

**PUBLIC TRUSTEE (AMENDMENT) ACT, 1977**

**New South Wales**



ANNO VICESIMO SEXTO

**ELIZABETHÆ II REGINÆ**

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**Act No. 41, 1977.**

An Act to amend the Public Trustee Act, 1913, and to  
validate certain matters. [Assented to, 15th April, 1977.]

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*Public Trustee (Amendment).*

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**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**Short title.**     **1.** This Act may be cited as the "Public Trustee (Amendment) Act, 1977".

**Commence-ment.**     **2.** (1) Except as provided in subsections (2) and (3), this Act shall commence on the date of assent to this Act.

(2) Section 5 shall be deemed to have commenced on 14th February, 1975.

(3) Schedule 1 (3) shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Schedules.**     **3.** This Act contains the following Schedules:—

**SCHEDULE 1.—AMENDMENTS TO THE PUBLIC TRUSTEE ACT, 1913.**

**SCHEDULE 2.—AMENDMENTS TO THE PUBLIC TRUSTEE ACT, 1913, BY WAY OF STATUTE LAW REVISION.**

**Amendment of Act No. 19, 1913.**     **4.** The Public Trustee Act, 1913, is amended in the manner set forth in Schedules 1 and 2.

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*Public Trustee (Amendment).*


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5. The regulation purporting to have been made under the Public Trustee Act, 1913, and published in Gazette No. 35 of 14th February, 1975, is amended—

Validation—  
commission  
payable to  
the public  
trustee.

- (a) by omitting from paragraph (a) (i) of that regulation the matter “\$” where firstly, secondly and thirdly occurring and by inserting instead the matter “£”; and
- (b) by omitting from paragraph (a) (iv) of that regulation the matter “\$” where firstly, secondly and thirdly occurring and by inserting instead the matter “£”.

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SCHEDULE 1.

**Sec. 4.**

AMENDMENTS TO THE PUBLIC TRUSTEE ACT, 1913.

(1) Section 7 (2)—

At the end of section 7, insert :—

(2) The public trustee—

- (a) may take proceedings and be proceeded against in its corporate name;
- (b) may, notwithstanding any other provision of this Act, for the purposes for which it is constituted, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property; and
- (c) may do and suffer all other things that bodies corporate generally may, by law, do and suffer and that are necessary for or incidental to the purposes for which it is constituted.

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*Public Trustee (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PUBLIC TRUSTEE ACT,  
1913—*continued.*

## (2) (a) Section 18A (1)—

Omit “four thousand dollars”, insert instead “\$15,000”.

## (b) Section 18A (1)—

Omit “and seal”, insert instead “, or the hand of the chief trust officer or the solicitor to the public trustee, and sealed with the public trustee’s seal”.

## (c) Section 18A (2)—

Omit “four thousand dollars”, insert instead “\$15,000”.

## (d) Section 18A (2)—

Omit “and seal”, insert instead “, or the hand of the chief trust officer or the solicitor to the public trustee, and sealed with the public trustee’s seal”.

## (e) Section 18A (3A) (a)—

Omit “four thousand dollars”, insert instead “\$15,000”.

## (f) Section 18A (3A) (a)—

Omit “and seal”, insert instead “, or the hand of the chief trust officer or the solicitor to the public trustee, and sealed with the public trustee’s seal”.

## (g) Section 18A (4)—

Omit “thirty miles”, insert instead “50 kilometres”.

## (h) Section 18A (5)—

Omit “six thousand dollars”, insert instead “\$20,000”.

SCHEDULE

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*Public Trustee (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PUBLIC TRUSTEE ACT,  
1913—*continued.*

(i) Section 18A (5)—

After “hand”, insert “, or the hand of the chief trust officer or the solicitor to the public trustee,”.

(j) Section 18A (5A)—

After “hand”, insert “, or the hand of the chief trust officer or the solicitor to the public trustee,”.

(3) Section 33—

Omit the section.

(4) Section 34 (2)—

At the end of section 34, insert :—

(2) A reference in subsection (1) to a minor being entitled to moneys in the hands of the public trustee includes a reference to a minor who is entitled to those moneys contingently on attaining an age specified in the instrument creating the entitlement.

(5) Section 34c—

After section 34B, insert :—

34c. (1) On the death of a person to whom a sum of money, not exceeding \$2,000, is payable by the public trustee, the public trustee may, without requiring administration to be taken out in the estate of that person, pay that sum or any part of that sum to a person who the public trustee considers is entitled to that sum or part.

Payment of money without grant of administration.

SCHEDULE

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*Public Trustee (Amendment).*


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 SCHEDULE 1—*continued.*

 AMENDMENTS TO THE PUBLIC TRUSTEE ACT,  
 1913—*continued.*

(2) A payment made in good faith pursuant to subsection (1) shall be valid against all persons and the public trustee shall be absolutely discharged from all liability in respect of any money so paid by him.

(3) A person to whom money is paid pursuant to subsection (1) shall be liable to apply that money in the due course of administration and the public trustee may, if he thinks fit, without being liable to see to the application of that money, require that person to give sufficient security, by bond or otherwise, that that money will be so applied.

(4) The public trustee shall notify the Commissioner of Stamp Duties of any payment made pursuant to subsection (1) within 30 days after the making of that payment.

(5) Nothing in this section affects any right of a person to claim or recover money paid pursuant to subsection (1) from a person other than the public trustee.

(6) Section 35 (2)—

Omit the subsection.

(7) Section 36G—

After section 36F, insert :—

Investment  
in common  
fund by  
the Court.

36G. (1) The public trustee shall, within one day after the date of receipt by him, pay into the common fund such money as is forwarded to him for that purpose by a registrar of the Court.

SCHEDULE

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*Public Trustee (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PUBLIC TRUSTEE ACT,  
1913—*continued.*

(2) The public trustee shall repay to a registrar of the Court, on demand by him, money paid into the common fund by that registrar under subsection (1) together with interest on that money calculated in accordance with section 36A (3) and (4).

(8) Sections 43A, 43B—

After section 43, insert :—

*Entitlement to costs in certain cases.*

43A. On an application by the public trustee, whether in common or in solemn form, for probate of any will, or for administration with a will annexed, the public trustee shall be entitled to his costs out of the estate, and shall not be liable for the costs of any other person. **Application in respect of will.**

43B. Where the beneficiaries entitled under any intestacy cannot agree as to the person to be appointed administrator and the public trustee, at the request of any one or more of those beneficiaries, applies for administration, he shall not be liable for the costs of any other person and shall be entitled to his costs out of the estate, whether or not he is appointed administrator. **Application on intestacy.**

(9) (a) Section 50 (1)—

Omit “, and sealed with his corporate seal, certifying that he”, insert instead “, or the hand of the chief trust officer, the senior trust officer, the solicitor to the public trustee, a branch

SCHEDULE

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*Public Trustee (Amendment).*


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SCHEDULE 1—*continued.*AMENDMENTS TO THE PUBLIC TRUSTEE ACT,  
1913—*continued.*

manager or a relieving branch manager, and sealed with the public trustee's seal, certifying that the public trustee".

## (b) Section 50 (2)—

Omit “, and sealed with his corporate seal, certifying that he”, insert instead “, or the hand of the chief trust officer, the senior trust officer, the solicitor to the public trustee, a branch manager or a relieving branch manager, and sealed with the public trustee's seal, certifying that the public trustee”.

## SCHEDULE 2.

AMENDMENTS TO THE PUBLIC TRUSTEE ACT, 1913,  
BY WAY OF STATUTE LAW REVISION.

## (1) (a) Section 5 (3) (a) (iv)—

Omit the subparagraph, insert instead :—

- (iv) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;

## SCHEDULE



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*Public Trustee (Amendment).*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PUBLIC TRUSTEE ACT, 1913,  
BY WAY OF STATUTE LAW REVISION—*continued.*

(b) Section 5 (3) (a) (vi)—

Omit the subparagraph, insert instead :—

- (vi) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act.

(c) Section 5 (4)—

Omit “1916–1935, or under any Act amending those Acts,”, insert instead “1916,”.

(d) Section 5 (5)—

Omit “–1935”.

(e) Section 5 (5)—

Omit “, or under any of those Acts as amended by subsequent Acts”.

(2) Section 6 (1)—

Omit “as amended by subsequent Acts,”.

(3) Section 9 (3)—

Omit “Colonial”.

SCHEDULE

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*Public Trustee (Amendment).*

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SCHEDULE 2—*continued.*AMENDMENTS TO THE PUBLIC TRUSTEE ACT, 1913,  
BY WAY OF STATUTE LAW REVISION—*continued.*

## (4) Section 16 (1), proviso—

Omit “the provisions of the Mining Acts, the Crown Lands Acts, or the Real Property Act, 1900,” insert instead “an Act by or under which provision is made for or with respect to the transfer of an estate or interest in property of the same class or description as that trust property.”

## (5) (a) Section 17—

Omit “idiot, or lunatic.”

## (b) Section 17—

Omit “directs :”, insert instead “directs.”

## (6) Section 18 (2), proviso—

Omit “the provisions of the Mining Act, the Crown Lands Act, or the Real Property Act, 1900,” insert instead “an Act by or under which provision is made for or with respect to the transfer of an estate or interest in property of the same class or description as that trust property.”

## (7) Section 18A (5A)—

Omit “-1940”.

## (8) (a) Section 36 (1)—

Omit “-1940”.

SCHEDULE

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*Public Trustee (Amendment).*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PUBLIC TRUSTEE ACT, 1913,  
BY WAY OF STATUTE LAW REVISION—*continued.*

(b) Section 36 (2)—  
Omit “-1940”.

(9) (a) Section 36D (a)—  
Omit “-1940”.

(b) Section 36D (b)—  
Omit “Colonial” wherever occurring.

(10) (a) Section 41—  
Omit “Colonial”.

(b) Section 41—  
Omit “said”.

(11) Section 52 (1)—  
Omit “Colonial”.

(12) (a) Section 53 (1A) (a)—  
Omit “Colonial”.

(b) Section 53 (1A) (b)—  
Omit “Colonial”.

SCHEDULE

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*Public Trustee (Amendment).*


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 SCHEDULE 2—*continued.*

 AMENDMENTS TO THE PUBLIC TRUSTEE ACT, 1913,  
 BY WAY OF STATUTE LAW REVISION—*continued.*

(c) Section 53 (2)—  
 Omit “Colonial”.

(d) Section 53 (3)—  
 Omit “said” wherever occurring.

(13) (a) Section 59—  
 Omit :—

All such regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

But if either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

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*Public Trustee (Amendment).*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PUBLIC TRUSTEE ACT, 1913,  
BY WAY OF STATUTE LAW REVISION—*continued.*

(b) Section 59 (2)—

At the end of section 59, insert :—

(2) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation made under this Act as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969.

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