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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**GOVERNMENT AMENDMENTS TO THE GUARDIANSHIP AND
MANAGEMENT OF PROPERTY AMENDMENT BILL 2005**

SUPPLEMENTARY EXPLANATORY STATEMENT

**Circulated by the authority of
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GOVERNMENT AMENDMENTS TO THE GUARDIANSHIP AND MANAGEMENT OF PROPERTY AMENDMENT BILL 2005

SUPPLEMENTARY EXPLANATORY STATEMENT

This supplementary explanatory statement relates to government amendments to the Guardianship and Management of Property Amendment Bill 2005 (the Bill) as introduced in the ACT Legislative Assembly.

Outline of Provisions

The government amendments strengthen the management of missing persons' property provided in the Bill, particularly by requiring the guardianship tribunal to state the kind of decisions a manager may make and the property to which they relate. Also, they set the term of the management order to 2 years with the power of the tribunal to extend it. The amendments also provide for a carer of a missing person to be able to apply for management, and give precedence to the public trustee's application to the Supreme Court under section 34 of the *Public Trustee Act 1985* to be a manager for a property or the appointment of the public trustee as such manager, over the appointment of a manager for that property under the Bill.

Amendment 1

Clause 4

Proposed new section 8AA (1A)

Page 2, line 22

The Guardianship and Management of Property Amendment Bill 2005 (the Bill) proposes to insert section 8AA in the *Guardianship and Management of Property Act 1991* (the guardianship legislation). Section 8AA of the Bill provides:

- that a person is a missing person where it is not known whether the person is alive, reasonable efforts have been made to find the person and the person has not contacted anyone for at least 90 days;
- for the power of the guardianship tribunal to appoint a manager for a missing person's property if it is satisfied that there is, or is likely to be, a need for a decision about the person's financial affairs or property, and the person's interests would be significantly adversely affected if such appointment is not made; and
- who may apply for the appointment of a manager.

Amendment 1 amends the Bill to insert proposed new section 8AA(1A) and provides that the tribunal must not consider an application if the public trustee

has applied to the Supreme Court to be appointed as the manager of the person's property under the *Public Trustee Act 1985*, section 34 or has been appointed as such manager.

Under section 34 of the Public Trustee Act, the public trustee may be appointed as manager of unclaimed property. On being appointed by the Supreme Court as manager of unclaimed property, the public trustee is accountable to that court.

Proposed section 8AA(1A) ensures the precedence of the process under the Public Trustee Act over the appointment of a manager by the guardianship tribunal.

Amendment 2

Clause 4

Proposed new section 8AA (4) and (5)

Page 3, line 23

Amendment 2 omits proposed sections 8AA(4) and 8AA(5) in clause 4 of the Bill and substitutes new sections.

Proposed new section 8AA(4) provides that an application made to the guardianship tribunal for the appointment of a manager for a missing person's property, or an appointment of such a manager, does not prevent the public trustee from applying to the Supreme Court under section 34 of the Public Trustee Act to be appointed, in relation to that property, as a manager of unclaimed property.

Proposed new section 8AA(5) provides that division 19.3 of the *Legislation Act 2001* (Appointments) does not apply to an appointment of a manager of a missing person's property. Division 19.3 applies to a position under a law and to exercise a function or do anything else under a law. The appointment of a manager of missing person's property is a matter to be fully dealt with under the guardianship legislation, without the need to comply with the requirements under division 19.3. Therefore, that division is to be excluded from applying to the appointment of manager of missing person's property.

Amendment 3

Proposed new sections 8AB and 8AC

Page 4, line 5 –

Proposed new section 8AB - Missing people's property—who may apply for appointment of manager?

Proposed new section 8AB provides for who may apply for appointment as manager, and replaces section 8AA(5) of the Bill.

Proposed section 8AB provides for the following eligible applicants:

- (a) a domestic partner of the person;
- (b) a relative of the person;
- (c) a carer of the person;
- (d) the Attorney General;
- (e) the public trustee;
- (f) the public advocate;
- (g) anyone else who has an interest in the property of the person.

Proposed new section 8AC - Missing people's property—powers and term of manager

Section 8AA(1) provides that the powers of a manager are the powers that the missing person would have if the person were able to exercise them. This section revises section 8AA(4) of the Bill.

Section 8AA(3) of the Bill provides for the tribunal to appoint a manager with the powers that the tribunal is satisfied are necessary or desirable to allow the manager to make decisions in relation to the property in accordance with the decision-making principles as if the missing person were a protected person. Section 5 of the guardianship legislation provides for these principles.

Proposed new section 8AC requires the guardianship tribunal to state the kind of decisions a manager may make. The tribunal may also state in the order the property in relation to which such decisions may be made.

This amendment also requires a management order to state the term, not exceeding 2 years, and provides for the power of the tribunal to extend the term.

Amendment 4

Proposed new clause 4A Page 4, line 5 –

Clause 4A

New section 27A - Missing people's property—liability of manager and third party dealings

This amendment proposes to insert clause 4A in the Bill. Clause 4A provides for new section 27A to the guardianship legislation.

Proposed new section 27A provides for the protection of an innocent manager and an innocent third party dealing with a manager.

A manager does not incur liability because of the manager's conduct in relation to the missing person's property done honestly where the manager believed on reasonable grounds that the conduct was a function under the

manager's appointment. A third party who deals with a manager in relation to the property under the manager's control also does not incur liability because of the dealing if the third party had an honest belief that the dealing was for the exercise of a function under the manager's appointment.

Amendment 5

Proposed new clause 4B

Page 4, line 5 -

Clause 4B

New section 30A - Missing people's property—ending of order

This amendment proposes to insert clause 4B in the Bill. Clause 4B provides for new section 30A to the guardianship legislation. This new section provides for the ending of an order appointing a manager of a missing person's property if the Supreme Court appoints the public trustee as manager of the property under the Public Trustee Act, section 34.

Amendment 6

Clause 11

Page 5, line 16 –

Clause 11 of the Bill proposes to omit section 34(1)(b) and (c) of the Public Trustee Act. This clause is opposed.

Sections 34(1)(b) and 34(1)(c) enable the public trustee to apply to be a manager of unclaimed property where the whereabouts of the owner of the property are unknown, or it is not known whether the owner of the property is alive or dead.

It is intended that management under section 34 of the Public Trustee Act should remain intact, particularly to enable long term management of a property. Government amendments to proposed new sections 8AA(1A), 8AA(4) and clause 4B give effect to this intention and ensure the precedence of the process of management of unclaimed property over that of missing person's property management. Clause 11 is therefore opposed.

Amendment 7

Clause 12

Page 5, line 18 –

Clause 12 of the Bill proposes to renumber section 34(1)(d) and (f) of the Public Trustee Act as section 34(1)(b) and (c) in view of clause 11 of the Bill. As clause 11 is not needed and omitted, clause 12 is also proposed to be opposed.