



Australian Capital Territory

# Public Trustee and Guardian Act 1985

A1985-8

**Republication No 33**

**Effective: 11 December 2021 – 5 April 2022**

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## About this republication

### The republished law

This is a republication of the *Public Trustee and Guardian Act 1985* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 11 December 2021. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 11 December 2021.

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, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### 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 the *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$160 for an individual and \$810 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

# Public Trustee and Guardian Act 1985

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Australian Capital Territory

# Public Trustee and Guardian Act 1985

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An Act appointing the public trustee and guardian, and for other purposes

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Public Trustee and Guardian Act 1985*.

### 2 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

### 3 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

### 3A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1* *Criminal Code*

The [Criminal Code](#), ch 2 applies to the following offences against this Act (see Code, pt 2.1):

- s 65A (Use and disclosure of protected information).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2* *Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

#### **4 Administration Act definitions**

A term defined in the [Administration Act](#) has the same meaning in this Act.

## Part 2                      The public trustee and guardian

### Division 2.1              Administration

#### 5                      Public trustee and guardian

The Public Trustee and Guardian is the person exercising the functions of public trustee and guardian (however described) in the public service.

#### 6                      Deputy public trustee and guardian

- (1) The director-general may appoint 1 or more public servants as deputy public trustee and guardian.

*Note 1* For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

- (2) A deputy public trustee and guardian may exercise a function of the public trustee and guardian, subject to any direction of the public trustee and guardian.

#### 8                      Public trustee and guardian a corporation sole

- (1) The public trustee and guardian—
- (a) is a corporation sole by the name of the Public Trustee and Guardian 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 and guardian, of acquiring, holding and disposing of real and personal property and of suing and being sued.

- (2) The *Financial Management Act 1996*, section 73 (1) (Nature of relevant territory authorities) does not apply in relation to the public trustee and guardian.

## **9 Agent of public trustee and guardian**

- (1) The public trustee and guardian may, from time to time, appoint a person to be an agent of the public trustee and guardian.

*Note 1* For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

- (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 and guardian in all matters relating to the business for which the person is appointed.

## **9A Delegation by public trustee and guardian**

- (1) The public trustee and guardian may delegate to a member of the public trustee and guardian's staff any function under this Act or another territory law.

*Note 1* For laws about delegations, see the [Legislation Act](#), pt 19.4.

*Note 2* **Function** includes authority, duty and power (see [Legislation Act](#), dict, pt 1).

- (2) However, a function may be delegated to a person only if the public trustee and guardian is satisfied that—
- (a) the function is of a kind that is appropriate to be exercised by the person; and
  - (b) the person has the qualifications, knowledge and experience appropriate for the function to be properly exercised; and

- (c) the person will comply with the *Guardianship and Management of Property Act 1991*, section 4 when exercising the functions of the public trustee and guardian under that Act; and
- (d) the person will comply with the obligations of the public trustee and guardian under the *Human Rights Act 2004*.

*Note* The public trustee and guardian must ensure the delegated function is properly exercised (see *Legislation Act*, s 238). Also, the public trustee and guardian may provide that the delegation has effect only in stated circumstances or subject to stated conditions, limitations or directions (see *Legislation Act*, s 234 and s 239).

## Division 2.2                      Protection and liability of public trustee and guardian

### 10                      Protection of public trustee and guardian etc from liability

- (1) In this section:

*official* means—

- (a) a person who holds, or has held, the position of public trustee and guardian or deputy public trustee and guardian; or
  - (b) a person who is, or has been, an agent of the public trustee and guardian; or
  - (c) a public servant who is exercising, or has exercised, a function relating to the business or affairs of the public trustee and guardian.
- (2) An official is not civilly liable for anything done or omitted to be done honestly and without recklessness—
- (a) in the exercise of a function under a territory law; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a function under a territory law.

- (3) Any liability that would, apart from this section, attach to the official attaches instead to the Territory.

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

Where—

- (a) the public trustee and guardian—
- (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 the person's 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 and guardian 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 and guardian had been lawfully entitled to act in that capacity.

## **12 Liability of public trustee and guardian**

Where, by an act or omission of the public trustee and guardian or another person acting or purporting to act in good faith for the public trustee and guardian, 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 an individual—

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



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

### **Division 3.1**              **General**

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

- (1) Subject to this Act, the public trustee and guardian 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; or
  - (h) a guardian or manager for a person if appointed by the ACAT; or
  - (i) the person responsible for the disposal of the body of an unclaimed deceased person.
- (2) Subject to this Act, the public trustee and guardian 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 and guardian shall not accept a trust established exclusively or primarily for religious purposes.

- (4) The public trustee and guardian may decline to accept, or accept subject to such conditions as the public trustee and guardian thinks fit, a trust or an appointment to act in any capacity.
- (5) The public trustee and guardian is not entitled to exercise a power under subsection (4)—
  - (a) in relation to a trust that devolves on the public trustee and guardian or an appointment of the public trustee and guardian 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.

**13A Appointment as person responsible for disposal of unclaimed deceased person**

- (1) This section applies if the public trustee and guardian accepts an appointment as the person responsible for the disposal of the body of an unclaimed deceased person.
- (2) The public trustee and guardian—
  - (a) may do any of the following:
    - (i) make arrangements for the disposal of the body of the unclaimed deceased person;
    - (ii) investigate whether the unclaimed deceased person has a solvent estate;
    - (iii) administer the unclaimed deceased person's estate; but

- (b) is not responsible for arranging the removal of the unclaimed deceased person's body from the place where the person died.

*Note* If a person dies, the person's estate vests in the public trustee and guardian from the time the person dies until someone is appointed as administrator of the estate or a grant of representation is made (see the [Administration Act](#), s 38A).

- (3) The public trustee and guardian must comply with any guideline made by the Minister for this section.
- (4) A guideline is a disallowable instrument.
- (5) In this section:

***unclaimed deceased person*** means a person—

- (a) whose death is registrable under the [Births, Deaths and Marriages Registration Act 1997](#); and
- (b) the executor of whose estate, or whose next of kin—
- (i) has not been found, despite reasonable inquiries by the police; or
- (ii) is unwilling or unable to make funeral arrangements for the person; and
- (c) whose body—
- (i) is held at a place in the ACT; and
- (ii) has not been claimed by anyone who has a right to claim the body under the law of another State.

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

- (1) Subject to subsection (3), the public trustee and guardian 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 and guardian is appointed and acts jointly with another person—
- (a) the public trustee and guardian and that other person jointly have and may exercise any function that the public trustee and guardian, if acting alone, would have or be entitled to exercise; and
  - (b) all moneys under the control of the public trustee and guardian and that other person jointly must be dealt with in the same manner as money under the control of the public trustee and guardian alone; and
  - (c) the receipt in writing of the public trustee and guardian alone for any moneys, securities or other personal property or effects required to be paid, transferred or delivered to the public trustee and guardian 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 and guardian may not be appointed or act jointly with another person as manager of property under part 5.

**15 Appointment of public trustee and guardian 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 and guardian 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 and guardian be made without the consent of that person.

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

Subject to this Act, the public trustee and guardian, 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 an individual 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 and guardian were an individual acting in that capacity.

## **Division 3.2 Appointment of public trustee and guardian as trustee**

### **17 Appointment**

- (1) The public trustee and guardian 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 and guardian were an individual.
- (2) However, the public trustee and guardian must not be appointed as a trustee if the instrument creating the trust contains a direction to the contrary.

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

- (1) Even though an instrument provides for or directs the appointment of 2 or more trustees, the public trustee and guardian 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 and guardian 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 and guardian 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 and guardian as a trustee taking effect, all the property in respect of which the public trustee and guardian 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 and guardian.

## **Division 3.3**                      **Appointment of public trustee and guardian as guardian or manager**

### **19A**                      **Application—div 3.3**

This division applies if the public trustee and guardian is appointed by the ACAT as a guardian or manager under the *Guardianship and Management of Property Act 1991*.

### **19B**                      **Other functions of public trustee and guardian as guardian or manager**

- (1) In addition to any other function given to the public trustee and guardian under the *Guardianship and Management of Property Act 1991* or another territory law, the public trustee and guardian has the following functions:
  - (a) representing people with a disability at hearings before the ACAT in relation to guardianship applications;
  - (b) investigate complaints and allegations about the actions of a guardian or manager or a person acting or purporting to act under an enduring power of attorney;
  - (c) promoting community discussion, and providing community education and information, about the functions of the ACAT under the *Guardianship and Management of Property Act 1991*.
- (2) In this section:

*disability* means one of the following conditions if the condition gives rise to a need for protection from abuse, exploitation or neglect, or a combination of those things:

  - (a) a physical, mental, psychological or intellectual condition;
  - (b) a condition that would make a person a forensic patient.

*forensic patient* includes a person who has been—

- (a) apprehended by a police officer because the person's behaviour or statements indicate to the officer that the person may have a mental disorder or mental illness; or
- (b) found by a court or the ACAT to be unfit to plead; or
- (c) acquitted of a criminal charge because of mental impairment; or
- (d) found guilty of a criminal offence and is, or while serving a sentence of imprisonment has become, a person with a mental disorder or mental illness.

*mental disorder*—see the [Mental Health Act 2015](#), section 9.

*mental illness*—see the [Mental Health Act 2015](#), section 10.

### **19C Guardian or manager of last resort**

If appointed as a guardian or manager by the ACAT, the public trustee and guardian must—

- (a) endeavour to find a suitable person to be appointed as the guardian or manager; and
- (b) if a suitable person is found—apply to the ACAT for the appointment of the person as guardian or manager.

### **19D Engagement of lawyer**

The public trustee and guardian may engage a lawyer to appear before a court or tribunal in relation to the exercise of the public trustee and guardian's functions under this division.



## Part 4 Powers and duties of public trustee and guardian

### 20 Powers of public trustee and guardian under Act additional to powers under other laws

The powers conferred on the public trustee and guardian under this Act when acting in any of the capacities in which the public trustee and guardian 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 and guardian in that capacity under any other law in force in the ACT.

### 21 Express powers of public trustee and guardian

- (1) Where the public trustee and guardian is acting in a trust or protective capacity as an executor, administrator, trustee, guardian or manager 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 and guardian under this Act, the public trustee and guardian may, unless expressly prohibited by the terms of any instrument affecting the authority of the public trustee and guardian to act in that capacity—
  - (a) buy, sell, realise and mortgage (with or without a power of sale) real and personal property, altogether or in parts, and subject to any condition the public trustee and guardian 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 and guardian 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

- (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 guardian; 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 and guardian, engage such persons as the public trustee and guardian thinks fit for the purpose of assisting or advising the public trustee and guardian in the administration or management of the estate; and
- (p) do all such acts, matters and things (including execute all documents) as are necessary or convenient for carrying out any of the powers conferred under this section.

- (2) In exercising the power referred to in subsection (1) (f), the public trustee and guardian 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 and guardian thinks fit.
- (3) Where the public trustee and guardian 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 and guardian 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 and guardian 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 and guardian may pay any interest payable in respect of money borrowed by the public trustee and guardian 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 and guardian 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 and guardian, the public trustee and guardian 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.

**22 Wills**

- (1) The public trustee and guardian 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) The public trustee and guardian may accept a will for deposit with the public trustee and guardian, whether or not the public trustee and guardian is appointed as an executor of the will.

**23 Safe custody of documents and chattels**

- (1) The public trustee and guardian 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 and guardian'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 and guardian in connection with the keeping of that thing by the public trustee and guardian—that of a bailee for reward; and
  - (b) where a charge is not made by the public trustee and guardian in connection with the keeping of that thing by the public trustee and guardian—that of a gratuitous bailee.

**23A Public trustee and guardian register**

- (1) The public trustee and guardian may keep a register of legal records.
- (2) The public trustee and guardian may include other records or information on the register that the public trustee and guardian considers appropriate.
- (3) The register may be kept in any form, including electronically, that the public trustee and guardian considers appropriate.
- (4) The register may be kept in 1 or more parts, as the public trustee and guardian considers appropriate.

(5) The public trustee and guardian may remove a legal record from the register if satisfied that the legal record no longer has any effect.

(6) In this section:

*enduring power of attorney*—see the *Powers of Attorney Act 2006*, section 8.

*legal record* means—

(a) a will that is—

(i) drawn by the public trustee and guardian; or

(ii) deposited with the public trustee and guardian; or

(b) an enduring power of attorney that—

(i) appoints the public trustee and guardian as attorney; or

(ii) is deposited with the public trustee and guardian.

*Note* The *Evidence Act 2011*, s 155 (Evidence of official records) applies to legal records kept on the register.

## 24 Legal representation

(1) A court or the ACAT may, in relation to proceedings in the court or ACAT, on an application made to it by a party to the proceedings or on its own initiative, direct the public trustee and guardian 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)—

(a) the public trustee and guardian 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 and guardian, must be paid to the public trustee and guardian out of any estate, funds or property the subject matter of the proceedings, or otherwise as the court or the ACAT may direct.
- (3) The public trustee and guardian may engage a lawyer to appear before a court or the ACAT in relation to the exercise of any of its functions under this Act.

#### **24A Public trustee and guardian to report to ACAT**

The public trustee and guardian must report to the ACAT about a matter before the ACAT if asked by the ACAT.

#### **25 Payment of money etc to public trustee and guardian 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 and guardian.
- (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 and guardian.

- (3) Where—

- (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 and guardian.

- (4) Where, as a result of a direction given under subsection (1), money in court is not paid out to the public trustee and guardian, the court may, by order, direct that the money be paid out to the public trustee and guardian 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 and guardian on behalf of that person; and
- (b) may give such directions for the service of the order on the public trustee and guardian as it thinks fit.
- (6) Where an order under subsection (5) is served on the public trustee and guardian, the public trustee and guardian 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 under the *Workers Compensation Act 1951* by way of a weekly payment.
- (8) In this section:
- court* includes the Magistrates Court and a tribunal.

**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 and guardian on behalf of a person under disability, the public trustee and guardian must hold the amount or property on trust for the person.
- (2) The public trustee and guardian may, subject to any direction of the Supreme Court—
  - (a) pay an amount, or give property, to anyone the public trustee and guardian 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; and
  - (c) pay an amount, or give property, into a superannuation fund on behalf of the person; and
  - (d) if an amount is paid, or property given, under paragraph (c)—manage the superannuation fund on behalf of the person.
- (3) If an amount is paid under subsection (2) (a), the public trustee and guardian need not supervise the use of the amount.



- (4) In this section:

*superannuation fund* means a complying superannuation fund for the *Income Tax Assessment Act 1997* (Cwlth).

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

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

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

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

- (1) The public trustee and guardian—
  - (a) may, in respect of a service rendered by the public trustee and guardian 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 and guardian in rendering a service.
- (2) The fees and expenses payable under subsection (1) in respect of a service rendered by the public trustee and guardian in connection with an estate, trust or fund—
  - (a) may be paid by the public trustee and guardian 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 and guardian.
- (4) Where, but for this subsection, there would be payable to the public trustee and guardian under this section an amount in respect of fees or expenses, the public trustee and guardian may dispense with the payment of that amount or reduce the amount that would otherwise be payable where the public trustee and guardian 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 and guardian to a person in a country other than Australia, the public trustee and guardian 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 and guardian 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 the consular officer or official under subsection (1) is a complete and sufficient discharge to the public trustee and guardian and the public trustee and guardian has no further concern to see to the application of those moneys or chattels.

**29A Payment of money without grant of administration**

- (1) This section applies if—
  - (a) before a person dies, the public trustee and guardian holds an amount or personal property for the person; and
  - (b) on the person's death, the total of the amount and the value of the personal property as estimated by the public trustee and guardian is not more than \$20 000; and
  - (c) the public trustee and guardian has no knowledge of an application for probate of the person's will or for letters of administration of the person's estate.

- (2) The public trustee and guardian may pay the amount, and transfer the personal property, to a person the public trustee and guardian considers is entitled to the amount or property (the *entitled person*) without proof of the entitled person having obtained probate of the deceased person's will or administration of the deceased person's estate.
- (3) For subsection (2), the public trustee and guardian may require the entitled person to give an undertaking that the amount or personal property will be administered by the entitled person for the deceased person's estate.

*Note* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).

- (4) An amount paid, or personal property given, under subsection (2) is taken to have been paid to the deceased person's estate.
- (5) This section does not affect any right of a person to claim or recover an amount paid, or personal property given, under subsection (2) from a person other than the public trustee and guardian.

### **30 Dealings with other public trustees**

- (1) Where—
- (a) the public trustee and guardian 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;

the public trustee and guardian 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 guardian; 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 and guardian 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 and guardian 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 and guardian 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 guardian; and
  - (c) the public trustee and guardian—
    - (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 public trustee and guardian—is unable, for any reason whatsoever, to effect payment of the moneys to the person;

the public trustee and guardian 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 and guardian may—

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

*Note* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).

### 33 Dispute involving claims

- (1) The public trustee and guardian may, in connection with the administration of a deceased estate, give public notice that any person who claims to be a creditor against the estate must notify the public trustee and guardian, in writing, of the claim within the period stated in the notice.

*Note* **Public notice** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).

- (2) Where—
- (a) the public trustee and guardian gives public notice under subsection (1); and
  - (b) a claim is made by a person in accordance with the notice; and
  - (c) the public trustee and guardian disputes, in whole or in part, the claim of the person;
- the public trustee and guardian shall give to the person a notice, in writing—
- (d) setting out the decision of the public trustee and guardian; and
  - (e) calling upon the person to institute proceedings to enforce the claim within 3 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 and guardian 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 and guardian 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 and guardian disputes shall be absolutely barred.



## Part 5 Unclaimed property

### 33A Meaning of *domestic partner* for pt 5

In this part:

*domestic partner*, of the owner of property, means the domestic partner of the owner when the owner was last known to be alive.

*Note* This definition qualifies the meaning of *domestic partner* given by the [Legislation Act](#), s 169.

### 34 Application for appointment as manager of property

- (1) The public trustee and guardian may apply to the court for an order appointing the public trustee and guardian 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 and guardian 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.
- (3) In making an order under this section appointing the public trustee and guardian manager of property, the court may specify the powers that may be exercised by the public trustee and guardian 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 and guardian—
- (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 and guardian should become the manager of the property;
- the public trustee and guardian 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 and guardian under subsection (1), the public trustee and guardian shall become manager of the property in respect of which the election is made.

**36 Public notice of appointment or election**

As soon as practicable after making an application under section 34 or filing a notice of election under section 35, the public trustee and guardian must give public notice of the application or election.

*Note* **Public notice** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).

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

Where the public trustee and guardian—

- (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 and guardian.

**38 Powers of public trustee and guardian as manager**

- (1) Unless the court in a particular case otherwise orders, the public trustee and guardian 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 and guardian 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 and guardian 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 money received by the public trustee and guardian as manager of the property, for the maintenance, education, advancement or benefit of the domestic partner, 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 and guardian as manager of the property—
  - (i) any mortgages, charges or other obligations on or attached to the property; and
  - (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 and guardian thinks fit, in the corporate name of the public trustee and guardian, bring or defend any proceedings relating to the property; and
- (l) exercise such other powers as may be conferred on the public trustee and guardian 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 and guardian, exercise such powers that the public trustee and guardian, if the public trustee and guardian 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 and guardian as manager of property in the exercise of any of the powers conferred on the public trustee and guardian 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 and guardian is manager under this part, give directions relating to—
  - (a) the property; or
  - (b) the management or administration of the property; or
  - (c) the exercise of any of the powers conferred on the public trustee and guardian under this part in respect of the property.
- (2) An application under subsection (1) may be made by—
  - (a) the public trustee and guardian; or
  - (b) the domestic partner, a child, or any other dependant of the owner of the property; 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 and guardian in relation to property of which the public trustee and guardian is manager under this part, make an order authorising the public trustee and guardian 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 domestic partner, a child, or any other 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 and guardian might, for any reason, be unduly onerous; and
  - (f) such other matter as it thinks fit.
- (6) Where—
- (a) the public trustee and guardian 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 and guardian 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 domestic partner, a child, or any other dependant of the owner of the property; or
  - (iv) the likelihood that continued management of the property by the public trustee and guardian might, for any reason, be unduly onerous;

the public trustee and guardian may sell the property.

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

#### **40 Management of certain moneys by public trustee and guardian**

- (1) Where the public trustee and guardian—
  - (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 and guardian is manager;

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

- (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 and guardian takes possession of property of which the public trustee and guardian—

- (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 and guardian, be held by the public trustee and guardian 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 and guardian 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 and guardian 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 and guardian is satisfied that a person is the owner of or beneficially entitled to property of which the public trustee and guardian is manager under this part; and
- (b) the whereabouts of the person are known to the public trustee and guardian;

the public trustee and guardian shall transfer the property to the person or, where for any reason the public trustee and guardian considers that it is not reasonably practicable to transfer the property to the person, the public trustee and guardian 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 and guardian 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 and guardian, for taking delivery of, the property; and
- (g) informing the person of the action that may be taken by the public trustee and guardian 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
  - (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 and guardian 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 and guardian, for taking delivery of, the property; and
- (d) informing the person of the relevant action that may be taken by the public trustee and guardian 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 and guardian—

- (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
  - (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 and guardian 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 and guardian 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 and guardian 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 and guardian—
  - (d) if the property is not money—may sell or otherwise dispose of the property in such manner as the public trustee and guardian thinks fit; or
  - (e) if the property is money—shall, after deduction of all costs and charges lawfully due to the public trustee and guardian or any other person in connection with the property, pay it to the Territory.
- (6) Where, on an application made to it by the public trustee and guardian, the court is satisfied that—
- (a) the public trustee and guardian 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 and guardian 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 and guardian must—
- (a) give public notice of the proposed sale or disposal; and

- (b) if the last-known place of residence of the person lawfully entitled to the property is in another State or Territory—give notice of the proposed sale or disposal in a newspaper circulating in that State or Territory.

*Note* **Public notice** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).

- (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 and guardian shall cease to be manager of property where—
  - (a) the property is transferred to a person under section 43 (1); or
  - (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 and guardian shall, after deduction of all costs and charges lawfully due to the public trustee and guardian 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 and guardian to act as manager under this part does not affect any charge acquired by the public trustee and guardian in respect of the property, or the validity of any act or thing done by the public trustee and guardian in connection with the property, while acting in that capacity.

#### **45 Claims made after cessation of management**

- (1) Where, on the public trustee and guardian 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 and guardian 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.
- (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

The Public Trustee and Guardian Investment Board is established.

#### 47                      Function of board

The function of the board is to advise the public trustee and guardian 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 guardian 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 guardian; 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 and guardian shall be the senior member of the board.

**53 Ending board member appointments**

- (1) This section applies to a board member other than the public trustee and guardian.
- (2) The Minister may end the member's appointment—
  - (a) if the member contravenes a territory law; or
  - (b) for misbehaviour; or
  - (c) if the member becomes bankrupt or personally insolvent; or

*Note* **Bankrupt or personally insolvent**—see the [Legislation Act](#), dictionary, pt 1.

- (d) if the member is convicted, or found guilty, in Australia of an offence punishable by imprisonment for at least 1 year; or
- (e) if the member is convicted, or found guilty, outside Australia of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year; or
- (f) if the member exercises the member's functions other than in accordance with section 53A (Honesty, care and diligence of board members); or
- (g) if the member fails to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the member's functions; or
- (h) if the member contravenes section 53D (Disclosure of interests by board members); or
- (i) if the member is absent from 3 consecutive meetings of the board, otherwise than on approved leave; or

- (j) for physical or mental incapacity, if the incapacity substantially affects the exercise of the member's functions.

*Note* A person's appointment also ends if the person resigns (see [Legislation Act, s 210](#)).

- (3) The Minister may also end the appointment of the member (the ***member concerned***) if the board tells the Minister in writing that it has resolved, by a majority of at least  $\frac{2}{3}$  of the members, to recommend to the Minister that the member's appointment be ended.
- (4) The board may pass a resolution mentioned in subsection (3) only if—
  - (a) at least 3 weeks written notice of the intention to consider the proposed resolution has been given to the member concerned; and
  - (b) the member concerned has been given an opportunity to make submissions and present documents to a meeting of the board; and
  - (c) if the member concerned has used the opportunity mentioned in paragraph (b)—a summary of the member's submissions is recorded in the minutes of the board and a copy of any documents presented is included in the minutes.
- (5) A member who is a public servant ceases to hold office as a member if the member ceases to be a public servant.

**53A Honesty, care and diligence of board members**

In exercising the functions of a board member, a member must exercise the degree of honesty, care and diligence required to be exercised by a director of a corporation in relation to the affairs of the corporation.

**53B Conflict of interest**

A board member must take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the member's functions.

**53C Agenda to require disclosure of interest item**

The agenda for each meeting of the board must include an item requiring any material interest in an issue to be considered at the meeting to be disclosed to the meeting.

**53D Disclosure of interests by board members**

- (1) If a board member has a material interest in an issue being considered, or about to be considered, by the board, the member must disclose the nature of the interest at a board meeting as soon as practicable after the relevant facts come to the member's knowledge.

*Note* **Material interest** is defined in s (4). The definition of **indirect interest** in s (4) applies to the definition of **material interest**.

- (2) The disclosure must be recorded in the board's minutes and, unless the board otherwise decides, the member must not—
  - (a) be present when the board considers the issue; or

(b) take part in a decision of the board on the issue.

**Example**

Albert, Boris and Chloe are members of the board. They have an interest in an issue being considered at the board meeting and they disclose the interest as soon as they become aware of it. Albert's and Boris's interests are minor but Chloe has a direct financial interest in the issue.

The board considers the disclosures and decides that because of the nature of the interests:

- Albert may be present when the board considers the issue but not take part in the decision
- Boris may be present for the consideration and take part in the decision.

The board does not make a decision allowing Chloe to be present or take part in the board's decision. Accordingly, since Chloe has a material interest she cannot be present for the consideration of the issue or take part in the decision.

(3) Any other board member who also has a material interest in the issue must not be present when the board is considering its decision under subsection (2).

(4) In this section:

**associate**, of a person, means—

- (a) the person's business partner; or
- (b) a close friend of the person; or
- (c) a family member of the person.

**executive officer**, of a corporation, means a person (however described) who is concerned with, or takes part in, the corporation's management, whether or not the person is a director of the corporation.

**indirect interest**—without limiting the kinds of indirect interests a person may have, a person has an **indirect interest** in an issue if any of the following has an interest in the issue:

- (a) an associate of the person;

- (b) a corporation if the corporation has not more than 100 members and the person, or an associate of the person, is a member of the corporation;
- (c) a subsidiary of a corporation mentioned in paragraph (b);
- (d) a corporation if the person, or an associate of the person, is an executive officer of the corporation;
- (e) the trustee of a trust if the person, or an associate of the person, is a beneficiary of the trust;
- (f) a member of a firm or partnership if the person, or an associate of the person, is a member of the firm or partnership;
- (g) someone else carrying on a business if the person, or an associate of the person, has a direct or indirect right to participate in the profits of the business.

***material interest***—a board member has a ***material interest*** in an issue if the member has—

- (a) a direct or indirect financial interest in the issue; or
- (b) a direct or indirect interest of any other kind if the interest could conflict with the proper exercise of the member's functions in relation to the board's consideration of the issue.

### **53E Reporting of disclosed interests to Minister**

- (1) Within 3 months after the day a material interest is disclosed under section 53D (1), the senior member of the board must report to the Minister in writing about—
  - (a) the disclosure; and
  - (b) the nature of the interest disclosed; and
  - (c) any decision by the board under section 53D (2).

- (2) The senior member must also give the Minister, not later than 31 days after the end of each financial year, a statement that sets out the information given to the Minister in reports under subsection (1) that relate to disclosures made during the previous financial year.
- (3) The Minister must give a copy of the statement to the relevant committee of the Legislative Assembly within 31 days after the day the Minister receives the statement.
- (4) In this section:

*relevant committee* means—

- (a) a standing committee of the Legislative Assembly nominated by the Speaker for subsection (3); or
- (b) if no nomination under paragraph (a) is in effect—the standing committee of the Legislative Assembly responsible for public accounts.

### **53F Protection of board members from liability**

- (1) A board member is not civilly liable for anything done or omitted to be done honestly and without recklessness—
  - (a) in the exercise of a function under a territory law; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a function under a territory law.
- (2) Any liability that would, apart from this section, attach to a board member attaches instead to the Territory.

### **53G Indemnification and exemption of board members**

- (1) The public trustee and guardian must not exempt a board member (whether directly or through another entity) from liability to the public trustee and guardian or the Territory.

- (2) The public trustee and guardian must not indemnify a board member (whether directly or through another entity and whether by agreement or by making a payment) against any of the following liabilities incurred as a board member:
- (a) a liability owed to the public trustee and guardian or the Territory;
  - (b) a liability owed to someone other than the public trustee and guardian or the Territory that did not arise from honest conduct.
- (3) The public trustee and guardian must not indemnify a board member (whether directly or through another entity and whether by agreement or by making a payment) against legal costs incurred as a member if the costs are incurred—
- (a) in defending or resisting a proceeding if the person is found to have a liability for which the person could not be indemnified under subsection (2); or
- Note* A board member is not personally liable for certain acts done or omissions made honestly and without recklessness (see s 53F).
- (b) in defending or resisting a criminal proceeding in which the person is found guilty.

## **Division 6.2 Board meetings**

### **54 Time and place of board meetings**

- (1) Meetings of the board are to be held when and where the senior member decides.
- (2) The senior member must give the other members reasonable notice of the time and place of the meeting.

### **54A Presiding member at meetings**

- (1) The senior member presides at all meetings at which the senior member is present.

- (2) If the senior member is absent, the member chosen by the members present presides.

**54B              Quorum at meetings**

Business may be carried on at a meeting of the board only if at least 2 members are present.

**54C              Voting at meetings**

- (1) At a meeting of the board each member has a vote on each question to be decided.
- (2) A question is decided by a majority of the votes of the members present and voting but, if the votes are equal, the member presiding has a deciding vote.
- (3) However, if only 2 members are present at the meeting, and they differ on a question arising at the meeting, the question must be deferred until the next meeting at which more than 2 members are present.

**54D              Conduct of meetings etc**

- (1) The board may conduct its proceedings (including its meetings) as it considers appropriate.
- (2) A meeting may be held using a method of communication, or a combination of methods of communication, that allows a board member taking part to hear what each other member taking part says without the members being in each other's presence.

**Examples**

a phone link, a satellite link, an internet or intranet link

- (3) A board member who takes part in a meeting conducted under subsection (2) is taken, for all purposes, to be present at the meeting.



- (4) A resolution is a valid resolution of the board, even if it is not passed at a meeting of the board, if all members agree to the proposed resolution in writing or by electronic communication.

**Example of electronic communication**

email

- (5) The board must keep minutes of its meetings.

## **Division 6.3 Common funds**

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

- (1) The public trustee and guardian shall establish and maintain 1 or more common funds.
- (2) Subject to this Act and any order of the court, the public trustee and guardian shall pay into 1 or more of the common funds all money received by the public trustee and guardian on behalf of an estate, trust or person, including moneys received by the public trustee and guardian as manager of property.
- (3) The public trustee and guardian 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 and guardian; or
  - (b) property of an estate or trust in connection with which the money is received is held by the public trustee and guardian jointly with another person and that other person, by notice in writing given to the public trustee and guardian, objects to the application of the money in that manner.
- (4) The public trustee and guardian 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 and guardian 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 and guardian) 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 and guardian 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 and guardian 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 and guardian 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 and guardian 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 and guardian; or
  - (b) invest the amount separately for the benefit of that estate, trust or person.
- (2) The public trustee and guardian 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 and guardian jointly with another person where that other person, by notice in writing given to the public trustee and guardian, 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 and guardian 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 guardian and having regard to any advice given by the board.

**59A Management fee**

- (1) The public trustee and guardian 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 and guardian 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.
- (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 and guardian 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 and guardian 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 and guardian, must be invested by the public trustee and guardian.

- (5) In acting under subsection (4), the public trustee and guardian 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 and guardian 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 and guardian must transfer from the account to the common fund guarantee and reserve account the amount decided by the public trustee and guardian 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 and guardian 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
    - (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 and guardian in obtaining legal advice or in, or in connection with, legal proceedings in which the public trustee and guardian 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 and guardian.
  - (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 and guardian 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 and guardian having regard to any advice given by the board, may be applied towards the costs and expenses necessarily incurred by the public trustee and guardian in the exercise of the public trustee and guardian's functions under this Act.

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

- (1) The public trustee and guardian 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 and guardian; or
  - (b) property of which the public trustee and guardian 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 and guardian 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 and guardian 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 guardian; and
  - (b) the person applies, in writing, to the public trustee and guardian for an advance against the person's beneficial interest;

the public trustee and guardian 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 and guardian on behalf of the estate, trust or person.

- (2) The public trustee and guardian 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 and guardian 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 and guardian 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 and guardian 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 and guardian 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 and guardian by the person to whom the advance was made.



- (b) in relation to the exercise of a function, as an information holder, under this Act or another law applying in the ACT; or
- (c) in a court proceeding; or
- (d) with the protected person's consent.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

- (4) An information holder need not disclose protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another law applying in the ACT.
- (5) In this section:

***court*** includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

***disclose*** includes—

- (a) communicate; or
- (b) publish.

***information*** means information, whether true or not, in any form and includes an opinion and advice.

***information holder*** means—

- (a) a person who is or has been—
  - (i) the public trustee and guardian or guardian; or
  - (ii) a deputy public trustee and guardian or guardian; or
- (b) anyone else who exercises or has exercised a function under this Act.

***produce*** includes allow access to.

*protected information* means information about a person that is disclosed to, or obtained by, an information holder because of the exercise of a function under this Act by the information holder or someone else.

*use*, in relation to information, includes make a record of the information.

**66 Public trustee and guardian may require information or documents**

- (1) The public trustee and guardian may, by written notice given to any entity, require the entity to give the public trustee and guardian stated information or documents relevant to the exercise of the public trustee and guardian's functions under this Act or another territory law.
- (2) The notice must state a reasonable period (not less than 14 days) within which the information or documents must be given.

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

- (1) Where an application is made to the court by a person other than the public trustee and guardian for an order—
  - (a) directing that a sum of money be paid to the public trustee and guardian; or
  - (b) vesting property in the public trustee and guardian; or
  - (c) appointing the public trustee and guardian as trustee, executor, administrator, manager or guardian;the court shall not make an order unless—
  - (d) the public trustee and guardian consents to the order being made; or

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

**69 Costs arising out of certain applications**

Where the public trustee and guardian 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 and guardian is entitled to the costs of the public trustee and guardian of and incidental to the application out of the estate of the deceased person; and
- (b) the public trustee and guardian 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 and guardian 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 and guardian, is null and void.

**72 Lien in respect of insurance premiums**

- (1) Where the public trustee and guardian 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 and guardian; or
  - (b) property of which the public trustee and guardian is manager;the public trustee and guardian shall have a lien on moneys paid out under the policy for the amount of premium so paid.
- (2) The lien is a statutory interest to which the *Personal Property Securities Act 2009* (Cwlth), section 73 (2) applies.

**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 and guardian is acting in any of the capacities in which the public trustee and guardian is, under this Act, authorised to act, a certificate under the seal of the public trustee and guardian stating—
  - (a) the capacity in which the public trustee and guardian is authorised to act; and
  - (b) the manner in which the public trustee and guardian became authorised to act in that capacity; and
  - (c) the time at which the public trustee and guardian 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 and guardian may, while acting in that capacity, exercise powers;

is evidence of the matters so stated.

- (2) Where the public trustee and guardian 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 and guardian stating any of the following matters:

- (a) the name of the deceased;
- (b) the home address of the deceased at the time of death;
- (c) the occupation of the deceased immediately prior to death;
- (d) the nature or form of the authority under which the public trustee and guardian 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 and guardian became authorised to administer the estate;
- (g) the time at which the public trustee and guardian became authorised to administer the estate;

is evidence of the matters so stated.

- (3) Where the public trustee and guardian is acting jointly with another person in any capacity, a certificate under the seal of the public trustee and guardian stating, in connection with the authority of the public trustee and guardian and that other person to act jointly in that capacity—

- (a) the matters referred to in subsection (1); or
- (b) any 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 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](#).

**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](#).

## Dictionary

(see s 2)

*Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

*Note 2* For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- appoint
- bankrupt or personally insolvent
- establish
- exercise
- found guilty
- function
- home address
- liability
- month
- power
- public servant
- tribunal
- will.

***Administration Act*** means the [Administration and Probate Act 1929](#).

***board*** means the Public Trustee and Guardian Investment Board established under section 46.

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

***court*** means the Supreme Court.

***deputy public trustee and guardian*** means a deputy public trustee and guardian under section 6.

***domestic partner***, for part 5 (Unclaimed property)—see section 33A.

***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 and guardian*** means—

- (a) the public servant who is the public trustee and guardian under section 5; or
- (b) the public trustee and guardian in its corporate capacity under section 8.

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

## Endnotes

1 About the endnotes

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## 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 are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

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.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

The *Public Trustee and Guardian Act 1985* 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* A1989-21, s 5 on 11 May 1989 (self-government day). The Act was later renamed by the *Protection of Rights (Services) Legislation Amendment Act 2016* A2016-1 (see s 41).

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 and Guardian Act 1985 A1985-8**

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 Ord1985-67**

notified 19 December 1985

commenced 1 February 1986 (Cwlth Gaz 1986 No G3)

##### **Administrative Arrangements (Consequential Amendments)**

##### **Ordinance 1987 Ord1987-37 s 6**

notified 24 July 1987

s 6 commenced 24 July 1987

## Endnotes

3 Legislation history

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### **Self-Government (Consequential Amendments) Ordinance 1989**

#### **Ord1989-38 sch 1**

notified 10 May 1989 (Cwlth Gaz 1989 No S160)  
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**

#### **Ord1989-50 sch**

notified 10 May 1989  
commenced 10 May 1989

## **Legislation after becoming Territory enactment**

### **Statutory Authorities (Audit Arrangements) Act 1990 A1990-25 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 A1991-21**

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

### **Public Trustee (Amendment) Act (No 2) 1991 A1991-91**

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

### **Workers' Compensation (Consequential Amendments) Act 1991**

#### **A1991-106 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 A1992-23**

#### **sch 1**

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

### **Acts Revision (Position of Crown) Act 1993 A1993-44 sch 2**

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

**Statute Law Revision (Penalties) Act 1994 A1994-81 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)

**Statutory Offices (Miscellaneous Provisions) Act 1994 A1994-97 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 A1996-26 sch pt 29**

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

**Public Trustee (Amendment) Act 1996 A1996-63**

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

**Remuneration Tribunal (Consequential Amendments) Act 1997 A1997-41 sch 1 (as am by A2002-49 amdt 3.222)**

notified 19 September 1997 (Gaz 1997 No S264)  
commenced 24 September 1997 (s 2 as am by A2002-49 amdt 3.222)

**Legal Practitioners (Consequential Amendments) Act 1997 A1997-96 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 A1999-28 sch**

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

**Legislation (Consequential Amendments) Act 2001 A2001-44 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)

## Endnotes

3 Legislation history

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**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  
A2002-27 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) A2002-49 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 A1997-41](#) .

**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))

**Sexuality Discrimination Legislation Amendment Act 2004 A2004-2  
sch 1 pt 1.13**

notified LR 18 February 2004  
s 1, s 2 commenced 18 February 2004 (LA s 75 (1))  
sch 1 pt 1.13 commenced 22 March 2004 (s 2 and [CN2004-4](#))

**Financial Management Legislation Amendment Act 2005 A2005-52  
sch 1 pt 1.18**

notified LR 26 October 2005  
s 1, s 2 commenced 26 October 2005 (LA s 75 (1))  
sch 1 pt 1.18 commenced 1 January 2006 (s 2 (2))

**Justice and Community Safety Legislation Amendment Act 2005  
(No 4) A2005-60 sch 1 pt 1.21**

notified LR 1 December 2005  
s 1, s 2 taken to have commenced 23 November 2005 (LA s 75 (2))  
sch 1 pt 1.21 commenced 22 December 2005 (s 2 (4))



**Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.82**

notified LR 22 March 2007

s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))

sch 3 pt 3.82 commenced 12 April 2007 (s 2 (1))

**Justice and Community Safety Legislation Amendment Act 2008****A2008-7 sch 1 pt 1.18**

notified LR 16 April 2008

s 1, s 2 commenced 16 April 2008 (LA s 75 (1))

sch 1 pt 1.18 commenced 7 May 2008 (s 2)

**Statute Law Amendment Act 2008 A2008-28 sch 3 pt 3.45**

notified LR 12 August 2008

s 1, s 2 commenced 12 August 2008 (LA s 75 (1))

sch 3 pt 3.45 commenced 26 August 2008 (s 2)

**Statute Law Amendment Act 2009 (No 2) A2009-49 sch 3 pt 3.59**

notified LR 26 November 2009

s 1, s 2 commenced 26 November 2009 (LA s 75 (1))

sch 3 pt 3.59 commenced 17 December 2009 (s 2)

**Personal Property Securities Act 2010 A2010-15 sch 2 pt 2.4**

notified LR 1 April 2010

s 1, s 2 commenced 1 April 2010 (LA s 75 (1))

sch 2 pt 2.4 commenced 30 January 2012 (s 2 (2) (b))

**Justice and Community Safety Legislation Amendment Act 2010****(No 2) A2010-30 sch 1 pt 1.20**

notified LR 31 August 2010

s 1, s 2 commenced 31 August 2010 (LA s 75 (1))

s 3 commenced 1 September 2010 (s 2 (1))

sch 1 pt 1.20 commenced 28 September 2010 (s 2 (2))

**Justice and Community Safety Legislation Amendment Act 2010****(No 4) A2010-50 sch 1 pt 1.8**

notified LR 14 December 2010

s 1, s 2 commenced 14 December 2010 (LA s 75 (1))

sch 1 pt 1.8 commenced 21 December 2010 (s 2 (1))

**Evidence (Consequential Amendments) Act 2011 A2011-48 sch 1 pt 1.32**

notified LR 22 November 2011  
s 1, s 2 commenced 22 November 2011 (LA s 75 (1))  
sch 1 pt 1.32 commenced 1 March 2012 (s 2 (1) and see [Evidence Act 2011 A2011-12, s 2](#) and [CN2012-4](#))

**Justice and Community Safety Legislation Amendment Act 2012 A2012-30 sch 1 pt 1.4**

notified LR 13 June 2012  
s 1, s 2 commenced 13 June 2012 (LA s 75 (1))  
sch 1 pt 1.4 commenced 14 June 2012 (s 2)

**Justice and Community Safety Legislation Amendment Act 2014 A2014-17 sch 1 pt 1.9**

notified LR 13 May 2014  
s 1, s 2 taken to have commenced 25 November 2013 (LA s 75 (2))  
sch 1 pt 1.9 commenced 14 May 2014 (s 2 (1))

**Justice and Community Safety Legislation Amendment Act 2014 (No 2) A2014-49 pt 7**

notified LR 10 November 2014  
s 1, s 2 commenced 10 November 2014 (LA s 75 (1))  
pt 7 commenced 17 November 2014 (s 2)

**Justice and Community Safety Legislation Amendment Act 2015 A2015-11 sch 1 pt 1.8**

notified LR 20 May 2015  
s 1, s 2 commenced 20 May 2015 (LA s 75 (1))  
sch 1 pt 1.8 commenced 21 May 2015 (s 2 (1))

**Red Tape Reduction Legislation Amendment Act 2015 A2015-33 sch 1 pt 1.56**

notified LR 30 September 2015  
s 1, s 2 commenced 30 September 2015 (LA s 75 (1))  
sch 1 pt 1.56 commenced 14 October 2015 (s 2)

**Protection of Rights (Services) Legislation Amendment Act 2016 A2016-1 pt 3**

notified LR 23 February 2016  
s 1, s 2 commenced 23 February 2016 (LA s 75 (1))  
pt 3 commenced 1 April 2016 (s 2)

**Protection of Rights (Services) Legislation Amendment Act 2016  
(No 2) A2016-13 sch 1 pt 1.34**

notified LR 16 March 2016  
s 1, s 2 commenced 16 March 2016 (LA s 75 (1))  
sch 1 pt 1.34 commenced 1 April 2016 (s 2 and see [Protection of Rights \(Services\) Legislation Amendment Act 2016](#) A2016-1 s 2)

**Red Tape Reduction Legislation Amendment Act 2016 A2016-18  
sch 3 pt 3.36**

notified LR 13 April 2016  
s 1, s 2 commenced 13 April 2016 (LA s 75 (1))  
sch 3 pt 3.36 commenced 27 April 2016 (s 2)

**Statute Law Amendment Act 2017 A2017-4 sch 3 pt 3.23**

notified LR 23 February 2017  
s 1, s 2 commenced 23 February 2017 (LA s 75 (1))  
sch 3 pt 3.23 commenced 9 March 2017 (s 2)

**COVID-19 Emergency Response Legislation Amendment Act 2020  
A2020-14 sch 1 pt 1.25**

notified LR 13 May 2020  
s 1, s 2 taken to have commenced 30 March 2020 (LA s 75 (2))  
amdt 1.120, amdt 1.121 commenced 11 August 2020 (s 2 (4) and [CN2020-14](#))  
sch 1 pt 1.25 remainder commenced 14 May 2020 (s 2 (1))

**Justice and Community Safety Legislation Amendment Act 2021  
A2021-3 pt 16**

notified LR 19 February 2021  
s 1, s 2 commenced 19 February 2021 (LA s 75 (1))  
pt 16 commenced 26 February 2021 (s 2 (1))

**Courts and Other Justice Legislation Amendment Act 2021 A2021-13  
pt 9**

notified LR 9 June 2021  
s 1, s 2 commenced 9 June 2021 (LA s 75 (1))  
pt 9 commenced 9 December 2021 (s 2 (2) and LA s 79)

## Endnotes

3 Legislation history

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**Operational Efficiencies (COVID-19) Legislation Amendment Act 2021  
A2021-24 pt 10**

notified LR 13 October 2021

s 1, s 2 taken to have commenced 8 October 2021 (LA s 75 (2))

pt 10 commenced 14 October 2021 (s 2 (1))

**Justice and Community Safety Legislation Amendment  
Act 2021 (No 2) A2021-33 pt 16**

notified LR 10 December 2021

s 1, s 2 commenced 10 December 2021 (LA s 75 (1))

pt 16 commenced 11 December 2021 (s 2 (6) (b))

## 4 Amendment history

### Long title

long title sub [A2016-1](#) s 40

### Name of Act

s 1 sub [A2005-52](#) amdt 1.247; [A2016-1](#) s 41

### Dictionary

s 2 om [A2001-44](#) amdt 1.3501  
ins [A2005-52](#) amdt 1.250

### Notes

s 3 om [A1993-44](#) sch 2  
ins [A2005-52](#) amdt 1.250

### Offences against Act—application of Criminal Code etc

s 3A ins [A2017-4](#) amdt 3.144

### Administration Act definitions

s 4 defs reloc to dict [A2005-52](#) amdt 1.249  
sub [A2005-52](#) amdt 1.250  
def *barrister and solicitor* om [A1997-96](#) sch 1  
def *public servant* om [Ord1989-38](#) sch 1

### The public trustee and guardian

pt 2 hdg sub [A2016-13](#) amdt 1.117

### Administration

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

### Public trustee and guardian

s 5 am [Ord1987-37](#)  
sub [A1994-97](#) sch pt 1; [A2005-52](#) amdt 1.251  
am [A2008-7](#) amdt 1.70  
sub [A2016-1](#) s 42

### Deputy public trustee and guardian

s 6 am [Ord1987-37](#)  
sub [A1994-97](#) sch pt 1; [A2005-52](#) amdt 1.251; [A2008-7](#)  
amdt 1.71; [A2016-1](#) s 42  
am [A2017-4](#) amdt 3.145

### Acting appointments

s 7 am [Ord1987-37](#); [A1992-23](#) sch 1  
om [A1994-97](#) sch pt 1

### Public trustee and guardian a corporation sole

s 8 hdg am [A2016-1](#) s 61  
s 8 am [A2005-52](#) amdt 1.252; [A2016-1](#) s 43, s 61

## Endnotes

4 Amendment history

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### **Agent of public trustee and guardian**

s 9 hdg am [A2016-1](#) s 61  
s 9 am [A2016-1](#) s 61; [A2017-4](#) amdt 3.145

### **Delegation by public trustee and guardian**

s 9A ins [A2016-1](#) s 44  
am [A2020-14](#) amdt 1.119  
sub [A2021-24](#) s 23

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

div 2.2 hdg (prev pt 2 div 2 hdg) renum R6 LA  
sub [A2016-13](#) amdt 1.118

### **Protection of public trustee and guardian etc from liability**

s 10 hdg am [A2016-1](#) s 61  
s 10 sub [A2005-52](#) amdt 1.253  
am [A2016-1](#) s 61

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

s 11 hdg am [A2016-1](#) s 61  
s 11 am [A2016-1](#) s 61; [A2017-4](#) amdt 3.146

### **Liability of public trustee and guardian**

s 12 hdg am [A2016-1](#) s 61  
s 12 am [Ord1989-38](#) sch 1; [A2016-1](#) s 61; [A2017-4](#) amdt 3.147,  
amdt 3.148

### **Appointment of public trustee and guardian**

pt 3 hdg am [A2016-1](#) s 61

### **Capacities in which public trustee and guardian may act**

s 13 hdg am [A2016-1](#) s 61  
s 13 am [A2016-1](#) s 45, s 61; [A2021-13](#) s 40

### **Appointment as person responsible for disposal of unclaimed deceased person**

s 13A ins [A2021-13](#) s 41  
am [A2021-33](#) s 26

### **General**

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

### **Public trustee and guardian may act jointly with another person**

s 14 hdg am [A2016-1](#) s 61  
s 14 am [A2016-1](#) s 61; [A2017-4](#) amdt 3.149, amdt 3.150

### **Appointment of public trustee and guardian on order of court**

s 15 hdg am [A2016-1](#) s 61  
s 15 am [A2016-1](#) s 61

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

s 16 am [A2016-1](#) s 61; [A2017-4](#) amdt 3.151

**Appointment of public trustee as trustee**

div 3.2 hdg (prev pt 3 div 2 hdg) renum R6 LA  
am [A2016-1](#) s 61

**Appointment**

s 17 am [A2016-1](#) s 61; [A2017-4](#) amdt 3.151, amdt 3.152

**Appointment of public trustee and guardian as sole trustee**

s 18 hdg am [A2016-1](#) s 61  
s 18 am [A2016-1](#) s 61; [A2017-4](#) amdt 3.153

**Vesting of property**

s 19 am [A2016-1](#) s 61

**Appointment of public trustee and guardian as guardian or manager**

div 3.3 hdg ins [A2016-1](#) s 46

**Application—div 3.3**

s 19A ins [A2016-1](#) s 46

**Other functions of public trustee and guardian as guardian or manager**

s 19B ins [A2016-1](#) s 46  
am [A2016-13](#) amdts 1.119-1.124

**Guardian or manager of last resort**

s 19C ins [A2016-1](#) s 46

**Engagement of lawyer**

s 19D ins [A2016-1](#) s 46

**Powers and duties of public trustee and guardian**

pt 4 hdg am [A2016-1](#) s 61

**Powers of public trustee and guardian under Act additional to powers under other laws**

s 20 hdg am [A2016-1](#) s 61  
s 20 am [A2016-1](#) s 61

**Express powers of public trustee and guardian**

s 21 hdg am [A2016-1](#) s 61  
s 21 am [A2016-1](#) ss 47-49, s 61

**Wills**

s 22 am [A2001-44](#) amdt 1.3502; [A2016-1](#) s 61; [A2021-3](#) s 36

**Safe custody of documents and chattels**

s 23 am [A2016-1](#) s 61; [A2016-13](#) amdt 1.125

**Public trustee and guardian register**

s 23A hdg am [A2016-1](#) s 61  
s 23A ins [A2010-50](#) amdt 1.16  
am [A2011-48](#) amdt 1.49; [A2016-1](#) s 61

## Endnotes

### 4 Amendment history

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#### **Legal representation**

s 24 hdg sub [A2016-13](#) amdt 1.126  
s 24 am [A1997-96](#) sch 1; [A2016-1](#) s 61; [A2016-13](#) amdts 1.127-1.129; [A2017-4](#) amdt 3.154, amdt 3.155

#### **Public trustee and guardian to report to ACAT**

s 24A ins [A2016-13](#) amdt 1.130

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

s 25 hdg am [A2016-1](#) s 61  
s 25 am [Ord1985-67](#); [A1991-106](#) sch; [A2003-2](#) s 74, s 75; [A2008-28](#) amdt 3.141; [A2012-30](#) amdt 1.21; [A2016-1](#) s 61

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

s 25A ins [A2003-2](#) s 76  
am [A2012-30](#) amdt 1.22, amdt 1.23; [A2014-17](#) amdt 1.105; [A2015-11](#) amdt 1.30; [A2016-1](#) s 61

#### **Power of public trustee and guardian to sue self when acting in different capacities**

s 26 hdg am [A2016-1](#) s 61  
s 26 am [A2016-1](#) s 61

#### **Power of public trustee and guardian to contract with self in certain circumstances**

s 27 hdg am [A2016-1](#) s 61  
s 27 am [A2016-1](#) s 61

#### **Fees and expenses of public trustee and guardian**

s 28 hdg am [A2016-1](#) s 61  
s 28 am [A2001-44](#) amdt 1.3503; [A2016-1](#) s 61

#### **Payments to persons outside Australia**

s 29 am [A2016-1](#) s 61; [A2017-4](#) amdt 3.156

#### **Payment of money without grant of administration**

s 29A ins [A2005-60](#) amdt 1.120  
sub [A2008-7](#) amdt 1.72  
am [A2016-1](#) s 61; [A2016-18](#) amdt 3.169, amdt 3.170

#### **Dealings with other public trustees**

s 30 am [A2016-1](#) ss 50-54, s 61

#### **Unclaimed moneys**

s 31 am [Ord1989-38](#) sch 1; [A2016-1](#) s 61

#### **Allowance of claims**

s 32 am [A2016-1](#) s 61; [A2016-18](#) amdt 3.171, amdt 3.172



**Dispute involving claims**

s 33 am [A2014-17](#) amdt 1.106; [A2015-33](#) amdt 1.198, amdt 1.199;  
[A2016-1](#) s 61

**Meaning of *domestic partner* for pt 5**

s 33A ins [A2004-2](#) amdt 1.39

**Application for appointment as manager of property**

s 34 am [A2016-1](#) s 61

**Election to become manager of property**

s 35 am [A2016-1](#) s 61

**Public notice of appointment or election**

s 36 sub [A2015-33](#) amdt 1.200  
am [A2016-1](#) s 61

**Property does not vest in public trustee and guardian as manager**

s 37 hdg am [A2016-1](#) s 61  
s 37 am [A2016-1](#) s 61

**Powers of public trustee and guardian as manager**

s 38 hdg am [A2016-1](#) s 61  
s 38 am [A2004-2](#) amdt 1.40; [A2016-1](#) s 61

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

s 39 am [A2004-2](#) amdt 1.41-1.43; [A2016-1](#) s 61

**Management of certain moneys by public trustee and guardian**

s 40 hdg am [A2016-1](#) s 61  
s 40 am [A2016-1](#) s 61

**Property to be held for owner**

s 41 am [A2016-1](#) s 61

**Charge over property**

s 42 am [A2016-1](#) s 61

**Disposal of property**

s 43 am [Ord1989-38](#) sch 1; [A2015-33](#) amdt 1.201; [A2016-1](#) s 61

**Cessation of management**

s 44 am [Ord1989-38](#) sch 1; [A2016-1](#) s 61

**Claims made after cessation of management**

s 45 am [Ord1989-38](#) sch 1; [A2016-1](#) s 61

**Investment board**

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

**Establishment of board**

s 46 am [A2016-1](#) s 55  
sub [A2017-4](#) amdt 3.157

## Endnotes

### 4 Amendment history

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#### **Function of board**

s 47 am [A1999-28](#) sch  
sub [A2002-27](#) s 38  
am [A2016-1](#) s 61

#### **Membership of board**

s 48 am [Ord1987-37](#); [A1994-97](#) sch pt 1  
sub [A2002-27](#) s 39  
am [A2016-1](#) s 61

#### **Senior member of board**

s 49 am [A2016-1](#) s 61

#### **Acting members**

s 50 am [Ord1987-37](#); [A1992-23](#) sch 1  
om [A2005-52](#) amdt 1.254

#### **Remuneration and allowances**

s 51 sub [Ord1989-50](#) sch  
om [A1997-41](#) sch 1

#### **Resignation**

s 52 am [Ord1987-37](#)  
om [A2005-52](#) amdt 1.254

#### **Ending board member appointments**

s 53 am [Ord1987-37](#)  
sub [A2005-52](#) amdt 1.255  
am [A2010-30](#) amdt 1.59; [A2016-1](#) s 61

#### **Honesty, care and diligence of board members**

s 53A ins [A2005-52](#) amdt 1.255

#### **Conflict of interest**

s 53B ins [A2005-52](#) amdt 1.255

#### **Agenda to require disclosure of interest item**

s 53C ins [A2005-52](#) amdt 1.255

#### **Disclosure of interests by board members**

s 53D ins [A2005-52](#) amdt 1.255

#### **Reporting of disclosed interests to Minister**

s 53E ins [A2005-52](#) amdt 1.255

#### **Protection of board members from liability**

s 53F ins [A2005-52](#) amdt 1.255

#### **Indemnification and exemption of board members**

s 53G ins [A2005-52](#) amdt 1.255  
am [A2016-1](#) s 61

**Board meetings**

div 6.2 hdg orig div 6.2 hdg renum as div 6.3 hdg  
ins [A2005-52](#) amdt 1.256

**Time and place of board meetings**

s 54 am [Ord1987-37](#); [A2002-27](#) s 40  
sub [A2005-52](#) amdt 1.256

**Presiding member at meetings**

s 54A ins [A2005-52](#) amdt 1.256

**Quorum at meetings**

s 54B ins [A2005-52](#) amdt 1.256

**Voting at meetings**

s 54C ins [A2005-52](#) amdt 1.256

**Conduct of meetings etc**

s 54D ins [A2005-52](#) amdt 1.256  
am [A2008-28](#) amdt 3.142

**Common funds**

div 6.3 hdg (prev pt 6 div 2 hdg and then div 6.2 hdg) am [A1999-28](#) sch  
renum R6 LA  
renum as div 6.3 hdg [A2005-52](#) amdt 1.257

**Establishment of common funds etc**

s 55 am [A1999-28](#) sch; [A2016-1](#) s 61

**Investment of money held in common funds**

s 56 am [A1999-28](#) sch; [A2002-27](#) s 41; [A2016-1](#) s 61

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

s 57 am [A1999-28](#) sch; [A2002-27](#) s 42; [A2016-1](#) s 61

**Withdrawal of money from common funds**

s 58 am [A1999-28](#) sch; [A2002-27](#) s 43; [A2016-1](#) s 61

**Distribution of capital and income**

s 59 sub [A1999-28](#) sch; [A2002-27](#) s 44; [A2016-1](#) s 61

**Management fee**

s 59A ins [A1991-21](#) s 3  
am [A1996-63](#) s 4; [A1999-28](#) sch; [A2001-44](#) amdt 1.3504,  
amdt 1.3505; [A2016-1](#) s 61

**Income accounts**

s 60 am [A1996-63](#) s 5  
sub [A1999-28](#) sch  
am [A2002-27](#) s 45, s 46  
ss renum LA R7 (see also [A2002-27](#) s 47)  
am [A2016-1](#) s 61

## Endnotes

### 4 Amendment history

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

s 61 am [A1996-63](#) s 6; [A1999-28](#) sch; [A2001-44](#) amdt 1.3506;  
[A2002-27](#) ss 48-50; [A2016-1](#) s 61

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

s 62 sub [A2001-56](#) amdt 3.473  
om [A2002-27](#) s 51

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

s 63 am [A1996-63](#) s 7; [A1999-28](#) sch  
sub [A2002-27](#) s 52  
am [A2016-1](#) s 61; [A2016-13](#) amdt 1.131

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

s 64 am [A1999-28](#) sch; [A2002-27](#) s 53, s 54; [A2016-1](#) s 61

#### **Advances to beneficiaries**

s 65 am [A1999-28](#) sch; [A2002-27](#) s 55, s 56; [A2016-1](#) s 61

#### **Audit**

pt 6 div 3 hdg ins [A1990-25](#) s 16  
om [A1996-26](#) sch pt 29

#### **Use and disclosure of protected information**

s 65A ins [A1990-25](#) s 16  
am [A1991-91](#) s 3  
om [A1996-26](#) sch pt 29  
ins [A2016-1](#) s 56

#### **Financial reporting and audit**

s 65B ins [A1990-25](#) s 16  
om [A1996-26](#) sch pt 29

#### **Public trustee and guardian may require information or documents**

s 66 hdg am [A2016-1](#) s 61  
s 66 am [A2007-3](#) amdt 3.436  
om [A2008-7](#) amdt 1.73  
ins [A2014-49](#) s 19  
am [A2016-1](#) s 61; [A2016-13](#) amdt 1.131; [A2020-14](#)  
amdt 1.120, amdt 1.121; [A2021-3](#) s 37, s 38

#### **Notices to be given to public trustee and guardian**

s 67 hdg am [A2016-1](#) s 61  
s 67 am [A1994-81](#) sch; [A2016-1](#) s 61

#### **Costs in legal proceedings**

s 68 am [A1997-96](#) sch 1; [A2016-1](#) s 61

#### **Costs arising out of certain applications**

s 69 am [A2016-1](#) s 61

**Certain covenants void**s 71 am [A2016-1](#) s 61**Lien in respect of insurance premiums**s 72 am [A2010-15](#) amdt 2.4; [A2016-1](#) s 61**Evidence**s 74 am [A2009-49](#) amdt 3.145; [A2016-1](#) s 61; [A2017-4](#) amdt 3.158, amdt 3.159**Determination of fees and charges**s 75 am [Ord1987-37](#)  
sub [A2001-44](#) amdt 1.3507  
am [A2017-4](#) amdt 3.160**Regulation-making power**s 76 am [Ord1987-37](#); [Ord1989-38](#) sch 1  
sub [A2001-44](#) amdt 1.3508**Dictionary**dict ins [A2005-52](#) amdt 1.258  
am [A2009-49](#) amdt 3.146; [A2010-30](#) amdt 1.60; [A2012-30](#)  
amdt 1.24; [A2017-4](#) amdt 3.161  
def **Administration Act** reloc from s 4 [A2005-52](#) amdt 1.249  
def **board** reloc from s 4 [A2005-52](#) amdt 1.249  
sub [A2016-1](#) s 57; [A2017-4](#) amdt 3.162  
def **common fund** am [A1999-28](#) sch  
reloc from s 4 [A2005-52](#) amdt 1.249  
def **court** reloc from s 4 [A2005-52](#) amdt 1.249  
def **deputy public trustee** sub [A1994-97](#) sch pt 1  
reloc from s 4 [A2005-52](#) amdt 1.249  
am [A2008-7](#) amdt 1.74  
om [A2016-1](#) s 58  
def **deputy public trustee and guardian** ins [A2016-1](#) s 59  
def **domestic partner** ins [A2004-2](#) amdt 1.38  
reloc from s 4 [A2005-52](#) amdt 1.249  
def **member** reloc from s 4 [A2005-52](#) amdt 1.249  
def **person under disability** reloc from s 4 [A2005-52](#)  
amdt 1.249  
def **public trustee** sub [A1994-97](#) sch pt 1; [A2005-52](#)  
amdt 1.248  
reloc from s 4 [A2005-52](#) amdt 1.249  
sub [A2016-1](#) s 60  
om [A2016-13](#) amdt 1.132  
def **public trustee and guardian** ins [A2016-13](#) amdt 1.133  
def **senior member** reloc from s 4 [A2005-52](#) amdt 1.249

## Endnotes

### 5 Earlier republications

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#### 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. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	<a href="#">A1991-91</a>	31 May 1991
2	<a href="#">A1992-23</a>	31 August 1992
3	<a href="#">A1994-97</a>	28 February 1995
4	<a href="#">A1996-63</a>	31 December 1996
5	<a href="#">A1999-28</a>	31 July 1999
6	<a href="#">A2001-56</a>	31 January 2002
7	<a href="#">A2002-27</a>	7 October 2002
7 (RI)	<a href="#">A2002-27</a> ‡	13 February 2003
8	<a href="#">A2003-2</a>	31 March 2003
9	<a href="#">A2004-2</a>	22 March 2004
10	<a href="#">A2005-60</a>	22 December 2005
11	<a href="#">A2005-60</a>	1 January 2006
12	<a href="#">A2007-3</a>	12 April 2007
13*	<a href="#">A2008-7</a>	7 May 2008
14	<a href="#">A2008-28</a>	26 August 2008
15	<a href="#">A2009-49</a>	17 December 2009
16	<a href="#">A2010-30</a>	28 September 2010
17	<a href="#">A2010-50</a>	21 December 2010
18	<a href="#">A2010-50</a>	30 January 2012
19	<a href="#">A2011-48</a>	1 March 2012

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<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
20	<a href="#">A2012-30</a>	14 June 2012
21	<a href="#">A2014-17</a>	14 May 2014
22	<a href="#">A2014-49</a>	17 November 2014
23	<a href="#">A2015-11</a>	21 May 2015
24	<a href="#">A2015-33</a>	14 October 2015
25	<a href="#">A2016-13</a>	1 April 2016
26	<a href="#">A2016-18</a>	27 April 2016
27	<a href="#">A2017-4</a>	9 March 2017
28	<a href="#">A2020-14</a>	14 May 2020
29	<a href="#">A2020-14</a>	11 August 2020
30	<a href="#">A2021-3</a>	26 February 2021
31	<a href="#">A2021-24</a>	14 October 2021
32	<a href="#">A2021-24</a>	9 December 2021

‡ includes retrospective amendments by [A2002-49](#)