from whom the Public Trustee may recover an amount of duty payable under this section in respect of the estate.

(6) Any person mentioned in paragraph (a) or (b) of sub-section (5) shall be entitled on demand to obtain from the Public Trustee particulars of the manner in which the duty payable under this section in respect of the estate was assessed.

(7) Any

(7) Any pre-payments made under section 39 (1) of the *Probate Duty Act 1962* in respect of an estate to which this section applies shall be applied in payment (in whole or in part) of the duty payable under this section, unless the sum of the pre-payments exceeds the amount of duty so payable, in which case so much of the sum as is required shall be applied in payment of the duty and the surplus shall be refunded to the estate out of the Probate Duty Pre-payment Account established under section 39 (4) of the *Probate Duty Act 1962*.

Sixth
Schedule.

(8) The provisions of the *Probate Duty Act 1962* specified in column 1 of the Sixth Schedule, as modified in the manner specified in column 2 of the Sixth Schedule, shall apply in relation to estates to which this section applies, being estates of persons who die after the commencement of section 3 of the *Public Trustee (Amendment) Act 1981*.

(9) Without limiting the generality of sub-section (8), a reference in a provision specified in column 1 of the Sixth Schedule to the Commissioner of Probate Duties shall for the purposes of this section be read as a reference to the Public Trustee.

(10) Any regulations or rules of court made in relation to or for the purposes of any of the provisions of the *Probate Duty Act 1962* specified in column 1 of the Sixth Schedule shall have effect, with such changes in matters of detail as are necessary, in relation to or for the purposes of this section.

(11) Subject to sub-sections (8) and (10), and without limiting the operation of any other provision of this section, nothing in the *Probate Duty Act 1962* or any regulations or rules of court made thereunder shall be deemed to apply to the Public Trustee or to any estate administered by him.

(12) The duty payable under this section in respect of an estate shall be deemed to be a debt due to Her Majesty after payment of the testamentary and funeral expenses of the deceased person but otherwise in priority to all other debts of the deceased person.

(13) If probate of the will or administration of the estate of a deceased person upon whose estate duty has been paid under this section is granted at any time afterwards, no further duty shall be payable on any property or amount included in the final balance of the estate under this section.”.

Schedule.

(2) The provisions set out in the Schedule have the force of law by virtue of this sub-section.

(3) After

(3) After the Fifth Schedule to the Principal Act there is inserted the following Schedule:

No. 6350.
New Sixth
Schedule.

"SIXTH SCHEDULE

Section 20 (8).

Column 1 Provision of Probate Duty Act 1962	Column 2 Modification
Section 19 (except sub-section (2)).	In sub-section (1), the words "Any administrator or other person liable to the payment of duty under this Act" shall be read as follows: "Any person— (a) who is a beneficiary of an estate to which section 20 of the <i>Public Trustee Act</i> 1958 applies or who has received, or is entitled to receive, property in respect of which an amount has been included in the final balance of such an estate; or (b) from whom the Public Trustee may recover an amount of the duty payable under section 20 of the <i>Public Trustee Act</i> 1958—".
Section 19A ..	Nil.
Section 19B ..	Nil.
Section 19C ..	Nil.
Section 19D ..	A reference to the powers and functions of the Commissioner of Probate Duties under the <i>Probate Duty Act</i> 1962 shall be read as a reference to the powers and functions of the Public Trustee under this Act.
Section 19E ..	Nil.
Section 19F ..	A reference to interest in sub-section (1) shall be disregarded.
Section 20 (except sub-section (3)) ..	Nil.
Section 26 ..	In sub-section (2), the words "by the administrator, he" shall be read as "under section 20 of the <i>Public Trustee Act</i> 1958, the Public Trustee". In sub-section (3), a reference to the administrator shall be read as a reference to the Public Trustee.
Section 30 ..	The reference to section 29 of the <i>Probate Duty Act</i> 1962 shall be disregarded. The reference to the administrator shall be read as a reference to the Public Trustee.
Section 33 ..	Nil.
Section 34 (1) and (3) ..	Nil.
Section 36 ..	A reference to the administrator of an estate shall be read as a reference to the Public Trustee.
Section 38 ..	A reference to duty payable under the <i>Probate Duty Act</i> 1962 shall be read as a reference to duty payable under section 20 of this Act, and a reference to the payment of duty in accordance with the provisions of that Act shall be read as a reference to the payment of duty in accordance with section 20 of this Act.
Section 38A ..	A reference to duty payable under the <i>Probate Duty Act</i> 1962 shall be read as a reference to duty payable under section 20 of this Act. A reference to the administrator or other person liable to pay duty shall be read as a reference to a person— (a) who is a beneficiary of an estate to which section 20 of this Act applies or who has received or is entitled to receive property in respect of which an amount has been included in the final balance of an estate under that section; or (b) from whom the Public Trustee may recover an amount of the duty payable under that section in respect of an estate.

"SIXTH

"SIXTH SCHEDULE—continued.

Column 1 Provision of Probate Duty Act 1962	Column 2 Modification
Section 38A—continued	The rate of interest for the time being determined by the Minister administering the <i>Probate Duty Act 1962</i> under section 38A (3) of that Act shall have effect for the purposes of the application of section 38A of that Act in relation to estates to which section 20 of this Act applies.
Section 38B (except sub-sections (3), (4) and (5))	<p>A reference to duty payable under the <i>Probate Duty Act 1962</i> shall be read as a reference to duty payable under section 20 of this Act, and a reference to the payment of duty in accordance with the provisions of that Act shall be read as a reference to the payment of duty in accordance with section 20 of this Act.</p> <p>A reference to the administrator or other person liable to pay duty shall be read as a reference to a person—</p> <ol style="list-style-type: none"> who is a beneficiary of an estate to which section 20 of this Act applies or who has received or is entitled to receive property in respect of which an amount has been included in the final balance of the estate under that section; or from whom the Public Trustee may recover an amount of the duty payable under that section in respect of an estate. <p>A reference to the Hardship Relief Board shall be read as a reference to the Hardship Relief Board constituted under section 38B (3) of the <i>Probate Duty Act 1962</i> and acting in accordance with section 38B (5) of that Act.</p> <p>The rate of interest for the time being determined by the Minister administering the <i>Probate Duty Act 1962</i> under section 38B (6) of that Act shall have effect for the purposes of the application of section 38B of that Act in relation to estates to which section 20 of this Act applies.</p>
Section 40 Nil."

Amendment of
No. 6350, s. 28
(2).
Certification of
infirm persons.

Amendment of
No. 6350, s. 39.
Appointment
by court of
guardians of
person or
estate of
patients and
infirm persons
etc.

6. In section 28 (2) of the Principal Act for the words "fourteen clear days" there is substituted the expression "21 clear days".

7. In section 39 of the Principal Act, for paragraph (a) there is substituted the following paragraph:

"(a) make orders—

- for the appointment of a committee, or otherwise for the protection, care and management of the person or of the estate or of the person and estate of the patient; or
- for the appointment of a guardian of the person or a receiver of the estate or both a guardian of the person and a receiver of the estate of the infirm person—

and such committee, guardian or receiver shall according to the nature of his appointment have the same powers and authorities and be subject to the same control and

liabilities

liabilities as a committee of the person or estate or of the person and estate of a lunatic so found under this Act.”.

8. For sections 42 and 43 of the Principal Act there are substituted the following sections: No. 6350, New Ss. 42, 43.

“42. (1) Where it appears to the Public Trustee that a protected person is possessed of or entitled to or has an interest in property in any State (other than Victoria) or Territory of the Commonwealth or in New Zealand or the United Kingdom he may, by instrument in writing under his hand and seal directed to the officer of that State, Territory or country who is or may be charged by or under the laws thereof with the management of the affairs of persons, however described under those laws, who are incapable of managing their affairs by reason of senility, disease, illness or physical or mental infirmity— Power of Public Trustee to request proper officer in other jurisdictions to administer property of protected person in Victoria.

- (a) certify that he has the general care, protection and management of the estate of the person named in the instrument; and
- (b) authorize the officer to collect, manage, sell or otherwise administer any property in that State, Territory or country of which the person named in the instrument is possessed or to which that person is entitled or in which that person has an interest.

(2) The Public Trustee may give a discharge to the officer mentioned in sub-section (1) on the payment over or delivery to the Public Trustee of the balance of the monies or other property of the person named in an instrument under that sub-section remaining after payment of all costs, charges and expenses incurred by the officer in the exercise of the authority given him under that sub-section and after satisfying, or making provision for satisfying, the debts of the person and claims against him payable to any person residing in the State, Territory or country (as the case may be).

(3) The Public Trustee may revoke or vary any authority given by him under sub-section (1).

43. (1) Where the officer charged by or under the laws of any State (other than Victoria) or Territory of the Commonwealth or by or under the laws of New Zealand or the United Kingdom with the management of the estate of a person in that State, Territory or country who is incapable of managing his affairs by reason of senility, disease, illness or physical or mental infirmity, by instrument in writing under his hand and seal— Power of Public Trustee to pay to property officer of another jurisdiction balance of property of infirm person.

- (a) certifies to the Public Trustee that he has the care and management of the estate of that person; and

(b) authorizes

- (b) authorizes the Public Trustee to collect, manage, sell or otherwise dispose of or administer any property in Victoria of which the person named in the instrument is possessed or to which that person is entitled or in which that person has an interest—

the Public Trustee shall have and may exercise over and in respect of the property all his powers of collection, management, sale, disposition, administration and inquiry and all the provisions of this Act shall apply with respect to the property as if the person were resident in Victoria and a protected person.

(2) The Public Trustee may pay over or deliver to the officer referred to in sub-section (1) the balance of the property of the person named in the instrument referred to in that sub-section or of any money received as a result of the exercise of powers under that sub-section in respect of the property remaining—

- (a) after payment of all costs, charges and expenses incurred by the Public Trustee in and in relation to the exercise of the powers; and
- (b) after satisfying, or providing for the satisfaction of, the debts and claims of which the Public Trustee has notice payable out of the property of that person to any person resident in Victoria.

(3) The Public Trustee shall account to the officer referred to in sub-section (1) for any payment made by him out of the property of a person named in an instrument referred to in that sub-section but shall not be bound to see to the application of any such payment.

(4) The Public Trustee may exercise his powers under sub-section (1) until he receives notice from the officer referred to in that sub-section of the revocation of the authority so referred to or the death of the person in respect of whom the authority was given; and thereupon the person or his legal personal representatives (as the case may be) shall be bound by and may take advantage of any act done on behalf of the person by the Public Trustee under sub-section (1) as if it had been done by the person and the person had not at the time been under a legal disability.”.

Amendment of
No. 6350, s. 48
(5).

9. (1) For sub-section (5) of section 48 of the Principal Act there is substituted the following sub-section:

Commission
payable to
Her Majesty.

“(5) There shall be paid to Her Majesty each year in respect of each estate administered by a committee other than the Public Trustee a percentage of—

- (a) one per centum of the corpus of the estate collected by or coming under the control of the committee during that year; and

(b) two

- (b) two and one half per centum of the income of the estate collected by or coming under the control of the committee during that year—

and the amount of percentage so payable shall be certified by the Public Trustee when he examines the accounts.”.

- (2) The amendment made to the Principal Act by sub-section (1) shall be deemed to have been made upon the commencement of section 2 (2) of the *Mental Health Act 1959*.

Transitional provision.

10. (1) In section 48A of the Principal Act—

Amendment of No. 6350, s. 48A.

- (a) after sub-section (1) there is inserted the following sub-section:

Election of voluntary patients to be protected persons.

“(1A) The Public Trustee may decline either absolutely or except upon conditions to accept an authority under sub-section (1), but shall not so decline without the consent of a judge of the Court.”;

- (b) in sub-section (3), after the expression “shall continue to be a protected person until he revokes the instrument under sub-section (2)” there is inserted the expression “or until he is discharged from the institution in which he is a voluntary patient (whichever first occurs)”;

- (c) after sub-section (4) there is inserted the following sub-section:

“(5) Where—

- (a) a voluntary patient in an institution authorizes the Public Trustee to manage his estate; and

- (b) the voluntary patient is discharged from the institution without having previously revoked the authority—

the superintendent of the institution shall without unnecessary delay report the discharge to the Public Trustee.”.

- (2) The Principal Act as amended by paragraphs (b) and (c) of sub-section (1) applies on and after the commencement of this Act as well to persons who were protected persons (within the meaning of the Principal Act) before that commencement as to persons who afterwards become protected persons (within the meaning of the Principal Act).

Transitional provision.

11. After section 52 (2) of the Principal Act there is inserted the following sub-section:

Amendment of No. 6350, s. 52 (2).

- “(3) The exercise by the Public Trustee, under sub-section (1) or (2) either before or after the commencement of section 10 of the *Public Trustee (Amendment) Act 1981*, of a power vested in a

Appointment by Public Trustee of new trustee.

protected

protected person to appoint a new trustee shall be deemed to be, or to have been (as the case may be), an appointment of a new trustee within the meaning of section 45 of the *Trustee Act 1958*."

Public Trustee
not to sell
land over
\$60 000 in
value without
order of court.

Power of
Public Trustee
to retain
investments,
&c.

Amendment of
No. 6350,
s. 54H.

Acceptance of
payment of
debt deemed
to be dealing
with property.

Amendment of
No. 6350,
s. 56A.
Power of
Public Trustee
to invest
monies &c.

12. In section 53 (1) of the Principal Act for the expression "\$4,000" there is substituted the expression "\$60 000".

13. In section 54 (2) (c) of the Principal Act, the words "shall have and may" are repealed.

14. Section 54H of the Principal Act is amended as follows:

- (a) After the expression "54H" there is inserted the expression "(1)"; and
- (b) At the end of the section there is inserted the following sub-section:

“(2) For the purpose of this section and section 54I, the acceptance of payment of the whole or any part of a debt shall be deemed to be a dealing with property.”.

15. Section 56A of the Principal Act is amended as follows:

- (a) The word "and" appearing at the end of paragraph (a) of sub-section (1) is repealed;
- (b) After paragraph (b) of sub-section (1) the following expression and paragraph shall be inserted:

“;and
- (c) the acquisition by the Public Trustee of furniture, fittings and equipment which may be used in connexion with the duties, powers or functions of the Public Trustee under this Act.”;
- (c) In sub-section (3), after the words "part of the land or building" there are inserted the words "together with any furniture, fittings and equipment acquired under sub-section (1)";
- (d) For sub-section (4) there is substituted the following sub-section:

“(4) There shall be payable by equal monthly instalments in advance out of the Consolidated Fund such amounts in respect of a building, part of a building, furniture, fittings or equipment 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 thereof having regard to the prevailing rates of rent in respect of similar accommodation, furniture, fittings and equipment and the Consolidated Fund is hereby to the necessary extent appropriated accordingly.”;

(e) In

- (e) In paragraph (c) of sub-section (6), after the words "in respect of that part" there are inserted the words "and the furniture, fittings and equipment in that part";
- (f) For paragraph (a) of sub-section (7) there is substituted the following paragraph:
 - "(a) the cost payable by the Public Trustee of repair, maintenance, alterations and other outgoings of or in connexion with land, furniture, fittings and equipment acquired by the Public Trustee under this section or of or in connexion with a building on such land;"
- (g) In sub-section (10), after the words "acquired by the Public Trustee under this section" there are inserted the words "or of any furniture, fittings or equipment so acquired";
- (h) In sub-section (11), after the word "land" (where twice occurring) there are inserted the words "furniture, fittings or equipment";
- (i) In sub-section (12), for the words commencing at the beginning of that sub-section and ending with the words "alteration of a building on that land" there are substituted the following words:

"Where land, furniture, fittings or equipment is or are sold under sub-section (11) and the amount of the net proceeds of the sale is less than the amount applied from the Common Fund in connexion with the land, furniture, fittings or equipment".

16. (1) In section 57 (6) of the Principal Act—

- (a) the word "and" appearing after paragraph (e) is repealed; and
- (b) after paragraph (f) the following expression and paragraph are inserted:

"; and

- (g) Payment to the Common Fund of amounts (not exceeding \$1000 in the aggregate in any financial year) equivalent to the amounts of any losses incurred by the Common Fund as a result of payments made from it in relation to particular estates or trust property, being payments which are in the opinion of the Public Trustee irrecoverable."

Amendment of
No. 6350,
s. 57 (6).
Application
of monies in
Estates
Guarantee and
Reserve
Account.

(2) After section 57 (6) of the Principal Act there is inserted the following sub-section:

"(6A) Where, pursuant to sub-section (6) (g), an amount is applied from the Estates Guarantee and Reserve Account for payment

payment to the Common Fund of the amount of a loss incurred by the Common Fund in relation to a particular estate or to particular trust property and the whole or any part of the amount lost is subsequently recovered, the amount recovered shall be carried to the credit of the Estates Guarantee and Reserve Account.”.

No. 6350.
New s. 65A.

Payment of
money to
minor over 16.

17. After section 65 of the Principal Act there is inserted the following section:

“65A. A receipt signed by a person of or above the age of 16 years to whom money or property (not exceeding in amount or in value, as estimated by the Public Trustee, \$50 in the aggregate) is paid or delivered by the Public Trustee shall be a complete discharge to the Public Trustee of all liability in respect of it.”

Amendment of
No. 6350.
New s. 66 (2A).
Supervision of
Public Trustee
by Court.

18. After section 66 (2) of the Principal Act there is inserted the following sub-section:

“(2A) Without limiting the generality of sub-sections (1) and (2), the jurisdiction of the Court under those sub-sections shall include jurisdiction to approve, order or advise the commencement of proceedings by the Public Trustee acting in one capacity or on behalf of one protected person against the Public Trustee acting in another capacity or on behalf of another protected person.”.

No. 6350.
New s. 70A.
Power of
Public Trustee
to certify
that he is
authorized
to administer
an estate.

19. After section 70 of the Principal Act there is inserted the following section:

“70A. (1) Where the Public Trustee (either alone or jointly with any other person) is or is deemed to be the executor or administrator of the estate of a deceased person the Public Trustee may issue a certificate under his hand and seal—

- (a) certifying that he, alone or jointly with the other person, has been granted probate or letters of administration of the estate or is deemed to be the executor or administrator of it;
- (b) stating the date of the grant of probate or letters of administration or the date on which and manner in which he became deemed to be the executor or administrator of the estate; and
- (c) stating the name, place of residence and occupation of the deceased person.

(2) A document purporting to be a certificate issued under sub-section (1) shall, notwithstanding any enactment or law to the contrary, be accepted by all courts, officers and other persons whomsoever, whether acting under any Act or otherwise, as *prima facie* evidence of the death of the deceased person and of the appointment of the Public Trustee, either alone or jointly with the other person (if any) mentioned in that regard in the document, as executor or administrator of the estate of the deceased person, or of his right to administer the estate (as the case may be).”.

SCHEDULE

SCHEDULE

Section 5 (2).

RETROSPECTIVITY OF APPLICATION OF CERTAIN PROVISIONS OF THE PROBATE DUTY ACT 1962 TO ESTATES ADMINISTERED BY THE PUBLIC TRUSTEE

1. (1) Sections 19 (except sub-section (2)), 19A, 19B, 19C, 19D, 19E and 19F of the *Probate Duty Act* 1962 apply in relation to estates administered by the Public Trustee, being estates of persons who died before the commencement of section 3 of this Act.

Application of
No. 6890,
ss. 19-19F.

(2) For the purposes of sub-section (1)—

(a) the words "Any administrator or other person liable to the payment of duty under this Act" shall be read as follows:

"Any person—

(a) who is a beneficiary of an estate to which section 20 of the *Public Trustee Act* 1958 applies or who has received, or is entitled to receive, property in respect of which an amount has been included in the final balance of such an estate; or

(b) from whom the Public Trustee may recover an amount of the duty payable under section 20 of the *Public Trustee Act* 1958—";

(b) the period of three months within which an objection may be lodged under section 19 (1) of the *Probate Duty Act* 1962 shall be deemed to commence on the day on which section 3 of this Act commences;

(c) a reference in any provision referred to in sub-clause (1) to the Commissioner of Probate Duties shall be read as a reference to the Public Trustee;

(d) a reference in section 19D of the *Probate Duty Act* 1962 to the powers and functions of the Commissioner of Probate Duties under that Act shall be read as a reference to the powers and functions of the Public Trustee under this Act; and

(e) the reference to interest in section 19F (1) of the *Probate Duty Act* 1962 shall be disregarded.

2. (1) Where, before the commencement of section 3 of this Act, duty became payable under section 20 of the Principal Act, or a corresponding previous enactment, in respect of an estate administered by the Public Trustee and, at the time the duty became payable, section 26 of the *Probate Duty Act* 1962 or a corresponding previous enactment was in force in relation to duty payable under the *Probate Duty Act* 1962 or a corresponding previous enactment, section 26 of the *Probate Duty Act* 1962 or the corresponding previous enactment (as the case may be) shall be deemed to have applied in relation to the estate.

Retrospective
application of
No. 6890, s. 26.

(2) For the purposes of sub-clause (1)—

(a) a reference in section 26 of the *Probate Duty Act* 1962 or a corresponding previous enactment to the administrator of an estate shall be deemed always to have included a reference to the Public Trustee; and

(b) a reference in section 26 of the *Probate Duty Act* 1962 or a corresponding previous enactment to duty or interest payable by the administrator of an estate shall be deemed always to have included a reference to duty payable under section 20 of the Principal Act or a corresponding previous enactment.

3. (1) Where, before the commencement of section 3 of this Act, duty became payable under section 20 of the Principal Act or a corresponding previous enactment in respect of an estate administered by the Public Trustee and, at the time the duty became payable, section 30 of the *Probate Duty Act* 1962 or a corresponding previous enactment was in force in relation to duty payable under the *Probate Duty Act* 1962 or a corresponding previous enactment, section 30 of the *Probate Duty Act* 1962 or the corresponding previous enactment (as the case may be) shall be deemed to have applied in relation to the estate.

Retrospective
application of
No. 6890, s. 30.

(2) For the purposes of sub-clause (1)—

(a) a reference in section 30 of the *Probate Duty Act* 1962 or a corresponding previous enactment to the administrator of an estate shall be deemed always to have included a reference to the Public Trustee;

(b) a reference in section 30 of the *Probate Duty Act* 1962 to duty payable by the administrator of an estate under the *Probate Duty Act* 1962 or a corresponding previous enactment shall be deemed always to have included a reference to duty payable under section 20 of the Principal Act or a corresponding previous enactment; and

SCHEDULE

SCHEDULE—continued

- (c) section 30 of the *Probate Duty Act* 1962 or a corresponding previous enactment shall be deemed never to have been subject to section 29 of that Act or a corresponding previous enactment.

Retrospective application of No. 6890, s. 38.

4. (1) Where, before the commencement of this Act, section 20 of the Principal Act required the Public Trustee to assess an amount of duty payable in respect of an estate, section 38 of the *Probate Duty Act* 1962 shall be deemed to have applied in relation to the assessment.

(2) For the purposes of sub-clause (1)—

- (a) a reference in section 38 of the *Probate Duty Act* 1962 to the Commissioner of Probate Duties shall be deemed always to have been a reference to the Public Trustee; and
- (b) a reference to duty payable under the *Probate Duty Act* 1962 shall be deemed always to have been a reference to duty payable under section 20 of the Principal Act.

Application of No. 6890, ss. 38A and 38B.

5. (1) The provisions of sections 38A and 38B of the *Probate Duty Act* 1962 apply to and with respect to the estate of any person, being an estate to which section 20 of the Principal Act applies or applied, irrespective of the time of death of the person.

(2) For the purposes of sub-clause (1)—

- (a) a reference in section 38A or 38B (except sub-section (3), (4) and (5)) of the *Probate Duty Act* 1962 to duty payable under that Act shall be read as a reference to duty payable under section 20 of the Principal Act;
- (b) a reference in section 38A or 38B of the *Probate Duty Act* 1962 to the payment of duty in accordance with the provisions of that Act shall be read as a reference to the payment of duty in accordance with the provisions of section 20 of the Principal Act;
- (c) a reference in section 38A or 38B of the *Probate Duty Act* 1962 to the administrator or other person liable to pay duty shall be read as a reference to a person—
- (i) who is a beneficiary of an estate to which section 20 of the Principal Act applies or who has received or is entitled to receive property in respect of which an amount has been included in the final balance of an estate under that section; or
- (ii) from whom the Public Trustee may recover an amount of the duty payable under that section in respect of an estate;
- (d) a reference in section 38B to the Hardship Relief Board shall be read as a reference to the Hardship Relief Board constituted under section 38B (3) of the *Probate Duty Act* 1962 and acting in accordance with section 38B (5) of that Act;
- (e) the rate of interest for the time being determined by the Minister administering the *Probate Duty Act* 1962 under section 38A (3) or 38B (6) of that Act shall have effect for the purposes of the application of section 38A or 38B (as the case may be) of that Act in relation to estates to which section 20 of the Principal Act applies or applied.