

2015

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Protection of Rights (Services) Legislation Amendment Bill 2015

Contents

	Page
Part 1	
Preliminary	
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
Part 2	
Human Rights Commission Act 2005	
4 Main objects of Act New section 6 (2) (da) and (db)	3
5 Section 6 (2) (e), (f) and (h)	3
6 Section 6 (2) (i)	3

J2015-322

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Contents

	Page	
7	New section 6A	4
8	New section 9A	4
9	Members of commission New section 12 (1) (aa)	4
10	New section 12 (1) (f), (g) and (1A)	5
11	Commission's functions Section 14 (1) (b) and (c)	5
12	Section 14 (1) (d), (f), (g), (h) and (i)	5
13	New section 14 (1A)	5
14	Section 14 (2)	6
15	New divisions 3.2 and 3.2A	6
16	Sections 19A, 19BA and 20	12
17	Disability and community services commissioner's functions New section 21 (1) (aa) and (ab)	12
18	Sections 21A, 22, 23A and 24	13
19	Health services commissioner's functions Section 25 (1) (a)	13
20	Sections 25A, 26 and 27A	13
21	New divisions 3.7A and 3.7B	14
22	Ending appointments Division 3.8	17
23	New section 31	17
24	Quorum at meetings Section 32	17
25	Voting at meetings New section 33 (2)	17
26	Individual with more than 1 role Section 34 (1), example	18
27	Section 34 (3)	18
28	New section 41A	18
29	What complaints may be made under this Act? New section 42 (1) (ea)	19
30	Who may make a complaint under this Act? Section 43 (1) (f)	19

	Page	
31	Consideration without complaint or appropriate complainant Section 48 (2)	19
32	Allocating complaints Section 50	20
33	Referral of advocacy matters Section 51A (2) and (3)	20
34	Considering complaints Section 52 (1), new notes	20
35	Protection of others from liability Section 100A	21
36	Dictionary, definition of <i>children and young people commissioner</i>	21
37	Dictionary, new definition	21
38	Dictionary, definitions of <i>disability and community services commissioner</i> and <i>discrimination commissioner</i>	22
39	Dictionary, definitions of <i>health services commissioner</i> and <i>human rights commissioner</i>	22
40	Dictionary, new definitions	22
41	Dictionary, definition of <i>related Act</i> , new paragraph (ba)	22
42	Dictionary, definition of <i>related Act</i> , new paragraphs (f) and (g)	23
43	Dictionary, new definitions	23
Part 3	Public Trustee Act 1985	
44	Long title	24
45	Section 1	24
46	Sections 5 and 6	24
47	Public trustee a corporation sole Section 8 (1) (a)	25
48	New section 9A	25
49	Capacities in which public trustee may act New section 13 (1) (h)	25
50	New division 3.3	26
51	Express powers of public trustee Section 21 (1)	28
52	Section 21 (1) (a)	28
53	Section 21 (1) (p)	29

Contents

	Page	
54	Dealings with other public trustees	
	Section 30 (1) (a)	29
55	Section 30 (1)	29
56	Section 30 (2) (a)	29
57	Section 30 (2)	30
58	Section 30 (3)	30
59	Establishment of board	
	Section 46	30
60	New section 65A	30
61	Dictionary, definition of <i>board</i>	33
62	Dictionary, definition of <i>deputy public trustee</i>	33
63	Dictionary, new definition of <i>deputy public trustee and guardian</i>	33
64	Dictionary, definition of <i>public trustee</i>	33
65	Further amendments, mentions of <i>public trustee</i>	34
Part 4	Repeal	
66	Repeal of Public Advocate Act 2005	35
Schedule 1	Other amendments	36
Part 1.1	Domestic Violence Agencies Act 1986	36
Part 1.2	Guardianship and Management of Property Act 1991	37
Part 1.3	Victims of Crime Act 1994	42

2015

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Protection of Rights (Services) Legislation Amendment Bill 2015

A Bill for

An Act to amend legislation about the protection of rights services, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Protection of Rights (Services) Legislation*
4 *Amendment Act 2015*.

5 **2 Commencement**

6 This Act commences on 1 April 2016.

7 *Note* The naming and commencement provisions automatically commence on
8 the notification day (see [Legislation Act](#), s 75 (1)).

9 **3 Legislation amended**

10 This Act amends the *Human Rights Commission Act 2005* and the
11 *Public Trustee Act 1985*.

12 *Note 1* This Act also amends the following legislation (see sch 1):

- 13 • *Domestic Violence Agencies Act 1986*
14 • *Guardianship and Management of Property Act 1991*
15 • *Victims of Crime Act 1994*.

16 *Note 2* This Act also repeals the *Public Advocate Act 2005* (see s 66).

1 **Part 2** **Human Rights Commission**
2 **Act 2005**

3 **4 Main objects of Act**
4 **New section 6 (2) (da) and (db)**

5 *insert*

6 (da) acknowledge, protect and promote the rights of victims; and

7 (db) promote the protection of children and young people and
8 people with a disability from abuse and exploitation; and

9 **5 Section 6 (2) (e), (f) and (h)**

10 *omit*

11 disability services, health services, services for children and young
12 people and services for older people

13 *substitute*

14 prescribed services

15 **6 Section 6 (2) (i)**

16 *omit*

17 disability services, health services, services for children and young
18 people, and services for older people,

19 *substitute*

20 prescribed services

1 **7 New section 6A**

2 *insert*

3 **6A What is a *prescribed service*?**

4 For this Act, a *prescribed service* means—

- 5 (a) a health service; and
6 (b) a disability service; and
7 (c) a service for children and young people; and
8 (d) a service for older people; and
9 (e) a service for victims of crime.

10 **8 New section 9A**

11 *insert*

12 **9A What is a *service for victims of crime*?**

13 A *service for victims of crime* is a service provided in the ACT
14 specifically for victims of crime.

15 **Examples—services for victims of crime**

- 16 • counselling and grief support services
17 • court support services

18 *Note* An example is part of the Act, is not exhaustive and may extend, but
19 does not limit, the meaning of the provision in which it appears (see
20 [Legislation Act](#), s 126 and s 132).

21 **9 Members of commission**
22 **New section 12 (1) (aa)**

23 *before paragraph (a), insert*

- 24 (aa) the president;

10 New section 12 (1) (f), (g) and (1A)

insert

(f) the public advocate;

(g) victims of crime commissioner.

Note The victims of crime commissioner is also the domestic violence project coordinator (see *Domestic Violence Agencies Act 1986*, s 11).

(1A) The president of the commission is the human rights commissioner.

**11 Commission's functions
Section 14 (1) (b) and (c)**

omit

disability services, health services, services for children and young people, and services for older people,

substitute

prescribed services

12 Section 14 (1) (d), (f), (g), (h) and (i)

omit

13 New section 14 (1A)

insert

(1A) The commission must exercise its functions—

(a) with regard to the principle—

(i) of the indivisibility and universality of human rights; and

(ii) that every person is free and equal in dignity and rights;
and

- 1 (b) efficiently, with a view to providing the greatest possible
2 benefit to the people of the ACT.

3 **14 Section 14 (2)**

4 *omit*

5 **15 New divisions 3.2 and 3.2A**

6 *insert*

7 **Division 3.2 President**

8 **18 President's functions**

- 9 (1) The president has the following functions:
- 10 (a) managing the administration of the commission;
- 11 (b) the efficient and effective financial management of the
12 commission's resources;
- 13 (c) ensuring the commission's functions are exercised in an
14 orderly and prompt way;
- 15 (d) developing a governance and corporate support protocol in
16 accordance with section 18A;
- 17 (e) developing a client service charter in accordance with
18 section 18B;
- 19 (f) developing an operations protocol in accordance with
20 section 18C;
- 21 (g) ensuring, as far as practicable, the commission's functions are
22 exercised in a way that takes into account, and is consistent
23 with, the governance and corporate support protocol, the client
24 service charter and the operations protocol;

- 1 (h) reporting, or coordinating reporting, on behalf of the
2 commission in accordance with subsection (2);
- 3 (i) promoting community discussion, and providing community
4 education and information, about—
- 5 (i) this Act and related Acts; and
6 (ii) the operation of the commission; and
7 (iii) the procedures for making complaints;
- 8 (j) advising the Minister about any matter in relation to this Act or
9 a related Act;
- 10 (k) collecting information about the operation of this Act and
11 related Acts, and publishing the information;
- 12 (l) dealing with complaints about the operation of the commission
13 (but not a complaint about a decision of a commissioner in
14 relation to a complaint made under division 4.1);
- 15 (m) if the president considers that a commissioner has a real or
16 perceived conflict of interest in relation to a complaint—
17 considering the complaint or allocating responsibility for
18 consideration of the complaint to another commissioner;
- 19 (n) any other function given to the president under this Act or
20 another territory law.
- 21 (2) The president—
- 22 (a) must for each inquiry and review mentioned in
23 section 14 (1) (e)—
- 24 (i) report, in writing, to the Minister and other appropriate
25 entities about the inquiry or review; and
26 (ii) advise the Minister and other appropriate entities about
27 the those matters; and

- 1 (b) is responsible for giving reports under the following sections
2 on behalf of the commission:
- 3 (i) section 17 (Minister's directions);
4 (ii) section 83 (Third-party reports);
5 (iii) section 84 (Commission-initiated reports);
6 (iv) section 87 (Reporting to Minister); and
- 7 (c) may report, in writing, to the Minister on the following
8 systemic matters:
- 9 (i) a matter of public importance relating to the commission,
10 including how the commission handles complaints under
11 the Act;
- 12 (ii) a matter affecting the system—
- 13 (A) for the protection of the rights of users of prescribed
14 services (or a class of user) as a whole, rather than a
15 matter affecting an individual alone; and
- 16 (B) for the provision of prescribed services (or a class of
17 prescribed services) as a whole, rather than a matter
18 affecting an individual alone.
- 19 (3) The president may exercise any function given to any other
20 commissioner under this Act or another territory law.
- 21 (4) To remove any doubt, the Minister may, but need not, present
22 advice mentioned in subsection (2) (a) to the Legislative Assembly.
- 23 *Note* A report under s 87 must be presented to the Legislative Assembly.

- 1 **18A Governance and corporate support protocol**
- 2 The president must—
- 3 (a) after consulting with the director-general, prepare a draft
- 4 governance and corporate support protocol for each 3-year
- 5 period that includes—
- 6 (i) how the responsible directorate and the commission will
- 7 consult and communicate with each other; and
- 8 (ii) a strategic plan for the 3-year period; and
- 9 (iii) how funding will be allocated within the commission for
- 10 each year in the 3-year period; and
- 11 (iv) a budget for each commissioner mentioned in section 12
- 12 for each year in the 3-year period; and
- 13 (v) performance criteria to be met by the commission in each
- 14 year of the 3-year period; and
- 15 (vi) financial and performance reporting and auditing
- 16 requirements for the 3-year period; and
- 17 (vii) processes for requesting funding; and
- 18 (viii) anything else prescribed by regulation; and
- 19 (b) give the draft plan to the director-general for approval; and
- 20 (c) publish the approved plan on the commission’s website.
- 21 **18B Client services charter**
- 22 The president must—
- 23 (a) every 3 years, after consulting with the ACT community for
- 24 8 weeks, prepare a client service charter that states—
- 25 (i) how the commission will provide services to the
- 26 community; and

1 (ii) what the community can expect when dealing with the
2 commission; and

3 (b) publish the charter on the commission's website.

4 **18C Operations protocol**

5 The president must—

6 (a) every 3 years, after consulting with the other commissioners,
7 prepare a protocol consistent with part 4 (Complaints) that
8 provides for the following:

9 (i) how enquiries and complaints generally will be received
10 by the commission;

11 (ii) how enquiries will be dealt with within the commission;

12 (iii) how complaints will be referred within the commission;

13 (iv) how clients can access the commission's services;

14 (v) how the president undertakes advocacy and reporting on
15 systemic matters under section 18 (2);

16 (vi) the kinds of questions or matters that may be considered
17 at a commission meeting under section 33;

18 (vii) when complaints should be referred to other complaint
19 handling entities;

20 (viii) anything else the commission considers appropriate;

21 (ix) anything else prescribed by regulation; and

22 (b) publish the protocol on the commission's website.

1 Division 3.2A Appointment of commission members

2 18D Appointment of commission members

- 3 (1) The Executive must appoint the commission members.

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

6 *Note 2* In particular, an appointment may be made by naming a person or
7 nominating the occupant of a position (see s 207).

- 8 (2) However, the Executive must not appoint a person as a member
9 unless satisfied that the person has the experience or expertise
10 necessary to exercise the member's functions.

- 11 (3) A member must not be appointed for a term of longer than 5 years.

12 *Note* A person may be reappointed to a position if the person is eligible to be
13 appointed to the position (see [Legislation Act](#), s 208 and dict, pt 1,
14 def *appoint*).

- 15 (4) A member's conditions of appointment are the conditions agreed
16 between the Executive and the member, subject to any
17 determination under the [Remuneration Tribunal Act 1995](#).

18 18E Ending appointments

- 19 (1) The Executive may end the appointment of a person as a
20 commission member—

21 (a) if the person contravenes a territory law; or

22 (b) for misbehaviour; or

23 (c) if the person becomes bankrupt or personally insolvent; or

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

26 (d) if the person is convicted, in the ACT, of an offence punishable
27 by imprisonment for at least 1 year; or

1 (e) if the person is convicted outside the ACT, in Australia or
2 elsewhere, of an offence that, if it had been committed in the
3 ACT, would be punishable by imprisonment for at least 1 year.

4 (2) The Executive must end the person's appointment—

5 (a) if the person is absent, other than on leave approved by the
6 Minister, for 14 consecutive days or for 28 days in any
7 12-month period; or

8 (b) for physical or mental incapacity, if the incapacity substantially
9 affects the exercise of the person's functions.

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

12 **18F Delegation of member's functions**

13 A commission member may delegate the member's functions under
14 this Act or another territory law to another member or a commission
15 staff member.

16 *Note* For the making of delegations and the exercise of delegated functions,
17 see the [Legislation Act](#), pt 19.4.

18 **16 Sections 19A, 19BA and 20**

19 *omit*

20 **17 Disability and community services commissioner's**
21 **functions**
22 **New section 21 (1) (aa) and (ab)**

23 *insert*

24 (aa) to exercise functions for the commission in relation to services
25 for older people;

- 1 (ab) to deal with the following complaints:
- 2 (i) a children and young people service complaint;
- 3 (ii) a disability service complaint;
- 4 (iii) an older people service complaint;
- 5 (iv) complaints about matters in relation to which the public
6 advocate and victims of crime commissioner exercise
7 functions;
- 8 (v) complaints about non-compliance with the governing
9 principles under the *Victims of Crime Act 1994* by an
10 agency involved in the administration of justice;
- 11 (vi) complaints about the actions of a guardian or manager or
12 a person acting or purporting to act under an enduring
13 power of attorney;

14 **18 Sections 21A, 22, 23A and 24**

15 *omit*

16 **19 Health services commissioner's functions**
17 **Section 25 (1) (a)**

18 *omit*

19 and services for older people

20 **20 Sections 25A, 26 and 27A**

21 *omit*

1 **21 New divisions 3.7A and 3.7B**

2 *insert*

3 **Division 3.7A Public advocate**

4 **27B Public advocate's functions**

5 (1) The public advocate has the following functions:

6 (a) to advocate for the rights of people with a disability and, as
7 part of advocating for those rights, doing the following:

8 (i) fostering the provision of services and facilities for
9 people with a disability;

10 (ii) supporting the establishment of organisations that support
11 people with a disability;

12 (iii) encouraging the development of programs that benefit
13 people with a disability (including advocacy programs,
14 educational programs and programs to encourage people
15 to act as guardians and managers);

16 (iv) promoting the protection of people with a disability from
17 abuse and exploitation;

18 (b) to advocate for the rights of children and young people and, as
19 part of advocating for those rights, doing the following:

20 (i) fostering the provision of services and facilities for
21 children and young people;

22 (ii) supporting the establishment of organisations that support
23 children and young people;

24 (iii) promoting the protection of children and young people
25 from abuse and exploitation;

- 1 (c) to advocate matters about individual children or young people
2 for whom the director-general under the *Children and Young*
3 *People Act 2008* has parental responsibility;
- 4 (d) monitoring the provision of services for the protection of
5 children and young people;
- 6 (e) dealing, on behalf of people with a disability and children and
7 young people, with entities providing services;
- 8 (f) any other function given to the public advocate under this Act
9 or any other territory law.

10 *Note* The public advocate also has functions under the *Children and Young*
11 *People Act 2008*.

12 (2) In this section:

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

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

18 ***forensic patient*** includes a person who has been—

- 19 (a) apprehended by a police officer because the person's behaviour
20 or statements indicate to the officer that the person may be
21 suffering from a mental dysfunction or mental illness; or
- 22 (b) found by a court or the ACAT to be unfit to plead; or
- 23 (c) acquitted of a criminal charge because of mental impairment;
24 or
- 25 (d) found guilty of a criminal offence and is mentally
26 dysfunctional or mentally ill, or has become mentally
27 dysfunctional or mentally ill while serving a sentence of
28 imprisonment.

1 **mental dysfunction** means a disturbance or defect, to a substantially
2 disabling degree, of perceptual interpretation, comprehension,
3 reasoning, learning, judgment, memory, motivation or emotion.

4 **mental illness** means a condition that seriously impairs (either
5 temporarily or permanently) the mental functioning of a person and
6 is characterised by the presence in the person of any of the
7 following symptoms:

- 8 (a) delusions;
- 9 (b) hallucinations;
- 10 (c) serious disorder of thought form;
- 11 (d) a severe disturbance of mood;
- 12 (e) sustained or repeated irrational behaviour indicating the
13 presence of the symptoms mentioned in paragraphs (a), (b), (c)
14 or (d).

15 **Division 3.7B Victims of crime commissioner**

16 **27C Victims of crime commissioner's functions**

- 17 (1) The victims of crime commissioner has the following functions:
- 18 (a) to exercise functions for the commission in relation to services
19 for victims of crime;
- 20 (b) to exercise any other function given to the commissioner under
21 this Act or any other territory law.

22 *Note* The victims of crime commissioner also has functions under the
23 *Domestic Violence Agencies 1986* (as the domestic violence project
24 coordinator), the *Victims of Crime Act 1994* and the *Victims of Crime*
25 *(Financial Assistance) Act 1983*.

- 26 (2) The exercise of the function mentioned in subsection (1) (a) is
27 subject to any decision of the commission about the exercise of its
28 functions in relation to services for victims of crime.

1 **22** **Ending appointments**
2 **Division 3.8**

3 *omit*

4 **23** **New section 31**

5 *insert*

6 **31** **Presiding member at meetings**

7 (1) The president presides at all meetings at which the president is
8 present.

9 (2) If the president is absent, the member chosen by the members
10 present presides.

11 **24** **Quorum at meetings**
12 **Section 32**

13 *omit*

14 $\frac{1}{2}$ the

15 *substitute*

16 3

17 **25** **Voting at meetings**
18 **New section 33 (2)**

19 *insert*

20 (2) A question is decided by a majority of the votes of the members
21 present and voting but, if the votes are equal, the member presiding
22 has the deciding vote.

1 **26 Individual with more than 1 role**
2 **Section 34 (1), example**

3 *substitute*

4 **Example**

5 The disability and community services commissioner may be appointed as the
6 health services commissioner.

7 **27 Section 34 (3)**

8 *omit*

9 $\frac{1}{2}$ the

10 *substitute*

11 3

12 **28 New section 41A**

13 *insert*

14 **41A When may someone complain about a service for victims**
15 **of crime?**

16 (1) A person may complain to the commission about—

17 (a) a service for victims of crime if—

18 (i) the service is not being provided appropriately; or

19 (ii) the provider of the service has acted inconsistently with
20 any of the following:

21 (A) the generally accepted standard of service delivery
22 expected of a provider of the kind of service to
23 which the complaint relates;

24 (B) any other standard prescribed by regulation; or

25 (iii) the service is not being provided; or

1 (b) non-compliance with the governing principles under the
 2 *Victims of Crime Act 1994* by an agency involved in the
 3 administration of justice.

4 (2) Subsection (2) (b) does not apply to a decision made in relation to
 5 the administration of the victims services scheme under the *Victims*
 6 *of Crime Act 1994*, part 4.

7 **29 What complaints may be made under this Act?**
 8 **New section 42 (1) (ea)**

9 *insert*

10 (ea) a victims of crime service complaint;

11 **30 Who may make a complaint under this Act?**
 12 **Section 43 (1) (f)**

13 *omit*

14 or older people service complaint

15 *substitute*

16 , older people service complaint or victims of crime service
 17 complaint

18 **31 Consideration without complaint or appropriate**
 19 **complainant**
 20 **Section 48 (2)**

21 *omit*

22 or older people service complaint

23 *substitute*

24 , older people service complaint or victims of crime service
 25 complaint

- 1 **32 Allocating complaints**
2 **Section 50**
- 3 *omit*
- 4 **33 Referral of advocacy matters**
5 **Section 51A (2) and (3)**
- 6 *omit*
7 commission
8 *substitute*
9 disability and community services commissioner
- 10 **34 Considering complaints**
11 **Section 52 (1), new notes**
- 12 *insert*
- 13 *Note 1* Responsibility for considering complaints may be in accordance with
14 the operations protocol made under s 18C.
- 15 *Note 2* If the president considers that a commissioner has a real or perceived
16 conflict of interest in relation to a complaint, the president may consider
17 the complaint or allocate responsibility for considering the complaint to
18 another commissioner (see s 18 (1) (m)).

1 **35 Protection of others from liability**
2 **Section 100A**

3 *omit*

4 Civil proceedings do not lie against a person in relation to loss,
5 damage or injury of any kind suffered by another person as a result

6 *substitute*

7 Civil or criminal liability is not incurred only because

8 **36 Dictionary, definition of *children and young people***
9 ***commissioner***

10 *substitute*

11 *children and young people commissioner* means the commission
12 member exercising the functions under section 19B.

13 **37 Dictionary, new definition**

14 *insert*

15 *commissioner* means the following:

- 16 (a) the human rights commissioner;
17 (b) the disability and community services commissioner;
18 (c) the discrimination commissioner;
19 (d) the health services commissioner;
20 (e) the children and young people commissioner;
21 (f) the public advocate;
22 (g) the victims of crime commissioner.

1 **38 Dictionary, definitions of *disability and community***
2 ***services commissioner and discrimination commissioner***

3 *substitute*

4 *disability and community services commissioner* means the
5 commission member exercising the functions under section 21.

6 *discrimination commissioner* means the commission member
7 exercising the functions under section 23.

8 **39 Dictionary, definitions of *health services commissioner***
9 ***and human rights commissioner***

10 *substitute*

11 *health services commissioner* means the commission member
12 exercising the functions under section 25.

13 *human rights commissioner* means the commission member
14 exercising the functions under section 27.

15 **40 Dictionary, new definitions**

16 *insert*

17 *president*, of the commission—see section 12 (1A).

18 *public advocate* means the commission member exercising the
19 functions under section 27B.

20 **41 Dictionary, definition of *related Act*, new paragraph (ba)**

21 *insert*

22 (ba) *Domestic Violence Agencies Act 1986*;

1 **42 Dictionary, definition of *related Act*, new paragraphs (f)**
2 **and (g)**

3 *insert*

4 (f) *Victims of Crime Act 1994*;

5 (g) *Victims of Crime (Financial Assistance) Act 1983*.

6 **43 Dictionary, new definitions**

7 *insert*

8 *service for victims of crime*—see section 9A.

9 *victims of crime commissioner* means the commission member
10 exercising the functions under section 27C.

11 *victims of crime service complaint* means a complaint about a
12 service for victims of crime that may be made, or is made, under
13 section 41A.

1 **Part 3 Public Trustee Act 1985**

2 **44 Long title**

3 *substitute*

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

6 **45 Section 1**

7 *substitute*

8 **1 Name of Act**

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

10 **46 Sections 5 and 6**

11 *substitute*

12 **5 Public trustee and guardian**

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

16 **6 Deputy public trustee and guardian**

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

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

1 **47 Public trustee a corporation sole**
2 **Section 8 (1) (a)**

3 *omit*

4 Public Trustee

5 *substitute*

6 Public Trustee and Guardian

7 **48 New section 9A**

8 *in division 2.1, insert*

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

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

13 (2) However, the public trustee and guardian may only delegate the
14 following functions to a person exercising the functions of deputy
15 public trustee and guardian:

16 (a) acting as a guardian or manager when appointed by the ACAT;

17 (b) applying to the ACAT for an appointment of a person as
18 guardian or manager under section 19C (b).

19 *Note* For the making of delegations and the exercise of delegated functions,
20 see the [Legislation Act](#), pt 19.4.

21 **49 Capacities in which public trustee may act**
22 **New section 13 (1) (h)**

23 *insert*

24 (h) a guardian or manager for a person if appointed by the ACAT.

50 New division 3.3*insert***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) representing forensic patients before the ACAT or a court;
- (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.

- 1 ***forensic patient*** includes a person who has been—
- 2 (a) apprehended by a police officer because the person’s behaviour
- 3 or statements indicate to the officer that the person may be
- 4 suffering from a mental dysfunction or mental illness; or
- 5 (b) found by a court or the ACAT to be unfit to plead; or
- 6 (c) acquitted of a criminal charge because of mental impairment;
- 7 or
- 8 (d) found guilty of a criminal offence and is mentally
- 9 dysfunctional or mentally ill, or has become mentally
- 10 dysfunctional or mentally ill while serving a sentence of
- 11 imprisonment.
- 12 ***mental dysfunction*** means a disturbance or defect, to a substantially
- 13 disabling degree, of perceptual interpretation, comprehension,
- 14 reasoning, learning, judgment, memory, motivation or emotion.
- 15 ***mental illness*** means a condition that seriously impairs (either
- 16 temporarily or permanently) the mental functioning of a person and
- 17 is characterised by the presence in the person of any of the
- 18 following symptoms:
- 19 (a) delusions;
- 20 (b) hallucinations;
- 21 (c) serious disorder of thought form;
- 22 (d) a severe disturbance of mood;
- 23 (e) sustained or repeated irrational behaviour indicating the
- 24 presence of the symptoms mentioned in paragraphs (a), (b), (c)
- 25 or (d).

1 **19C Guardian or manager of last resort**

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

4 (a) endeavour to find a suitable person to be appointed as the
5 guardian or manager; and

6 (b) if a suitable person is found—apply to the ACAT for the
7 appointment of the person as guardian or manager.

8 **19D Engagement of lawyer**

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

12 **51 Express powers of public trustee**
13 **Section 21 (1)**

14 *omit*

15 as an executor, administrator or trustee

16 *substitute*

17 in a trust or protective capacity as an executor, administrator,
18 trustee, guardian or manager

19 **52 Section 21 (1) (a)**

20 *substitute*

21 (a) buy, sell, realise and mortgage (with or without a power of
22 sale) real and personal property, altogether or in parts, and
23 subject to any condition the public trustee thinks fit; and

1 **53 Section 21 (1) (p)**

2 *after*

3 things

4 *insert*

5 (including execute all documents)

6 **54 Dealings with other public trustees**
7 **Section 30 (1) (a)**

8 *omit*

9 public trustee

10 *substitute*

11 public trustee and guardian

12 **55 Section 30 (1)**

13 *omit*

14 the public trustee may

15 *substitute*

16 the public trustee and guardian may

17 **56 Section 30 (2) (a)**

18 *omit*

19 public trustee

20 *substitute*

21 public trustee and guardian

- 1 **57 Section 30 (2)**
- 2 *omit*
- 3 the public trustee may
- 4 *substitute*
- 5 the public trustee and guardian may
- 6 **58 Section 30 (3)**
- 7 *omit*
- 8 public trustee
- 9 *substitute*
- 10 public trustee and guardian
- 11 **59 Establishment of board**
- 12 **Section 46**
- 13 *omit*
- 14 Public Trustee
- 15 *substitute*
- 16 Public Trustee and Guardian
- 17 **60 New section 65A**
- 18 *in part 7, insert*
- 19 **65A Use and disclosure of protected information**
- 20 (1) An information holder commits an offence if—
- 21 (a) the information holder uses information; and
- 22 (b) the information is protected information about someone else;
- 23 and

1 (c) the information holder is reckless about whether the
2 information is protected information about someone else.

3 Maximum penalty: 50 penalty units, imprisonment for 6 months or
4 both.

5 (2) An information holder commits an offence if—

6 (a) the information holder does something that discloses
7 information; and

8 (b) the information is protected information about someone else;
9 and

10 (c) the information holder is reckless about whether—

11 (i) the information is protected information about someone
12 else; and

13 (ii) doing the thing would result in the information being
14 disclosed to someone else.

15 Maximum penalty: 50 penalty units, imprisonment for 6 months or
16 both.

17 (3) Subsections (1) and (2) do not apply if the information holder uses
18 or discloses protected information about someone else (the
19 *protected person*)—

20 (a) under this Act or another law applying in the ACT; or

21 (b) in relation to the exercise of a function, as an information
22 holder, under this Act or another law applying in the ACT; or

23 (c) in a court proceeding; or

24 (d) with the protected person's consent.

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

- 1 (4) An information holder need not disclose protected information to a
2 court, or produce a document containing protected information to a
3 court, unless it is necessary to do so for this Act or another law
4 applying in the ACT.
- 5 (5) In this section:
- 6 *court* includes a tribunal, authority or person having power to
7 require the production of documents or the answering of questions.
- 8 *disclose* includes—
- 9 (a) communicate; or
- 10 (b) publish.
- 11 *information* means information, whether true or not, in any form
12 and includes an opinion and advice.
- 13 *information holder* means—
- 14 (a) a person who is or has been—
- 15 (i) the public trustee or guardian; or
- 16 (ii) a deputy public trustee or guardian; or
- 17 (b) anyone else who exercises or has exercised a function under
18 this Act.
- 19 *produce* includes allow access to.
- 20 *protected information* means information about a person that is
21 disclosed to, or obtained by, an information holder because of the
22 exercise of a function under this Act by the information holder or
23 someone else.
- 24 *use*, in relation to information, includes make a record of the
25 information.

1 **61 Dictionary, definition of *board***

2 *substitute*

3 *board* means the Public Trustee and Guardian Investment Board.

4 **62 Dictionary, definition of *deputy public trustee***

5 *omit*

6 **63 Dictionary, new definition of *deputy public trustee and guardian***

7 *insert*

8 *deputy public trustee and guardian* means a deputy public trustee
9 and guardian under section 6.
10

11 **64 Dictionary, definition of *public trustee***

12 *substitute*

13 *public trustee* means—

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

- 1 **65 Further amendments, mentions of *public trustee***
- 2 *omit*
- 3 public trustee
- 4 *substitute*
- 5 public trustee and guardian
- 6 *in*
- 7 • sections 8 to 12
- 8 • part 3 heading
- 9 • sections 13 to 16
- 10 • division 3.2 heading
- 11 • sections 17 to 19
- 12 • part 4 heading
- 13 • sections 20 to 29A
- 14 • sections 31 to 33
- 15 • sections 34 to 45
- 16 • sections 47 to 53
- 17 • section 53G
- 18 • sections 55 to 69
- 19 • sections 71 and 72
- 20 • section 74

1 **Part 4** **Repeal**

2 **66** **Repeal of Public Advocate Act 2005**

3 The *Public Advocate Act 2005* (A2005-47) is repealed.

1 **Schedule 1 Other amendments**

2 (see s 3)

3 **Part 1.1 Domestic Violence Agencies**
4 **Act 1986**

5 **[1.1] Section 11**

6 *substitute*

7 **11 Domestic violence project coordinator**

8 The victims of crime commissioner is the domestic violence project
9 coordinator (the *coordinator*).

10 *Note* The victims of crime commissioner is a member of the human rights
11 commission appointed under the [Human Rights Commission Act 2005](#),
12 s 18D.

13 **[1.2] Dictionary, definition of *coordinator***

14 *substitute*

15 *coordinator*—see section 11.

16 *Note* The victims of crime commissioner is the coordinator.

1 **Part 1.2** **Guardianship and Management**
2 **of Property Act 1991**

3 **[1.3] Section 8AA (2) (a)**

4 *omit 1st mention of*
5 public trustee
6 *substitute*
7 public trustee and guardian

8 **[1.4] Section 8AA (2) (b)**

9 *omit*
10 public trustee
11 *substitute*
12 public trustee and guardian

13 **[1.5] Section 8AA (5)**

14 *omit 1st mention of*
15 public trustee
16 *substitute*
17 public trustee and guardian

18 **[1.6] Section 8AB (f)**

19 *omit*

1 **[1.7] Section 9 (2)**
2 *omit*
3 public advocate, the public trustee,
4 *substitute*
5 public trustee and guardian,

6 **[1.8] Section 9 (5)**
7 *omit*
8 public advocate, the public trustee
9 *substitute*
10 public trustee and guardian

11 **[1.9] Section 10 (2)**
12 *omit*
13 public advocate, the public trustee
14 *substitute*
15 public trustee and guardian

16 **[1.10] Section 10 (3)**
17 *omit*
18 public advocate or public trustee
19 *substitute*
20 public trustee and guardian

1 **[1.11] Section 30A**

2 *omit 1st mention of*
3 *public trustee*
4 *substitute*
5 *public trustee and guardian*

6 **[1.12] Section 32 (4)**

7 *substitute*
8 (4) If the notice indicates that the public trustee and guardian (the
9 *public trustee*) or a person stated by the public trustee will act as
10 guardian, the notice is taken to be an application for the appointment
11 of the public trustee or person as the guardian.

12 **[1.13] Section 32 (6)**

13 *substitute*
14 (6) If the notice indicates that the public trustee or a person stated by the
15 public trustee has consented to act as manager, the notice is taken to
16 be an application for the appointment of the public trustee or person
17 as the manager.

18 **[1.14] Section 64 heading**

19 *substitute*
20 **64 Request for accounts—enduring powers of attorney**

1 **[1.15] Section 64 (2)**

2 *after 1st mention of*

3 public advocate

4 *insert*

5 or the public trustee and guardian (the *requestor*)

6 **[1.16] Section 64 (2)**

7 *omit 2nd mention of*

8 public advocate

9 *substitute*

10 the requestor

11 **[1.17] Section 67 (3), definition of *emergency order***

12 *substitute*

13 *emergency order* means an order appointing the public trustee and
14 guardian to be—

15 (a) the guardian for a person under section 7; or

16 (b) a manager of a person's property under section 8 or
17 section 8AA.

18 **[1.18] Section 72A (2) (h) and (i)**

19 *substitute*

20 (h) the public trustee and guardian; and

1 **[1.19] Further amendments, mentions of *public advocate***

2 *omit*

3 public advocate

4 *substitute*

5 public trustee and guardian

6 *in*

- 7 • section 9 (1) and (4)
- 8 • section 32 (3) and (5)
- 9 • sections 32H to 32J
- 10 • section 68
- 11 • section 70

12 **[1.20] Further amendments, mentions of *public trustee***

13 *omit*

14 public trustee

15 *substitute*

16 public trustee and guardian

17 *in*

- 18 • section 8AB
- 19 • sections 26 to 27AA
- 20 • section 64, note
- 21 • section 67
- 22 • section 75

1 **Part 1.3** **Victims of Crime Act 1994**

2 **[1.21] Division 3.1**

3 *omit*

4 **[1.22] Section 11 (d)**

5 *omit*

6 **[1.23] Section 11, new note**

7 *insert*

8 *Note 1* The commissioner is a member of the human rights commission
9 appointed under the *Human Rights Commission Act 2005*, s 18D.

10 **[1.24] Dictionary, definition of *commissioner***

11 *omit*

12 section 7

13 *substitute*

14 the *Human Rights Commission Act 2005*, section 18D.

15 *Note* The commissioner is a member of the human rights commission (see
16 *Human Rights Commission Act 2005*, s 12 (1) (g)).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 19 November 2015.

2 Notification

Notified under the [Legislation Act](#) on 2015.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

© Australian Capital Territory 2015