

Acts Amendment (Public Trustee and Trustee Companies) Bill 2000

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Western Australia

LEGISLATIVE ASSEMBLY

**Acts Amendment (Public Trustee and Trustee
Companies) Bill 2000**

A Bill for

An Act to amend —

- **the *Public Trustee Act 1941*;**
- **the *Trustee Companies Act 1987*,**

and to make consequential amendments to various other Acts.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Acts Amendment (Public Trustee and Trustee Companies) Act 2000*.

5 **2. Commencement**

This Act comes into operation on a day fixed by proclamation.

Part 2 — Amendments to the *Public Trustee Act 1941*

Division 1 — *Public Trustee Act 1941* amended in this Part

3. The Act amended

5 The amendments in this Part are to the *Public Trustee Act 1941**.

[* Reprinted as at 8 September 1993.

For subsequent amendments see 1999 Index to Legislation of Western Australia, Table 1, pp. 204-05.]

Division 2 — Substantive amendments

10 **4. Long title amended**

The long title is amended by deleting “appointment of a public trustee, and the powers and duties” and inserting instead —

“

15 **establishment of the Public Trust Office and the functions**

”.

5. Section 1 replaced

Section 1 is repealed and the following is inserted instead —

“

20 **Part 1 — Preliminary**

1. Short title

This Act may be cited as the *Public Trust Office Act 1941*.

”.

6. Section 2 amended

Section 2 is amended as follows:

- (a) after the definition commencing “administration” the following definition is inserted —

5

“

“**common fund**” means a common fund referred to in section 39D.

”;

- (b) after the definition of “estate” the following definition is inserted —

10

“

“**Executive Director**” means the Executive Director provided for by section 3B.

”;

- (c) after the definition of “income” the following definition is inserted —

15

“

“**member of staff**”, in relation to the Public Trust Office, means the Executive Director or any other person referred to in Part 3.

”;

- (d) the definition of “Public Trustee” is deleted and the following definition is inserted instead —

25

“

“**PTO**” or “**Public Trust Office**” means the Public Trust Office established by section 3A.

”;

- (e) after the definition of “rules” the following definitions are inserted —

30

“

“**Treasurer**” means Treasurer of the State.

“**Treasurer’s guidelines**” means guidelines issued by the Treasurer under section 48A(2).

”.

7. Section 3 amended

Section 3(2) is repealed.

8. Part I replaced

Part I is repealed and the following Parts are inserted instead —

5

“

Part 2 — The Public Trust Office

3A. Public Trust Office established

- (1) A body called the Public Trust Office is established.
- (2) The PTO is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the PTO in its corporate name.
- (4) The PTO may use one or more of the following operating names —
 - (a) Public Trust Office;
 - (b) Public Trustee;
 - (c) any name approved by the Minister.
- (5) The PTO is an agent of the Crown in right of the State and, except as provided in subsection (6), enjoys the status, immunities and privileges of the Crown.
- (6) Nothing in this Act shall be read as conferring on the PTO in the performance of its functions or provision of services any immunity from the operation of any written law.

10

15

20

25

3B. Executive Director

- (1) There shall be an office of Executive Director, Public Trust Office.

- 5
- (2) A chief executive officer of the Public Trust Office shall be appointed under Part 3 of the *Public Sector Management Act 1994* and that person shall hold the office of Executive Director.
- (3) The Executive Director, in the name of the PTO, shall —
- 10
- (a) perform the functions of the PTO under this Act or any other written law; and
- (b) determine the policies and control the affairs of the PTO.
- (4) The Executive Director is responsible for, and has the powers needed to administer, the day to day operations of the PTO.

3C. Delegation

- 15
- (1) The PTO may, by instrument in writing, delegate the performance of any of its functions, except this power of delegation.
- (2) A delegation under subsection (1) may be made —
- 20
- (a) to a member of the PTO's staff; or
- (b) with the approval of the Minister, to any other person.
- (3) A function performed by a delegate shall be taken to be performed by the PTO.
- 25
- (4) A delegate performing a function under this section shall be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section shall be read as limiting the ability of the PTO to act through its staff and agents in the normal course of business.

4. Ministerial control

- (1) The Minister is the responsible authority of the PTO for the purposes of the *Public Sector Management Act 1994*.
- 5 (2) The Minister may give written directions to the PTO with respect to the performance of its functions, either generally or in relation to a particular matter, and the PTO shall give effect to any such direction when it becomes effective under section 4A.
- 10 (3) The Minister shall cause the text of any direction under subsection (2) to be laid before each House of Parliament or dealt with under section 53A —
- (a) within 14 days after the direction is given; or
- 15 (b) if the direction is the subject of a notice under section 17 of the *Statutory Corporations (Liability of Directors) Act 1996*, within 14 days after it is confirmed under that section.
- (4) The text of a direction under subsection (2) shall be included in the annual report submitted by the
- 20 accountable authority of the PTO under section 66 of the *Financial Administration and Audit Act 1985*.

4A. When directions take effect

- (1) Subject to this section, a direction under section 4(2) becomes effective on the expiry of 7 days after the
- 25 PTO receives it or of such longer period as the Minister may, at the request of the PTO, determine.
- (2) If the PTO asks the Minister to extend the 7 day period under subsection (1), the Minister shall decide whether or not to agree to the request and notify the PTO of that
- 30 decision before the 7 day period has expired.

5 (3) If a direction is the subject of a notice under section 17 of the *Statutory Corporations (Liability of Directors) Act 1996*, it does not become effective before it is confirmed under that section or the expiry of any extension of time notified under subsection (4).

10 (4) Despite subsection (4) of section 17 of the *Statutory Corporations (Liability of Directors) Act 1996*, the Minister may, when confirming a direction under that section, extend the time for the direction to become effective and notify the PTO of the extension.

4B. Minister to have access to information

15 (1) The Minister is entitled —
(a) to have information in the possession of the PTO; and
(b) where the information is in or on a document, to have, and make and retain copies of, that document.

20 (2) For the purposes of subsection (1) the Minister may —
(a) request the PTO to furnish information to the Minister;
(b) request the PTO to give the Minister access to information;
(c) for the purposes of paragraph (b) make use of the PTO's members of staff to obtain the information and furnish it to the Minister.

25 (3) The PTO shall comply with a request under subsection (2) and make its members of staff and facilities available to the Minister for the purposes of subsection (2)(c).

(4) The Minister is not entitled to have information under this section in a form that —

(a) discloses the identity of a person for whom the PTO is providing a service; or

5

(b) might enable the identity of any such person to be ascertained,

unless that person has consented to the Minister's having the information.

(5) In this section —

10

“document” includes any tape, disc or other device or medium on which information is recorded or stored;

15

“information” means information specified, or of a description specified, by the Minister that relates to the functions of the PTO.

5. Administration and planning

(1) The Minister and the PTO are to enter into a written agreement in relation to the matters set out in subsections (2) and (3) for each 12 month period (an **“agreement”**).

20

(2) An agreement may provide for any of the following —

(a) the funding of the PTO's operations;

25

(b) matters relating to keeping the Minister reasonably informed of the operations, financial performance and financial position of the PTO, including the assets and liabilities, surpluses, deficits and prospects of the PTO;

30

(c) matters relating to the Executive Director notifying the Minister if the Executive Director forms the opinion that the PTO is unable, or likely to be unable, to satisfy any financial

obligation of the PTO from the financial resources available or likely to be available to the PTO at the time the financial obligation is due;

- 5 (d) if the chief executive officer of the department referred to in subsection (6) has been delegated the power to enter into the agreement, arrangements under section 6A(1) as to the use of the services of officers or employees of the department;
- 10 (e) such other matters as are agreed between the Minister and the PTO.

(3) An agreement shall provide for —

- 15 (a) the Executive Director to submit, for the Minister's approval, in respect of each financial year a draft business plan to cover a forecast period of not more than 5 years setting out —
- 20 (i) the PTO's medium to long term economic and financial objectives;
- (ii) the PTO's medium to long term objectives in relation to the functions it has to perform that are not in its commercial interests to perform ("**non-commercial functions**");
- 25 (iii) operational targets; and
- (iv) how those objectives and targets will be achieved;
- 30 (b) the Executive Director to submit, for the Minister's approval, in respect of each financial year a draft annual operational plan to cover the financial year setting out —
- (i) an outline of the PTO's objectives;

- 5
- (ii) business and service performance targets and other measures by which to judge performance in relation to objectives for the financial year;
- (iii) allocation of resources;
- (iv) an outline of the nature and scope of the functions to be performed during the financial year;
- 10
- (v) an estimate of income and expenditure and source of funding during the financial year;
- (vi) the non-commercial functions to be performed in the financial year;
- 15
- (vii) the costings of, funding for, or other arrangements to make adjustments relating to, those non-commercial functions; and
- 20
- (viii) the ways in which, and the extent to which, compensation will be made for performing those non-commercial functions;
- (c) the matters that are to be considered by the Executive Director in the preparation of a business plan or an annual operational plan;
- 25
- (d) the manner and form in which the Executive Director shall prepare, submit, revise or modify a business plan or an annual operational plan;
- (e) the functions of the Executive Director and the Minister in relation to the development, approval or modification of a business plan or an annual operational plan; and
- 30
- (f) the operation of a business plan or an annual operational plan.

- 5
- (4) A provision in, or condition of, an agreement that purports to exclude the operation of section 8(2) of the *Public Sector Management Act 1994* has no effect, but without prejudice to other provisions or conditions of the agreement.
- 10
- (5) The Minister shall cause —
- (a) within 14 days after an agreement is made the text of the agreement to be laid before each House of Parliament or dealt with under section 53A; and
- 15
- (b) the text of a business plan or an annual operational plan in relation to the PTO that has been approved by the Minister to be laid before each House of Parliament within 14 days after the plan is approved by the Minister or dealt with under section 53A.
- 20
- (6) The Minister may delegate the Minister's power under subsection (1) to enter into an agreement to the chief executive officer of the department of the Public Service principally assisting the Minister in the administration of the *Court Security and Custodial Services Act 1999*.
- 25
- (7) The first agreement shall be effective on and from the day on which the *Acts Amendment (Public Trustee and Trustee Companies) Act 2000* comes into operation.
- 30
- (8) If an agreement (other than the first agreement) has not been made in respect of a 12 month period then on the commencement of that period the provisions of the agreement for the previous 12 month period apply, to the extent that the provisions are relevant, until an agreement is made for the first-mentioned period.
- (9) Nothing in this section or an agreement affects any power of the Minister to give directions to the PTO.
- (10) An agreement is not legally enforceable.

Part 3 — Staff

6. Staff

- (1) The power to engage and manage the staff of the PTO is vested in the Executive Director.
- 5 (2) The power conferred by subsection (1) does not preclude the delegation of any matter under section 3C.
- (3) The remuneration of and other terms and conditions of employment of staff are not to be less favourable than is provided for in —
- 10 (a) an applicable industrial award, order or agreement; or
- (b) the *Minimum Conditions of Employment Act 1993*.
- (4) Nothing in this section affects the operation of the
- 15 *Workplace Agreements Act 1993* or section 100 of the *Public Sector Management Act 1994*.
- (5) Nothing in this Act or in an agreement, a business plan or an annual operational plan under section 5 affects
- 20 the PTO's obligations to comply with whole of government policies relating to industrial relations and human resource management that apply generally to public sector bodies within the meaning of the *Public Sector Management Act 1994*.

6A. Use of other government staff, etc.

- 25 (1) The PTO may by arrangement with the relevant employer make use, either full-time or part-time, of the services of any officer or employee —
- (a) in the Public Service;
- (b) in a State agency or instrumentality; or
- 30 (c) otherwise in the service of the Crown in right of the State.

- (2) The PTO may by arrangement with —
- (a) a department of the Public Service; or
 - (b) a State agency or instrumentality,
- make use of any facilities of the department, agency or instrumentality.
- (3) An arrangement under subsection (1) or (2) shall be made on such terms as are agreed to by the parties.

9. Part II heading and Division (1) heading replaced

The headings to Part II and Division (1) of Part II are deleted and the following headings are inserted instead —

Part 4 — Functions of Public Trust Office

Division 1 — General

10. Heading to Part II Division (2) replaced

The heading to Part II Division (2) is deleted and the following heading is inserted instead —

**Division 2 — Public Trust Office as executor
or administrator**

11. Section 9 amended

The second sentence of section 9 is deleted.

12. Section 12 amended

Section 12(8) is amended by deleting “, idiot, or lunatic,”.

13. Section 12A inserted

After section 12 the following section is inserted —

“

5 **12A. PTO’s powers on appointment as agent of executor,
administrator, etc.**

In addition to the PTO’s powers under section 12, if —

- 10 (a) a person who is an executor or administrator
appoints the PTO as the person’s agent to act as
executor or administrator in the place of the
person;
- 15 (b) a person who may be entitled to apply for a
grant of probate appoints the PTO as the
person’s agent to apply for a grant of probate;
- (c) a person who may be entitled to obtain
administration (with the will of a testator
annexed) of the testator’s estate appoints the
PTO as the person’s agent to apply for an order
to administer the estate; or
- 20 (d) a person who is referred to in section 25 of the
Administration Act 1903 as a person who may
be granted administration of an estate of a
person dying intestate appoints the PTO as the
person’s agent to apply for an order to
administer the estate,

25 the PTO, if so appointed by power of attorney or other
instrument of appointment, may act within the scope of
the authority conferred on the PTO as effectually as the
person could have acted and may exercise all
discretionary and other powers delegated by the
30 principal as fully as the principal could have exercised
them.

”.

14. Section 14 amended

(1) Section 14(1) is amended by deleting “\$10 000” and inserting instead —

“ the prescribed amount ”.

5 (2) Section 14(4) is amended by deleting “the sum of \$10 000” and inserting instead —

“ the prescribed amount ”.

(3) Section 14(4) is amended by deleting “under his hand”.

(4) Section 14(5) is amended by deleting “under his hand”.

10 (5) After section 14(5) the following subsection is inserted —

“

(6) In this section —

“**prescribed amount**” means the amount prescribed
for the purposes of section 10 of the *Trustee
Companies Act 1987* for the relevant time.

15

”.

15. Section 15 repealed

Section 15 is repealed.

16. Section 18 amended

20 Section 18 is amended by deleting “Public Trustee is under \$1 000, he” and inserting instead —

“ PTO is under \$5 000, the PTO ”.

17. Heading to Part II Division (3) replaced

25 The heading to Part II Division (3) is deleted and the following heading is inserted instead —

“ **Division 3 — Public Trust Office as trustee** ”.

18. Section 22A inserted

After section 22 the following section is inserted —

“

22A. PTO’s powers on appointment as trustee’s agent

5 If a person who is a trustee appoints the PTO as the
person’s agent to act as trustee in the place of the person
the PTO, if so appointed by power of attorney or other
instrument of appointment, may act within the scope of
10 the authority conferred on the PTO as effectually as the
person could have acted and may exercise all
discretionary and other powers delegated by the principal
as fully as the principal could have exercised them.

”.

19. Section 23 amended

15 (1) Section 23(1) is amended by deleting “himself” and inserting
instead —

“ itself ”.

(2) Section 23(2) is repealed and the following subsection is
inserted instead —

20 “

(2) In particular, but without limiting the generality of
subsection (1), where the PTO holds moneys belonging
to more than one estate, as trustee for the investment of
those moneys, sections 39F, 39G, 39H and 39I apply in
25 relation to the investment of those moneys as if the
moneys were standing to the credit of a common fund.

”.

20. Heading to Part II Division (4) replaced

30 The heading to Part II Division (4) is deleted and the following
heading is inserted instead —

“ **Division 4 — Estates of represented persons** ”.

21. Section 33 amended

Section 33 is amended by deleting “, as unclaimed moneys, to be dealt with in accordance with the provisions of the *Unclaimed Moneys Act 1912*” and inserting instead —

5 “ and dealt with under the *Unclaimed Money Act 1990* ”.

22. Heading to Part II Division (5) replaced

The heading to Part II Division (5) is deleted and the following heading is inserted instead —

10 “
Division 5 — Functions of Public Trust Office as to moneys subject to court and other orders”.

23. Section 37 amended

15 (1) Section 37(3)(a) is deleted and the following paragraph is inserted instead —

“
(a) All moneys ordered under the *Workers’ Compensation and Rehabilitation Act 1981* to be invested by the PTO, shall be paid to the PTO, and the receipt by the PTO, or of any one authorised by it, of those moneys is a complete discharge to all persons concerned.

20 ”.

25 (2) Section 37(4) is amended by deleting “hand and seal of the Public Trustee” and inserting instead —

“ seal of the PTO ”.

24. Heading to Part II Division (6) replaced

The heading to Part II Division (6) is deleted and the following heading is inserted instead —

“

5

**Division 6 — Functions of Public Trust Office as to
uncared for property**

”.

25. Part II Division 7 inserted

After section 37A the following Division is inserted in Part II —

10

“

Division 7 — Approved services

37B. Definitions

In this Division —

15

“**approved service**” means a service that has been approved under section 37C;

“**client**” means —

20

- (a) a beneficiary of the estate of a deceased person which is administered by the PTO;
- (b) the donor of a power of attorney under which the PTO is the donee;
- (c) a person who appoints the PTO to be the executor of the person’s will;
- (d) a person on whose behalf moneys are invested in a common fund;
- 25 (e) a beneficiary of a trust administered by the PTO;
- (f) a person who has appointed the PTO to act as the person’s agent; or
- (g) a member of a prescribed class of persons;

“investment management services” includes any of the following —

- 5 (a) assisting clients to ascertain their investment objectives, financial situations, risk profiles and particular investment needs;
- (b) setting investment policies and objectives for clients;
- (c) holding money for investment on behalf of clients;
- 10 (d) engaging and retaining suitably qualified financial planners or investment managers for clients;
- (e) subscribing to, buying or selling securities and other investments, or accepting new issue entitlements, on behalf of clients;
- 15 (f) collecting interest, dividends and other income on behalf of clients;
- (g) reviewing clients’ investment portfolios from time to time;
- 20 (h) providing accounting information to clients on a regular basis in relation to their investments.

37C. Approval of services that PTO may provide to clients

- 25 (1) The Minister, with the Treasurer’s concurrence, may approve one or more of the following services for provision by the PTO to clients —
 - (a) conveyancing and property settlement services;
 - (b) financial planning services;
 - 30 (c) taxation services including the preparation and lodging of returns for the purpose of, or in connection with, assessments of any duties or taxes;

- (d) investment management services in relation to investments other than those in a common fund.
- 5 (2) Before granting an approval the Minister may require the PTO to provide such information, business plans, budgets, forecasts and other details as the Minister or the Treasurer considers necessary to enable a full assessment of the proposed service to be undertaken.
- (3) An approval may be of general application or specific to a particular class or classes of service or client.
- 10 (4) In granting an approval the Minister may attach such conditions to the approval as the Minister sees fit.
- (5) If the Minister grants an approval the Minister shall within 14 days after the approval is granted cause a report setting out the approved service to be laid before each House of Parliament or dealt with under section 53A.
- 15 (6) An approval cannot be granted in respect of the provision to a client of a service referred to in subsection (1) if a fee for the provision of the service to the client is set out in the current scale of fees determined under section 39A.
- 20

37D. Provision of approved services to clients

- 25 (1) The Public Trustee may provide to a client an approved service and shall ensure that the provision of an approved service is in accordance with the conditions, if any, attached by the Minister.
- (2) An approval given under section 37C is sufficient authority for the doing of such things as are necessary for the provision of the approved service to a client.

- 5
- (3) The PTO is entitled to charge and receive fees and remuneration and recover disbursements for the provision of approved services to clients.
- (4) The PTO may continue to provide an approved service to a person who was a client even though the person is no longer a client.
- 10
- (5) Nothing in this Division shall be read as limiting any power that the PTO otherwise has, whether under this Act or any other written law, a court order or an authorisation in an instrument, to invest property other than by way of investment in a common fund.

”.

26. Part III amended

15 The heading to Part III is deleted and sections 38, 39, 40 and 40A are repealed and the following is inserted instead —

“

Part 5 — Financial provisions

Division 1 — Financial provisions relating to administration of Public Trust Office

20 **38. Funds of PTO**

The funds available for the purpose of enabling the PTO to perform its functions consist of —

- 25
- (a) moneys from time to time appropriated by Parliament;
- (b) moneys received by the PTO in the performance of its functions;
- (c) income derived from the investment of moneys forming part of the Account referred to in section 38A; and
- 30
- (d) other moneys lawfully received by, made available to, or payable to, the PTO.

38A. Public Trust Office Account

(1) The funds referred to in section 38 are to be credited to an account to be called the “**Public Trust Office Account**” —

5

(a) at the Treasury; or

(b) with the approval of the Treasurer, at a bank,

and if paragraph (a) applies that Account shall form part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*.

10

(2) The Account shall be charged with —

(a) the salaries and allowances payable to the staff engaged under section 6; and

(b) all other expenditure lawfully incurred by the PTO in the performance of its functions.

15

38B. Investment

Unless section 38A(1)(a) applies, any funds of the PTO that are not immediately required for the purposes of performing the functions of the PTO may, if approved by the Treasurer, be invested in any manner that moneys in the Public Bank Account may be invested under the *Financial Administration and Audit Act 1985*.

20

38C. Application of *Financial Administration and Audit Act 1985*

25

The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the PTO and the PTO’s operations.

**Division 2 — Financial provisions relating to functions
of Public Trust Office**

39. Definition

In this Division —

5 “fees” includes commissions and other charges.

39A. Scale of fees

- 10 (1) The PTO shall from time to time determine a scale of fees, not exceeding any limit set by the Minister, for a function performed, or a service provided, by the PTO under this Act or any other written law except —
- (a) an approved service as defined in section 37B;
or
 - (b) the preparation of a will or an enduring power of attorney.
- 15 (2) A scale of fees has no effect unless it is published in the *Gazette*.
- (3) The PTO shall ensure that the first scale of fees is effective on and from the day on which the *Acts Amendment (Public Trustee and Trustee Companies) Act 2000* comes into operation.
- 20 (4) A scale of fees may provide for any of the following —
- (a) different rates of fees that may be charged in respect of different classes of estate and the time and manner of charging such fees;
 - 25 (b) the charging of fees in respect of capital or income;
 - (c) a rate of fee for the PTO’s services in relation to the management of an investment in a common fund that has been determined by the PTO having regard to the percentage charged
- 30

by similar bodies as management fees for similar investments in similar funds;

- (d) the time and manner in which fees may be paid or deducted out of an estate.

5 **39B. PTO's entitlements to fees and disbursements**

- (1) The PTO is entitled to charge a fee as remuneration for performing a function or providing a service under this Act or any other written law.
- 10 (2) The fee charged for the performance of a function or the provision of a service shall not exceed the fee in respect of the function or service that is set out in the scale of fees determined under section 39A and having effect at the time the function is performed or the service is provided.
- 15 (3) This section does not apply to the remuneration of the PTO for providing —
- (a) an approved service as defined in section 37B; or
- (b) the preparation of a will or an enduring power of attorney.
- 20 (4) Nothing in this Division prevents, limits or affects —
- (a) the payment of any fees that a testator in his or her will has directed to be paid; or
- (b) the payment of any fees that have been agreed on between the PTO and the interested parties,
- 25 either in addition to or instead of the fees provided for by this Division.
- 30 (5) Nothing in this Division prevents, limits or affects the reimbursement to the PTO of all disbursements properly made by the PTO in the performance of a function or the provision of a service.

39C. Payment of fees from estates

A fee which the PTO is entitled to receive in respect of an estate —

- 5
- (a) is payable out of the capital or income of the estate, as determined by the PTO; and
- (b) shall be paid or deducted out of the estate at the time and in the manner provided for in the scale of fees determined under section 39A and having effect at the time the relevant function is performed or the relevant service is provided.
- 10

39D. Establishment of common funds

- (1) The PTO may establish and keep separately one or more accounts to be called a “**common fund**”.
- (2) Each common fund —
- 15
- (a) forms part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; and
- (b) shall have a distinguishing name or number.

39E. Power to invest moneys in common funds

- 20
- (1) The PTO may invest in a common fund moneys held by the PTO in the course of administering, holding, managing or controlling an estate in any capacity whatsoever and properly available for investment.
- (2) Nothing in subsection (1) authorises the investment in a common fund of moneys if investment of the moneys in a common fund is contrary to the terms or conditions of the instrument of appointment, the instrument creating the trust or any other instrument or order affecting the holding of the moneys by the PTO.
- 25

39F. Power to invest, and restrictions on investment of, common fund moneys

(1) The PTO may invest the moneys standing to the credit of a common fund but only —

5 (a) as trust funds may be invested under Part III of the *Trustees Act 1962*; and

(b) in a form of investment that is, or is of a kind that is, approved by the Treasurer.

10 (2) If the PTO invests moneys standing to the credit of a common fund in a form of investment referred to in subsection (1)(b), the PTO shall ensure that the investment of those moneys is entered into in accordance with —

(a) any relevant Treasurer's guidelines; and

15 (b) the broad investment strategy referred to in section 39J.

39G. How common fund moneys are to be invested, distributed etc.

20 (1) Investments made from moneys standing to the credit of a common fund shall not be made in the name or on account of, and shall not belong to, any particular estate but are to be held by the PTO proportionately having regard to the proportion which the amount invested in relation to each estate bears to the total amount invested in the fund in relation to all participating estates.

25 (2) At least once every 3 months, the PTO shall distribute to the separate account of each estate participating in a common fund, in accordance with its proportional interests determined under subsection (1), the amount of any increase or decrease in the value of the

30

investments held by the fund as determined either by independent valuation or estimated by the PTO.

- 5
- (3) The PTO shall deal with income earned by the PTO in respect of the investment of a common fund in the same manner as an investment in the fund is dealt with and the PTO shall ensure that appropriate records are made in the register of investments and the separate account maintained under section 39I(1) for each participating estate.
- 10
- (4) The entitlement of each participating estate to income earned by the PTO in respect of the investment of a common fund shall be calculated on a daily basis from the date of participation to the date of withdrawal.
- 15
- (5) The PTO may at any time withdraw from a common fund any amount standing to the credit of an estate in that fund and shall debit the separate account maintained by the PTO under section 39I accordingly.
- 20
- (6) The amount standing to the credit of an estate in a common fund shall be determined for the purposes of withdrawal having regard to distributions made under subsection (2) and to that estate's entitlement to income calculated on a daily basis.

39H. Derivative powers in relation to common funds

- 25
- (1) In this section —
“**derivative powers**” means the powers conferred by subsection (2).
- 30
- (2) Subject to subsections (3) and (4) and with the approval of the Treasurer, the PTO may, in the administration of a common fund, enter into an agreement or arrangement to effect any of the following transactions —
- (a) a forward interest rate agreement;

- (b) an interest rate swap;
- (c) a forward interest rate swap;
- (d) an interest rate cap, an interest rate collar or an interest rate floor;
- 5 (e) an option for interest rate management purposes;
- (f) any transaction which is a combination of 2 or more transactions permitted under this subsection.
- (3) The PTO may only exercise the derivative powers either in accordance with section 39F or —
- 10 (a) for the purpose of hedging or managing exposure arising out of the risk of adverse variations —
- 15 (i) in the costs of the borrowing or raising of money by the PTO; or
- (ii) in the revenue obtainable by the PTO from investments made or financial accommodation provided by the PTO, and not for any speculative purpose; and
- 20 (b) if the powers are exercised under paragraph (a), in compliance with —
- (i) the equitable and other duties of the PTO as a trustee under the law of Western Australia; and
- 25 (ii) a credit policy formulated and, if applicable, varied by the PTO under subsection (4).
- (4) The PTO —
- 30 (a) shall formulate a prudent credit policy setting out the manner in which, and the controls subject to which, the derivative powers will be exercised and comply with that credit policy;

- 5
- (b) shall ensure that the exercise of the derivative powers, and the compliance by the PTO with the credit policy formulated under this subsection, are monitored on a daily basis;
- (c) may from time to time vary a credit policy formulated under this subsection; and
- 10 (d) shall ensure that a credit policy formulated or varied under this subsection is not inconsistent with any relevant Treasurer's guidelines referred to in section 39F(2).

39I. Records as to common funds

- 15 (1) The PTO shall keep a separate account for each estate participating in a common fund, containing a record of the amount and date of each investment made in the fund in relation to the estate and the current value of the interest of the estate calculated in accordance with section 39G(2).
- 20 (2) The PTO shall maintain a register of investments in respect of each common fund and record in that register —
- (a) a description sufficient to identify every investment made by the fund and details of moneys held to the credit of the fund; and
- 25 (b) the value, determined either by independent valuation or estimated by the PTO at least once in every 3 months, of every investment held by the fund.

39J. Investment strategy for common funds

- 30 (1) The PTO shall formulate and give effect to a broad investment strategy for the investment of a common fund.

(2) In formulating its investment strategy and in making investment decisions the PTO shall endeavour to optimise returns having regard to the matters referred to in section 20(1) of the *Trustees Act 1962*.

5

(3) The PTO shall review —
(a) its broad investment strategy; and
(b) the management and performance of its investments,

10

from time to time in accordance with any relevant Treasurer's guidelines.

(4) The PTO shall provide to the Treasurer a copy of each review referred to in subsection (3).

39K. Power to enter into portfolio management contracts as to common fund investments

15

(1) The PTO may enter into any contract or arrangement with any person approved by the Treasurer for the management by that person of a class or classes of investment forming part of a common fund.

20

(2) The terms and duration of a proposed contract or arrangement under subsection (1) shall be approved by the Treasurer before the contract or arrangement is entered into.

25

(3) Subject to any relevant Treasurer's guidelines and in accordance with section 3C, the PTO may delegate to a person referred to in subsection (1) all or any of the PTO's functions under section 39F with respect to all or part of a common fund.

40. Power to lease or sell purchased land

30

(1) In this section —
“**purchased land**” means the land described in the Sixth Schedule that was purchased by the Public Trustee pursuant to repealed section 40(2a);

“**repealed section 40(2a)**” means section 40(2a) of this Act immediately before the commencement of the *Acts Amendment (Public Trustee and Trustee Companies) Act 2000*;

5 “**saved Common Fund**” means the common fund referred to in section 61 of the *Acts Amendment (Public Trustee and Trustee Companies) Act 2000*;

10 “**unused portion**” means so much of the purchased land as, on the day that the *Public Trustee Amendment Act 1982* came into operation, was not used for the purposes referred to in repealed section 40(2a).

- (2) The PTO may lease —
- (a) portions of the building referred to in repealed section 40(2a); or
 - 15 (b) the unused portion,

to any person approved of by the Minister on such terms and conditions as the Minister approves.

20 (3) The PTO, with the approval of the Minister and the Treasurer, may sell the purchased land or portions of the purchased land at such price, at such time and on such terms and conditions as the PTO considers to be prudent.

(4) The proceeds of the sale of the purchased land are to be credited to the saved Common Fund.

25 (5) If the proceeds of the sale of the purchased land are less than the book value of the purchased land set out in the PTO’s accounts then the extent of the loss shall be credited to the saved Common Fund from the amount of reserve moneys agreed under section 60(1)(a) of the *Acts Amendment (Public Trustee and Trustee Companies) Act 2000* or determined under section 60(2) of that Act.

30

”.

27. Section 41 amended

(1) Section 41(1) is amended by deleting “the Common Fund” in both places where it occurs and inserting instead —

“ a common fund ”.

5 (2) Section 41(2) is amended by inserting after “at such” —

“ commercial ”.

28. Section 42 repealed

Section 42 is repealed.

29. Section 43 repealed

10 Section 43 is repealed.

30. Section 44 amended

(1) Section 44(1) is amended by deleting “the Common Fund” and inserting instead —

“ a common fund ”.

15 (2) Section 44(5) is amended by deleting “Common Fund” and inserting instead —

“ common fund from which the moneys were advanced ”.

(3) Section 44(6) is amended by deleting “hand and seal of the Public Trustee” and inserting instead —

20 “ seal of the PTO ”.

31. Section 45 amended

Section 45(2) is amended by deleting “Treasury” and inserting instead —

“ Consolidated Fund ”.

32. Section 46 repealed

Section 46 is repealed.

33. Section 47 amended

Section 47(1) is amended by deleting “The Public Trustee” and inserting instead —

“

In addition to the requirements of section 39I(1), the PTO

”.

34. Section 48 replaced

Section 48 is repealed and the following sections are inserted instead —

“

48. Fees for preparation of wills and enduring powers of attorney

(1) Despite anything to the contrary in the *Legal Practitioners Act 1893*, the PTO may charge a fee and recover disbursements for the preparation of a will or an enduring power of attorney.

(2) Subsection (1) applies only if the will or enduring power of attorney is prepared under the direction and control of a certificated practitioner within the meaning of the *Legal Practitioners Act 1893*.

48A. Treasurer’s approvals and guidelines

(1) The following shall be in writing but may otherwise be given when and how the Treasurer determines —

(a) an approval given by the Treasurer under section 38A(1)(b), 38B, 39F(1), 39H(2) or 39K(1) or (2);

(b) the concurrence of the Treasurer under section 37C(1).

- 5 (2) The Treasurer may issue written guidelines to be followed by the PTO for the purposes of section 39F(2), 39J(3) or 39K(3) and may, in writing, amend or revoke those guidelines.
- 5 (3) Guidelines issued under subsection (2) are not subsidiary legislation for the purposes of the *Interpretation Act 1984*.
- 10 (4) If there is any inconsistency between guidelines issued under subsection (2) and a direction given under section 4(2), the guidelines are to prevail.
- 15 (5) If the Treasurer issues, amends or revokes a guideline for the purposes of section 39F(2), 39J(3) or 39K(3) the text of the guideline, amendment or revocation shall be included in the annual report submitted by the accountable authority of the PTO under section 66 of the *Financial Administration and Audit Act 1985*.

”.

35. Part IV heading replaced

20 The heading to Part IV is deleted and the following heading is inserted instead —

“ **Part 6 — Miscellaneous** ”.

36. Section 49 amended

- (1) Section 49(1)(ea) is amended by deleting “subject to subsections (2a) and (2b),”.
- 25 (2) Section 49(1)(n) is amended by deleting “his wife or any child, parent or other person dependent on him, and for the education of his children, as to the Public Trustee” and inserting instead —

30 “
the person’s spouse or any child, parent or other person dependent on the person, and for the education of the person or the person’s children, as to the PTO

”.

(3) Section 49(1)(r) is amended by deleting “himself”.

(4) Section 49(2) is amended by deleting “, the Public Trustee” and inserting instead —

“

5 or performing a function referred to in clause 1(1) of
Schedule 5 to the *Guardianship and Administration
Act 1990*, the PTO

”.

(5) Section 49(2a), (2b) and (2c) are repealed.

10 **37. Section 52 replaced**

Section 52 is repealed and the following section is inserted
instead —

“

52. Public Trustee may sue itself in different capacities

15 (1) Despite any rule of law or practice to the contrary, the
PTO, acting in one capacity, may commence
proceedings in the PTO’s corporate name against itself
acting in another capacity.

20 (2) In every case referred to in subsection (1) the PTO
shall obtain the directions of the Court as to how the
opposing interests are to be represented.

”.

38. Section 53 replaced

25 Section 53 is repealed and the following sections are inserted
instead —

“

53. Execution of documents by Public Trust Office

(1) The PTO shall have a common seal.

(2) A document is duly executed by the PTO if —

30 (a) the common seal of the PTO is affixed to it in
accordance with subsections (3) and (4); or

- (b) it is signed on behalf of the PTO by a person or persons authorised to do so under subsection (5).
- 5 (3) The common seal of the PTO shall not be affixed to any document except as authorised by the PTO.
- (4) The common seal of the PTO shall be affixed to a document in the presence of the Executive Director who shall sign the document to attest that the common seal was so affixed.
- 10 (5) The PTO may, by writing under its seal, authorise the Executive Director or a member or members of staff to sign documents on behalf of the PTO, either generally or subject to such conditions or restrictions as are specified in the authorisation.
- 15 (6) A document purporting to be executed in accordance with this section shall be presumed to be duly executed until the contrary is shown.
- (7) A document executed by a person under this section without the common seal of the PTO shall not be
20 regarded as a deed unless the person executes it as a deed and is authorised under subsection (5) to do so.
- (8) When a document is produced bearing a seal purporting to be the common seal of the PTO, it shall
25 be presumed that the seal is the common seal of the PTO until the contrary is shown.

53A. Supplementary provision about laying documents before Parliament

- (1) If —
- 30 (a) at the commencement of the period referred to in section 4(3), 5(5) or 37C(5) in respect of a document a House of Parliament is not sitting; and

(b) the Minister is of the opinion that that House will not sit during that period,

the Minister shall transmit a copy of the document to the Clerk of that House.

5 (2) A copy of a document transmitted to the Clerk of a House shall be regarded —

(a) as having been laid before that House; and

(b) as being a document published by order or under the authority of that House.

10 (3) The laying of a copy of a document that is regarded as having occurred under subsection (2)(a) shall be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

15 ”.

39. Section 54 amended

(1) Section 54(1) is amended by deleting “will in the Office of the Public Trustee” and inserting instead —

“ or her will with the PTO ”.

20 (2) Section 54(2) is amended by deleting “custody or control any testamentary paper of any insane patient, insane person, or represented person, may deposit the same in the Office of the Public Trustee upon oath, as he” and inserting instead —

“

25 or her custody or control any testamentary paper of any insane person, or represented person, may deposit the same with the PTO upon oath, as the PTO

”.

40. Section 55 amended

5 Section 55(2) is amended by deleting “Public Trustee may institute such inquiries as he thinks proper, and may, by summons under his hand, require any person to appear before him and answer all questions that he” and inserting instead —

“
10 PTO may make such inquiries as it considers to be required, and may issue a summons to require a person to appear before the Executive Director and answer all questions that the Executive Director
”.

41. Section 56 amended

15 Section 56(2) is amended by deleting “Public Trustee in his corporate capacity” and inserting instead —

“ PTO ”.

42. Section 59 amended

20 Section 59 is amended by deleting “hand of the Public Trustee, and sealed with his seal, certifying the nature of his” and inserting instead —

“ seal of the PTO certifying the nature of the PTO’s ”.

43. Section 60 amended

25 Section 60 is amended by deleting “his office” and inserting instead —

“ the PTO ”.

44. Section 62 amended

Section 62 is amended by deleting “Public Trustee” and inserting instead —

“ PTO in relation to a deceased person’s estate ”.

45. Section 64 amended

(1) Section 64 is amended by inserting before “The Governor” the subsection designation (1).

(2) At the end of section 64 the following subsection is inserted —

5

“

(2) Section 45(1) and (2) of the *Interpretation Act 1984* apply in respect of fees, commissions and charges prescribed under this Act despite sections 3(3) and 45(3) of that Act.

10

”.

46. Section 66 inserted

After section 65 the following section is inserted —

“

66. Non-prescribed fees

15

(1) The PTO, in determining a fee (including remuneration) that may be charged under this Act other than by way of regulations, may provide for all or any of the following matters —

20

(a) specific fees;

(b) maximum or minimum fees;

(c) maximum and minimum fees;

(d) fees in proportion to the estimated value of the functions to be performed or the services to be provided;

25

(e) the payment of fees either generally or under specified conditions or in specified circumstances;

(f) the reduction, waiver or refund, in whole or in part, of such fees.

(2) Where any reduction, waiver or refund, in whole or part, of any fee is provided for by the PTO such reduction, waiver or refund may be expressed to apply or be applicable either generally or specifically —

- 5 (a) in respect of certain matters or transactions or classes of matter or transaction;
- (b) in respect of certain documents or classes of document;
- (c) when any event happens or ceases to happen;
- 10 (d) in respect of certain persons or classes of person; or
- (e) in respect of any combination of such matters, transactions, documents, events or persons,

15 and may be expressed to apply or to be applicable subject to such conditions as may be specified by the PTO or in the discretion of any other person specified by the PTO.

”.

47. First Schedule repealed

20 The First Schedule is repealed.

48. Sixth Schedule amended

(1) The Sixth Schedule is amended in the shoulder clause by deleting “40A(1)” and inserting instead —

“ 40(1) ”.

25 (2) The Sixth Schedule is amended by deleting “Volume 541 Folio 28A” and inserting instead —

“ Volume 1845 Folio 320 ”.

Division 3 — Minor amendments to make gender of persons referred to in the Act non-specific and as to corporate name

49. “He” amended to “the PTO”

- 5 (1) The provisions set out in the Table to this subsection are amended by deleting “he” and inserting instead —
“ the PTO ”.

Table

10(3)	45(1)
10(4)	49(1)(b)
10(6) (in both places)	49(1)(j)
14(1)	49(1)(o)
14(3) (in both places)	49(1)(p) (in both places)
21(4) (in both places)	49(1)(r)
24	49(3)
29(1)	55(1)
31(2)	56(1) (in the 2 nd paragraph)
37(2)	60 (in both places)
44(2) (in both places)	63
44(3)	

- 10 (2) Sections 10(6) and 14(3) are amended by deleting “He” and inserting instead —
“ The PTO ”.

50. “He” amended to refer to various other persons

- (1) Section 12(4) is amended by deleting “he” and inserting instead —
“ the executor or administrator ”.
- 15 (2) Sections 12(7) and 37A(5) are amended by deleting “it or he” and inserting instead —
“ the Court or Judge ”.

- (3) Section 22(2)(a) is amended by deleting “he” and inserting
instead —
“ the custodian trustee ”.
- 5 (4) Section 22(2)(d) is amended by deleting “he” in both places
where it occurs and inserting instead —
“ the custodian trustee ”.
- (5) Section 22(2)(g) is amended by inserting after “he” —
“ or she ”.
- 10 (6) Section 27(2) is amended by deleting “he” and inserting
instead —
“ the Judge ”.
- (7) Section 28(3) is amended by deleting “he” and inserting
instead —
“ the owner ”.
- 15 (8) Section 31(1)(a) is amended by deleting “he” and inserting
instead —
“ the officer ”.
- (9) Section 31(1)(b) is amended by deleting “he” in both places
where it occurs and inserting instead —
20 “ the person ”.
- (10) Section 55(6) is amended by deleting “he” and inserting
instead —
“ the person ”.
- 25 (11) Section 56(1) is amended by deleting “he” in the first place
where it occurs and inserting instead —
“ the person ”.

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s. 51

(12) Section 58 is amended by deleting “he” in both places where it occurs and inserting instead —

“ the Judge ”.

51. “Him” amended to “the PTO”

5 The provisions set out in the Table to this section are amended by deleting “him” and inserting instead —

“ the PTO ”.

Table

10(5)	44(1)
13(2)	44(2)
13(3)	44(3)
14(1)	45(1)
14(2)	47(1)
31(1)	47(3)
31(2) (in the first place)	55(1)
32	56(1)
37(2)	58 (in the first and second places)
37A(2)	61(2) (in both places)
37A(3) (in both places)	64(i)
41(1)	

52. “Him” amended to refer to various other persons

10 (1) Section 22(2)(d) is amended by deleting “him” and inserting instead —

“ the custodian trustee ”.

(2) Section 31(2) is amended by deleting “him” in the second place where it occurs and inserting instead —

15 “ that person ”.

(3) Section 47(2)(b) is amended by deleting “him” and inserting instead —

“ the applicant ”.

(4) Section 55(4) and 55(6) are amended by inserting after “him” —

“ or her ”.

5 (5) Section 58 is amended by deleting “him” in the third place where it occurs and inserting instead —

“ the Judge ”.

(6) Section 58 is amended by deleting “him” in the fourth place where it occurs and inserting instead —

“ that person ”.

10 **53. “His” amended to “the PTO’s”**

The provisions set out in the Table to this section are amended by deleting “his” and inserting instead —

“ the PTO’s ”.

Table

13(2)	49(1)(h)
14(5) (in the second place)	49(1)(l)
29(4) (in the third place)	50(1) (in the first place)
31(2)	51
37A(2)	56(1) (in both places)
47(1)	58 (in the first place)
47(3)	60 (in the first place)
49(1)	

15 **54. “His” amended to refer to various other persons**

(1) The provisions set out in the Table to this subsection are amended by deleting “his” and inserting instead —

“ the person’s ”.

Acts Amendment (Public Trustee and Trustee Companies) Bill 2000

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s. 54

Table

- | | | |
|--|----------|----------------------------|
| | 9 | 31(1) (in the first place) |
| | 10(1)(a) | 44(3) |
| | 16(1)(a) | 55(6) (in both places) |
- (2) Section 10(1)(ab) is amended by deleting “his estate” and inserting instead —
“ the deceased person’s estate ”.
- 5 (3) Sections 16(2)(a) is amended by inserting after “his” —
“ or her ”.
- (4) Section 27(1) is amended by deleting “his” and inserting instead —
“ the Judge’s ”.
- 10 (5) Section 29(1)(b) is amended by deleting “his” and inserting instead —
“ the represented person’s ”.
- (6) Section 29(2) is amended by deleting “his” in both places where it occurs and inserting instead —
15 “ the represented person’s ”.
- (7) Section 29(4) is amended by deleting “his” in the first and second places where it occurs and inserting instead —
“ the represented person’s ”.
- (8) Section 31(1) is amended by deleting “his” in the second place where it occurs and inserting instead —
20 “ the officer’s ”.
- (9) Section 47(2)(a), (b) and (c) are amended by deleting “his” and inserting instead —
“ the applicant’s ”.

(10) Section 50(1) (in the second place) and (2) is amended by deleting “his” and inserting instead —

“ the officer’s ”.

(11) Section 58 is amended by inserting after “his” in the second and third places where it occurs —

“ or her ”.

55. “Public Trustee” amended to “PTO”

The provisions set out in the Table to this section are amended by deleting “Public Trustee” and inserting instead —

“ PTO ”.

Table

2 (in the definition of “estate”)	13(1) (in each place)
2 (in the definition of “represented person”)	13(2) (in both places)
3(1)(b), (c), (d)(i) and (ii), (e), (f) and (h)	13(3) (in both places)
7(1)	14(1) (in both places)
7(2)	14(2)
8 (in both places)	14(4)
9 (in the first place)	14(5) (in each place)
10(1) (in both places)	16(1)(a) (in both places)
10(2)	16(1)(b) (in each place)
10(3) (in each place)	16(2)(a) (in both places)
10(4) (in both places)	16(3) (in the second place)
10(5)	17 (in both places)
11	20
12(1)	21(1)
12(2)	21(3)
12(3)	21(4) (in each place)
12(4) (in both places)	21(5) (in each place)
12(5)	21(6)
12(6)	21(7)
12(8) (in both places)	22(1)
	23(1)
	24
	27(1)

Acts Amendment (Public Trustee and Trustee Companies) Bill 2000

Part 2 Amendments to the Public Trustee Act 1941

Division 4 Savings and transitional provisions

s. 56

28(3) (in each place)	49(1)
29(1)	49(1)(d)
29(2)	49(1)(e)
29(4)	49(3) (in both places)
31(1) (in each place)	49(4)
31(2)	50(1) (in both places)
32 (in both places)	50(2) (in both places)
33 (in both places)	51 (in both places)
37(1)	54(3) (in both places)
37(2)	55(1)
37(3)(b)	55(3)
37(3)(c) (in both places)	55(6) (in both places)
37A(1) (in both places)	55(7)
37A(2)	56(1) (in each place)
37A(3) (in both places)	57
37A(4)	58 (in each place)
37A(6) (in both places)	60
41(1)	61(1) (in both places)
44(1)	61(2) (in both places)
44(3)	63
44(4)	64(f)
45(1) (in each place)	64(g)
45(2) (in both places)	64(h)
47(2) (in each place)	64(i) (in both places)
47(3)	

Division 4 — Savings and transitional provisions

56. Definitions

(1) In this Division —

5 **“commencement day”** means the day on which this Act comes into operation;

“existing participant” means a trust or estate on behalf of which moneys were invested before the commencement day in the Common Fund referred to in repealed section 40(1);

“**purchased land**” has the meaning that it had under repealed section 40A(1);

5 “**reserve moneys**” means the balances of interest referred to in repealed section 40(4)(c) that are held by the Public Trustee as part of the Common Fund referred to in repealed section 40(1) immediately before the commencement day;

“**saved Common Fund**” means the common fund referred to in section 61.

10 (2) In this Division a reference to a particular repealed provision is a reference to the particular provision of the *Public Trustee Act 1941* as it was in effect immediately before the commencement day.

57. Interpretation Act 1984 not affected

15 The provisions of this Division do not prejudice or affect the application of the *Interpretation Act 1984* to and in relation to the repeal effected by section 8.

58. The Public Trustee continues as the Public Trust Office

20 (1) The Public Trust Office as established on the commencement day is a continuation of, and the same legal entity as, the body corporate known immediately before the commencement day as the Public Trustee.

(2) If in a written law or other document or instrument there is —
25 (a) a reference to the Public Trustee; or
(b) a reference that is to be read and construed as a reference to the Public Trustee,

that reference, where the context so requires, is to be read as if it had been amended to be a reference to the Public Trust Office as established on the commencement day.

- (3) The Registrar of Titles is to take notice of the provisions of this Division and is empowered to record and register in the appropriate manner the necessary documents and otherwise to give effect to this Division.

5 **59. Staff**

The person who was the officer called the Public Trustee immediately before the commencement day continues in office on and after the commencement day as the Executive Director, Public Trust Office and except as otherwise agreed by that
10 person, the person's remuneration, existing or accrued rights, rights under a superannuation scheme or continuity of service are not affected, prejudiced or interrupted by this section or section 58.

60. Crediting of certain reserve moneys to Consolidated Fund

- 15 (1) Within 6 months of the commencement day the Public Trust Office and the Treasurer are to —
- (a) agree on the amount of reserve moneys, or a means of assessing the amount of reserve moneys, that is to be held by the Public Trust Office pending the sale of the
20 purchased land in the event that the proceeds of the sale of the purchased land are less than the book value of the purchased land set out in the accounts of the Public Trust Office; and
- (b) identify the reserve moneys that are to be credited to the
25 Consolidated Fund and agree when, and if relevant the circumstances in which, those moneys are to be credited to the Consolidated Fund.
- (2) To the extent that a matter referred to in subsection (1) is not
30 agreed within the period referred to in that subsection the matter is to be determined by the Treasurer.

(3) Reserve moneys are to be credited to the Consolidated Fund in accordance with an agreement under subsection (1) or a determination under subsection (2).

5 (4) Subsections (1) to (3) and any agreement under subsection (1) or determination under subsection (2) have effect despite any provision of the *Public Trust Office Act 1941*.

61. The Common Fund saved as a common fund

10 The Common Fund referred to in repealed section 40(1) is, on and from the commencement day, to be treated as a common fund as defined in the *Public Trust Office Act 1941*.

62. Power to meet deficiency in the saved Common Fund from the Consolidated Fund continues for 5 years in respect of existing participants

15 (1) Despite the repeal of repealed section 42 by this Act that section continues to apply to the saved Common Fund to the extent set out in subsection (2) for a period of 5 years after the commencement day.

(2) Repealed section 42 applies under subsection (1) —

20 (a) to the moneys that, immediately before the commencement day, are standing to the credit of the saved Common Fund or, if any of those moneys are withdrawn on or after the commencement day, to the balance of those moneys; and

(b) only in respect of existing participants.

25 (3) No later than 6 months after the commencement day the Public Trust Office is to give written notice to each existing participant on behalf of which moneys remain invested in the saved Common Fund at the time the notice is given and the notice is to be to the effect that repealed section 42 will no longer apply to
30 the existing participant's investments in the saved Common Fund when the 5 year period expires.

- 5 (4) No later than 6 months before the 5 year period expires the Public Trust Office is to give written notice to each existing participant on behalf of which moneys remain invested in the saved Common Fund at the time the notice is given and the notice is to be to the effect that repealed section 42 will no longer apply to the existing participant's investments in the saved Common Fund when that period expires.
- 10 (5) The operation of subsection (1) is not affected by —
- (a) the failure of the Public Trust Office to give notice in accordance with subsection (3) or (4); or
 - (b) an existing participant not receiving the notice referred to in subsection (3) or (4).

63. Savings of leases under repealed section 40(2a)(b) and 40A

15 A lease that had been entered into under repealed section 40(2a)(b) or 40A and that is in effect immediately before the commencement day continues to have effect on and from the commencement day as if the relevant repealed section had not been repealed by this Act.

64. Interim business plan and interim annual operational plan

- 20 (1) The Executive Director shall prepare and submit to the Minister for the Minister's approval, as soon as is practicable after the commencement day, a draft interim business plan and a draft interim annual operational plan.
- 25 (2) When the Minister has approved the draft interim business plan and the draft interim annual operational plan those documents become the business plan and the annual operational plan for the remainder of the financial year in which this Act comes into operation, or until the Minister approves a draft business plan and a draft annual operational plan, whichever is the later.

Part 3 — Amendments to the *Trustee Companies Act 1987*

65. The Act amended

The amendments in this Part are to the *Trustee Companies Act 1987**.

[* Reprinted as at 1 November 1999.]

66. Section 18A inserted

After section 18 the following section is inserted in Part III —

“

18A. Fees for preparation of wills and enduring powers of attorney

(1) Despite anything to the contrary in the *Legal Practitioners Act 1893*, a trustee company may charge a fee and recover disbursements for the preparation of a will or an enduring power of attorney.

(2) Subsection (1) applies only if the will or enduring power of attorney is prepared under the direction and control of a certificated practitioner within the meaning of the *Legal Practitioners Act 1893*.

”.

67. Section 30 amended

Section 30 is amended by deleting “state” and inserting instead —

“ estate ”.

68. Schedule 2 amended

Schedule 2 clause 3(a) is amended by deleting “Public Trustee” and inserting instead —

“ Public Trust Office ”.

Part 4 — Consequential amendments to various other Acts

Division 1 — Aboriginal Affairs Planning Authority Act 1972

69. The Act amended

5 The amendments in this Division are to the *Aboriginal Affairs Planning Authority Act 1972**.

[* *Reprinted as at 5 February 1999.*

For subsequent amendments see 1999 Index to Legislation of Western Australia, Table 1, p. 2.]

10 **70. Section 35 amended**

- (1) Section 35(1) is amended by deleting “Public Trustee under and subject to the provisions of the *Public Trustee Act 1941*” and inserting instead —

“

15 Public Trust Office under and subject to the provisions of the *Public Trust Office Act 1941*

”.

- (2) Section 35(3) is amended by deleting “Public Trustee” and inserting instead —

20 “ Public Trust Office ”.

- (3) Section 35(5) is amended by deleting “Public Trustee” and inserting instead —

“ Public Trust Office ”.

71. Section 36 amended

- 25 (1) Section 36(1) is amended by deleting “Public Trustee” and inserting instead —

“ Public Trust Office ”.

- (2) Section 36(2) is amended by deleting “Public Trustee may recover any such wages or property by action in his” and inserting instead —

“

5 Public Trust Office may recover any such wages or property by action in its

”.

- (3) Section 36(3) is amended by deleting “Public Trustee” and inserting instead —

10 “ Public Trust Office ”.

72. Section 37 amended

Section 37 is amended by deleting “Public Trustee” and inserting instead —

“ Public Trust Office ”.

15 **Division 2 — Administration Act 1903**

73. The Act amended

The amendments in this Division are to the *Administration Act 1903**.

[* Reprinted as at 1 July 1999.]

20 **74. Section 3 amended**

- (1) Section 3 is amended in the definition of “Administrator” by deleting “Public Trustee” and inserting instead —

“ Public Trust Office ”.

- (2) Section 3 is amended by deleting the definition of “Public Trustee” and inserting the following definition instead —

“

“**Public Trust Office**” means the Public Trust Office established by the *Public Trust Office Act 1941*.

”.

75. Section 17A amended

Section 17A(1) is amended by deleting “Public Trustee” and inserting instead —

“ Public Trust Office ”.

76. Section 26 amended

Section 26(8) is amended by deleting “Public Trustee” and inserting instead —

“ Public Trust Office ”.

77. Section 45 amended

Section 45(1) is amended by deleting “Public Trustee” and inserting instead —

“ Public Trust Office ”.

78. Section 142 amended

- (1) Section 142(1) is amended by deleting “Public Trustee of Western Australia” and inserting instead —

“ Public Trust Office ”.

- (2) Section 142(2) is amended by deleting “Public Trustee of Western Australia, is situated outside the limits of Western Australia, such Public Trustee” and inserting instead —

“

Public Trust Office, is situated outside the limits of Western Australia, the Public Trust Office

”.

Division 3 — Auction Sales Act 1973

79. Auction Sales Act 1973 amended

Section 5(1)(e) of the *Auction Sales Act 1973** is amended by deleting “Public Trustee” and inserting instead —

5 “ Public Trust Office ”.

[* *Reprinted as at 10 June 1999.*

For subsequent amendments see 1999 Index to Legislation of Western Australia, Table 1, p. 17.]

Division 4 — Charitable Trusts Act 1962

10 **80. Charitable Trusts Act 1962 amended**

Section 13(c) of the *Charitable Trusts Act 1962** is amended by deleting “Public Trustee” and inserting instead —

“ Public Trust Office ”.

[* *Reprinted as authorised 24 March 1971.*

15 *For subsequent amendments see 1999 Index to Legislation of Western Australia, Table 1, p. 34.]*

Division 5 — Constitution Acts Amendment Act 1899

81. Constitution Acts Amendment Act 1899 amended

20 Schedule V Part 3 to the *Constitution Acts Amendment Act 1899** is amended by inserting after the item relating to the Psychologists Board the following item —

“ The Public Trust Office ”.

[* *Reprinted as at 19 May 2000.*

25 *For subsequent amendments see 1999 Index to Legislation of Western Australia, Table 1, pp. 49-50, and Acts Nos. 2, 20, 24 and 25 of 2000.]*

Division 6 — Crimes (Confiscation of Profits) Act 1988

82. The Act amended

The amendments in this Division are to the *Crimes (Confiscation of Profits) Act 1988**.

5

[* *Act No. 47 of 1988* .

For subsequent amendments see 1999 Index to Legislation of Western Australia, Table 1, p. 57.]

83. Heading to Part 4 amended

10

The heading to Part 4 is amended by deleting “Public Trustee” and inserting instead —

“ **Public Trust Office** ”.

84. Section 28 amended

15

- (1) Section 28(1) is amended by deleting “Public Trustee is entitled to receive such fees as may be prescribed by or under the *Public Trustee Act 1941* in respect of the exercise of its powers or the performance of its duties in relation to property of which the Public Trustee” and inserting instead —

20

“ Public Trust Office is entitled to receive such fees as may be determined or prescribed by or under the *Public Trust Office Act 1941* in respect of the exercise of its powers or the performance of its duties in relation to property of which the Public Trust Office

”.

25

- (2) Section 28(2) is amended by deleting “Public Trustee in the exercise of powers or the performance of duties by the Public Trustee in relation to property of which the Public Trustee” and inserting instead —

30

“ Public Trust Office or its members of staff as defined by the *Public Trust Office Act 1941* or its agents in the

exercise of powers or the performance of duties by
 those persons in relation to property of which the
 Public Trust Office

”.

5 (3) Section 28(3) is deleted.

(4) Section 28(4) is amended by deleting “under the hand of the
 Public Trustee or a Deputy Public Trustee and sealed with the
 common seal of the Public Trustee” and inserting instead —
 “ sealed with the common seal of the Public Trust Office ”.

10 **85. “Public Trustee” amended to “Public Trust Office”**

The provisions set out in the Table to this section are amended
 by deleting “Public Trustee” and inserting instead —

“ Public Trust Office ”.

Table

20(7)(b)	27(5) (in each place)
22(2)(d) (in both places)	27(6) (in each place)
22(4)(e) (in each place)	27(7)
25(2)(d) (in both places)	28(4)(a)
25(6)	28(5) (in each place)
25(8)	28(6) (in each place)
26(3)	28(7) (in each place)
26(5)	50(4)(a)
27(1) (in both places)	50(5)
27(2)	50(7)
27(4) (in both places)	51(in both places)

Division 7 — Criminal Injuries Compensation Act 1985

86. Criminal Injuries Compensation Act 1985 amended

Section 16(2) of the *Criminal Injuries Compensation Act 1985** is amended as follows:

- 5 (a) in paragraph (b) by inserting after “*Mental Health Act 1962*” —
- “
- 10 before it was amended by section 123 of the *Guardianship and Administration Act 1990*”;
- (b) by deleting paragraph (c) and inserting the following paragraphs instead —
- “
- 15 (c) an incapable patient or infirm person within the meaning of the *Public Trustee Act 1941* before it was amended by section 123 of the *Guardianship and Administration Act 1990*, the application may be made by the Public Trust Office;
- 20 (d) a represented person as defined by the *Guardianship and Administration Act 1990*, the application may be made by the guardian or administrator as defined by that Act, as is relevant to the case.
- 25 ”.

[* Reprinted as at 12 February 1997.]

Division 8 — Financial Administration and Audit Act 1985

87. Financial Administration and Audit Act 1985 amended

Schedule 1 to the *Financial Administration and Audit Act 1985**
is amended by deleting “Public Trustee” and inserting
5 instead —

“ Public Trust Office ”.

[* Reprinted as at 9 July 1999.

*For subsequent amendments see 1999 Index to Legislation of
Western Australia, Table 1, p. 89 and Acts Nos. 20, 24 and 25
10 of 2000.]*

Division 9 — Financial Institutions Duty Act 1983

88. Financial Institutions Duty Act 1983 amended

Section 3 of the *Financial Institutions Duty Act 1983** is
amended in the definition of “trustee corporation” as follows:

15 (a) by deleting paragraph (a) and inserting the following
paragraph instead —

“

(a) the Public Trust Office established by the
20 *Public Trust Office Act 1941*;

”;

(b) in paragraph (c) by deleting “Public Trustee” and
inserting instead —

“ Public Trust Office ”.

[*Reprinted as at 19 November 1992.

*For subsequent amendments see 1999 Index to Legislation
25 of Western Australia, Table 1, p. 90.]*

Division 10 — Guardianship and Administration Act 1990

89. The Act amended

The amendments in this Division are to the *Guardianship and Administration Act 1990**.

5 [* Reprinted as at 21 April 1997 .
For subsequent amendments see 1999 Index to Legislation of
Western Australia, Table 1, p. 106.]

90. Section 3 amended

10 (1) Section 3(1) is amended in the definition of “corporate trustee”
by deleting “Public Trustee” and inserting instead —

“ Public Trust Office ”.

(2) Section 3(1) is amended by deleting the definition of “Public
Trustee” and inserting the following definition instead —

15 “
“**Public Trust Office**” means the Public Trust Office
established by the *Public Trust Office Act 1941*;
”.

91. Section 41 amended

20 Section 41(1)(c)(ii) is amended by deleting “Public Trustee”
and inserting instead —

“ Public Trust Office ”.

92. Section 64 amended

Section 64(3)(b) is amended by deleting “*Public Trustee
Act 1941*” and inserting instead —

25 “ *Public Trust Office Act 1941* ”.

93. Section 76 amended

Section 76(3) is amended by deleting “sections 50 and 53 of the *Public Trustee Act 1941*” and inserting instead —

“ section 6, 6A or 50 of the *Public Trust Office Act 1941* ”.

5 **94. Section 80 amended**

(1) Section 80(1a) is amended by deleting “Public Trustee” and inserting instead —

“ Public Trust Office ”.

10 (2) Section 80(7) is amended by deleting “Public Trustee in the Public Trustee’s” and inserting instead —

“ Public Trust Office in the Public Trust Office’s ”.

95. Section 83B amended

(1) Section 83B(1)(b) is amended by deleting “Public Trustee” and inserting instead —

15 “ Public Trust Office ”.

(2) Section 83B(2) is amended by deleting “Public Trustee” in both places where it occurs and inserting instead —

“ Public Trust Office ”.

20 (3) Section 83B(3) is amended by deleting “Public Trustee” and inserting instead —

“ Public Trust Office ”.

96. Section 117 amended

Section 117(3)(a) is amended by deleting “Public Trustee from receiving remuneration under the *Public Trustee Act 1941*” and inserting instead —

5

“

Public Trust Office from receiving remuneration under the *Public Trust Office Act 1941*

”.

97. Schedule 5 clause 1 amended

10 (1) Schedule 5 clause 1(1) is amended as follows:

(a) by deleting “he” and inserting instead —

“ the Public Trust Office ”;

(b) by deleting “him” and inserting instead —

“ the Public Trustee ”.

15 (2) Schedule 5 clause 1(2) is amended as follows:

(a) by deleting “derives” and inserting instead —

“ derived ”;

(b) by inserting after “1941” —

“ before that section was repealed by section 123 ”.

20 (3) After Schedule 5 clause 1(2) the following subclause is inserted —

“

(2a) For the avoidance of doubt, the means by which the Public Trust Office performs the functions referred to in clause 1(1) or (2) at a particular time are to be in accordance with the functions and powers that the Public Trust Office has at that time.

25

”.

- (4) Schedule 5 clause 1(3) is amended by deleting “Public Trustee shall cease to have the functions under section 24 referred to in subclause (1) when he” and inserting instead —

“

5 Public Trust Office shall cease to have the functions under section 24 referred to in subclause (1) when the Public Trust Office

”.

- (5) Schedule 5 clause 1(4) is amended as follows:

- 10 (a) by deleting “Public Trustee shall cease to have the functions under section 36C referred to in subclause (1) when he” and inserting instead —

“

15 Public Trust Office shall cease to have the functions under section 36C referred to in subclause (1) when the Public Trust Office

”;

- (b) by deleting “he certifies under the *Public Trustee Act 1941*” and inserting instead —

20 “

 the Public Trust Office certifies under the provisions of the *Public Trustee Act 1941* that were repealed by section 123

”.

- 25 (6) Schedule 5 clause 1(5) is amended by deleting “Public Trustee in” and inserting instead —

“ Public Trust Office in ”.

- (7) Schedule 5 clause 1(6) is amended by deleting “Public Trustee” in both places where it occurs and inserting instead —

“ Public Trust Office ”.

- 30 (8) Schedule 5 clause 1(7) is amended by deleting “Public Trustee” in both places where it occurs and inserting instead —

“ Public Trust Office ”.

98. Schedule 5 clause 2 amended

- (1) Schedule 5 clause 2(2) is repealed and the following subclause is inserted instead —

“

- 5 (2) Subclause (1) also applies in respect of the Public Trust Office, with all necessary changes, where the Public Trustee was the manager of the estate of a person under section 25 of the *Public Trustee Act 1941* immediately before that section was repealed by section 123.

10

”.

- (2) Schedule 5 clause 2(3)(b) is amended by inserting after “1941” —

“ as it was immediately before it was repealed by section 123 ”.

99. Schedule 5 clause 3 amended

- 15 Schedule 5 clause 3(1)(a) is amended by deleting “Public Trustee” and inserting instead —

“ Public Trust Office ”.

Division 11 — *Inheritance (Family and Dependants Provision) Act 1972*

20 **100. *Inheritance (Family and Dependants Provision) Act 1972* amended**

- 25 Section 4(1) of the *Inheritance (Family and Dependants Provision) Act 1972** is amended in the definition of “Administrator” by deleting “Public Trustee” and inserting instead —

“ Public Trust Office ”.

[* *Act No. 57 of 1972.*

For subsequent amendments see 1999 Index to Legislation of Western Australia, Table 1, p. 121.]

Division 12 — Land Administration Act 1997

101. Land Administration Act 1997 amended

Section 172(7)(a) of the *Land Administration Act 1997** is amended by deleting “Public Trustee” and inserting instead —

5 “ Public Trust Office ”.

[* *Act No. 30 of 1997.*

For subsequent amendments see 1999 Index to Legislation of Western Australia, Table 1, p. 133, and Acts Nos. 13 and 24 of 2000.]

10 **Division 13 — Police Act 1892**

102. Police Act 1892 amended

Section 27 of the *Police Act 1892** is amended by deleting “Public Trustee” and inserting instead —

“ Public Trust Office ”.

15 [* *Reprinted as at 1 April 2000.*

For subsequent amendments see 1999 Index to Legislation of Western Australia, Table 1, p. 194, and Acts Nos. 17 and 24 of 2000.]

Division 14 — Public Sector Management Act 1994

20 **103. Public Sector Management Act 1994 amended**

Schedule 2 to the *Public Sector Management Act 1994** is amended by inserting after item 37B the following item —

“ 38 The Public Trust Office ”.

25 [* *Reprinted as at 9 June 2000.*

For subsequent amendments see 1999 Index to Legislation of Western Australia, Table 1, p. 204, and Acts Nos. 24 and 25 of 2000.]

**Division 15 — Securities Industry (Application of Laws)
Act 1981 amended**

104. Securities Industry (Application of Laws) Act 1981 amended

5 Schedule 1 to the *Securities Industry (Application of Laws)
Act 1981** is amended in clause 2B by deleting “Public Trustee,
under the *Public Trustee Act 1941*” and inserting instead —

“

Public Trust Office, under the *Public Trust Office
Act 1941*

10

”.

[* Act No. 31 of 1981.]

Division 16 — Securities Industry Act 1975

105. Securities Industry Act 1975 amended

15 Section 4(1) of the *Securities Industry Act 1975** is amended in
the definition of “exempt dealer” by deleting paragraph (f) and
inserting the following paragraph instead —

“

20

(f) the Public Trust Office when it carries on a
business of dealing in securities by reason of
its powers under the *Public Trust Office
Act 1941*;

”.

[* Act No. 99 of 1975.]

**Division 17 — Statutory Corporations (Liability of Directors)
Act 1996**

25

**106. Statutory Corporations (Liability of Directors) Act 1996
amended**

Schedule 1 to the *Statutory Corporations (Liability of
Directors) Act 1996** is amended by inserting after the item

relating to the Potato Marketing Corporation the following item —

“
Public Trust the Executive *Public Trust Office*
Office Director *Act 1941*
”.

5 [* *Act No. 41 of 1996.*
 For subsequent amendments see 1999 Index to Legislation of
 Western Australia, Table 1, p. 239.]

Division 18 — Strata Titles Act 1985

107. Strata Titles Act 1985 amended

10 Section 50(2) of the *Strata Titles Act 1985** is amended by
 deleting “Public Trustee under the *Public Trustee Act 1941*”
 and inserting instead —

“
15 Public Trust Office established by the *Public Trust*
 Office Act 1941
”.

[* *Reprinted as at 1 July 1999.*
 For subsequent amendments see Act No. 24 of 2000.]

Division 19 — Supreme Court Act 1935

20 **108. Supreme Court Act 1935 amended**

 Section 167(1)(k) of the *Supreme Court Act 1935** is amended
 by deleting “Public Trustee” and inserting instead —

“ Public Trust Office ”.

25 [* *Reprinted as at 23 July 1999.*
 For subsequent amendments see Act No. 27 of 2000.]

Division 20 — Transfer of Land Act 1893

109. Transfer of Land Act 1893 amended

Section 187(1) of the *Transfer of Land Act 1893** is amended by deleting “Public Trustee” in each place where it occurs and inserting instead —

“ Public Trust Office ”.

[* Reprinted as at 23 July 1999.

For subsequent amendments see 1999 Index to Legislation of Western Australia, Table 1, p. 256, and Act No. 24 of 2000.]

Division 21 — Trustees Act 1962

110. The Act amended

The amendments in this Division are to the *Trustees Act 1962**.

[* Reprinted as at 14 September 1981.

For subsequent amendments see 1999 Index to Legislation of Western Australia, Table 1, p. 259.]

111. Section 6 amended

Section 6(1) is amended in the definition of “trustee corporation” by deleting “Public Trustee in and for Western Australia” and inserting instead —

“
Public Trust Office established by the *Public Trust Office Act 1941*

”.

112. Section 13 amended

Section 13(3) is amended by deleting “subsection (4) of section twelve of the *Public Trustee Act 1941*, the Court, upon the application of any executor or administrator being also trustee of the will of the person whose estate he is

administering, by order transfers to the Public Trustee the estate of the deceased person for administration, then the Public Trustee” and inserting instead —

“

5 section 12(4) of the *Public Trust Office Act 1941*, the
Court, upon the application of any executor or
administrator being also trustee of the will of the
person whose estate he is administering, by order
10 transfers to the Public Trust Office the estate of the
deceased person for administration, then the Public
Trust Office

”.

113. Section 14 amended

15 Section 14(5)(a) is amended by deleting “Public Trustee, as
prescribed under the *Public Trustee Act 1941*” and inserting
instead —

“

20 Public Trust Office, as determined or
prescribed under the *Public Trust Office
Act 1941*

”.

114. Section 15 amended

25 Section 15(4)(a) is amended by deleting “Public Trustee, as
prescribed under the *Public Trustees Act 1941*” and inserting
instead —

“

30 Public Trust Office, as determined or
prescribed under the *Public Trust Office
Act 1941*

”.

115. Section 51 amended

Section 51(3) is amended by deleting “Public Trustee” and inserting instead —

“ Public Trust Office ”.

5

Division 22 — Unclaimed Money Act 1990

116. Unclaimed Money Act 1990 amended

Section 9(1) of the *Unclaimed Money Act 1990** is amended as follows:

- 10 (a) in paragraph (e) by deleting “*Public Trustee Act 1941* is paid to the Treasury” and inserting instead —

“

Public Trust Office Act 1941 is credited to the Consolidated Fund

”;

15

- (b) in paragraph (f) by deleting “Public Trustee and is for the time being held in the Common Fund established under section 40 of the *Public Trustee Act 1941*” and inserting instead —

“

20

Public Trust Office and is for the time being held in a common fund as defined in the *Public Trust Office Act 1941*

”.

[* *Reprinted as at 5 November 1999.*]

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