



Australian Capital Territory

# **Public Trustee Act 1985      No 8**

**Republication No 8**

**Effective: 31 March 2003**

Republication date: 31 March 2003

Last amendment made by A2003-2

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Public Trustee Act 1985* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 31 March 2003. It also includes any amendment, repeal or expiry affecting the republished law to 31 March 2003.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Public Trustee Act 1985

## Contents

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	Page
<b>Part 1                      Preliminary</b>	
1      Short title	2
4      Interpretation for Act	2
<b>Part 2                      The public trustee</b>	
<b>Division 2.1                Administration</b>	
5      Public trustee	4
6      Deputy public trustee	4
8      Public trustee a corporation sole	5
9      Agent of public trustee	5
<b>Division 2.2                Protection and liability of public trustee</b>	
10     Protection of public trustee and other officers	5

---

## Contents

	Page
11 Protection of public trustee where mistake as to death etc	6
12 Liability of public trustee	7
<b>Part 3 Appointment of public trustee</b>	
<b>Division 3.1 General</b>	
13 Capacities in which public trustee may act	8
14 Public trustee may act jointly with another person	9
15 Appointment of public trustee on order of court	10
16 Effect of appointment or election	10
<b>Division 3.2 Appointment of public trustee as trustee</b>	
17 Appointment	10
18 Appointment of public trustee as sole trustee	11
19 Vesting of property	11
<b>Part 4 Powers and duties of public trustee</b>	
20 Powers of public trustee under Act additional to powers under other laws	12
21 Express powers of public trustee	12
22 Wills	15
23 Safe custody of documents and chattels	15
24 Representation of parties in legal proceedings	15
25 Payment of money etc to public trustee on behalf of person under disability	16
25A Amounts etc paid by trustee for person under disability	18
26 Power of public trustee to sue self when acting in different capacities	18
27 Power of public trustee to contract with self in certain circumstances	19
28 Fees and expenses of public trustee	19
29 Payments to persons outside Australia	20
30 Dealings with other public trustees	20
31 Unclaimed moneys	21
32 Allowance of claims	22
33 Dispute involving claims	22

	Contents
	Page
<b>Part 5                    Unclaimed property</b>	
34              Application for appointment as manager of property	24
35              Election to become manager of property	25
36              Notice of appointment or election	25
37              Property does not vest in public trustee as manager	25
38              Powers of public trustee as manager	26
39              Application for directions and sale of property in special circumstances	27
40              Management of certain moneys by public trustee	29
41              Property to be held for owner	30
42              Charge over property	30
43              Disposal of property	31
44              Cessation of management	34
45              Claims made after cessation of management	35
<b>Part 6                    Financial</b>	
<b>Division 6.1              Investment board</b>	
46              Establishment of board	37
47              Function of board	37
48              Membership of board	37
49              Senior member of board	38
50              Acting members	38
52              Resignation	38
53              Termination of office	39
54              Meetings of board	39
<b>Division 6.2              Common funds</b>	
55              Establishment of common funds etc	40
56              Investment of money held in common funds	41
57              Investment of money not held in common funds	41
58              Withdrawal of money from common funds	41
59              Distribution of capital and income	42
59A             Management fee	42
60              Income accounts	43
61              Common fund guarantee and reserve account	44

## Contents

---

	Page
63 Application of surplus funds	46
64 Advances from common funds	46
65 Advances to beneficiaries	47
<b>Part 7                   Miscellaneous</b>	
66 Sale of goods by auction	49
67 Notices to be given to public trustee	49
68 Costs in legal proceedings	50
69 Costs arising out of certain applications	51
70 Jurisdiction of court	51
71 Certain covenants void	51
72 Lien in respect of insurance premiums	51
73 Manner of giving notices	52
74 Evidence	52
75 Determination of fees and charges	53
76 Regulation-making power	54
<b>Endnotes</b>	
1 About the endnotes	55
2 Abbreviation key	55
3 Legislation history	56
4 Amendment history	59
5 Earlier republications	62



Australian Capital Territory

## **Public Trustee Act 1985**

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An Act relating to the appointment of a public trustee and the powers and duties of the public trustee, and for other purposes

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**Part 1                              Preliminary****1            Short title**

This Act may be cited as the *Public Trustee Act 1985*.

**4            Interpretation for Act**

## (1) In this Act:

*Note*     A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

**Administration Act** means the *Administration and Probate Act 1929*.

**board** means the Public Trustee Investment Board.

**common fund** means a common fund established under section 55.

**court** means the Supreme Court.

**deputy public trustee** means the Deputy Public Trustee under section 6.

**member** means a member of the board.

**person under disability** means a person who has not attained full age or a person who is of unsound mind or incapable.

**public trustee** means—

- (a) the public servant for the time being performing the functions of the Public Trustee for the Australian Capital Territory under section 5; or
- (b) the Public Trustee for the Australian Capital Territory in its corporate capacity under section 8.

**senior member** means the senior member of the board.

**Section 4**

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- (2) Where an expression is used in this Act that is defined in the Administration Act, then, unless the contrary intention appears, that expression has the same meaning for this Act as it has in the Administration Act.

## **Part 2                    The public trustee**

### **Division 2.1            Administration**

#### **5            Public trustee**

- (1) There shall be a Public Trustee for the Australian Capital Territory.
- (2) The chief executive shall create and maintain an office in the public service the duties of which include performing the functions of the Public Trustee for the Australian Capital Territory.
- (3) The public trustee shall be the public servant for the time being performing the duties of the public service office referred to in subsection (2).

#### **6            Deputy public trustee**

- (1) There shall be a Deputy Public Trustee.
- (2) The deputy public trustee may perform any function of the public trustee, subject to any direction of the public trustee.
- (3) The chief executive shall create and maintain an office in the public service the duties of which include performing the functions of the deputy public trustee.
- (4) The deputy public trustee shall be the public servant for the time being performing the duties of the public service office referred to in subsection (3).
- (5) A person dealing with the deputy public trustee is not bound to enquire whether the deputy public trustee, in performing a function in connection with a dealing—
  - (a) was subject to a direction of the public trustee; or
  - (b) complied with a direction of the public trustee to which the deputy public trustee was subject.

## **8 Public trustee a corporation sole**

- (1) The public trustee—
  - (a) is a corporation sole by the name of the Public Trustee for the Australian Capital Territory; and
  - (b) has perpetual succession; and
  - (c) shall have an official seal; and
  - (d) is capable, in the corporate name of the public trustee, of acquiring, holding and disposing of real and personal property and of suing and being sued.
- (2) All courts, judges and persons acting judicially shall take judicial notice of the seal of the public trustee affixed to a document and shall presume that it was duly affixed.

## **9 Agent of public trustee**

- (1) The public trustee may, from time to time, appoint a person to be an agent of the public trustee.
- (2) A person who is appointed under this section as an agent is subject to the direction, control, supervision and inspection of the public trustee in all matters relating to the business for which the person is appointed.

## **Division 2.2**

## **Protection and liability of public trustee**

## **10 Protection of public trustee and other officers**

- (1) A person who holds, or has held, the office of public trustee is not liable, personally, to an action or other proceeding for or in relation to an act done or omitted to be done in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power or authority, conferred on the person as the holder of that office.

- (2) A person who is, or has been, a deputy public trustee, an acting public trustee or deputy public trustee, an agent of the public trustee or a public servant exercising a power or performing a function relating to the business or affairs of the public trustee is not liable to an action or other proceeding for or in relation to an act done or omitted to be done in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power or authority, conferred on the person in that capacity.

## **11 Protection of public trustee where mistake as to death etc**

Where—

- (a) the public trustee—

- (i) has obtained a grant of probate of the will, or administration of the estate, of a person under the Administration Act; or
- (ii) is otherwise administering the estate of a person under the Administration Act; or
- (iii) is acting as executor or trustee under the will of a person; and

- (b) it is found—

- (i) that the person is alive; or
- (ii) in a case in which the person was believed to have died intestate—that the person died testate; or
- (iii) in a case in which the person was believed to have died testate—that the person died intestate and that the document that was believed to be his or her last will has no testamentary validity or effect; or
- (iv) that a document that was believed to be the person's last will is not the person's last will;

all acts done or omitted to be done by the public trustee in good faith while acting in any capacity in connection with the grant,

estate or will are as valid and effectual as if the public trustee had been lawfully entitled to act in that capacity.

## **12 Liability of public trustee**

Where, by an act or omission of the public trustee or another person acting or purporting to act in good faith for the public trustee, a person sustains a loss or injury that would have entitled that person to a remedy in respect of the loss or injury if the act or omission were an act or omission of a natural person—

- (a) the person sustaining the loss or injury is entitled to the same remedy against the public trustee in the corporate capacity of the public trustee as the person would have been entitled to against a natural person; and
- (b) the liability of the public trustee shall be discharged by the Territory.

## **Part 3                      Appointment of public trustee**

### **Division 3.1                General**

#### **13     Capacities in which public trustee may act**

- (1) Subject to this Act, the public trustee may be appointed and act under that name as—
  - (a) a trustee; or
  - (b) an executor or administrator, including administrator *pendente lite*; or
  - (c) a collector of an estate of a person under an order to collect and administer that estate; or
  - (d) a receiver; or
  - (e) an agent or attorney; or
  - (f) a manager of property, whether real or personal; or
  - (g) a guardian of the estate of any person.
- (2) Subject to this Act, the public trustee may become (whether by election or otherwise) and may act under that name as a manager of property, whether real or personal.
- (3) The public trustee shall not accept a trust established exclusively or primarily for religious purposes.
- (4) The public trustee may decline to accept, or accept subject to such conditions as the public trustee thinks fit, a trust or an appointment to act in any capacity.
- (5) The public trustee is not entitled to exercise a power under subsection (4)—

- (a) in relation to a trust that devolves on the public trustee or an appointment of the public trustee that is made specifically by law; or
- (b) in relation to an appointment that was made by order of the court; or
- (c) on the ground only of the small value of the relevant property or estate.

#### **14 Public trustee may act jointly with another person**

- (1) Subject to subsection (3), the public trustee may be appointed and act jointly with another person in any of the capacities referred to in section 13.
- (2) Subject to any other law in force in the ACT, where the public trustee is appointed and acts jointly with another person—
  - (a) the public trustee and that other person jointly have and may exercise or perform all or any of the powers, duties and functions that the public trustee, if acting alone, would have or be entitled to exercise or perform; and
  - (b) all moneys under the control of the public trustee and that other person jointly shall be dealt with in the same manner as money under the control of the public trustee alone; and
  - (c) the receipt in writing of the public trustee alone for any moneys, securities or other personal property or effects required to be paid, transferred or delivered to the public trustee and that other person jointly—
    - (i) shall be a sufficient discharge; and
    - (ii) shall fully and effectually exonerate the person by whom that property or those effects was or were paid, transferred or delivered from seeing to the application, or being answerable for any loss or misapplication, of that property or those effects.

- (3) The public trustee may not be appointed or act jointly with another person as manager of property under part 5.

## **15 Appointment of public trustee on order of court**

Where the consent of a person is required for the appointment of a trustee, executor or administrator and the person—

- (a) refuses to consent to the public trustee being appointed; or
- (b) is absent from the ACT; or
- (c) is a person under disability;

the court may, on an application made to it, order that the appointment of the public trustee be made without the consent of that person.

## **16 Effect of appointment or election**

Subject to this Act, the public trustee, when acting in a capacity referred to in section 13—

- (a) has the same powers, duties and liabilities and is entitled to the same rights and immunities as a natural person acting in that capacity; and
- (b) is subject to the control and orders of any court in the same manner as if the public trustee were a natural person acting in that capacity.

## **Division 3.2**

## **Appointment of public trustee as trustee**

### **17 Appointment**

- (1) The public trustee may be appointed as an original, new or additional trustee in the same cases, in the same manner and by the same persons or court as if the public trustee were a natural person.

- (2) Notwithstanding subsection (1), the public trustee shall not be appointed as a trustee if the instrument creating the trust contains a direction to the contrary.

## **18 Appointment of public trustee as sole trustee**

- (1) Notwithstanding that an instrument provides for or directs the appointment of 2 or more trustees, the public trustee may be appointed as sole trustee under the instrument unless the appointment is expressly prohibited by the instrument.
- (2) The appointment of the public trustee as sole trustee under an instrument for subsection (1) may be made by—
- (a) the trustees appointed under the instrument; or
  - (b) where there is another person who has the power to appoint a new trustee under the instrument—that person; or
  - (c) where there are 2 or more other persons who have the power to appoint a new trustee under the instrument—those persons; or
  - (d) the court.
- (3) An application for an order of the court appointing the public trustee as sole trustee under an instrument may be made by—
- (a) any 1 of the trustees appointed under the instrument; or
  - (b) where there are 2 or more other persons who have the power to appoint a new trustee under the instrument—any 1 of those persons; or
  - (c) any person who has an interest in any property to which the instrument relates.

## **19 Vesting of property**

On an appointment of the public trustee as a trustee taking effect, all the property in respect of which the public trustee is so appointed is, subject to the trusts applicable to it, by virtue of the appointment and without other assurances in law, vested in the public trustee.

**Part 4****Powers and duties of public trustee****20 Powers of public trustee under Act additional to powers under other laws**

The powers conferred on the public trustee under this Act when acting in any of the capacities in which the public trustee is authorised to act are in addition to and not in substitution for or in derogation of any other power conferred on or exercisable by the public trustee in that capacity under any other law in force in the ACT.

**21 Express powers of public trustee**

- (1) Where the public trustee is acting as an executor, administrator or trustee or is otherwise acting in connection with the administration of an estate, without limiting the generality of any other power conferred on the public trustee under this Act, the public trustee may, unless expressly prohibited by the terms of any instrument affecting the authority of the public trustee to act in that capacity—
  - (a) sell property by public auction or private contract, altogether or in parts, and subject to such conditions (if any) as the public trustee thinks fit; and
  - (b) exchange property or join in a partition of property; and
  - (c) grant a lease of property for such period as the public trustee thinks fit—
    - (i) being a period not exceeding 10 years; or
    - (ii) if the lease is granted with an option for renewal—being a period that, together with the term of the option, does not exceed 10 years; and

**Section 21**

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- (d) enter into a sharefarming agreement for a period not exceeding 3 years; and
- (e) insure property, real or personal, against any contingency; and
- (f) expend money for the repair, maintenance or renovation of property; and
- (g) pay rates, taxes, insurance premiums and any other outgoings, charges and expenses in respect of property; and
- (h) pay or discharge all debts, liabilities, costs, expenses and other obligations; and
- (i) borrow money, with or without giving security; and
- (j) set off against the claim of a person in respect of an estate any amount owed by the person to that estate or another estate being administered by the public trustee; and
- (k) bring or defend any proceedings; and
- (l) take proceedings to cause a person to become a bankrupt or a company to be wound up; and
- (m) vote or otherwise act either in person or by proxy at or in connection with a meeting of creditors or shareholders; and
- (n) carry out contracts entered into before the commencement of this Act in the same manner as if the contracts had been entered into after the commencement of this Act; and
- (o) at the expense of an estate being administered by the public trustee, engage such persons as the public trustee thinks fit for the purpose of assisting or advising the public trustee in the administration or management of the estate; and
- (p) do all such acts, matters and things as are necessary or convenient for carrying out any of the powers conferred under this section.

**Section 21**

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- (2) In exercising the power referred to in subsection (1) (f), the public trustee may charge the costs of repair, maintenance or renovation, as the case may be, either to capital or to income or apportion the costs between capital and income on such a basis as the public trustee thinks fit.
- (3) Where the public trustee has been appointed to act as trustee, executor or administrator of the estate of a deceased person, whether alone or jointly with another person, the public trustee may exercise the power referred to in subsection (1) (h) for the purpose of paying the reasonable costs of—
  - (a) the erection of a memorial or tombstone over the grave of the deceased person; or
  - (b) where the deceased person has been cremated—a memorial or otherwise suitably preserving the ashes of the deceased person.
- (4) Without limiting the generality of the power referred to in subsection (1) (i), the public trustee may exercise that power for the purpose of repaying a debt or other liability that was incurred before the commencement of this Act.
- (5) In exercising the power referred to in subsection (1) (i), the public trustee may pay any interest payable in respect of money borrowed by the public trustee out of income or, if the income is insufficient, out of capital.
- (6) Where, in the exercise of the power referred to in subsection (1) (j), the public trustee sets off against the claim of a person in respect of an estate an amount owed by the person to another estate being administered by the public trustee, the public trustee shall transfer from the estate to which the claim related to the estate to which the amount was owed an amount equal to the amount that was owed by the person to that lastmentioned estate.

**Section 22**

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**22 Wills**

- (1) The public trustee may, either without charging a fee or for a fee not exceeding the fee determined under section 75 for this section, draw a will or other testamentary instrument for a person.
- (2) Subject to subsection (3), the public trustee may accept a will for deposit with the public trustee.
- (3) The public trustee shall not accept a will for deposit under this section unless the public trustee is appointed executor or an executor of the will.

**23 Safe custody of documents and chattels**

- (1) The public trustee may accept for safe custody any trust instrument, a debenture or other security, any document of title to property, any other document and any chattel.
- (2) The public trustee's liability in respect of any thing deposited for safe custody under subsection (1) is—
  - (a) where a charge is made by the public trustee in connection with the keeping of that thing by the public trustee—that of a bailee for reward; and
  - (b) where a charge is not made by the public trustee in connection with the keeping of that thing by the public trustee—that of a gratuitous bailee.

**24 Representation of parties in legal proceedings**

- (1) The court may, in relation to proceedings in the court, on an application made to it by a party to the proceedings or on its own motion, direct the public trustee to represent—
  - (a) a party to those proceedings; or
  - (b) a person or class of persons interested in those proceedings.
- (2) Where a direction is given under subsection (1)—

**Section 25**

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- (a) the public trustee may be represented in the proceedings in connection with which the direction is given by a legal practitioner; and
- (b) the costs and expenses of the representation, as between solicitor and client, together with a reasonable fee for the services of the public trustee, shall be paid to the public trustee out of any estate, funds or property the subject matter of the proceedings, or otherwise as the court may direct.

**25 Payment of money etc to public trustee on behalf of person under disability**

- (1) Where, in the proceedings, it is adjudged or ordered, or it is agreed, that money, not being money to which subsection (3) applies, be paid to a person under disability (whether or not that person is a party to a cause or matter), the money—
  - (a) shall be paid into court; and
  - (b) shall, unless the court otherwise directs, be paid out to the public trustee.
- (2) Where money, not being money to which subsection (3) applies—
  - (a) is paid into court—
    - (i) before the commencement of this Act; or
    - (ii) after the commencement of this Act under a judgment, order or agreement given, entered or made before the commencement of this Act; and
  - (b) the money is being held in court on behalf of a person under disability;

the court may, by order, direct that the money be paid out to the public trustee.
- (3) Where—

**Section 25**

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- (a) money payable as compensation under the *Workers Compensation Act 1951* is paid into court, whether before or after the commencement of this Act; and
  - (b) the money is being held in court on behalf of a person under disability;  
the court may, by order, direct that the money be paid out to the public trustee.
- (4) Where, as a result of a direction given under subsection (1), money in court is not paid out to the public trustee, the court may, by order, direct that the money be paid out to the public trustee and may make such other order as it thinks fit.
- (5) Where a court adjudges or orders that property (whether real or personal) be delivered up or transferred to a person under disability (whether or not that person is a party to a cause or matter), the court—
  - (a) may order that the property be delivered up or transferred to the public trustee on behalf of that person; and
  - (b) may give such directions for the service of the order on the public trustee as it thinks fit.
- (6) Where an order under subsection (5) is served on the public trustee, the public trustee shall accept delivery or transfer of the property to which the order relates and the acceptance of the property shall be a sufficient discharge to the person delivering or transferring the property.
- (7) Nothing in this section applies in relation to—
  - (a) money ordered or agreed to be paid in proceedings in the Magistrates Court, being money due to a person who has not attained full age as salary, wages or otherwise in respect of the person's employment; or
  - (b) money payable as compensation—

Section 25A

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- (i) under the *Workers Compensation Act 1951* by way of a weekly payment; or
- (ii) under that Act, schedule 1, clause 9A.

**25A Amounts etc paid by trustee for person under disability**

- (1) If an amount is paid to, or property is accepted by, the public trustee under section 25 on behalf of a person under disability, the public trustee must hold the amount or property on trust for the person.
- (2) The public trustee may, subject to any direction of the Supreme Court—
  - (a) pay an amount, or give property, to anyone the public trustee considers appropriate, for the maintenance, education, advancement or benefit of the person or a dependent of the person; and
  - (b) use the amount or property for the maintenance, education, advancement or benefit of the person or a dependent of the person.
- (3) If an amount is paid under subsection (2) (a), the public trustee need not supervise the use of the amount.

**26 Power of public trustee to sue self when acting in different capacities**

- (1) Notwithstanding any rule of law or practice to the contrary, the public trustee, acting in one capacity, may, subject to subsection (2) commence proceedings against the public trustee acting in another capacity.
- (2) Before commencing proceedings under subsection (1), the public trustee shall apply to the court for directions as to the manner in which the respective interests of the public trustee are to be represented in the proceedings.

**Section 27**

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**27 Power of public trustee to contract with self in certain circumstances**

- (1) The public trustee, while acting in any capacity in connection with a trust or estate, may enter into a contract, deed or covenant with the public trustee while acting in any capacity in connection with another trust or estate or as manager of property.
- (2) The public trustee, while acting as manager of property, may enter into a contract, deed or covenant with the public trustee while acting as manager of other property or in any capacity in connection with a trust or estate.

**28 Fees and expenses of public trustee**

- (1) The public trustee—
  - (a) may, in respect of a service rendered by the public trustee for which no other provision for the payment of a fee is made under this Act, charge such fee, whether by way of commission or otherwise, as is determined under section 75 for this section; and
  - (b) is entitled to the reasonable expenses incurred by the public trustee in rendering a service.
- (2) The fees and expenses payable under subsection (1) in respect of a service rendered by the public trustee in connection with an estate, trust or fund—
  - (a) may be paid by the public trustee from moneys in the estate, trust or fund; and
  - (b) are, subject to any other law in force in the ACT, payable in priority to any other debts or liabilities of the estate, trust or fund.
- (3) The incidence of the fees and expenses payable under this section as between capital and income shall be determined by the public trustee.

**Section 29**

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- (4) Where, but for this subsection, there would be payable to the public trustee under this section an amount in respect of fees or expenses, the public trustee may dispense with the payment of that amount or reduce the amount that would otherwise be payable where the public trustee is satisfied that payment of the amount would impose hardship on a person or that other circumstances exist that justify taking such action.

**29 Payments to persons outside Australia**

- (1) Where any moneys or chattels are payable or deliverable by the public trustee to a person in a country other than Australia, the public trustee may pay those moneys or deliver those chattels, on behalf of that person—
  - (a) to a consular officer of that country resident in Australia; or
  - (b) if there is no such officer—to an official of that country, wherever the official is resident, who appears to the public trustee to be a suitable person to receive those moneys or chattels.
- (2) The receipt of a consular officer or official of moneys or chattels paid or delivered to him or her under subsection (1) is a complete and sufficient discharge to the public trustee and the public trustee has no further concern to see to the application of those moneys or chattels.

**30 Dealings with other public trustees**

- (1) Where—
  - (a) the public trustee is administering the estate in the ACT of a person who, at the time of the person's death, was domiciled outside the ACT; and
  - (b) the estate of the person in the place in which the person was, at the time of the person's death, domiciled is being administered by the public trustee or other like official of the place of domicile;

**Section 31**

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the public trustee may, after payment of creditors and the fees, charges and expenses provided for under this Act, pay the balance of the proceeds of the estate in the ACT to the public trustee or other like official of the place of domicile, without incurring any liability in relation to the payment, and without any obligation to see to the application, of that balance.

## (2) Where—

- (a) the estate of a deceased person who, at the time of the person's death, was domiciled in the ACT is being administered by the public trustee; and
- (b) the public trustee or other like official of a place other than the ACT has obtained administration of the estate of the deceased person in that place;

the public trustee may receive from that public trustee or other like official the balance of the estate of the deceased person in that place.

## (3) The balance of an estate received by the public trustee under subsection (2) shall form part of the estate of the deceased person in the ACT.

**31 Unclaimed moneys**

## (1) Where—

- (a) the public trustee has been administering an estate for a period of not less than 6 years; and
- (b) moneys forming part of the estate are being held by the public trustee; and
- (c) the public trustee—
  - (i) has no knowledge of the existence or whereabouts of a person who is, or claims to be, entitled to the moneys; or
  - (ii) in a case in which the existence and whereabouts of the person entitled to receive the moneys are known to the

**Section 32**

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public trustee—is unable, for any reason whatsoever, to effect payment of the moneys to the person;

the public trustee shall pay those moneys to the Territory.

- (2) A person who claims to be entitled to any moneys paid to the Territory under subsection (1) may apply to the court for an order declaring the person to be so entitled and, if the court is satisfied that the person is entitled to the moneys or a part of the moneys, it may make an order accordingly.
- (3) Where an order is made under subsection (2), there is payable to the person in whose favour the order is made by the Territory an amount equal to the amount specified in the order.

**32 Allowance of claims**

The public trustee may—

- (a) at any time, require a person to make a statutory declaration or produce other sufficient evidence to support a claim in connection with—
  - (i) an estate or trust being administered by the public trustee; or
  - (ii) property of which the public trustee is manager; and
- (b) refuse to admit or take any further action in relation to the claim until the declaration or evidence is produced.

**33 Dispute involving claims**

- (1) The public trustee may, in connection with the administration of a deceased estate, cause a notice to be published in a newspaper circulating in the ACT requiring any person who claims to be a creditor against the estate to notify the public trustee in writing of the claim within such period as is specified in the notice.
- (2) Where—

**Section 33**

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- (a) the public trustee causes a notice to be published under subsection (1); and
  - (b) a claim is made by a person in accordance with the notice; and
  - (c) the public trustee disputes, in whole or in part, the claim of the person;
- the public trustee shall give to the person a notice, in writing—
- (d) setting out the decision of the public trustee; and
  - (e) calling upon the person to institute proceedings to enforce the claim within 6 months after the receipt by the person of the notice; and
  - (f) containing a statement informing the person of the effect of a refusal or failure by the person to comply with the notice.
- (3) If a person to whom a notice is given under subsection (2) does not, within the period specified in the notice, or within such further period as the court, on an application made to it by the person before the expiration of that firstmentioned period, allows, institute proceedings to enforce the person's claim—
- (a) the public trustee may deal with the estate in connection with which the notice under subsection (1) was published without taking into consideration the claim or so much of the claim as the public trustee disputes; and
  - (b) the right of the person to recover the amount of the claim or that part of the claim that the public trustee disputes shall be absolutely barred.

## **Part 5                    Unclaimed property**

### **34 Application for appointment as manager of property**

- (1) The public trustee may apply to the court for an order appointing the public trustee manager of property where—
  - (a) the owner of the property is unknown; or
  - (b) the whereabouts of the owner of the property are unknown; or
  - (c) it is not known whether the owner of the property is alive or dead; or
  - (d) the owner of the property is dead or permanently or indefinitely absent from the ACT and—
    - (i) it is not known whether the person has a personal representative or agent in the ACT with authority to take possession of and administer the property; or
    - (ii) the whereabouts of the person's personal representative or agent are unknown; or
    - (iii) it is not known whether the person's personal representative or agent is alive or dead; or
  - (e) the owner of the property is a corporation and an officer or agent of the corporation cannot be found; or
  - (f) the property appears to have been abandoned.
- (2) On an application being made to it under this section, the court may, by order, appoint the public trustee manager of the property in respect of which the application is made if the court is satisfied that the appointment is necessary or desirable—
  - (a) in the interests of the owner of the property or of any other person; or
  - (b) in order to properly protect or preserve the property.

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Section 35

- (3) In making an order under this section appointing the public trustee manager of property, the court may specify the powers that may be exercised by the public trustee in connection with the property.

**35 Election to become manager of property**

- (1) Where, in respect of property in connection with which an application could be made under section 34, the public trustee—  
(a) estimates that the gross value of the property does not exceed \$10 000; and  
(b) is satisfied that—  
(i) in the interests of the owner of the property or of any other person; or  
(ii) in order to properly protect or preserve the property; it is necessary or desirable that the public trustee should become the manager of the property;

the public trustee may, without making an application to the court, elect to become manager of the property by filing in the office of the court a notice of election.

- (2) On a notice of election being filed by the public trustee under subsection (1), the public trustee shall become manager of the property in respect of which the election is made.

**36 Notice of appointment or election**

Forthwith after making an application under section 34 or filing a notice of election under section 35, the public trustee shall cause a notice of the application or election, as the case may be, to be published in a newspaper circulating in the ACT.

**37 Property does not vest in public trustee as manager**

Where the public trustee—

Section 38

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- (a) is appointed or elects to become manager of property under this part; or
- (b) becomes manager of property under this part because of section 40 (1);  
the property does not vest in the public trustee.

**38 Powers of public trustee as manager**

- (1) Unless the court in a particular case otherwise orders, the public trustee as manager of property under this part may—
  - (a) take or recover possession of the property and recover all sums of money (including sums of money payable in respect of damages and mesne profits) payable to the owner of the property in connection with the property, whether the money became payable before or after the public trustee became manager of the property; and
  - (b) do all things necessary for obtaining or perfecting the title to the property; and
  - (c) carry out or enforce, in such manner as the public trustee thinks fit, any contract affecting the property and exercise any powers conferred by the contract; and
  - (d) perform or discharge any obligation or duty imposed on the owner of the property; and
  - (e) apply the property, or any moneys received by the public trustee as manager of the property, for the maintenance, education, advancement or benefit of the spouse, children or other dependants of the owner of the property; and
  - (f) pay, out of moneys received or borrowed by or advanced to the public trustee as manager of the property—
    - (i) any mortgages, charges or other obligations on or attached to the property; and

**Section 39**

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- (ii) any debts, liabilities, costs, expenses or other obligations of the owner of the property; and
  - (g) exercise any power conferred by or under an instrument or any law in force in the ACT on the owner of the property; and
  - (h) subject to this Act, sell the property; and
  - (i) cut, gather and sell crops growing or situated on the property; and
  - (j) erect or contribute to the costs of erecting fences on or around the property; and
  - (k) in the name of the owner of the property or, if the public trustee thinks fit, in the corporate name of the public trustee, bring or defend any proceedings relating to the property; and
  - (l) exercise such other powers as may be conferred on the public trustee by the court under section 34 (3); and
  - (m) subject to the provisions of this part relating to the sale of property by the public trustee, exercise such powers that the public trustee, if the public trustee were the trustee of the property, could, under this Act or any other law in force in the ACT, exercise in relation to the property.
- (2) An instrument executed by the public trustee as manager of property in the exercise of any of the powers conferred on the public trustee under this part shall have effect and may be registered in all respects as if it had been executed by the owner of the property.

**39 Application for directions and sale of property in special circumstances**

- (1) The court may, on an application made to it in relation to property of which the public trustee is manager under this part, give directions relating to—
  - (a) the property; or
  - (b) the management or administration of the property; or

**Section 39**

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- (c) the exercise of any of the powers conferred on the public trustee under this part in respect of the property.
- (2) An application under subsection (1) may be made by—
  - (a) the public trustee; or
  - (b) the spouse, a child or any other person who is a dependant of the owner of the property to which the application relates; or
  - (c) any person who has an interest in the property to which the application relates.
- (3) The court may, on an application made to it by the public trustee in relation to property of which the public trustee is manager under this part, make an order authorising the public trustee to sell the property on such conditions as it thinks fit.
- (4) Before determining an application under this section, the court may direct that notice of the application—
  - (a) be served on such person as it thinks fit; or
  - (b) be published in such manner as it thinks fit.
- (5) For the purpose of determining an application under this section, the court shall have regard to—
  - (a) the need for preservation of the property to which the application relates; and
  - (b) the likelihood of the property deteriorating; and
  - (c) the interest of any person having an interest in the property; and
  - (d) the interest of the spouse, a child or any other person who is a dependant of the owner of the property; and
  - (e) in the case of an application under subsection (3)—whether continued management of the property by the public trustee might, for any reason, be unduly onerous; and

**Section 40**

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(f) such other matter as it thinks fit.

(6) Where—

- (a) the public trustee is acting as manager of property under this part; and
- (b) the gross value of the property does not exceed \$5 000; and
- (c) the public trustee considers that it is necessary or desirable to sell the property having regard to—
  - (i) the likelihood of the property deteriorating; or
  - (ii) the interest of any person having an interest in the property; or
  - (iii) the interest of the spouse, a child or any other person who is a dependant of the owner of the property; or
  - (iv) the likelihood that continued management of the property by the public trustee might, for any reason, be unduly onerous;

the public trustee may sell the property.

(7) Where the public trustee sells property under this section, the public trustee ceases to be manager of that property.

**40 Management of certain moneys by public trustee**

(1) Where the public trustee—

- (a) receives moneys as the proceeds of a sale or property effected under this section 39; or
- (b) receives or recovers any moneys (including moneys received or recovered as income, damages or mesne profits) in respect of property of which the public trustee is manager;

the public trustee shall, under this subsection, become manager under this part of those moneys.

Section 41

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- (2) Subsection (1) does not apply in relation to moneys received as the proceeds of a sale of property under section 43.

**41 Property to be held for owner**

Where the public trustee takes possession of property of which the public trustee—

- (a) has been appointed, or has elected to become, manager under this part; or
- (b) has become manager under this part because of section 40 (1);  
the property shall, after payment of all moneys authorised to be applied, expended or charged by the public trustee, be held by the public trustee for the owner of or person beneficially entitled to the property.

**42 Charge over property**

- (1) Where any fees, costs or expenses are incurred by or payable to the public trustee as manager of property under this part, there is created, by force of this subsection, a charge on that property to secure the payment of those fees, costs or expenses.
- (2) The charge created on property by subsection (1)—
  - (a) is subject to any mortgage or charge to which the property was subject immediately before the fees, costs or expenses were incurred or became payable; and
  - (b) subject to subsection (3), has priority over all other mortgages or charges whatsoever.
- (3) The public trustee may postpone, wholly or in part, a charge created on property by subsection (1) in favour of a mortgage or charge created after the firstmentioned charge was created.
- (4) The amount of money for the time being charged on property under subsection (1) shall bear interest at such rate as is prescribed.

**43 Disposal of property**

(1) Where—

- (a) the public trustee is satisfied that a person is the owner of or beneficially entitled to property of which the public trustee is manager under this part; and
- (b) the whereabouts of the person are known to the public trustee; the public trustee shall transfer the property to the person or, where for any reason the public trustee considers that it is not reasonably practicable to transfer the property to the person, the public trustee shall give to the person a notice—
  - (c) describing the property; and
  - (d) specifying the location of the property; and
  - (e) informing the person that the public trustee is acting as manager of the property; and
  - (f) requesting that the person, within such period as is specified in the notice, being a period of not less than 2 months after the date of the notice, take delivery of, or make arrangements, satisfactory to the public trustee, for taking delivery of, the property; and
  - (g) informing the person of the action that may be taken by the public trustee under this section in connection with the property in the event of the request referred to in paragraph (f) not being complied with.

(2) Where—

- (a) a notice relating to property is given to a person under subsection (1); and
- (b) the person—
  - (i) does not comply with the request contained in the notice; or

**Section 43**

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- (ii) having complied with the request by making arrangements for taking delivery of the property—does not give effect to those arrangements;

the public trustee shall give to the person a further notice—

- (c) requiring the person, within such period as is specified in the notice, being a period of not less than 3 months after the date of the notice, to take delivery of, or make arrangements, satisfactory to the public trustee, for taking delivery of, the property; and
- (d) informing the person of the relevant action that may be taken by the public trustee in connection with the property under subsection (3) if the requirement referred to in paragraph (c) is not complied with; and
- (e) where appropriate, informing the person that the proceeds of sale of the property will be paid to the Territory.

(3) Where—

- (a) a notice relating to property is given to a person under subsection (2); and
- (b) the person—
  - (i) does not comply with the requirement contained in the notice; or
  - (ii) having complied with the requirement by making arrangements for taking delivery of the property—does not give effect to those arrangements;

the public trustee—

- (c) if the property is not money—
  - (i) where the gross value of the property exceeds \$5 000—may apply to the court for an order to sell the property and the court may make an order accordingly; or

**Section 43**

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- (ii) where the gross value of the property does not exceed \$5 000—may sell the property; or
  - (d) if the property is money—shall, after deduction of all costs and charges lawfully due to the public trustee or any other person in connection with the property, pay it to the Territory.
- (4) Where, on an application made to it by a person, the court is satisfied that—
- (a) the applicant or another person is the owner of or beneficially entitled to property of which the public trustee is manager under this part; and
  - (b) the whereabouts of the applicant or that other person are known;
- the court shall order that the property be transferred to the applicant or that other person, as the case requires, or make such other order as it thinks fit.
- (5) Where—
- (a) the public trustee has continued to act as manager of property for a period of not less than 7 years; and
  - (b) the owner of or person beneficially entitled to the property has not been ascertained or, if ascertained, has not been located; and
  - (c) the gross value of the property does not exceed \$5 000;
- the public trustee—
- (d) if the property is not money—may sell or otherwise dispose of the property in such manner as the public trustee thinks fit; or
  - (e) if the property is money—shall, after deduction of all costs and charges lawfully due to the public trustee or any other person in connection with the property, pay it to the Territory.

Section 44

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- (6) Where, on an application made to it by the public trustee, the court is satisfied that—
  - (a) the public trustee has continued to act as manager of property for a period of not less than 7 years; and
  - (b) the owner of or person beneficially entitled to the property has not been ascertained or, if ascertained, has not been located;

the court shall order—

  - (c) if the property is not money—that the property be sold or otherwise disposed of in such manner as it thinks fit; or
  - (d) if the property is money—that, after deduction of all costs and charges lawfully due to the public trustee or any other person in connection with the property, it be paid to the Territory.
- (7) Before selling or otherwise disposing of property under subsection (5), the public trustee shall cause a notice of the proposed sale or disposal to be published—
  - (a) in a newspaper circulating in the ACT; and
  - (b) where the last-known place of residence of the person lawfully entitled to the property is a place in a State or another Territory—in a newspaper circulating in that State or Territory.
- (8) Before determining an application under subsection (6), the court may direct—
  - (a) that notice of the application be served on such person as it thinks fit; and
  - (b) that notice of the application be published in such manner as it thinks fit.

**44 Cessation of management**

- (1) The public trustee shall cease to be manager of property where—
  - (a) the property is transferred to a person under section 43 (1); or

**Section 45**

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- (b) the property is transferred to a person in consequence of a notice having been given to the person under section 43 (1) or (2); or
  - (c) the property is sold under section 43 (3); or
  - (d) the property, being money, is paid to the Territory under section 43 (3), (5) or (6); or
  - (e) the property is transferred to a person under, or effect is otherwise given to, an order made under section 43 (4); or
  - (f) the property is sold or otherwise disposed of under section 43 (5) or (6).
- (2) On ceasing to be manager of property under subsection (1) (c) or (f), the public trustee shall, after deduction of all costs and charges lawfully due to the public trustee or any other person in connection with the property, pay to the Territory any proceeds of sale of the property.
  - (3) The cessation under this section or section 39 (7) of the authority of the public trustee to act as manager under this part does not affect any charge acquired by the public trustee in respect of the property, or the validity of any act or thing done by the public trustee in connection with the property, while acting in that capacity.

**45 Claims made after cessation of management**

- (1) Where, on the public trustee ceasing to be manager of property, money is paid to the Territory under section 43 (3), (5) or (6) or 44 (2), a person may apply to the court for an order under this section in relation to the property.
- (2) Where, on an application made to the court under this section, the court is satisfied that, at the time the public trustee ceased to be manager of the property in connection with which the application is made, the applicant was the owner or 1 of the owners of the property or beneficially entitled or 1 of the persons beneficially entitled to the property, the court may make an order to that effect.

Section 45

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- (3) On an order being made by the court under this section in connection with property, there is payable by the Territory to the person in relation to whom the order was made—
- (a) where the court was satisfied that the person was the sole owner of or the only person beneficially entitled to the property—an amount equal to the amount or the aggregate of the amounts paid to the Territory in connection with the property; and
  - (b) where the court was satisfied that the person was 1 of the owners of or persons beneficially entitled to the property—an amount equal to such part of the amount or the aggregate of the amounts paid to the Territory in connection with the property as bears the same proportion to that lastmentioned amount, or that aggregate, as the case requires, as the interest of the person in the property bears to the interest that the person would have if the person were the sole owner of or the only person beneficially entitled to the property.

## **Part 6                      Financial**

### **Division 6.1              Investment board**

## **46 Establishment of board**

There is established by this Act a board by the name of the Public Trustee Investment Board.

## 47 Function of board

The function of the board is to advise the public trustee on the investment of money that is from time to time in a common fund or otherwise in the hands of the public trustee and available for investment.

*Note* A provision of a law that gives an entity a function also gives the entity powers necessary and convenient to exercise the function (see *Legislation Act 2001*, s 196 and dict, pt 1, def of **entity**).

## **48      Membership of board**

- (1) The board consists of—  
(a) the public trustee; and  
(b) at least 2 other members appointed by the Minister.

*Note 1* For the making of appointments (including acting appointments), see *Legislation Act 2001*, div 19.3.

**Note 2** In particular, a person may be appointed for a particular provision of a law (see *Legislation Act 2001*, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

**Note 3** Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see *Legislation Act 2001*, div 19.3.3).

- (2) A member mentioned in subsection (1) (b) must be appointed for a term of not longer than 3 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see *Legislation Act 2001*, s 208 and dict , pt 1, def of *appoint*).

## **49 Senior member of board**

The public trustee shall be the senior member of the board.

## **50 Acting members**

- (1) The Minister may, in writing, appoint a person to act as a member, other than a senior member—
- (a) during a vacancy in the office of a member, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when a member is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of the office;
- but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.
- (6) If the person appointed to act as a member is a public servant, the appointment of the person so to act ceases to have effect if the person ceases to be a public servant.
- (8) The validity of anything done by a person purporting to act under subsection (1) shall not be called in question on the ground that the occasion for the appointment of the person had not arisen, that there is a defect or irregularity in or in connection with the appointment, that the appointment ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

## **52 Resignation**

A member, other than the public trustee, may resign his or her office by writing signed by the member and delivered to the Minister.

### **53 Termination of office**

- (1) The Minister may terminate the appointment of a member, other than the public trustee, by reason of misbehaviour or physical or mental incapacity.
- (2) If a member, other than the public trustee—
  - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (b) is absent, except on leave granted by the Minister, from 3 consecutive meetings of the board;

the Minister shall terminate the appointment of the member.
- (3) A member who is a public servant ceases to hold office as a member if the member ceases to be a public servant.

### **54 Meetings of board**

- (1) The senior member shall convene such meetings of the board as the senior member considers necessary for the efficient performance of its function.
- (2) At a meeting of the board, 2 members constitute a quorum.
- (3) The senior member shall preside at all meetings of the board at which the senior member is present.
- (4) If the senior member is not present, the member chosen by the members present presides.
- (5) Subject to subsection (7), questions arising at a meeting of the board shall be determined by a majority of the votes of the members present and voting.
- (6) Subject to subsection (7), the person presiding at a meeting of the board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

- (7) Where only 2 members are present at a meeting of the board and they differ on a question arising at the meeting, that question shall be deferred until the next meeting at which more than 2 members are present.
- (8) In this section, a reference to a member includes, if a person is acting as a member, a reference to the person so acting.

## **Division 6.2                      Common funds**

### **55 Establishment of common funds etc**

- (1) The public trustee shall establish and maintain 1 or more common funds.
- (2) Subject to this Act and any order of the court, the public trustee shall pay into 1 or more of the common funds all money received by the public trustee on behalf of an estate, trust or person, including moneys received by the public trustee as manager of property.
- (3) The public trustee shall not pay money into a common fund where—
  - (a) investment in a common fund is expressly prohibited by the terms of a trust under which the money is received by the public trustee; or
  - (b) property of an estate or trust in connection with which the money is received is held by the public trustee jointly with another person and that other person, by notice in writing given to the public trustee, objects to the application of the money in that manner.
- (4) The public trustee shall, in respect of each estate, trust or person on whose behalf money is paid into a common fund, keep proper accounts showing the amount for the time being at the credit of that estate, trust or person in the common fund.

## **56 Investment of money held in common funds**

- (1) Money in a common fund must be invested by the public trustee having regard to any advice given by the board.

*Note* The *Trustee Act 1925*, subdivision 2.2.1 contains provisions about the powers and duties of trustees (including the public trustee) in relation to investments.

- (2) Investments made from money in a common fund shall not be made in the name or on account of, or belong to, any particular estate, trust or person.
- (3) The public trustee may sell or otherwise convert into money any investments acquired under this section.

## **57 Investment of money not held in common funds**

Where money received by the public trustee is not, under section 55, required to be paid into a common fund—

- (a) the money shall belong to and be held in the name of the estate, trust or person on whose behalf the money is received; and
- (b) the public trustee must invest the money in accordance with any directions applying to it; and
- (c) capital or income received in respect of an investment made under paragraph (b) shall be credited to the estate, trust or person on whose behalf the investment is made; and
- (d) any loss arising out of an investment made under paragraph (b) shall be debited to the estate, trust or person on whose behalf the investment is made.

## **58 Withdrawal of money from common funds**

- (1) The public trustee may withdraw an amount from a common fund at the credit of an estate, trust or person and—

- (a) apply the amount for any purpose relating to the exercise or performance, in connection with that estate, trust or person, of any of the powers or functions of the public trustee; or
  - (b) invest the amount separately for the benefit of that estate, trust or person.
- (2) The public trustee shall withdraw from a common fund an amount paid into the fund in accordance with section 55 on behalf of an estate or trust in respect of which property is held by the public trustee jointly with another person where that other person, by notice in writing given to the public trustee, objects to the retention of that amount in the fund.
- (3) An amount withdrawn from a common fund under this section shall, from the date of withdrawal, cease to have a claim for any benefit from the common fund.

## **59 Distribution of capital and income**

- (1) The public trustee must distribute any capital or income paid into the income account of a common fund to the estates, trusts or persons having an interest in the common fund.
- (2) Distributions must be made at times decided by the public trustee and having regard to any advice given by the board.

## **59A Management fee**

- (1) The public trustee shall establish and maintain an account to be called the fees and commissions account.
- (2) The fees and commissions account shall not form part of a common fund.
- (3) The public trustee is entitled to charge a management fee for the administration of moneys held in a common fund.
- (4) The management fee must be the amount determined by, or worked out in accordance with the rate or scale determined by, the Minister for this section.

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- (5) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (6) A management fee shall be deducted on the last day of each month.
- (7) Management fees received under this section shall be paid into the fees and commissions account.

## **60 Income accounts**

- (1) The public trustee shall establish and maintain for each common fund an account called an income account.
- (2) The income account forms part of the common fund.
- (3) The public trustee shall pay any capital or income received in relation to the common fund into that income account.
- (4) If an amount to the credit of the income account is not for the time being required—
  - (a) to be distributed under section 59; or
  - (b) to be transferred to the common fund guarantee and reserve account under section 61; or
  - (c) to be applied in accordance with section 63 (Application of surplus funds);

the amount, or the part of the amount decided by the public trustee, must be invested by the public trustee.

- (5) In acting under subsection (4), the public trustee must have regard to any advice given by the board.
- (6) Capital or income received on investments made under subsection (4) is to be paid into the income account.

## **61 Common fund guarantee and reserve account**

- (1) The public trustee shall establish and maintain an account to be called the common fund guarantee and reserve account.
- (2) The common fund guarantee and reserve account shall not form part of a common fund.
- (3) If, after distribution of capital and income under section 59, a balance remains in an income account, the public trustee must transfer from the account to the common fund guarantee and reserve account the amount decided by the public trustee having regard to any advice given by the board.
- (5) Subject to this section, the common fund guarantee and reserve account may be applied by the public trustee for any of the following purposes:
  - (a) payment to a common fund of an amount equal to the amount of any loss sustained on the realisation of an investment made from the common fund;
  - (b) payment of costs and expenses incurred in protecting investments made from a common fund;
  - (c) payment of any other expenses or charges incurred in connection with—
    - (i) the maintenance or administration of a common fund; or
    - (ii) investments made from a common fund;  
not being expenses or charges that are properly chargeable against a particular estate or trust;
  - (d) payment of costs and expenses incurred in legal proceedings involving an estate or trust in respect of which moneys are held in a common fund, other than—
    - (i) costs and expenses ordered by the court to be charged against a particular estate or trust; and

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- (ii) in the case of costs and expenses properly chargeable against a particular estate or trust—so much of those costs and expenses as are able to be met by the estate or trust;
  - (e) payment of the costs and expenses or part of the costs and expenses incurred by the public trustee in obtaining legal advice or in, or in connection with, legal proceedings in which the public trustee is a party where, by reason of general interest in, and importance of, the subject matter of the advice or proceedings, it is not appropriate for any or all of those costs and expenses to be charged against a particular estate or trust.
  - (6) If there is an amount at credit in the common fund guarantee and reserve account that is not for the time being required to be applied for any of the purposes mentioned in subsection (5), the amount must be invested by the public trustee.
  - (7) Capital or income received in respect of investments made under subsection (6) shall be paid into the common fund guarantee and reserve account.
  - (8) The public trustee is entitled to charge a management fee for the administration of moneys held in the common fund guarantee and reserve account.
  - (9) The management fee must be the amount determined by, or worked out in accordance with the rate or scale determined by, the Minister for this section.
  - (10) A determination is a disallowable instrument.

*Note*      A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (11) A management fee shall be deducted on the last day of each month.

### **63 Application of surplus funds**

- (1) This section applies if a balance remains in an income account after each amount required under this part to be paid from the account is paid.
- (2) The balance, or the part of the balance decided by the public trustee having regard to any advice given by the board, may be applied towards the costs and expenses necessarily incurred by the public trustee in the exercise of the public trustee's functions under this Act.

### **64 Advances from common funds**

- (1) The public trustee may, having regard to any advice given by the board, make advances from a common fund for any purpose relating to—
  - (a) an estate or trust being administered by the public trustee; or
  - (b) property of which the public trustee is manager.
- (2) An advance under subsection (1) must bear interest at the rate, and be made on any other conditions, that the public trustee from time to time decides having regard to any advice given by the board.
- (3) An advance under subsection (1), together with the interest payable under subsection (2) in respect of the advance, shall be a charge on—
  - (a) all of the property of the estate or trust in connection with which the advance is made or all of the property being managed, as the case requires; or
  - (b) if the advance is made in respect of part only of that property—the particular property in respect of which the advance is made.
- (4) A charge on property created under this section in connection with an advance shall rank next in priority to any mortgage or other

charge registered against or secured on the property of which the public trustee has notice at the time of making the advance.

## **65 Advances to beneficiaries**

- (1) Where—
  - (a) a person is beneficially entitled in an estate or trust being administered by the public trustee; and
  - (b) the person applies, in writing, to the public trustee for an advance against the person's beneficial interest;

the public trustee may make an advance or advances in accordance with this section to the person from a common fund containing money received by the public trustee on behalf of the estate, trust or person.
- (2) The public trustee must not make an advance to a person under subsection (1) if the advance exceeds, or the total of the advances made to the person would exceed,  $\frac{1}{2}$  of the amount the public trustee estimates to be the value of the person's beneficial interest in the estate or trust against which the advance is to be made.
- (3) An advance under subsection (1) must bear interest at the rate, and be made on any other conditions, that the public trustee from time to time decides having regard to any advice given by the board.
- (4) An advance under subsection (1), together with the interest payable under subsection (3) in respect of the advance, shall be a charge against the beneficial interest of the person to whom the advance is made subject only to any prior charges on that interest of which the public trustee has, before making the advance, received notice in writing.
- (5) An advance under subsection (1), together with the interest payable under subsection (3) in respect of the advance and any costs, charges or expenses incurred by the public trustee in connection with the advance or the recovery of the advance shall, unless

expressly agreed to the contrary, be repayable on demand to the public trustee by the person to whom the advance was made.

**Part 7****Miscellaneous****66 Sale of goods by auction**

- (1) Where—
  - (a) the public trustee proposes to realise—
    - (i) personal property of an estate or trust being administered by the public trustee; or
    - (ii) property of which the public trustee is manager; and
  - (b) the value of the property does not, in the opinion of the public trustee, exceed \$2 000;  
the property may be offered for sale by auction by the public trustee or by a person authorised, in writing, by the public trustee.
  - (2) A person who carries out an auction under subsection (1) is not, for the purposes of that auction, required to hold a licence under the *Auctioneers Act 1959*.

**67 Notices to be given to public trustee**

- (1) Where an application is made to the court by a person other than the public trustee for an order—
  - (a) directing that a sum of money be paid to the public trustee; or
  - (b) vesting property in the public trustee; or
  - (c) appointing the public trustee as trustee, executor, administrator, manager or guardian;

the court shall not make an order unless—

  - (d) the public trustee consents to the order being made; or

**Section 68**

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- (e) the applicant has served on the public trustee a notice informing the public trustee of the application and a period of 14 days has elapsed after the service of the notice.
  - (2) Where the court makes an order of a kind referred to in subsection (1), the applicant shall, within 28 days after the order is made, serve on the public trustee—
    - (a) a sealed copy of the order; and
    - (b) a statement of any property affected by the order.
- Maximum penalty: 2 penalty units.
- (3) A statement relating to property referred to in subsection (2) shall—
    - (a) specify the place at which the property is situated; and
    - (b) specify the person by whom the property is held; and
    - (c) contain details of any liabilities existing in respect of the property; and
    - (d) contain such other details (if any) as are prescribed.

**68 Costs in legal proceedings**

- (1) Where, in proceedings in which the public trustee is a party or is in any way interested, the public trustee is represented by a legal practitioner who is a public servant, the public trustee is entitled to the same costs and allowances as if the public trustee had been represented by a legal practitioner who was not a public servant.
- (2) Where, in proceedings in which the public trustee is a party or is in any way interested, the person for the time being holding the office of public trustee, being a legal practitioner, appears in person, the public trustee is entitled to the same costs and allowances as if the public trustee had been represented by another person who was a legal practitioner.

**69 Costs arising out of certain applications**

Where the public trustee applies under the Administration Act for the grant of probate of the will, or administration of the estate, of a deceased person—

- (a) the public trustee is entitled to the costs of the public trustee of and incidental to the application out of the estate of the deceased person; and
- (b) the public trustee is not liable for the costs of any other person.

**70 Jurisdiction of court**

Jurisdiction to hear and determine applications under this Act is vested in the court.

**71 Certain covenants void**

A covenant, stipulation or condition contained in a mortgage—

- (a) whereby the money secured by the mortgage becomes due and payable; or
- (b) whereby a power of sale or entry into possession becomes exercisable; or
- (c) adversely affecting, or likely to affect adversely, the estate or interest of the mortgagor;

in the event of the public trustee becoming entitled, in any capacity, to administer the estate of the mortgagor or of the estate of the mortgagor coming under the control of the public trustee, is null and void.

**72 Lien in respect of insurance premiums**

Where the public trustee pays a premium in respect of a policy of insurance relating to—

- (a) property the subject of an estate or trust being administered by the public trustee; or

**Section 73**

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(b) property of which the public trustee is manager; the public trustee shall have a lien on moneys paid out under the policy for the amount of premium so paid.

**73 Manner of giving notices**

A document that is required or permitted by this Act to be given to or served on a person by the public trustee may be given or served by sending it by post to the person at the last-known place of residence of that person.

**74 Evidence**

- (1) Where the public trustee is acting in any of the capacities in which the public trustee is, under this Act, authorised to act, a certificate under the seal of the public trustee stating—
  - (a) the capacity in which the public trustee is authorised to act; and
  - (b) the manner in which the public trustee became authorised to act in that capacity; and
  - (c) the time at which the public trustee became authorised to act in that capacity; and
  - (d) that the real or personal property described in the certificate is property in respect of which the public trustee may, while acting in that capacity, exercise powers;

is evidence of the matters so stated.

- (2) Where the public trustee is executor or administrator of, or is authorised by law to administer, the estate of a deceased person, a certificate under the seal of the public trustee stating all or any of the following matters:
  - (a) the name of the deceased;
  - (b) the residential address of the deceased at the time of death;

**Section 75**

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- (c) the occupation of the deceased immediately prior to death;
- (d) the nature or form of the authority under which the public trustee is administering the estate;
- (e) the date of granting of the authority referred to in paragraph (d);
- (f) the manner in which the public trustee became authorised to administer the estate;
- (g) the time at which the public trustee became authorised to administer the estate;

is evidence of the matters so stated.

- (3) Where the public trustee is acting jointly with another person in any capacity, a certificate under the seal of the public trustee stating, in connection with the authority of the public trustee and that other person to act jointly in that capacity—
    - (a) the matters referred to in subsection (1); or
    - (b) any or all of the matters referred to in subsection (2);
- is evidence of the matters so stated.

## **75 Determination of fees and charges**

- (1) The Minister may, in writing, determine fees and charges for this Act.

*Note* The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees and charges (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Section 76

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**76 Regulation-making power**

The Executive may make regulations for this Act.

*Note*      Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## **Endnotes**

### **1 About the endnotes**

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### **2 Abbreviation key**

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	RI = reissue
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

## **Endnotes**

### **3 Legislation history**

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#### **3 Legislation history**

This Act was originally a Commonwealth ordinance—the *Public Trustee Ordinance 1985* (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

After 11 May 1989 and before 10 November 1999, Acts commenced on their notification day unless otherwise stated (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) s 25).

#### **Legislation before becoming Territory enactment**

##### **Public Trustee Act 1985 No 8**

notified 8 March 1985

s 1, s 2 commenced 8 Mar 1985

remainder commenced 28 October 1985 (Cwlth Gaz 1985 No G42)

as amended by

##### **Magistrates Court Ordinance 1985 No 67**

notified 19 December 1985

commenced 1 February 1986 (Cwlth Gaz 1986 No G3)

##### **Administrative Arrangements (Consequential Amendments) Ordinance 1987 No 37 s 6**

notified 24 July 1987

s 6 commenced 24 July 1987

##### **Self-Government (Consequential Amendments) Ordinance 1989 No 38 sch 1**

notified 10 May 1989 (Cwlth Gaz 1989 No S164)

s 1, s 2 commenced 10 May 1989 (s 2 (1))

sch 1 commenced 11 May 1989 (s 2 (2) and Cwlth Gaz 1989 No S164)

**Remuneration (Miscellaneous Amendments) Ordinance 1989 No 50  
sch**

notified 10 May 1989  
commenced 10 May 1989

**Legislation after becoming Territory enactment**

**Statutory Authorities (Audit Arrangements) Act 1990 No 25 pt 13**

notified 22 June 1990 (Gaz 1990 No S29)  
s 1, s 2 commenced 22 June 1990 (s 2 (1))  
pt 13 commenced 22 June 1990 (s 2 (2) and Gaz 1990 No S35)

**Public Trustee (Amendment) Act 1991 No 21**

notified 10 May 1991 (Gaz 1991 No S36)  
commenced 10 May 1991 (s 2)

**Public Trustee (Amendment) Act (No 2) 1991 No 91**

notified 24 December 1991 (Gaz 1991 No S155)  
commenced 24 December 1991

**Workers' Compensation (Consequential Amendments) Act 1991  
No 106 sch**

notified 15 January 1992 (Gaz 1991 No S3)  
s 1, s 2 commenced 15 January 1992 (s 2 (1))  
sch pt 1 commenced 22 January 1992 (s 2 (2) and see Gaz 1992  
No S9)

**Statute Law Revision (Miscellaneous Provisions) Act 1992 No 23  
sch 1**

notified 4 June 1992 (Gaz 1992 No S71)  
sch 1 commenced 4 June 1992

**Acts Revision (Position of Crown) Act 1993 No 44 sch 2**

notified 27 August 1993 (Gaz 1993 No S165)  
commenced 27 August 1993 (s 2)

**Statute Law Revision (Penalties) Act 1994 No 81 sch**

notified 29 November 1994 (Gaz 1994 No S253)  
s 1, s 2 commenced 29 November 1994 (s 2 (1))  
sch commenced 29 November 1994 (s 2 (2) and Gaz 1994 No S269)

## **Endnotes**

### **3 Legislation history**

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**Statutory Offices (Miscellaneous Provisions) Act 1994 No 97 sch pt 1**

notified 15 December 1994 (Gaz 1994 No S280)  
s 1, s 2 commenced 15 December 1994 (s 2 (1))  
sch pt 1 commenced 15 December 1994 (s 2 (2) and Gaz 1994  
No S293)

**Financial Management and Audit (Consequential and Transitional  
Provisions) Act 1996 No 26 sch pt 29**

notified 1 July 1996 (Gaz 1996 No S130)  
commenced 1 July 1996 (s 2)

**Public Trustee (Amendment) Act 1996 No 63**

notified 3 December 1996 (Gaz 1996 No S321)  
commenced 3 December 1996 (s 2)

**Remuneration Tribunal (Consequential Amendments) Act 1997 No 41  
sch 1 (as am by Act 2002 No 49 amdt 3.222)**

notified 19 September 1997 (Gaz 1997 No S264)  
commenced 24 September 1997 (s 2 as am by Act 2002 No 49  
amdt 3.222)

**Legal Practitioners (Consequential Amendments) Act 1997 No 96  
sch 1**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch 1 commenced 1 June 1998 (s 2 (2))

**Trustee (Amendment) Act 1999 No 28 sch**

notified 21 May 1999 (Gaz 1999 No S24)  
commenced 21 May 1999 (s 2)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 317**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 317 commenced 12 September 2001 (s 2 and see Gaz 2001  
No S65)

**Statute Law Amendment Act 2001 (No 2) 2001 No 56 pt 3.44**

notified 5 September 2001 (Gaz 2001 No S65)  
commenced 5 September 2001 (s 2 (1))

**Justice and Community Safety Legislation Amendment Act 2002  
No 27 pt 11**

notified LR 9 September 2002  
s 1, s 2 commenced 9 September 2002 (LA s 75)  
pt 11 commenced 7 October 2002 (s 2 (2))

**Statute Law Amendment Act 2002 (No 2) No 49 amdt 3.222**

notified LR 20 December 2002  
s 1, s 2 taken to have commenced 7 October 1994 (LA s 75 (2))  
amdt 3.222 taken to have commenced 24 September 1997 (s 2 (3))  
*Note* This Act only amends the Remuneration Tribunal  
(Consequential Amendments) Act 1997 No 41.

**Justice and Community Safety Legislation Amendment Act 2003  
A2003-2 pt 16**

notified LR 3 March 2003  
s 1, s 2 commenced 3 March 2003 (LA s 75 (1))  
pt 16 commenced 31 March 2003 (s 2 (2))

**4 Amendment history****Commencement**

s 2 om 2001 No 44 amdt 1.3501

**Crown to be bound**

s 3 om 1993 No 44 sch 2

**Interpretation for Act**

s 4 def **a common fund** sub 1999 No 28 sch  
def **barrister and solicitor** om 1997 No 96 sch 1  
def **public servant** om 1989 No 38 sch 1  
def **deputy public trustee** sub 1994 No 97 sch pt 1  
def **public trustee** sub 1994 No 97 sch pt 1

**Administration**

div 2.1 hdg (prev pt 2 div 1 hdg) renum R6 LA

**Public trustee**

s 5 am 1987 No 37  
sub 1994 No 97 sch pt 1

**Deputy public trustee**

s 6 am 1987 No 37  
sub 1994 No 97 sch pt 1

**Acting appointments**

s 7 am 1987 No 37; 1992 No 23 sch 1  
om 1994 No 97 sch pt 1

## Endnotes

### 4 Amendment history

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**Protection and liability of public trustee**

div 2.2 hdg (prev pt 2 div 2 hdg) renum R6 LA

**Liability of public trustee**

s 12 am 1989 No 38 sch 1

**General**

div 3.1 hdg (prev pt 3 div 1 hdg) renum R6 LA

**Appointment of public trustee as trustee**

div 3.2 hdg (prev pt 3 div 2 hdg) renum R6 LA

**Wills**

s 22 am 2001 No 44 amdt 1.3502

**Representation of parties in legal proceedings**

s 24 am 1997 No 96 sch 1

**Payment of money etc to public trustee on behalf of person under disability**

s 25 am 1985 No 67; 1991 No 106 sch; A2003-2 s 74, s 75

**Amounts etc paid by trustee for person under disability**

s 25A ins A2003-2 s 76

**Fees and expenses of public trustee**

s 28 am 2001 No 44 amdt 1.3503

**Unclaimed moneys**

s 31 am 1989 No 38 sch 1

**Disposal of property**

s 43 am 1989 No 38 sch 1

**Cessation of management**

s 44 am 1989 No 38 sch 1

**Claims made after cessation of management**

s 45 am 1989 No 38 sch 1

**Investment board**

div 6.1 hdg (prev pt 6 div 1 hdg) renum R6 LA

**Function of board**

s 47 am 1999 No 28 sch  
sub 2002 No 27 s 38

**Membership of board**

s 48 am 1987 No 37; 1994 No 97 sch pt 1  
sub 2002 No 27 s 39

**Acting members**

s 50 am 1987 No 37; 1992 No 23 sch 1

## Endnotes

Amendment history

4

### **Remuneration and allowances**

s 51                    sub 1989 No 50 sch  
                        om 1997 No 41 sch 1

### **Resignation**

s 52                    am 1987 No 37

### **Termination of office**

s 53                    am 1987 No 37

### **Meetings of board**

s 54                    am 1987 No 37; 2002 No 27 s 40

### **Common funds**

div 6.2 hdg            (prev pt 6 div 2 hdg) am 1999 No 28 sch  
                        renum R6 LA

### **Establishment of common funds etc**

s 55                    am 1999 No 28 sch

### **Investment of money held in common funds**

s 56                    am 1999 No 28 sch; 2002 No 27 s 41

### **Investment of money not held in common funds**

s 57                    am 1999 No 28 sch; 2002 No 27 s 42

### **Withdrawal of money from common funds**

s 58                    am 1999 No 28 sch; 2002 No 27 s 43

### **Distribution of capital and income**

s 59                    sub 1999 No 28 sch; 2002 No 27 s 44

### **Management fee**

s 59A                    ins 1991 No 21 s 3  
                        am 1996 No 63 s 4; 1999 No 28 sch; 2001 No 44 amdt 1.3504,  
                        amdt 1.3505

### **Income accounts**

s 60                    am 1996 No 63 s 5  
                        sub 1999 No 28 sch  
                        am 2002 No 27 s 45, s 46  
                        ss renum LA R7 (see also 2002 No 27 s 47)

### **Common fund guarantee and reserve account**

s 61                    am 1996 No 63 s 6; 1999 No 28 sch; 2001 No 44 amdt 1.3506;  
                        2002 No 27 ss 48-50

### **Directions of board about investments**

s 62                    sub 2001 No 56 amdt 3.473  
                        om 2002 No 27 s 51

### **Application of surplus funds**

s 63                    am 1996 No 63 s 7; 1999 No 28 sch  
                        sub 2002 No 27 s 52

## Endnotes

### 5 Earlier republications

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<b>Advances from common funds</b>		
s 64	am 1999 No 28 sch; 2002 No 27 s 53, s 54	
<b>Advances to beneficiaries</b>		
s 65	am 1999 No 28 sch; 2002 No 27 s 55, s 56	
<b>Audit</b>		
pt 6 div 3 hdg	ins 1990 No 25 s 16	
	om 1996 No 26 sch pt 29	
<b>Audit Act to apply</b>		
s 65A	ins 1990 No 25 s 16 am 1991 No 91 s 3 om 1996 No 26 sch pt 29	
<b>Financial reporting and audit</b>		
s 65B	ins 1990 No 25 s 16 om 1996 No 26 sch pt 29	
<b>Notices to be given to public trustee</b>		
s 67	am 1994 No 81 sch	
<b>Costs in legal proceedings</b>		
s 68	am 1997 No 96 sch 1	
<b>Determination of fees and charges</b>		
s 75	am 1987 No 37 sub 2001 No 44 amdt 1.3507	
<b>Regulation-making power</b>		
s 76	am 1987 No 37; 1989 No 38 sch 1 sub 2001 No 44 amdt 1.3508	

### 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Repubication No	Amendments to	Repubication date
1	Act 1991 No 91	31 May 1991
2	Act 1992 No 23	31 August 1992
3	Act 1994 No 97	28 February 1995

## **Endnotes**

Earlier publications 5

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4	Act 1996 No 63	31 December 1996
5	Act 1999 No 28	31 July 1999
6	Act 2001 No 56	31 January 2002
7	Act 2002 No 27	7 October 2002
7 (RI)	Act 2002 No 27 ‡	13 February 2003

‡ includes retrospective amendments by Act 2002 No 49

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