



Australian Capital Territory

Public Trustee (Miscellaneous Amendments) Act 1985

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About this republication

The republished law

This is a republication of the *Public Trustee (Miscellaneous Amendments) Act 1985* effective 20 July 1989 to 21 December 2000.

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Australian Capital Territory

PUBLIC TRUSTEE (MISCELLANEOUS AMENDMENTS) ACT 1985

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FURTHER AMENDMENTS OF THE ADMINISTRATION
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AMENDMENTS OF OTHER ACTS



Australian Capital Territory

PUBLIC TRUSTEE (MISCELLANEOUS AMENDMENTS) ACT 1985

An Act to amend certain Acts in consequence of the making of the *Public Trustee Act 1985*, and for other purposes

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Public Trustee (Miscellaneous Amendments) Act 1985*.¹

Commencement

2. This Act shall come into operation on such date as is fixed by the Minister of State for Territories by notice in the *Gazette*.¹

PART II—AMENDMENTS OF THE ADMINISTRATION AND PROBATE ACT 1929

Principal Act

3. The *Administration and Probate Act 1929* is in this Part referred to as the Principal Act.

Interpretation

4. Section 5 of the Principal Act is amended by inserting after the definition of “Probate” in subsection (1) the following definition:

“ ‘Public Trustee’ has the same meaning as in the *Public Trustee Act 1985*;”.

5. Section 10C of the Principal Act is repealed and the following section substituted:

Grant of probate to public trustee

“10C. Where a deceased person has named, as an executor of his or her will—

- (a) the Public Trustee for the Australian Capital Territory;
- (b) the public trustee of a State; or
- (c) the Public Trustee for the Northern Territory,

the Court may grant probate of the will to that public trustee.”.

Order to assign bond in creditor’s administration

6. Section 18 of the Principal Act is amended by omitting from subsection (1) “Curator” and substituting “Public Trustee”.

Costs where caveat lodged by Public Trustee

7. Section 38 of the Principal Act is amended by omitting “the Curator” and substituting “the Public Trustee”.

Estate to vest in Public Trustee until grant

8. Section 38A of the Principal Act is amended by omitting “the Curator” and substituting “the Public Trustee”.

Heading to Part VI

9. The heading to Part VI of the Principal Act is omitted and the following heading substituted:

“PART VI—PUBLIC TRUSTEE”.

Orders to Public Trustee to collect and administer

10. Section 88 of the Principal Act is amended by omitting from subsection (1) “the Curator” (first, second and third occurring) and substituting “the Public Trustee”.

Grant of probate or administration notwithstanding appointment of Public Trustee

11. Section 90 of the Principal Act is amended by omitting from subsection (1) “the Curator” (wherever occurring) and substituting “the Public Trustee”.

Cessation of rights and liabilities of Public Trustee

12. Section 91 of the Principal Act is amended by omitting from subsection (1) “the Curator” (wherever occurring) and substituting “the Public Trustee”.

Order to Public Trustee to collect and administer in special circumstances

13. Section 92 of the Principal Act is amended by omitting from subsection (1) “the Curator” and substituting “the Public Trustee”.

Court to have summary jurisdiction over Public Trustee

14. Section 95 of the Principal Act is amended by omitting from subsection (1) “the Curator has been ordered” and substituting “the Curator of Estates of Deceased Persons or the Public Trustee has been ordered”.

Public Trustee to act as Court directs

15. Section 97 of the Principal Act is amended by omitting “the Curator” and substituting “the Public Trustee”.

Public Trustee may obtain directions of Court

16. Section 97A of the Principal Act is amended by omitting from subsection (1) “Curator” and substituting “Public Trustee”.

Receipt of Public Trustee sufficient discharge

17. Section 102 of the Principal Act is amended by omitting “the Curator” and substituting “the Public Trustee”.

Further amendments

18. The Principal Act is amended as set out in Schedule 1.

PART III—AMENDMENTS OF OTHER ACTS

Amendments of other Acts

19. The Acts specified in Schedule 2 are amended as set out in that Schedule.

PART IV—TRANSITIONAL

Interpretation

20. In this Part—

“commencement date” means the date of commencement of this Act;

“Curator” means the Curator of Estates of Deceased Persons appointed under the *Administration and Probate Act 1929*;

“Public Trustee” has the same meaning as in the *Public Trustee Act 1985*.

Transfer of assets, liabilities etc.

21. (1) On the commencement date—

- (a) any rights, property or assets that, immediately before that date, were vested in the Curator are, by force of this subsection, vested in the Public Trustee; and
- (b) the Public Trustee becomes, by force of this subsection, liable to pay or discharge any debts, liabilities or obligations of the Curator that existed immediately before that date.

(2) Without limiting the generality of subsection (1), where, immediately before the commencement date, the Curator was administering the estate of a deceased person, then, on the commencement date—

- (a) the Public Trustee becomes entitled to administer such portion of that estate as is left unadministered by the Curator;
- (b) all rights, property and assets that, immediately before that date, were vested in the Curator in respect of that estate are vested in the Public Trustee;
- (c) the Public Trustee becomes liable to pay and discharge all debts, liabilities and obligations of the Curator in respect of that estate that existed immediately before that date; and
- (d) the Public Trustee is entitled to possession of all books, accounts, letters, papers and documents used by or in the possession of or under the control of the Curator in respect of that estate immediately before that date.

Contracts, agreements etc.

22. (1) Any contract, agreement or arrangement entered into by or on behalf of the Curator as a party and in force immediately before the commencement date continues in force notwithstanding the repeal of section 8 of the *Administration and Probate Act 1929* effected by this Act but that contract, agreement or arrangement has effect, on and after the commencement date, as if—

- (a) the Public Trustee were substituted for the Curator as a party to the contract, agreement or arrangement; and
- (b) any reference in the contract, agreement or arrangement to the Curator were (except in relation to matters that occurred before that date) a reference to the Public Trustee.

(2) A reference to the Curator in any order or other instrument, not being an instrument of a kind referred to in subsection (1), in force immediately before the commencement date has effect on and after that date as if that reference were (except in relation to matters that occurred before that date) a reference to the Public Trustee.

(3) A reference to the Curator in a will made before the commencement of this Act by a testator who dies after that commencement, being a will that has not been revoked, has effect, or shall be taken to have had effect, on and after the death of the testator as if that reference to the Curator were a reference to the Public Trustee.

(4) In subsection (3), “will” includes a codicil.

Proceedings

23. Where, immediately before the commencement date, proceedings to which the Curator was a party were pending in any court or tribunal, the Public Trustee is, by force of this section, substituted for the Curator as a party to the proceedings.

Registration of changes in title to land

24. Where, by reason of the operation of section 21, any interest in land situated in the Territory becomes vested in the Public Trustee, the Public Trustee may lodge with the Registrar of Titles a notice stating that that interest in land is vested in the Public Trustee by virtue of the operation of section 21 and the Registrar shall make such entries in the relevant registers kept by the Registrar, and do such other things, as are necessary to reflect the operation of section 21 in relation to that interest in land.

SCHEDULE 1

Section 18

FURTHER AMENDMENTS OF THE ADMINISTRATION AND PROBATE ACT 1929

Provision	Amendment
Subsection 5 (1)	<p>(a) Omit the definitions of “Acting Curator”, “Acting Deputy Curator”, “Deputy Curator” and “the Curator”.</p> <p>(b) Omit “subsection (3) of section seven of this Act” from the definition of “Acting Deputy Registrar”, substitute “subsection 7 (3)”.</p> <p>(c) Omit “subsection (3) of section seven of this Act” from the definition of “Acting Registrar”, substitute “subsection 7 (3)”.</p> <p>(d) Omit the definition of “City Area”.</p> <p>(e) Omit “the first day of July, One thousand nine hundred and twenty-nine” from the definitions of “deceased person” and “the deceased”, substitute “1 July 1929”.</p> <p>(f) Omit “section seven of this Act” from the definition of “Deputy Registrar”, substitute “section 7”.</p> <p>(g) Omit “section seven of this Act” from the definition of “the Registrar”, substitute “section 7”.</p> <p>(h) Omit “-1963” from the definition of “the Registrar of Titles”.</p> <p>(i) Omit “section seven B of this Act” from the definition of “the seal of the Court”, substitute “section 7B”.</p>

SCHEDULE 1—continued

Provision	Amendment
Sections 6, 8, 8A and 8B	Repeal the sections
Subsection 8C (1).....	Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Subsection 8C (2).....	Omit “In the last preceding subsection”, substitute “In subsection (1)”.
Paragraph 8C (2) (b).....	Omit the office specified in the table opposite to the reference to the State of Western Australia, substitute the following office— “Commissioner of State Taxation”.
Subsection 14 (2).....	Omit “Two thousand dollars”, substitute “\$2,000”.
Subsection 14 (4).....	Omit “of this section”.
Paragraph 14 (4) (a).....	Omit “Curator”, substitute “Public Trustee”.
Subsection 14 (5).....	Omit “ <i>Insurance Act 1932-1966</i> ”, substitute “ <i>Insurance (Deposits) Act 1932</i> ”.
Subsection 18 (2).....	Omit “Curator”, substitute “Public Trustee”.
Subsection 18 (3).....	Omit “Curator”, substitute “Public Trustee”
Subsection 80 (2).....	Omit “the last preceding subsection” (wherever occurring), substitute “subsection (1)”.
Subsection 80 (3).....	(a) Omit “of this section”. (b) Omit “Curator” (wherever occurring), substitute “Public Trustee”. (c) Omit “section eighty-eight of this Act”, substitute “section 88”.
Subsection 83B (1).....	Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Subsection 83B (2).....	(a) Omit “the last preceding subsection” (wherever occurring), substitute “subsection (1)”. (b) Omit “Curator”, substitute “Public Trustee”.
Paragraph 83B (2) (b).....	Omit “sections nine B, sixty-four, sixty-five and ninety-nine of this Act”, substitute “sections 9B, 64, 65 and 99”.
Sections 84, 85, 86, 87 and 87A	Repeal the sections.
Subsection 87B (1).....	Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Subsection 87B (2).....	(a) Omit “Curator” (wherever occurring), substitute “Public Trustee”. (b) Omit “the last preceding subsection”, substitute “subsection (1)”.
Subsection 87B (3).....	(a) Omit “Curator” (wherever occurring), substitute “Public Trustee”. (b) Omit “of this section”.

SCHEDULE 1—continued

Provision	Amendment
Subsection 87B (4)	(a) Omit “Curator” (wherever occurring), substitute “Public Trustee”. (b) Omit “of this section”.
Subsection 87B (5)	Omit the subsection.
Subsection 87C (1)	Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Paragraph 87C (1) (d)	Omit “the next succeeding section”, substitute “section 88”.
Subsection 87C (2)	(a) Omit “the last preceding subsection”, substitute “subsection (1)”. (b) Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Subsection 87C (3)	Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Subsection 87C (4)	(a) Omit “Curator” (wherever occurring), substitute “Public Trustee”. (b) Omit “the next succeeding section”, substitute “section 88”.
Subsection 87C (5)	(a) Omit “Curator” (wherever occurring), substitute “Public Trustee”. (b) Omit “in the <i>Gazette</i> and”.
Subsection 87C (6)	Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Subsection 87C (7)	(a) Omit “Curator” (wherever occurring), substitute “Public Trustee”. (b) Omit “the last preceding subsection”, substitute “subsection (6)”.
Subsection 87C (8)	Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Subsection 87C (9)	(a) Omit “Curator” (wherever occurring), substitute “Public Trustee”. (b) Omit “the last preceding subsection”, substitute “subsection (8)”.
Subsection 87C (10)	(a) Omit “of this section”. (b) Omit “Curator”, substitute “Public Trustee”. (c) Omit “the next succeeding section”, substitute “section 88”.
Subsection 87C (11)	(a) Omit “Curator”, substitute “Public Trustee”. (b) Omit “of this section”. (c) Omit “section thirty-two B of this Act”, substitute “section 32B”.
Paragraph 88 (1) (h)	Omit “the Curator”, substitute “the Curator of Estates of Deceased Persons or the Public Trustee”.

SCHEDULE 1—continued

Provision	Amendment
Subsection 88 (2).....	Omit “Curator”, substitute “Public Trustee”.
Subsection 88 (3).....	Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Subsection 88 (4).....	Omit “of this section” (wherever occurring).
Subsection 88 (5).....	Omit “Curator”, substitute “Public Trustee”.
Subsection 89 (1).....	Omit “Curator”, substitute “Public Trustee”.
Subsection 89 (1A).....	Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Subsection 89 (2).....	Omit “Curator”, substitute “Public Trustee”.
Paragraph 90 (1) (a).....	Omit “section eighty-seven B of this Act”, substitute “section 87B”.
Paragraph 90 (1) (b)	Omit “section eighty-seven C of this Act”, substitute “section 87C”.
Paragraph 90 (1) (c).....	Omit “section eighty-eight of this Act”, substitute “section 88”.
Subsection 90 (2).....	(a) Omit “seven”, substitute “7”. (b) Omit “Curator”, substitute “Public Trustee”.
Subsection 91 (2).....	Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Subsection 91 (3).....	Omit “Curator”, substitute “Public Trustee”.
Subsection 91 (4).....	Omit “Curator”, substitute “Public Trustee”.
Subsection 92 (2).....	Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Subsection 92 (3).....	Omit “Curator”, substitute “Public Trustee”.
Section 93.....	(a) Omit “fourteen days”, substitute “1 month”. (b) Omit “Curator”, substitute “Public Trustee”.
Sections 94, 94A and 94B	Repeal the sections.
Paragraph 95 (1) (a).....	Insert “or the Public Trustee” after “the Curator”.
Paragraph 95 (1) (i)	Omit “Curator”, substitute “Public Trustee”.
Paragraph 96 (1) (a).....	Omit “or”.
Paragraph 96 (1) (b)	Omit the paragraph, substitute the following paragraph: “(b) by the Public Trustee; or”.
Paragraph 96 (1) (c).....	Omit “Curator”, substitute “Public Trustee”.
Section 97.....	Omit “of this Act”.
Subsection 97A (2).....	Omit “Curator”, substitute “Public Trustee”.
Subsection 97A (4).....	Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Subsection 98 (1).....	(a) Omit “Curator”, substitute “Public Trustee”. (b) Omit “of this Act”. (c) Omit “the next succeeding subsection”, substitute “subsection (2)”.

SCHEDULE 1—continued

Provision	Amendment
Section 99	Repeal the section.
Section 101	Omit “Curator”, substitute “Public Trustee”.
Paragraph 101 (a)	Add at the end of the paragraph “and”.
Paragraphs 101 (b), (d) and (e)	Omit the paragraphs.
Section 102	Omit “of this Act”.
Sections 103, 104, 105 and 106	Repeal the sections.
Subsection 107 (1)	Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Subsection 107 (1A)	Omit “Curator”, substitute “Public Trustee”.
Subsection 107 (1B)	(a) Omit “either of the last two preceding subsections”, substitute “subsection (1) or (1A)”.
	(b) Omit “Curator”, substitute “Public Trustee”.
Subsection 107 (2)	Omit “Curator’s”, substitute “Public Trustee’s”.
Section 108	Repeal the section.

SCHEDULE 2

Section 19

AMENDMENTS OF OTHER ACTS

Acts	Amendments
<i>Agents Act 1968</i>	Paragraph 3 (a)— Omit “the Curator of Intestate Estates”, substitute “the Public Trustee for the Australian Capital Territory”.
<i>Child Welfare Act 1957</i>	Subsection 119 (1)— Omit “Curator of the Estates of Deceased Persons”, substitute “Public Trustee for the Australian Capital Territory”. Subsection 119 (2)— Omit “Curator of the Estates of Deceased Persons”, substitute “Public Trustee for the Australian Capital Territory”.
<i>Compensation (Fatal Injuries) Act 1968</i>	Subsection 4 (1)— Omit “the Curator of Deceased Estates if the Curator” from the definition of “personal representative”, substitute “the Public Trustee for the Australian Capital Territory if the Public Trustee”.
<i>Court of Petty Sessions (Civil Jurisdiction) Act 1982</i>	Section 95— Omit subsections (1) and (2), substitute the following subsection: “(1) This section applies to money ordered or agreed to be paid in proceedings referred to in section 94, other than— (a) money due to a person who has not attained full age as salary, wages or otherwise in respect of his employment; and (b) money paid to the Public Trustee in pursuance of section 25 of the <i>Public Trustee Act 1985</i> .”.
<i>Egg Industry Act 1975</i>	Subsection 16 (12)— (1) Omit from paragraph (a) “the Curator of Estates of Deceased Persons”, substitute “the Public Trustee for the Australian Capital Territory”. (2) Omit from paragraph (b) “the Curator”, substitute “the Public Trustee”.
<i>Evidence Act 1971</i>	Paragraph 14 (5) (b)— Add at the end thereof “or the Public Trustee for the Australian Capital Territory”.

SCHEDULE 2—continued

Acts	Amendments
<i>Family Provision Act 1969</i>	<p>Subsection 4 (1)—</p> <p>Omit “the Curator of Deceased Estates” from the definition of “administration”, substitute “the Curator of Estates of Deceased Persons or the Public Trustee for the Australian Capital Territory”.</p>
<i>Legal Practitioners Act 1970</i>	<p>Subsection 124 (2)—</p> <p>Omit paragraphs (a) and (b), substitute the following paragraphs:</p> <p>“(a) the Public Trustee for the Australian Capital Territory or a person performing the duties of the Public Trustee;</p> <p>(b) a person who—</p> <p>(i) is an officer or employee within the meaning of the <i>Public Service Act 1922</i> of the Commonwealth; and</p> <p>(ii) is exercising a power or performing a function relating to the business or affairs of the Public Trustee; or”.</p>
<i>Real Property Act 1925</i>	<p>Paragraph 6 (1) (a)—</p> <p>Omit the definition of “Curator”.</p> <p>Subsection 135 (1)—</p> <p>(1) Omit “authorizing the Curator”, substitute “authorizing the Curator of Estates of Deceased Persons or the Public Trustee for the Australian Capital Territory”.</p> <p>(2) Omit “or Curator”, substitute “or Public Trustee”.</p> <p>Subsection 135 (2)—</p> <p>Omit “the Curator”, substitute “the Public Trustee for the Australian Capital Territory”.</p> <p>Subsection 136 (2)—</p> <p>Omit “the Curator”, substitute “the Curator of Estates of Deceased Persons or the Public Trustee for the Australian Capital Territory”.</p>
<i>Seat of Government (Administration) Act 1930</i>	<p>Second Schedule—</p> <p>Insert in Part I—</p> <p>“<i>Public Trustee Act 1985</i></p> <p><i>Public Trustee (Miscellaneous Amendments) Act 1985</i>”</p> <p>after—</p> <p>“<i>Police Offences Act 1930</i>”.</p>

SCHEDULE 2—continued

Acts	Amendments
<i>Trustee Act 1957</i>	<p>Section 7—</p> <p>Omit the definition of “the Curator”, substitute the following definition:</p> <p>“ ‘the Public Trustee’ means the Public Trustee for the Australian Capital Territory and includes—</p> <p>(a) a person appointed to act as Public Trustee; and</p> <p>(b) a Deputy Public Trustee;”.</p> <p>Paragraph 9 (d)—</p> <p>Omit “the Curator”, substitute “the Public Trustee”.</p> <p>Paragraph 12 (c)—</p> <p>Omit “the Curator”, substitute “the Public Trustee”.</p> <p>Subsection 13 (3)—</p> <p>Omit “the Curator”, substitute “the Public Trustee”.</p> <p>Second Schedule—</p> <p>(1) Omit “the Curator” from the definition of “Administrator” in paragraph (b) in column 3 of item 4, substitute “the Public Trustee”.</p> <p>(2) Omit the definition of “the Curator” in paragraph (f) in column 3 of item 4, substitute the following definition:</p> <p>“ ‘the Public Trustee’ means the Public Trustee for the Australian Capital Territory and includes—</p> <p>(a) a person appointed to act as Public Trustee; and</p> <p>(b) a Deputy Public Trustee.”.</p> <p>(3) Omit from subsection (2) in column 3 of item 7 “the Curator” (wherever occurring), substitute “the Public Trustee”.</p>
<i>Workmen’s Compensation Act 1951</i>	<p>First Schedule—</p> <p>(1) Insert in paragraph 6 “or (except in the case of a payment under paragraph 9A of this Schedule) dealt with in accordance with section 25 of the <i>Public Trustee Act 1985</i>” after “under this Act”.</p> <p>(2) Insert in paragraph 7 (3) “and, in the case of a lump sum payment, section 25 of the <i>Public Trustee Act 1985</i>” after “of that paragraph”.</p>

NOTE

1. The *Public Trustee (Miscellaneous Amendments) Act 1985* as shown in this reprint comprises Act No. 9, 1985 amended as indicated in the Tables below.

Citation of Laws—The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) altered the citation of most Ordinances so that after Self-Government day they are to be cited as Acts. That Act also affects references in ACT laws to Commonwealth Acts.

Table 1

Table of Ordinances

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Public Trustee (Miscellaneous Amendments) Ordinance 1985</i>	9, 1985	8 Mar 1985	28 Oct 1985 (see <i>Gazette</i> 1985, No. G42, p. 3902)	

Self-Government day 11 May 1989

Table 2

Table of Acts

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Public Trustee (Miscellaneous Amendments) (Amendment) Act 1989</i>	6, 1989	20 July 1989	20 July 1989	—

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
S. 22	am. Act No. 6, 1989