

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 81.

Public Curator.

GENERAL ANNOTATION.

ADMINISTRATION.

As at 13 February 1976 (the date of gazettal of the most comprehensive allocation of responsibilities to Ministers and Departments at about the effective date), the administration of this Chapter was vested in the Minister for Justice.

Accordingly, unless some other intention is clearly indicated, by note or in the text, references in or in relation to this Chapter to—

“the Minister”—should be read as references to the Minister for Justice;

“the Departmental Head”—should be read as references to the Secretary for Justice¹;

“the Department”—should be read as references to the Department of Justice².

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¹ Previously the Secretary for Law.
² Previously the Department of Law.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 81.

Public Curator Act.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 81.

Public Curator Act.

Being an Act to establish an office of Public Curator and to make provision for his functions, powers and duties, and for related purposes.

PART I.—PRELIMINARY.

1. Interpretation.

In this Act, unless the contrary intention appears—

“administration” means “administration” as defined in Section 1 of the *Wills, Probate and Administration Act*, and includes—

- (a) an order under Section 10 or 11 of this Act; and
- (b) an order under Section 110 of the *Wills, Probate and Administration Act*;

“administrator” includes any person to whom administration is granted, including—

- (a) the Public Curator, in a case where an order is made under Section 10 or 11; and
- (b) a Distributor appointed under the *Wills, Probate and Administration Act*, in a case where an order is made under Section 110 of that Act;

“personal estate” includes—

- (a) leasehold estates and other chattels real; and
- (b) moneys; and
- (c) shares of Government and other funds; and
- (d) securities for moneys; and
- (e) debts; and
- (f) choses in action; and
- (g) credit goods; and
- (h) all other property,

and any share or interest in any such thing, but does not include any property that is real estate;

“the Public Curator” means the Public Curator appointed under Section 2;

“Public Curator’s agent” means a person appointed under Section 4 to be an agent of the Public Curator;

“purposes of administration”, in relation to the estate of a deceased person, includes the payment in due course of administration of—

- (a) debts, funeral and testamentary expenses, duties and commission; and
- (b) costs, charges and expenses of the executor or administrator; and
- (c) any other costs that are ordered to be paid out of the estate;

“real estate” includes—

- (a) messuages, lands, rents and hereditaments of freehold or any other tenure, whether—
 - (i) corporeal; or
 - (ii) incorporeal; or
 - (iii) personal; and
- (b) any undivided share of, and any estate, right, or interest (other than a chattel interest) in, any such messuages, lands, rents or hereditaments; and
- (c) land included under a lease for 21 years or more.

PART II.—ADMINISTRATION.

2. The Public Curator.

(1) Subject to the *Public Service Act*, the Minister may, by notice, appoint an officer to be the Public Curator.

(2) The Public Curator—

- (a) is a corporation by the name of “Public Curator of Papua and New Guinea”; and
- (b) has perpetual succession; and
- (c) shall have a seal.

3. The Deputy Public Curator.

(1) The Minister may, by notice, appoint an officer to be the Deputy Public Curator.

(2) Subject to Subsection (4), where under or in this or any other Act, or any instrument—

- (a) anything may or shall be done by; or
- (b) any reference is made to,

the Public Curator, the thing may be done by, or the reference includes a reference to, as the case may be, the Deputy Public Curator.

(3) In a case to which Subsection (2) applies, the Deputy Public Curator—

- (a) has and may exercise and perform any of the powers, functions, authorities and duties of the Public Curator; and
- (b) is entitled to the same immunities as the Public Curator.

(4) The exercise and performance of the powers, functions, authorities and duties of the Deputy Public Curator are subject to such conditions and restrictions (if any) as the Public Curator imposes—

- (a) generally; or
- (b) in relation to a specified matter or class of matters; or
- (c) in relation to all matters other than a specified matter or class of matters.

4. Public Curator’s agents.

(1) The Public Curator may appoint a person to act as his agent for the purpose of the administration of an estate.

(2) A person appointed under Subsection (1) may, at the request of the Public Curator, act as his agent—

- (a) for such purposes; and
- (b) with such powers; and
- (c) subject to such conditions and limitations, as are contained in the appointment.

(3) A person appointed under Subsection (1) shall act under the direction of the Public Curator.

(4) An agent appointed under Subsection (1) who is not an officer of the Public Service shall, if required by the Public Curator, give such security for the due performance of his duties as the Public Curator thinks proper.

(5) The Public Curator may pay to an agent appointed under Subsection (1) a commission, not exceeding 10%, in respect of all moneys collected by him or by reason of his agency.

PART III.—FUNCTIONS OF THE PUBLIC CURATOR.

Division 1.—General.

5. Appointment as executor, etc., by will.

A person may, by his will, appoint the Public Curator to be the sole executor or trustee of his will, and on the death of the testator the Curator shall, subject to Section 8, apply for probate of the will or execute the office of trustee, as the case may be.

6. Delegation to Public Curator by trustees.

(1) Where the trustees of a trust estate are empowered to delegate all or any of their powers and functions to any person, they may with the consent of the Public Curator delegate them to the Public Curator, and the Public Curator has and may exercise the delegated powers and functions.

(2) The charges of the Public Curator in relation to the exercise of or performance of a power or function delegated to him under Subsection (1)—

- (a) are as prescribed; or
- (b) if not prescribed, are as agreed on by the delegating trustees and the Public Curator.

7. Public Curator as trustee for minors' property.

(1) In this section, "executor" includes an administrator with or without the will annexed and a trustee.

(2) An executor may—

- (a) pay a legacy or share due to an infant to the Public Curator; and
- (b) by instrument direct the Public Curator to account to the infant according to the provisions of the trust instrument.

(3) A direction under Subsection (2) shall specify whether the sum to which it relates is the whole or part only of the amount to which the infant is entitled, and the Public Curator is under no liability if he acts on the statement contained in the direction.

(4) A direction under Subsection (2) vests in the Public Curator all the powers of the executor in regard to the legacy or share.

(5) The executor shall furnish the Public Curator with a copy of the trust instrument, and the Public Curator shall act on it.

8. Power to decline trusts.

(1) By leave of a Judge, the Public Curator may refuse to act as executor or trustee of a will where, in the opinion of the Judge, the trusts and duties to be performed are of such a complicated, uncertain or risky nature as to render it inadvisable that the Public Curator should so act.

(2) The Public Curator may decline, absolutely or except on conditions, to accept any trust, but shall not so decline on the ground only of the small value of the trust property concerned.

Division 2.—Administration of Estates, etc.

9. Probate, etc., after commencement of administration by Public Curator.

(1) Where an order has been made under this Part, the National Court may nevertheless grant probate of the will, or administration of the estate, of a deceased person to any person—

- (a) in such manner; and
- (b) subject to such limitations or conditions,

as it thinks proper.

(2) In a case referred to in Subsection (1), an application for a grant shall not be made until seven days after written notice of the intention to apply for the grant has been left at the office of the Public Curator.

(3) Immediately on the grant referred to in Subsection (1)—

- (a) all the interest, powers, rights and duties of the Public Curator (except any right conferred by Subsection (4) or (5)) in regard to the estate of the deceased person whose estate is affected by the grant; and
- (b) all liabilities of the Public Curator under any contract or agreement entered into by him in relation to the estate,

cease.

(4) Where probate of a will or administration of an estate is granted in accordance with Subsection (1), any portion of the estate of the deceased left unadministered by the Public Curator, and all rights and obligations of the Public Curator in respect of it, vests in the executor or administrator obtaining the probate or administration.

(5) This section does not prevent the allowance and payment of—

- (a) all money due for commission to the Public Curator; and
- (b) the necessary outlay, disbursements, costs, charges, and expenses in relation to the estate, including all costs of, and incidental to, appearing on the application for the probate or administration.

(6) This section does not relieve the Public Curator from any liability in respect of his management of the estate up to the time of the granting of the probate or administration.

10. Orders to administer.

(1) On the application of the Public Curator, the National Court or a Judge may grant to the Public Curator an order to administer the estate of any deceased person leaving property within the jurisdiction where—

- (a) the deceased left no executor, widow, widower or next of kin resident within the jurisdiction, who is willing and capable of acting in the execution of the will or the administration of the estate; or
- (b) the executors named renounce probate of the will of the deceased, and all the persons primarily entitled to administration decline, by instrument filed with the Registrar, to apply for administration; or
- (c) probate or administration is not applied for within three months after the death of the deceased; or
- (d) after the expiration of 30 days after the death, there is no reasonable probability of application being made within the period of three months after the death; or
- (e) the estate or any portion of the estate is liable to waste, and the executor, widow, widower or next of kin—
 - (i) is absent from the locality of the estate; or
 - (ii) is not known; or
 - (iii) has not been found; or
 - (iv) requests the Public Curator in writing to apply for the order; or
- (f) the estate, or any portion of the estate, is—
 - (i) of a perishable nature; or
 - (ii) in danger of being lost or destroyed; or
- (g) great expense may be incurred by any delay.

(2) The National Court or a Judge may—

- (a) before granting the order applied for under Subsection (1), require the Public Curator—
 - (i) to give such notices; or
 - (ii) to cite such persons; or
 - (iii) to produce such evidence, as the Court or Judge thinks proper; or
- (b) make a temporary order for collection and protection only, or limited to a portion of the estate or otherwise.

(3) Except as otherwise expressly provided, an order under Subsection (1) gives the Public Curator the same powers, rights and obligations in respect of the estate as he would have had if administration had been granted to him.

(4) Except as otherwise expressly provided, all laws referring to the administration of the estates of deceased persons apply to the administration of estates by the Public Curator.

11. Orders to administer in case of reasonable suspicion of death.

(1) Where it is made to appear to the National Court that there is reasonable ground to suppose that a person has died, whether within or outside the jurisdiction of the Court, leaving property within the jurisdiction, the Court or a Judge may order and empower the Public Curator to administer the estate of the person.

(2) Until revoked, an order under Subsection (1) empowers the Public Curator—

- (a) to collect, manage, and administer the personal estate of the supposedly dead person; and
- (b) to enter on and receive the rents and profits of, and otherwise manage, his real estate; and
- (c) to pay and discharge the debts and liabilities of that person,

in the same way as if the person were dead and the Public Curator had obtained an order to administer the estate of the person under Section 10.

(3) The Public Curator shall not proceed to any distribution of the assets without an order of the National Court or of a Judge, specially authorizing him to make the distribution.

12. Orders as to estates of missing persons.

(1) Where—

- (a) the whereabouts of the owner of any property in the country are unknown and cannot with reasonable diligence be ascertained; and
- (b) there is no person in the country with authority to take possession of and administer the property,

the National Court or a Judge may—

- (c) on the application ex parte of the Public Curator; and
- (d) on being satisfied that it is advisable, in the interests of the owner of the property or of any other person, to do so,

make an order, on such terms and conditions as the Court or Judge thinks proper, authorizing the Curator—

- (e) to take possession of the property; and
- (f) to bring any action or other proceeding relating to the property; and
- (g) to defend, compromise, confess or submit to judgement in any or all claims, demands and proceedings concerning the property; and
- (h) to sell, call in, convert into money, dispose of or otherwise deal with the property or any part of it; and
- (i) to lease the property or any part of it for a term not exceeding seven years; and
- (j) to receive, sue for and recover any moneys owed to the owner of the property; and
- (k) to insure any buildings or other property of the owner against loss by fire or other cause; and
- (l) to pay rates, taxes and other outgoings payable in respect of the property, and to borrow money on the security of the property for that purpose; and
- (m) to maintain and repair the property, and to borrow money on the security of the property for that purpose; and
- (n) to borrow money on the security of the property in order to comply with any law or order or requirement of a competent authority concerning the property; and

- (o) to invest moneys received by him in the exercise of any of the powers referred to in the preceding provisions of this subsection in any manner in which trust moneys may be invested; and
 - (p) to pay out of moneys received by him in the exercise of any of the powers referred to in this subsection any debts owing by the owner of the property; and
 - (q) to apply moneys received by him in the exercise of any of the powers referred to in this subsection in—
 - (i) the maintenance, education or advancement of the wife, husband, children, parents, brothers, sisters or other dependants of the owner of the property; or
 - (ii) the payment of the reasonable medical or funeral expenses of any of those persons; and
 - (r) to complete and carry out in such manner as he thinks fit any valid subsisting contract affecting the property, or to discharge any obligation attached to it at the time when the property comes into his possession or under his control; and
 - (s) to execute for and on behalf of the owner of the property and, if he thinks fit, in the name of the owner, all deeds and other instruments that are necessary for any of the purposes referred to in the preceding provisions of this subsection; and
 - (t) to do such other acts, matters and things in relation to the property or affairs of the owner of the property as the Court or Judge thinks proper.
- (2) All expenses incurred by the Public Curator in the exercise of the powers conferred on him by or under this section—
- (a) are a charge on the property of the owner; and
 - (b) bear interest at the rate of 5% per annum from the date at which they are incurred until recovered by the Public Curator.
- (3) A charge under this section ranks next in order of priority after any mortgage or charge to which the property was subject when it came into the possession or under the control of the Public Curator.
- (4) All moneys received by the Public Curator in the exercise of the powers conferred on him by or under this section shall, after payment of all moneys authorized to be expended by him, be held by him in trust for the owner of, or the person beneficially entitled to, the property.
- (5) In respect of any sale, lease or other disposition of any property made by the Public Curator in the exercise of the powers conferred on him by or under this section, the Public Curator has the same powers as if he were the owner of the property, and any instrument executed by him in the exercise of any of those powers—
- (a) shall be registered; and
 - (b) has effect in all respects,
- as if it had been executed by the owner of the property.
- (6) The owner of any property in respect of which an order has been made under Subsection (1), or any person having any interest in any such property or in any part of it, may, at any time after the making of the order and after giving 14 days' notice to the Public Curator, apply to the National Court or a Judge to rescind the order in whole or in part.

(7) On an application under Subsection (6), the order may be rescinded in whole or in part on such terms as the Court or Judge thinks proper, but without prejudice to the validity of any act, matter or thing done by the Public Curator during the continuance of the order.

(8) No order made under this section and no act, matter or thing done under any such order is or becomes invalid or inoperative by reason only—

- (a) that the order was made or the act, matter or thing done under a mistake of fact; or
- (b) that the owner of the property was dead at the time when the order was made, or has died since the making of the order; or
- (c) of any disposition of the property made by the owner of it during the subsistence of the order.

13. Notice of orders under Sections 10, 11 and 12.

(1) Within 21 days after an order under Section 10, 11 or 12 has been granted, the Public Curator shall, unless the National Court or a Judge otherwise orders, cause notice of the fact that the order has been granted to be published in the National Gazette and in a newspaper published in the country.

(2) In the case of persons other than citizens, the Curator shall, unless the National Court or a Judge orders otherwise, give notice to the consul of the country where the next of kin are supposed to reside, if there is such a consul resident in Papua New Guinea, or if there is not, the consul resident in the State of New South Wales (if there is one).

14. Taking possession of deceased estates.

(1) Where a person dies leaving property in the country and, as far as the Public Curator or a Public Curator's agent can ascertain—

- (a) he left no will; or
- (b) he left a will, but no executor was appointed in the will; or
- (c) he left a will and an executor was appointed in the will, but the executor—
 - (i) is dead; or
 - (ii) is too far from the place where the property or any part of it is situated to be able to take care of it without delay; or
 - (iii) does not intend, or neglects, to act as executor,

the Public Curator, or a Public Curator's agent on his behalf, may immediately and without any order under this Division take possession of the property or any part of it.

(2) When the Public Curator or a Public Curator's agent has taken possession under Subsection (1) of the real estate of a deceased person, he may—

- (a) take any steps and incur any expense that he thinks necessary for preserving it or anything in, on, or annexed to it; and
- (b) collect and sell any product of it that would decrease in value by being kept, and incur any necessary expense in connexion with the collection or sale.

(3) Where the Public Curator or a Public Curator's agent has taken possession under Subsection (1) of the personal estate of a deceased person, he may—

- (a) sell or dispose of it, or any part of it, if it appears to him that it will be for the benefit of the estate of the deceased person that he should do so; and

(b) pay out of it, or of the proceeds of it—

- (i) the funeral expenses of the deceased person; and
- (ii) the expenses incurred in collecting, preserving, selling, or disposing of the personal estate; and
- (iii) the expenses incurred under Subsection (2).

(4) Where a Public Curator's agent has taken any action under this section, he shall immediately give full particulars of the action to the Public Curator.

15. Powers pending grant.

(1) Where any person dies, and notwithstanding that some person other than the Public Curator is—

- (a) appointed executor; or
- (b) entitled to letters of administration,

the Public Curator may, if he thinks fit, until probate or letters of administration are granted—

- (c) exercise with respect to the estate of the deceased person all such powers and authorities; and
- (d) do all such acts and things,

as he could exercise or do if the deceased person had died intestate and the Public Curator had obtained an order under Section 10.

(2) The Public Curator shall not sell, lease, exchange, mortgage or partition any portion of the property (except for the sale of any of the personal estate that is of a perishable nature or that would decrease in value by being kept) unless the property is ordered to be sold by the National Court on the application of the Public Curator.

(3) Subject to Subsection (6), before the Public Curator first acts under this section in respect of an estate, he shall give notice, in writing or by telegram, to any person known to him as a person who (not being an infant or of unsound mind) would be entitled to obtain probate or letters of administration, informing him that he intends so to act unless the person proceeds to apply for probate or letters of administration immediately.

(4) If the person referred to in Subsection (3)—

- (a) does not, within 21 days after the posting or other service of the notice or of the despatching of the telegram, as the case may be, give notice, in writing or by telegram, to the Public Curator that he intends to apply for probate or letters of administration; or
- (b) gives notice in accordance with Paragraph (a) but fails to apply within 14 days after giving the notice for probate or letters of administration; or
- (c) applies for probate or letters of administration and the application fails,

then, unless the National Court otherwise orders, the Public Curator may proceed to exercise any of the powers and authorities given by this section.

(5) In the event of more persons than one being entitled to take out probate or letters of administration, it is sufficient for the purposes of this section if notice is given to one of the persons only.

(6) Where it is not actually known to the Public Curator that there is any person entitled to obtain probate or letters of administration, or in a case of emergency (of which the Public Curator is the sole judge), this section does not prevent the Public Curator from

exercising the powers and authorities given by this section without giving notice in accordance with Subsection (3).

(7) Any expenses incurred by the Public Curator under this section are a first charge on the property of the deceased person.

(8) Any person who takes out probate or letters of administration of the estate of the deceased person after the Public Curator has taken any action under this section must pay any fees and expenses payable to, or incurred by, the Public Curator before he is entitled to a grant of probate or letters of administration.

16. Duty of Public Curator on taking possession.

Subject to Section 15, where the Public Curator or a Public Curator's agent has, under this section, taken possession of any estate of a deceased person, the Public Curator shall apply, as soon as possible, to the National Court for an order under Section 10 in respect of the estate.

Division 3.—Investment.

17. Duty to invest.

After the expiration of the period of 12 months after the date of his obtaining administration of an estate, the Public Curator shall invest all moneys then standing to the credit of the estate—

- (a) as the National Court or a Judge by order directs; and
- (b) subject to any such order, as prescribed.

18. Payment to Consolidated Revenue Fund.

(1) Subject to Subsection (2), the Public Curator shall, in January of each year, cause all sums of money that—

- (a) were invested under Section 17 on the first day of that month; and
- (b) had been lying to the credit of an estate under his control for the previous six years,

to be paid to the Consolidated Revenue Fund.

(2) The Public Curator may retain to the credit of an estate any sum of money that he thinks likely to be required to answer payments to be made out of the estate under an order of the National Court in force on the 1 January in question.

19. Claims on moneys paid to Consolidated Revenue Fund.

(1) The National Court or a Judge may—

- (a) on the application of a person claiming to be entitled to any money paid into the Consolidated Revenue Fund under Section 18; and
- (b) on being satisfied by affidavit or other sufficient evidence that the person is so entitled,

make an order for payment of the money or any portion of it, but—

- (c) without interest from the time of payment to the Consolidated Revenue Fund under Section 18; and
- (d) after deducting any costs and expenses that have been incurred by the Public Curator or otherwise in respect of the application.

(2) On being served with an order under Subsection (1) the Secretary for Finance shall, within a reasonable time, pay the amount mentioned in the order to the person named in it, and the receipt of that person is a sufficient voucher for the payment.

(3) Notice of an application under this section shall be served on the Public Curator seven clear days before the application is heard.

Division 4.—Distribution of Estates.

20. Payment of debts.

(1) The Public Curator shall, at such times as he thinks proper, cause advertisements to be published in the National Gazette, and in such public newspapers as he thinks expedient, calling on the creditors of the persons whose estates he is administering to come in and prove their debts before him, on or before a time fixed in the notice.

(2) The Public Curator may allow any claim made before him on the affidavit or statutory declaration of the claimant alone, or, where he thinks fit, on such further evidence as he requires.

(3) As soon after the expiration of the time allowed for proof of debts as he can conveniently do so, the Public Curator shall—

- (a) pay the debts proved, if they can be paid in full; or
- (b) if they cannot be paid in full, declare and pay a dividend on them.

(4) If the Public Curator collects any further assets after making the payment under Subsection (3), he shall pay—

- (a) any part of the proved debts remaining unpaid; and
- (b) any debts subsequently proved before him,

or a dividend on them.

(5) Creditors who subsequently prove shall first be paid a dividend equal to the dividend paid to creditors who previously proved their debts.

21. Rejection of debts.

(1) Notwithstanding Section 60 of the *Wills, Probate and Administration Act*, where—

- (a) a person who claims to be a creditor against the estate of a deceased person lodges a claim that the Public Curator refuses to recognize; or
- (b) a person who has been called on by written notice to lodge his claim as a creditor in the prescribed manner fails for a period of one month so to lodge the claim,

the Public Curator may give written notice to the person—

- (c) of his refusal to recognize the claim; or
- (d) of his not having received the claim,

as the case may be.

(2) Where a person does not within six months after the receipt of a notice under Subsection (1) institute proceedings to enforce the claim, the Public Curator may distribute the assets of the deceased person—

- (a) without taking into consideration the claim in respect of which notice of non-receipt has been given; or

(b) taking into consideration only that portion of a received claim of which he has not given notice of his refusal to recognize it.

(3) On a distribution being made under Subsection (2), the right of the person to recover the amount of the claim, or the portion of it in respect of which notice was given under Subsection (1), is absolutely barred as against the portion of the estate that has been distributed.

(4) For the purposes of this section, a notice may be given to a person by posting it to him in a registered letter addressed—

(a) to the address given in his claim; or

(b) if no claim has been received, to him at his place of abode or business last-known to the Public Curator,

and the notice shall be deemed to have been received by the person in the ordinary course of post unless, before the distribution of assets, the Public Curator has notice to the contrary.

22. Maintenance of infants.

Where the share of an infant entitled in the distribution of an intestate estate under administration by the Public Curator does not exceed K1 000.00, the Public Curator may—

(a) pay the share to such person as the Public Curator thinks proper, to be applied by him for the maintenance, education, and advancement of the infant; or

(b) himself so apply such share.

23. Bona vacantia.

(1) If any real estate vested in the Public Curator belongs to the State as *bona vacantia*, the net proceeds of its sale shall be paid by the Public Curator into the Consolidated Revenue Fund.

(2) The transfer of the real estate by the Public Curator to the purchaser of it passes the right, title and interest of the deceased intestate to the purchaser in the same way as in any other case.

24. Payment to widow or widower.

(1) Where the net value of an intestate estate administered by the Public Curator does not exceed K400.00 he may, if he thinks fit, pay the whole of the net balance to the widow or widower (if any) of the intestate.

(2) For the purposes of Subsection (1), the net value of an estate shall be ascertained by deducting from the gross value of the estate all debts and funeral and testamentary expenses of the intestate and all other lawful liabilities and charges to which the property is subject.

(3) Subject to Subsection (4), where—

(a) no person has, within the period of three years after the death of a deceased intestate, established a claim to the net balance, or any part of the net balance, of the estate of the deceased; and

(b) the Public Curator—

(i) does not know of any next of kin or other person beneficially entitled to it; and

(ii) cannot by reasonable efforts ascertain that any such person exists; and

(c) the deceased person left a widow or widower who is still living, the Public Curator may pay or transfer to the widow or widower, as the case may be, the net balance or part of the net balance.

(4) Subsection (3) does not prejudice the right of any person entitled to the net balance, or part of the net balance, to recover it from the widow or widower.

PART IV.—OVERSEA ESTATES AND INTERESTS IN ESTATES.

25. Interpretation of Part IV.

In this Part—

“part of Australasia” means the Dominion of New Zealand or a State or Territory of Australia;

“the proper officer”, in relation to a part of Australasia, means the officer discharging in that part duties analogous to those discharged in Papua New Guinea by the Public Curator.

26. Persons domiciled in Australasia.

(1) Where the Public Curator has obtained administration of the estate in Papua New Guinea of a person—

- (a) who was at the time of his death domiciled in a part of Australasia; and
- (b) whose estate in that part of Australasia is being administered by the proper officer,

the Public Curator may pay over to that proper officer the balance of the estate after payment of creditors and of the charges provided for in this Act—

- (c) without seeing to the application of it; and
- (d) without incurring any liability in regard to the payment-over.

(2) Where the Public Curator pays over the balance of an estate in accordance with Subsection (1), he shall certify to an account in favour of the proper officer accordingly.

27. Persons domiciled in Papua New Guinea.

(1) Where—

- (a) the proper officer of a part of Australasia has obtained administration of the estate of a deceased person whose estate in Papua New Guinea is being administered by the Public Curator; and
- (b) the deceased person was at the time of his death domiciled in Papua New Guinea,

the Public Curator may receive from that officer the balance of the estate in the part of Australasia, after payment of creditors and of the charges provided for under this law of that part of Australasia.

(2) Any balance received in accordance with Subsection (1)—

- (a) forms part of the estate of the deceased person; and
- (b) shall be dealt with according to the law of Papua New Guinea,

but no commission or percentage is payable to, or may be deducted by, the Public Curator in respect of it.

PART V.—PUBLIC CURATORS' ACCOUNTS, RECORDS, REPORTS, ETC.

28. Bank accounts.

(1) The Public Curator shall immediately pay all moneys received by him as Public Curator into a bank approved by the Secretary for Finance, to the credit of an official account to be operated on by him as Public Curator.

(2) All cheques drawn by the Public Curator on the account referred to in Subsection (1) shall be countersigned by an officer appointed by the Secretary for Finance.

(3) The Secretary for Finance shall advise the bank concerned of any appointment under Subsection (2).

29. Estate accounts, records, etc.

(1) The Public Curator shall—

(a) make, or cause to be made, an inventory or list of all estates as to which orders have been made under Section 10, 11 or 12, and retain it in his office; and

(b) keep an account of all his receipts, payments, and dealings in every such estate; and

(c) retain all letters received, and copies of all letters written by him, and all deeds, papers and writings of and relating to all such estates.

(2) On written application by or with the authority of any person interested in an estate referred to in Subsection (1), the Public Curator shall—

(a) permit the applicant, or his lawyer or other authorized agent, to inspect and take copies of—

(i) any entry in any register or file kept by him in relation to the estate; and

(ii) any account, notice, or other document in his custody, so far as the interest of the applicant is or may be affected by it; and

(b) at the expense of the applicant, supply him or his lawyer or other authorized agent with a copy of any such entry, account, notice or document, or of an extract from any such entry, account, notice or document; and

(c) give to the applicant, or his lawyer or other authorized agent, such information respecting the estate and the trust property as is reasonably requested in the application and is within the power of the Public Curator to give.

(3) Subject to Subsection (2), the Public Curator and his officers, and all Public Curator's agents, must observe strict secrecy in respect of every estate being administered by the Public Curator.

30. Office accounts and returns.

(1) The Public Curator shall—

(a) during the months of January and July in each year, transmit to the Secretary for Finance a return of all moneys received and paid by him during the last six months in respect of the estates administered by him, distinguishing the particular estates in which they have been received or paid; and

(b) furnish at the same time a return of all balances or sums then in his hands to the credit of each of those estates.

(2) The Public Curator shall keep proper books of account in relation to the matters referred to in Subsection (1).

(3) The books of account referred to in Subsection (2) may be examined and passed by the Secretary for Finance, or by an officer appointed by him for the purpose, at such times as the Secretary for Finance thinks desirable.

31. Audit.

(1) The Auditor-General shall inspect and audit the accounts and records of financial transactions of the Public Curator and records relating to his assets and assets in his custody, and shall promptly draw the attention of the Minister to any irregularity disclosed by the inspection and audit that is, in the opinion of the Auditor-General, of sufficient importance to justify his so doing.

(2) The Auditor-General may, in his discretion, dispense with the whole or any part of the detailed inspection and audit of any accounts or records referred to in Subsection (1).

(3) The Auditor-General or a person authorized by him is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Public Curator relating directly or indirectly to the receipt or payment of moneys by him, or to the acquisition, receipt, custody or disposal of assets by him.

(4) The Auditor-General or a person authorized by him may make copies of, or take extracts from, any such accounts, records, documents or papers.

(5) The Auditor-General or a person authorized by him may require any person to furnish him with such information in his possession or to which he has access as the Auditor-General or authorized person thinks necessary for the purposes of the functions of the Auditor-General under this Act, and the person must comply with the requirement.

(6) A person who contravenes Subsection (5) is guilty of an offence.

Penalty: A fine not exceeding K200.00.

PART VI.—LEGAL PROCEEDINGS, ETC.

32. Disputes, etc.

(1) Where an order is made under Section 10 or 11 in relation to the estate of a deceased person, or an order is made under Section 12 in relation to the property of a person—

(a) all disputes and matters concerning the collection, management or administration of the estate or of the property; and

(b) all claims on the estate or property,

shall, subject to Subsection (2), be decided by the National Court or a Judge.

(2) Where it appears to be undesirable that the matters in question should be decided in accordance with Subsection (1), the National Court or a Judge may direct such proceedings to be instituted as appear proper.

33. Orders as to the administration of estates.

On the application of the Public Curator or of a person interested in an estate being administered by the Public Curator, the National Court or a Judge may make such orders concerning the collection, sale, investment and disposal of the estate as the Court or Judge thinks proper.

34. Complaints against Public Curator.

(1) A person interested as creditor, next of kin, or otherwise in the estate of a deceased person that the Public Curator is administering under this Act, may—

- (a) on the neglect or refusal of the Public Curator to do any act in relation to the administration of the estate; or
- (b) on the Public Curator's doing, or threatening to do, any act in breach of his duty with reference to the estate,

apply on affidavit to the National Court or a Judge—

- (c) for an order calling on the Public Curator to show cause before the Court or a Judge, on a day not less than two days after the service of the order on him, why he should not do or abstain from doing the act; and
- (d) for an interim order in the nature of an injunction, if warranted by the facts of the case.

(2) An order under Subsection (1) may be granted subject to such conditions as to security for costs as the National Court or a Judge imposes.

(3) On the hearing of a complaint under Subsection (1), the National Court or a Judge may—

- (a) receive proof of the matters in relation to the complaint orally or by affidavit; and
- (b) make such order as the circumstances of the case require, and in particular as to payment of costs—
 - (i) by the complainant; or
 - (ii) by the Public Curator; or
 - (iii) from the estate administered by the Public Curator,as, in the discretion of the Court or Judge, seems just.

(4) An order under Subsection (3)—

- (a) has the same effect; and
- (b) is enforceable by the same process,

as if it had been made by the National Court in a suit between the parties to the complaint.

35. General indemnity.

(1) Notwithstanding anything in Section 4, the Public Curator is not answerable for any act or omission by a Public Curator's agent that—

- (a) is not in conformity with a direction given by the Public Curator under Section 4(3); or
- (b) did not happen by the Public Curator's own default or neglect.

(2) The Public Curator, his officers and the Public Curator's agents are not personally liable to any person in respect of goods or chattels that—

- (a) were in the possession of—
 - (i) a deceased testator or intestate at the time of his death; or
 - (ii) the Public Curator under an order made under Section 12; and

- (b) have been sold by the Public Curator, any such officer or a Public Curator's agent as the goods or chattels of the deceased or missing person, as the case may be,

unless—

- (c) at the time of the sale he knew; or
- (d) before the sale he had actual notice,

that the goods or chattels were not the property of the deceased or missing person.

(3) The Public Curator, his officers and the Public Curator's agents are not personally liable to any person for acts done in good faith in the performance of their respective duties, unless it is shown that any such act was done not only illegally but also wilfully or with gross negligence.

36. General remedy.

Where by any act or thing done or omitted by the Public Curator, any of his officers or a Public Curator's agent acting, or assuming in good faith to act, under this Act, any person sustains an injury that would have entitled him to a remedy if it had been done or omitted by a private person, he is entitled to the same remedy against the State as he would have been entitled to against a private person.

PART VII.—MISCELLANEOUS.

37. Searches by Public Curator.

The Public Curator or an officer authorized by him for the purpose is entitled, free of charge, to make searches of, and to make copies of or take extracts from, any documents and titles relating to any property or interest in which the Public Curator is or may be interested, that are in a department or registry administered by—

- (a) the Registrar-General; or
- (b) the Registrar of the National Court; or
- (c) the Director of Lands, Surveys and Mines; or
- (d) the Director of Agriculture, Stock and Fisheries.

38. Sale of goods by auction.

(1) Where the Public Curator is realizing the goods of an estate administered by him, the goods may be offered for sale by auction by him or by some person appointed by him.

(2) The Public Curator or a person appointed under Subsection (1) conducting a sale by auction is not required to be a licensee under the *Auctioneers Act* for the purposes of the sale.

39. Sale of property of third party.

In the case of a sale by the Public Curator any of his officers or a Public Curator's agent of goods or chattels belonging to a third person, the amount realized by the sale shall be paid over to the owner on proof of ownership, unless—

- (a) it has been applied in the payment of the debts of the deceased; or
- (b) it has been distributed—
 - (i) according to any will of the deceased; or

(ii) in the ordinary course of administration,
while the Public Curator, officer or agent was in ignorance and without actual notice of the claim of the person to the goods or chattels sold.

40. Disclosure to Public Curator.

(1) Where—

- (a) a corporation, association or person is in possession of any property of a deceased person; or
- (b) any property or money is to the credit of a deceased person in the books or accounts or otherwise of a corporation, association or partnership; or
- (c) under any association or partnership—
 - (i) a deceased person is entitled to a share in the assets of the association or partnership; or
 - (ii) his representatives are entitled to any payments as his share in such assets; or
- (d) a deceased person is the registered proprietor of any shares in a corporation or association; or
- (e) any person is indebted to a deceased person,

and the property, money, shares, or debts are vested in or belong to the Public Curator, the association, corporation or person must give notice immediately to the Public Curator or to a Public Curator's agent of the extent, nature and situation of the property, money, shares or debts.

(2) Where an order has been made under Section 10 vesting possession of the property of a missing person in the Public Curator—

- (a) any association, partnership or other person that or who—
 - (i) is in possession of any property; or
 - (ii) holds in its or his books or accounts a credit of any money; or
 - (iii) has any asset, or a share in any asset,
of the missing person; or
- (b) any corporation or association in which the missing person is the registered proprietor of any shares; or
- (c) any person indebted to the missing person,

shall give notice immediately to the Public Curator of the extent, nature and situation of the property, money, asset, share or debt, as the case may be.

(3) Any corporation, association or person referred to in Subsection (1) or (2) who wilfully neglects to comply with the provisions of this section is liable to a penalty of K400.00 recoverable by civil action at the suit of the Principal Legal Adviser.

41. Advances for purposes of administration.

(1) The Public Curator may make advances out of moneys lawfully available to him, and standing to the credit of the account referred to in Section 28(1), for the payment of expenses necessarily incurred by him in the administration of the estate of a deceased person.

(2) Until the advances made under Subsection (1) have been repaid out of the estate, the Public Curator may charge the estate with interest on the sums advanced, or on any part of the sums that have not been repaid, at a rate not exceeding 5% per annum.

(3) Interest received under Subsection (2) shall be paid into the Consolidated Revenue Fund.

42. Charges by Public Curator.

(1) Where the Public Curator or a Public Curator's agent has taken possession of the estate of a deceased person, the estate is liable to pay the same commission and charges as would have been payable under this Act if an order had been previously made under Section 10, whether or not the Public Curator further administers the estate.

(2) If an order under Section 10 is not obtained, the fee for the order shall not be charged.

43. Receipt by Public Curator a sufficient discharge.

The written receipt of the Public Curator for any moneys payable to him under this Act is a sufficient discharge for the moneys to the person paying them, and the person is not afterwards liable for any later misapplication of the moneys.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 81.

Public Curator Regulation.

ARRANGEMENT OF SECTIONS.

1. Commission.
2. Administration fees.
3. Audit fees.
4. Expenses.
5. Charges may be reduced.
6. Investment of estate moneys.
7. Investment of interest.
8. Deposit and withdrawal of moneys and securities.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 81.

*Public Curator Regulation*¹.

MADE under the *Public Curator Act*.

1. Commission.

- (1) Subject to this Regulation, the commission to be taken by the Public Curator in estates administered by him is as set out in Schedule 1.
- (2) The minimum amount of commission payable under Subsection (1) in relation to an estate is K10.00.
- (3) In any case under this section where—
 - (a) the existence or the identity of any or all persons beneficially intitled to share in an estate, or the next of kin, as the case may be, is unknown or is not definitely established; and
 - (b) it is necessary for the Public Curator to make inquiries, or to advertise outside the country, for the purpose of locating any the persons or next of kin,there shall be charged against—
 - (c) the estate; or
 - (d) the share of it in respect of which it is necessary to make such inquiries or so to advertise,

such additional commission not exceeding 2½% of the net value of the estate or the share of the estate (after payment of original claims) as the Public Curator thinks just and reasonable.

2. Administration fees.

In addition to the commission prescribed by Section 1, the Public Curator shall charge administration fees as set out in Schedule 2.

3. Audit fees.

- (1) Subject to Subsection (2), on every estate administered by the Public Curator an audit fee of K2.00 shall be charged on 30 June in each year and on final distribution or completion.
- (2) Where an estate referred to in Subsection (1) is finally distributed or completed within six months, or within six months of the charging of an annual fee of K2.00, the total fee or the final fee, as the case may be, is K1.00.

4. Expenses.

- (1) The Public Curator shall charge all expenses including exchange, telegrams, auctioneers' and agents' charges, freight, court fees, legal expenses or legal assistance or legal proceedings, advertising and all other out-of-pocket expenses and expenses incurred in the administration of an estate.

¹This Regulation was originally made under Section 138 of the pre-Independence *Probate and Administration Act 1951*. Section 138 was repealed by the pre-Independence *Wills, Probate and Administration Act 1966*, but while the regulations made under it were continued in force by Section 6 of the pre-Independence *Wills, Probate and Administration (Amendment) Act 1970* the regulation-making power contained in Section 138 was not.

(2) The Public Curator shall charge 10t per folio of 72 words, or part of a folio, for every office copy.

5. Charges may be reduced.

If on consideration of all the circumstances he thinks it just and reasonable, the Public Curator may in a particular case reduce or dispense with any of the commissions, fees or charges prescribed by this Regulation.

6. Investment of estate moneys.

(1) Where by the Act the Public Curator is required to invest money standing to the credit of an estate, he shall invest it—

- (a) by placing it with the Papua New Guinea Banking Corporation on fixed deposit for such period as he thinks proper; or
- (b) by placing it in a savings bank account with the Papua New Guinea Banking Corporation; or
- (c) by placing part of the money on such fixed deposit and the residue in such a savings bank account; or
- (d) by purchasing securities of or guaranteed by Australia or a State of Australia.

(2) For the purposes of the administration or distribution of the estate, the Public Curator may at any time realize any investment under Subsection (1).

(3) In any case in which he thinks fit to do so, the Public Curator may apply to the National Court for directions as to the manner of investment of any money.

7. Investment of interest.

Where money is invested by direction of the National Court under Section 6—

- (a) it is not necessary for the Public Curator to apply to the Court for directions as to the investment of the interest on the money; and
- (b) the interest may be invested by him in the same manner as the principal money may be invested under this Regulation.

8. Deposit and withdrawal of moneys and securities.

(1) All investments of moneys under this Regulation shall be in the name of the "Public Curator", to which designation there shall be added the name of the estate on behalf of which the investment is made.

(2) Where any money has been deposited with a bank in accordance with this Regulation, it may be withdrawn by cheque or written order (as the case may be) signed by the Public Curator and countersigned by a person appointed for the purpose by the Secretary for Finance.

(3) Any securities referred to in Section 6(1)(d) that have been purchased under this Regulation—

- (a) shall immediately be lodged with the Papua New Guinea Banking Corporation for safe custody; and
- (b) shall not be released by the Bank except on a written order signed by the Public Curator and countersigned by the person appointed by the Secretary for Finance under Subsection (2).

SCHEDULES.

SCHEDULE 1.

Reg., Sec. 1.

COMMISSION TO BE TAKEN BY THE PUBLIC CURATOR.

1. On the realization of an estate, or part of an estate, as to which the deceased died intestate—on the gross amount realized—

	Commission.
up to K4 000.00	5%
in excess of K4 000.00 and up to K20 000.00	2½%
in excess of K20 000.00	1%

2. On the realization of an estate, or part of an estate, as to which the deceased died testate—on the gross amount realized—

up to K1 000.00	5%
in excess of K1 000.00 and up to K20 000.00	2½%
in excess of K20 000.00	1%

3. On the gross amount of interest or on gross income from an estate, including any part of an estate set aside and invested for beneficiaries

5%

4. On unrealized property (except money) transferred or delivered, unconverted into money, to a devisee, legatee, beneficiary, *cestui qui trust*, widower, widow, next of kin or other person of a like character, under any will, settlement, trust or intestacy administered by the Public Curator—on the value of the property as fixed by the Public Curator—

(a) if transferred or delivered to a person originally exclusively entitled to the entirety of the property—

50% of the commission that would have been payable had the property been realized at the value so fixed.

(b) in any other case

the same commission as would have been payable had the property been realized at the value so fixed.

SCHEDULE 2.

Reg., Sec. 2.

ADMINISTRATION FEES CHARGED BY PUBLIC CURATOR.

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1. For every probate, order under Section 10 of the Act, reseal under Section 118 of the *Wills, Probate and Administration Act* or order under Section 66 of that Act—

where the assets in the estate appear to be—

under K100.00	0.75
K100.00 or more but under K400.00	1.50
K400.00 or more but under K1 000.00	2.00
K1 000.00 or more	3.00

2. For the preparation of an instrument (other than an instrument that is incidental to obtaining probate or administration—for every folio of 72 words

0.10

3. For the preparation of succession duty statements

where the assets—

do not exceed K2 000.00	0.50
exceed K2 000.00 but do not exceed K5 000.00	1.00
exceed K5 000.00 but do not exceed K10 000.00	2.00
exceed K10 000.00 but do not exceed K15 000.00	3.00
exceed K15 000.00 but do not exceed K20 000.00	4.00
exceed K20 000.00	5.00

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 81.

Public Curator.

APPENDIXES.

APPENDIX 1.

SOURCE OF THE PUBLIC CURATOR ACT.

Part A.—Previous Legislation.

Probate and Administration Act 1951 (No. 28 of 1952)

as amended by—

Probate and Administration Act 1952 (No. 1 of 1953)

Probate and Administration Act 1953 (No. 37 of 1953)

Probate and Administration Act (No. 2) 1953 (No. 86 of 1953)

Probate and Administration Act 1955 (No. 12 of 1955)

Probate and Administration Act (No. 2) 1955 (No. 56 of 1955)

Probate and Administration Act 1960 (No. 55 of 1960)

Probate and Administration (Amendment) Act 1970 (No. 24 of 1970)

Wills, Probate and Administration (Amendment) Act 1970 (No. 52 of 1970)

Probate and Administration (Auditor-General) Act 1975 (No. 124 of 1975).

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference. ¹	Section, etc., in Revised Edition.	Previous Reference. ¹
1	5	16	101
2	6(1)	17	119
3	6(4)	18	124
4	88	19	125
5	102A(1)	20	107
6	112	21	108
7	113	22	111
8	102A(2), 114	23	123
9	92, 93	24	109, 110
10	90, 91	25	127(2)
11	94	26	127(1)
12	93A	27	128
13	95, 96	28	116(4), (5)
14	97, 98, 99	29	116(1)-(3)
15	100	30	118

¹ Unless otherwise indicated, references are to the Act set out in Part A.

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference.	Section, etc., in Revised Edition.	Previous Reference.
31	116A	38	115
32	106	39	122
33	105	40	126
34	103, 104	41	117A
35	88(3), 120	42	102
36	121	43	117
37	89		

APPENDIX 2.

SOURCES OF THE PUBLIC CURATOR REGULATION.

Part A.—Previous Legislation.

Probate and Administration Regulations 1952 (No. 12 of 1952)

as amended by—

Amending Regulations (No. 3 of 1961).

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference. ¹	Section, etc., in Revised Edition.	Previous Reference. ¹
1	2	7	8
2	3	8	9
3	4	Schedule 1	2
4	5	Schedule 2	3
5	6		

¹ Unless otherwise indicated, references are to the regulations set out in Part A.