

Serial 94  
Public Trustee  
Amendment  
Mr Stone

NORTHERN TERRITORY OF AUSTRALIA

PUBLIC TRUSTEE AMENDMENT BILL 1998

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## NORTHERN TERRITORY OF AUSTRALIA

# A BILL for AN ACT

to amend the *Public Trustee Act*

**B**E it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

### 1. SHORT TITLE

This Act may be cited as the *Public Trustee Amendment Act 1998*.

### 2. COMMENCEMENT

The provisions of this Act come into operation on the date or respective dates fixed by the Administrator by notice in the Gazette.

### 3. PRINCIPAL ACT

The *Public Trustee Act* is in this Act referred to as the Principal Act.

### 4. DEFINITIONS

Section 5 of the Principal Act is amended by omitting the definitions of "common fund" and "Consolidated Fund" and substituting the following:

"'common fund' means a common fund established under section 23;".

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5. PUBLIC TRUSTEE INVESTMENT BOARD

Section 12 of the Principal Act is amended -

(a) by omitting subsection (3) and substituting the following:

"(3) The Investment Board consists of -

(a) the Public Trustee and Deputy Trustee;

(b) 5 persons appointed by the Minister.";

(c) by omitting from subsection (4) "2" and substituting "3"; and

(d) by omitting from subsections (5) and (6) "Chairman" and substituting "Chairperson".

6. ACCOUNTS OF PUBLIC TRUSTEE

Section 14 of the Principal Act is amended -

(a) by inserting in subsection (1) "Dividend" after "Trustee's";

(b) by omitting from subsection (2) "as are approved by the Attorney-General"; and

(c) by adding at the end the following:

"(3) The Public Trustee must pay into the Public Trustee's Dividend Account the commissions, fees, charges, levies and expenses charged under this Act.

"(4) The Public Trustee must pay into the Consolidated Revenue Account the money in the Public Trustee's Dividend Account when directed by the Treasurer."

7. ANNUAL REPORT

Section 18 of the Principal Act is amended -

(a) by omitting "The" and substituting "(1) The"; and

(b) by adding at the end the following:

"(2) The annual report is to include -

(a) the audited statement of accounts in respect of each common fund for that financial year; and

(b) the Auditor-General's report on those accounts.

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"(3) The Attorney-General must table a copy of the annual report in the Legislative Assembly within 6 sitting days after it is received."

8. AUDIT AND REPORT BY AUDITOR-GENERAL

Section 19 of the Principal Act is amended by omitting subsections (2), (3) and (4) and substituting the following:

"(2) The Auditor-General may at any time and must, in respect of each financial year, inspect and audit the accounts and records of the Public Trustee and must draw to the attention of the Attorney-General any irregularity disclosed by the inspection and audit that, in the opinion of the Auditor-General, is of sufficient importance to justify so doing.

"(3) The Auditor-General must provide the Attorney-General and the Public Trustee with a report of the results of an inspection and audit carried out under this section.

"(4) A report under subsection (3) is to contain the following investor information in respect of each common fund:

- (a) the nature and amount or rate of any fee that the Public Trustee charges in respect of investment in the fund;
- (b) the class of investments in which the fund may be invested;
- (c) the extent (if any) to which a capital sum invested may be reduced to defray losses from investment of the fund;
- (d) the rights of an investor in the fund to withdraw all or part of the investor's investment in the fund and the period of notice (if any) that the investor is required to give the Public Trustee in respect of a withdrawal;
- (e) the terms governing distribution of income and profit or loss of a capital nature attributable to each investment in the fund."

9. HEADING TO PART V

The heading to Part V of the Principal Act is amended by omitting "COMMON FUND" and substituting "INVESTMENT OF ESTATE FUNDS AND COMMON FUNDS".

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10. REPEAL AND SUBSTITUTION

Sections 21, 22, 23 and 24 of the Principal Act are repealed and the following substituted:

"21. INVESTMENT OF MONEY

"(1) Subject to this and any other Act and to a trust instrument or court order, the Public Trustee must invest estate or trust money -

- (a) in a manner authorised by the trust instrument;
- (b) in a manner in which a trustee may lawfully invest trust money; or
- (c) in one or more common funds.

"(2) Subject to this and any other Act, the Public Trustee may invest money on behalf of another person -

- (a) in a manner authorised by the person;
- (b) in a manner in which a trustee may lawfully invest trust money; or
- (c) in one or more common funds.

"22. MONEY FROM SEVERAL ESTATES AND TRUSTS MAY BE INVESTED AS SINGLE FUND

"(1) Subject to a trust instrument or court order, the Public Trustee may invest money from 2 or more estates or trusts as a single fund in one or more investments.

"(2) Where money from 2 or more estates or trusts is invested as a single fund, the Public Trustee must -

- (a) keep an account showing the amount for the time being standing to the credit of each estate or trust; and
- (b) after deducting the commission, fees, charges and expenses charged against the fund -
  - (i) divide income arising from investment of the money between the estates and trusts in proportion to the amounts invested and the period of each investment; and
  - (ii) divide profit or loss of a capital nature arising from investment of the money between the estates and trusts in proportion to the amounts invested.

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"23. ESTABLISHMENT OF COMMON FUNDS

"(1) The Public Trustee may establish one or more common funds -

- (a) for the investment of estate and trust money under the control of the Public Trustee; and
- (b) for the investment of money on behalf of other classes of persons.

"(2) The Public Trustee -

- (a) must determine the classes of investments in which a common fund may be invested; and
- (b) may vary those classes.

"(3) The Public Trustee must not invest money in a common fund unless the classes of investment in which the money may be invested on separate account are the same as or include the classes of investment in which the common fund may be invested.

"24. OPERATION OF COMMON FUNDS

"(1) The Public Trustee must keep an account showing the amount in a common fund for the time being standing to the credit of each investor in the fund.

"(2) The Public Trustee may realise an investment in which money from a common fund has been invested and reinvest that money in another investment of a class in which the common fund may be invested.

"(3) The Public Trustee may withdraw from a common fund an amount standing to the credit of an estate or trust for any of the following purposes:

- (a) reinvestment;
- (b) defraying liabilities that are lawfully chargeable against the estate or trust;
- (c) making a payment to a person who is beneficially entitled to that payment;
- (d) making any other payment in accordance with this or any other Act.

"(4) The Public Trustee must, after deducting the commission, fees, levies, charges and expenses charged against the common fund -

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- (a) divide income arising from investment of a common fund between the investors in proportion to the amounts invested and the period of each investment; and
- (b) divide profit or loss of a capital nature arising from investment of a common fund between the investors in proportion to the amounts invested.

"(5) The Public Trustee -

- (a) must value each common fund (including the investments in which the fund is invested) as at the first business day of each month; and
- (b) may value any of those funds as at any other time that the Public Trustee considers appropriate having regard to the nature of the fund.

"(6) Investments in and withdrawals from a common fund are to be effected on the basis of the most recent valuation under subsection (5).

"24A. MANAGEMENT FEES

"(1) The Public Trustee may charge against each common fund a management fee in respect of each month or part of a month that the Public Trustee manages the fund.

"(2) The management fee is not to exceed the prescribed percentage of the value of the common fund as at the first business day of the month.

"24B. ACCOUNTS, AUDITS AND REPORTS IN RESPECT OF COMMON FUNDS

"The Public Trustee must cause proper accounts to be kept in relation to each common fund.

"24C. INFORMATION FOR INVESTORS AND PROSPECTIVE INVESTORS IN COMMON FUND

"(1) The Public Trustee must, within 4 months after the end of each financial year, send to each investor (other than an estate) in a common fund an extract from the Public Trustee's annual report to the Minister for the that year containing the information required under section 19(4).

"(2) The Public Trustee must not accept money from a prospective investor (other than an estate) in a common fund unless the prospective investor has first been given an extract from the Public Trustee's last annual report



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to the Minister containing the information required under section 19(4) together with any further information required to update the investor information contained in the report."

11. PAYMENTS TO AND INDEMNITY FROM TERRITORY

Section 28 of the Principal Act is amended -

(a) by omitting "Where" and substituting "(1) Where"; and

(b) by adding at the end the following:

"(2) The Public Trustee must charge against each common fund a levy in respect of each month or part of a month that the Public Trustee manages the fund.

"(3) The levy is not to exceed the prescribed percentage of the value of the common fund as at the first business day of the month."

12. REPEAL AND SUBSTITUTION

Section 74 of the Principal Act is repealed and the following substituted:

"74. COMMISSIONS, FEES, CHARGES AND EXPENSES

"(1) Subject to the direction of the Minister, the Public Trustee may charge against an estate or trust or property under the management or control of the Public Trustee commission, fees and charges for services provided by the Public Trustee at the rate or amount determined under subsection (2) or as is agreed.

"(2) The Minister may, by notice in the Gazette, determine rates or amounts of commission, fees and charges that may be charged under subsection (1).

"(3) Commission, fees and charges charged under subsection (1) are in addition to -

(a) any other fees and levies charged under this Act; and

(b) any expenses properly incurred by the Public Trustee in connection with the estate, trust or property.

"(4) Commission, fees, charges and expenses -

(a) may be deducted from money received or held by the Public Trustee in connection with the estate, trust or property in respect of which

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the services to which the commission, fees or charge relate were provided or the expenses were incurred; or

- (b) may be raised (together with the costs and expenses of doing so) by the sale or mortgage of, or the giving or taking of a charge over, any property of the estate or trust in respect of which the services to which the commission or fees relate were provided or the expenses were incurred.

"(5) The Public Trustee may authorise outgoings and maintenance payments from the common funds in respect of investments, including real property investments, that are under the management or control of the Public Trustee."

13. FURTHER AMENDMENTS

The Principal Act is amended as set out in the Schedule.

14. FORMAL AMENDMENTS RELATING TO GENDER

The Principal Act is amended by -

- (a) inserting "or she" after "he" (wherever occurring);
- (b) inserting "or her" after "his" (wherever occurring, other than where it occurs in section 60(5)(a));
- (c) inserting "or her" after "him" (wherever occurring, other than where it occurs in section 60(5)(a)); and
- (d) inserting "or herself" after "himself" (wherever occurring).

15. SAVINGS AND TRANSITIONAL

On the commencement of this Act, the Public Trustee must -

- (a) determine the balance at credit of the Public Trustee in the common fund as constituted under the Principal Act as in force before that commencement; and
- (b) pay the balance into the Public Trustee's Dividend Account.

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SCHEDULE

Section 13

Provision	Amendment	
	omit	substitute
Section 12(1)	"the common fund of the Public Trustee"	"a common fund"
Section 13(1) (b)	"the common fund"	"a common fund"
Section 17(1)	"under section 23"	"other than in a common fund"
Section 26(1) and (2)	"the common fund"	"a common fund"
Section 26(4)	"the common fund"	"the common fund from which the money to acquire the land was expended or acquired"
Sections 27(1) and 29(1)	"the common fund"	"a common fund"
Section 30(1)	"the common fund"	"a common fund in which money from the estate is invested"
Section 30(5)	"the common fund"	"a common fund"
Section 31(1)	"the common fund"	"a common fund in which money from the estate is invested"
Sections 60(2) and 63	"the common fund"	"a common fund"
Sections 65(2), 66(4), 67 and 67A(3)	"Consolidated Fund"	"Consolidated Revenue Account"

