

No. 13 of 2020.

Public Curator (Amendment) Act 2020.

Certified on: 14 AUG 2020



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No. 13 of 2020.

AN ACT

entitled

Public Curator (Amendment) Act 2020,

Being an Act to amend the ***Public Curator Act*** (Chapter 81) to -

- (a) change the name “Public Curator” to “Public Trustee”; and
- (b) establish the office of the Public Trustee; and
- (c) administer and distribute the deceased estates for and on behalf of the deceased’s creditors, beneficiaries and guardians; and
- (d) provide for the powers, duties and functions of the Office, and for related purposes,

MADE by the National Parliament.

1. AMENDMENT OF LONG TITLE.

The long title of the Principal Act is repealed and replaced with the following:

“Being an Act to -

- (a) change the name “Public Curator” to “Public Trustee”; and
- (b) establish the office of the Public Trustee; and
- (c) administer and distribute the deceased estates for and on behalf of the deceased’s creditors, beneficiaries and guardians; and
- (d) provide for the powers, duties and functions of the Office, and for related purposes.”.

2. REFERENCE TO PUBLIC CURATOR.

(1) The Principal Act is amended by repealing the words “Public Curator” wherever appearing in the Principal Act and replacing them with the words “Public Trustee” or “Public Trustees”, as the case may be.

(2) Any reference to the word “Public Curator” in any other law must be read as “Public Trustee”.

3. INTERPRETATION (AMENDMENT OF SECTION 1).

The Principal Act is amended in Section 1 -

- (a) by deleting the full stop at the end of Paragraph (c) in the definition of “real estate” and substituting it with “;”; and
- (b) by inserting the following new definitions immediately after the definition of “real estate”:

““the proper officer” in relation to another country, means the officer discharging duties that are equivalent as those discharged in Papua New Guinea by the Public Trustee.”.

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4. NEW SECTIONS 1A, 1B, 1C AND 1D.

The Principal Act is amended in Part I by inserting the following new sections immediately after Section 1:

“1A. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely -

- (a) freedom from arbitrary search and entry conferred by Section 44; and
- (b) freedom of choice of employment under Section 48; and
- (c) the right of reasonable access to official documents conferred under Section 51; and
- (d) the right to freedom of movement conferred by Section 52; and
- (e) freedom of unjust deprivation of property conferred by Section 53; and
- (f) the right of equality of citizens conferred by Section 55,

is a law that is made for the purposes of complying with Section 38 of the *Constitution*, taking into account of the National Goals and Directive Principles and Basic Social Obligations, in particular -

- (g) goal Number 1 (Integral Human Development) which calls for every person to be dynamically involved in the process of freeing himself from every form of domination or oppression so that each man or woman will have the opportunity to develop as a whole person in relationship with others; and
- (h) Basic Social Obligation, Paragraph (h) which places an equal obligation on parents to support, assist and educate their children without discrimination, and for the purpose of giving effect to the public interest in public order and public welfare, to the extent that the law is reasonably justifiable in a democratic society having proper respect or regard for the right and dignity of mankind.

1B. NATIONAL GOALS AND APPLICATION OF LAWS.

This Act shall take into account relevant and applicable National Goals and Directive Principles, where necessary.

1C. NATIONAL INTEREST AND APPLICATION OF LAWS.

For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local - level Governments*, this law relates to a matter of national interest.

1D. ACT BINDS THE STATE.

This Act binds the State.”.

5. THE PUBLIC CURATOR (REPEAL AND REPLACEMENT OF SECTION 2).

Section 2 of the Principal Act is repealed and replaced with the following:

“2. THE PUBLIC TRUSTEE.

- (1) The Office of the Public Trustee is established.

(2) There must be a Public Trustee for the purpose of this Act whose manner of appointment, suspension and dismissal is as specified in the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*.

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- (3) The Office of the Public Trustee -
 - (a) is a body corporate with perpetual succession; and
 - (b) must have a common seal; and
 - (c) may acquire, hold and dispose of property; and
 - (d) may sue and be sued in its corporate name and style.
- (4) The Office of the Public Trustee must consist of -
 - (a) the Public Trustee; and
 - (b) Deputy Public Trustees; and
 - (c) any staff required for the purposes of this Act who shall be Trustee officers or employees of the National Public Service.

(5) The Public Trustee is subject to the provisions of the *Organic Law on the Duties and Responsibilities of Leadership*.

2A. THE COMMON SEAL OF THE PUBLIC TRUSTEE.

(1) The Common Seal of the Public Trustee must not be affixed to any document or instrument by any person other than the Public Trustee or a Deputy Public Trustee.

(2) The affixation of the Common Seal of the Public Trustee must be attested by an officer of the Office who is the estate officer dealing with the matter to which the Common Seal is affixed.

(3) A Court, a Judge and a person acting judicially must take judicial notice of the Common Seal of the Public Trustee affixed to a document and must accept that it was legally affixed.

(4) Subject to this Act, the Office of the Public Trustee is an agency of the State and must be entitled to the benefit of any immunity or privilege accorded to the State.

(5) A person who makes a claim against the Public Trustee may pursue the claim under the *Claims By and Against the State Act 1996*.”.

6. THE DEPUTY PUBLIC CURATOR (AMENDMENT OF SECTION 3).

Section 3 of the Principal Act is amended -

(a) by repealing Subsection (1) and replacing it with the following:

“(1) The Minister may appoint an officer, through a merit based process on the recommendation of the Departmental Head responsible for justice matters, to be a Deputy Public Trustee.”; and

(b) by inserting a new subsection after Subsection 4 as follows:

(5) The appointment of a Deputy Public Trustee under Subsection (1) must be published in the National Gazette.”.

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7. PUBLIC CURATOR'S AGENTS (AMENDMENT OF SECTION 4).

The Principal Act is amended in Section 4 by repealing Subsection (1) and replacing it with the following new subsection:

“(1) The Public Trustee may appoint a person to act as his agent in accordance with an instrument of appointment made under Section 4A.”.

8. NEW SECTION 4A.

The Principal Act is amended by inserting a new section after Section 4 as follows:

“4A. APPOINTMENT OF AGENTS.

(1) For purposes of Section 4, an instrument of appointment must provide for -

- (a) the purpose of appointment as an agent; and
- (b) the power delegated to the agent; and
- (c) the function delegated to the agent; and
- (d) any conditions that are deemed necessary as determined by the Public Trustee.

(2) The instrument of appointment of an agent referred to in Subsection (1) must be published in the National Gazette.”.

9. FUNCTIONS OF THE PUBLIC CURATOR (AMENDMENT OF PART III).

The Principal Act is amended in Part III by inserting the following new sections after Section 5:

“5A. FUNCTIONS OF THE PUBLIC TRUSTEE.

(1) Without limiting the generality of the functions of the Public Trustee, the functions of the Public Trustee include the following:

- (a) to administer and distribute a deceased's estate in accordance with Section 25 of the *Constitution*; and
- (b) to administer and distribute testate estates under the *Wills, Probate and Administration Act* (Chapter 291); and
- (c) to administer a trust or an estate for a minor; and
- (d) to administer a trust or an estate for a missing person; and
- (e) to administer an estate as directed by a Court.

(2) A trust, insolvency or an insane person's estate is not an inherent function.

(3) The Public Trustee may perform a specific function with regard to the type of estate he administers and these functions include the following:

- (a) to deposit money received for and on behalf of an estate administered by the Public Trustee; and
- (b) to disburse money for and on behalf of an estate administered by the Public Trustee in accordance with the *Public Curator Act* (Chapter 81) and the *Wills, Probate and Administration Act* (Chapter 291); and

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- (c) to discharge any obligation for and on behalf of an estate administered by the Public Trustee in accordance with the *Public Curator Act* (Chapter 81) and the *Wills, Probate and Administration Act* (Chapter 291); and
- (d) to invest any money for and on behalf of an estate administered by the Public Trustee in accordance with the *Public Curator Act* (Chapter 81) and the *Wills, Probate and Administration Act* (Chapter 291); and
- (e) to pay for expenses necessarily incurred by the Public Trustee in the administration of an estate in accordance with the *Public Curator Act* (Chapter 81) and the *Wills, Probate and Administration Act* (Chapter 291).

5B. POWERS OF THE PUBLIC TRUSTEE.

The Public Trustee -

- (a) must have control of the Office; and
- (b) must be administratively responsible for the efficient performance of the functions and powers of the Office; and
- (c) may direct a beneficiary to an estate to indemnify the Public Trustee when there is litigation affecting an estate administered by the Public Trustee; and
- (d) may indemnify any person or corporation that deals with an estate administered by the Public Trustee; and
- (e) may direct a beneficiary to an estate to pay for costs associated with legal proceedings affecting an estate; and
- (f) may distribute estate assets in a case where a beneficiary is missing, with the approval of the Court made *ex-parte*; and
- (g) may issue directions to deal with an estate valued at less than K50,000.00; and
- (h) may accept or reject a claim against an estate which are statute or time barred; and
- (i) ensures that the amount of liability to a legal claim against an estate administered by the Public Trustee is proportionate to the value of the estate administered; and
- (j) may institute a civil recovery proceeding in any Court against a person who defrauds an estate; and
- (k) may do anything necessary for the effective administration of an estate administered by the Public Trustee; and
- (l) may, when requested to do so by the relevant person or body, advise in regards to the *Public Curator Act* (Chapter 81) -
 - (i) the State or any statutory authority or instrumentality of the State; and
 - (ii) the Minister responsible for justice matters; and
 - (iii) Departmental Head of the department responsible for national justice administration.”.

10. DELEGATION TO PUBLIC CURATOR BY TRUSTEES (AMENDMENT OF SECTION 6).

Section 6 of the Principal Act is amended by inserting a new subsection after Subsection (2) as follows:

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“(3) For the avoidance of doubt, the Public Trustee must not delegate all or any of those powers or functions referred to under Subsection (1) to any person.”.

11. NEW SECTION 8A.

The Principal Act is amended by inserting a new section after Section 8 as follows:

“8A. ESTABLISHMENT OF AN INVESTMENT ADVISORY BOARD.

- (1) In this section, “Board” means the Investment Advisory Board.
- (2) An Investment Advisory Board is established and consists of the following members:
 - (a) the Public Trustee; and
 - (b) the State Solicitor; and
 - (c) the Departmental Head of the department responsible for financial matters; and
 - (d) a representative from the Papua New Guinea Council of Churches; and
 - (e) a representative from the Papua New Guinea Business Council.
- (3) The Board must provide financial and investment advice to the Public Trustee on investment of money which is, from time to time, in a trust fund and made available for investment on behalf of minors and insane persons.
- (4) The Board must ensure that all investment follow due process consistent with the provisions of the law governing trustees and is authorised by law.
- (5) The Board must ensure that assets of the Trust Fund are managed so as to meet future and contingent liabilities.
- (6) The Board must meet at such times and places as it thinks fit, and the Public Trustee is the Chair of a meeting of the Board.
- (7) At a meeting of the Board, the Chair and two other members form the quorum.
- (8) The Board must submit an annual report on the investment from the trust funds to the Minister responsible for national justice administration, and to other relevant statutory bodies consistent with provisions of laws governing trustees.”.

12. NEW SECTION 9A.

The Principal Act is amended by inserting a new section after Section 9 as follows:

“9A. ADDITIONAL FUNCTION OF TRUSTS, ESTATES ETC., UNDER OTHER LAWS.

The Public Trustee must -

- (a) administer a trust or an estate for a disabled or an insane person under the *Mental Health Act 2015*; and
- (b) administer a trust or an estate in an insolvency case under the *Insolvency Act* (Chapter 253); and

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- (c) administer any assets or income of a person convicted of an offence under the *Organic Law on the Duties and Responsibilities of Leadership*, pursuant to Section 28(1)(c) of the *Constitution*; and
- (d) administer a trusts and estates for other persons in accordance with other relevant laws.”.

13. INTERPRETATION OF PART IV (REPEAL OF SECTION 25).

Section 25 of the Principal Act is repealed.

14. PERSONS DOMICILED IN AUSTRALASIA (AMENDMENT OF SECTION 26).

The Principal Act is amended in Sections 26 by deleting the word “Australasia” twice appearing and replacing them with the words “another country”.

15. PERSONS DOMICILED IN PAPUA NEW GUINEA (AMENDMENT OF SECTION 27).

The Principal Act is amended in Section 27 by deleting the word “Australasia” twice appearing and replacing them with the words “another country”.

16. SEARCHES BY PUBLIC CURATOR (REPEAL AND REPLACEMENT OF SECTION 37).

Section 37 of the Principal Act is repealed and replaced with the following new section:

“37. SEARCH BY THE PUBLIC TRUSTEE.

(1) The Public Trustee or an officer authorised by him for the purpose is entitled to search and make copies of or take extracts from, any document and titles relating to any property or interests in which the Public Trustee 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 Registrar of Titles from the Department responsible for land and physical planning matters; or
- (d) Department of Health; or
- (e) National Housing Corporation; or
- (f) Papua New Guinea Investment Promotion Authority.

(2) Notwithstanding Subsection (1), the Minister may prescribe further agencies for the purposes of this section and must publish the agencies in the National Gazette.

(3) A search done under Subsection (1) is free of charge.”.

17. DISCLOSURE TO PUBLIC CURATOR (AMENDMENT OF SECTION 40).

Section 40 of the Principal Act is amended -

(a) by repealing Subsection (1) and replacing it with the following new subsection:

“(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

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- (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 of his payments as his share in such assets; or
- (d) a deceased person is a registered proprietor of any shares in a corporation or association; or
- (e) a person is indebted to a deceased person and the property, money, shares or debts are vested in or belong to the Public Trustee,

the corporation, association or person must give notice to the Public Trustee within 14 days -

- (i) by a person known to the deceased or by the association or partnership concurred at the death of the deceased; or
- (ii) when the Public Trustee is aware of the death of the deceased and makes a request to the persons or bodies concerned.”; and

(b) by repealing Subsection (3) and replacing it with the following new subsection:

“(3) A corporation, association or person referred to in Subsections (1) and (2) who does not comply with the provision of this section is liable, by an action at the suit of the Public Trustee -

- (a) in the case of a natural person, a fine not exceeding K5,000.00 or imprisonment for a term not exceeding two years, or both; and
- (b) in the case of a corporation or an association, a fine not exceeding K10,000.00.”.

18. NEW SECTIONS 44, 45 AND 46.

The Principal Act is amended in Part VII by inserting the following new sections after Section 43:

“44. PROTECTION TO PUBLIC TRUSTEE OFFICERS.

A person who threatens, intimidates or injures an officer of the Public Trustee in the course of his official duties, is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding two years, or both.

45. PENALTY FOR NON-COMPLIANCE WITH THIS ACT.

(1) An officer of the Public Trustee who does not comply with any provisions of this Act is guilty of an offence.

(2) An officer who is charged with an offence under Subsection (1) must be subject to the disciplinary action of the Public Trustee.

- (3) A person or an officer of the Public Trustee who dishonestly -
 - (a) applies the Common Seal of the Office of Public Trustee on any document; or

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- (b) applies any funds or property or any estate administered by the Public Trustee; or
- (c) mismanages any property or funds of the Public Trustee, for his own benefit or for the benefit of another person is guilty of an offence.

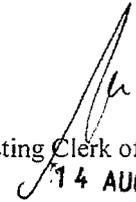
Penalty: A fine not exceeding K10,000.00.

(4) A person charged with an offence under Subsection (3) must be subject to punishment under the *Criminal Code Act* (Chapter 262).

46. REGULATIONS.

The Head of State may make regulations for the administration of this Act.”.

I hereby certify that the above is a fair print of the *Public Curator (Amendment) Act 2020*, which has been made by the National Parliament.


Acting Clerk of the National Parliament.
14 AUG 2020

I hereby certify that the *Public Curator (Amendment) Act 2020*, was made by the National Parliament on 9 June 2020, by an absolute majority as required by the *Constitution*.


Speaker of the National Parliament.
14 AUG 2020