

Serial 27
Public Trustee Amendment Bill 2001
Dr Toyne

**A BILL
for
AN ACT**

to amend the *Public Trustee Act*

C. O.

C. O.

NORTHERN TERRITORY OF AUSTRALIA
PUBLIC TRUSTEE AMENDMENT ACT 2001

No. of 2001

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NORTHERN TERRITORY OF AUSTRALIA

No. of 2001

AN ACT

to amend the *Public Trustee Act*

[Assented to 2001]

[Second reading 2001]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Public Trustee Amendment Act 2001*.

2. Commencement

(1) Sections 8, 10 and 11 come into operation on the commencement of the *Administration and Probate Amendment Act 2001*.

(2) The remaining 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. New section

The Principal Act is amended by inserting after section 4 the following:

"4A. Objectives of Act

"The objectives of this Act are –

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- (a) to provide for a manager, administrator, executor or trustee of last resort;
- (b) to provide a trustee and executor service to the public that is an alternative to the services provided by the private sector; and
- (c) to provide for the establishment of common funds for investment purposes."

5. Public Trustee Investment Board

Section 12 of the Principal Act is amended –

- (a) by omitting from subsection (3)(a) "and Deputy Trustee;" and substituting "or, in the absence of the Public Trustee, the Deputy Public Trustee; and";
- (b) by omitting from subsection (3)(b) "5" and substituting "2"; and
- (c) by omitting from subsection (4) "shall be the Public Trustee and 3 other members" and substituting "is the Public Trustee or the Deputy Public Trustee and one other person".

6. New sections

The Principal Act is amended by inserting after section 20 in Part IV the following:

"20A. Provision of information to beneficiaries of estate or trust

"During the administration of an estate or trust, the Public Trustee must provide the beneficiaries or their representatives with appropriate information concerning the administration.

"20B. Provision of account during administration of estate

"(1) During the administration of an estate, the Public Trustee must, on application by a person with a proper interest in the administration, provide the person with an account of –

- (a) the assets and liabilities of the estate;
- (b) the Public Trustee's administration of the estate;
- (c) the investments made from the estate;
- (d) the distributions made from the estate; and
- (e) any other expenditure (including fees and commissions) from the estate.

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"(2) If—

- (a) the Public Trustee has provided an account to a person in accordance with subsection (1); and
- (b) the person applies for a further account within 3 months after the date on which the previous account was provided,

the Public Trustee need not provide the person with a further account until the end of that 3 months.

"(3) The Public Trustee may charge a reasonable fee for providing an account under this section.

"(4) If the Public Trustee fails to provide a proper account under this section the Court may, on application by the person who sought the account or any other person who has a proper interest in the matter, make one or both of the following orders:

- (a) an order that the Public Trustee must prepare and deliver proper accounts;
- (b) an order that an officer of the Court or other specified person must investigate the administration of the estate,

and may make incidental or ancillary orders."

7. Repeal and substitution

Section 28 of the Principal Act is repealed and the following substituted:

"28. Levy against common fund

"(1) 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.

"(2) The levy charged against a common fund is not to exceed the prescribed percentage of the value of the common fund.

"(3) The value of a common fund —

- (a) is to be calculated in accordance with the prescribed method of calculation; or
- (b) if no method of calculation is prescribed under paragraph (a) — is to be calculated daily and is the minimum amount of the balance of the common fund for that day.

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"(4) Before deciding the levy to be charged under this section, the Public Trustee must take into account the advice of the Treasurer as to the value of the indemnity provided under section 97(4) and any guarantee provided under section 97(7)."

8. Repeal

Sections 35, 46 and 47 of the Principal Act are repealed.

9. Notice of application to be served

Section 51 of the Principal Act is amended by omitting from subsection (2) "Penalty: \$500." and substituting the following:

"Penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units."

10. Repeal

Part VII of the Principal Act is repealed.

11. Repeals

Sections 68, 80, 82 and 85 of the Principal Act are repealed.

12. Repeal and substitution

Section 97 of the Principal Act is repealed and the following substituted:

"97. Liabilities, indemnities and guarantees

"(1) No personal liability attaches to –

(a) the Public Trustee or an employee, agent or representative of the Public Trustee; or

(b) a member of the Investment Board,

for an act or omission in the exercise or performance, or purported exercise or performance, of a power, function or duty under this Act, or any other law in force in the Territory, if the act or omission is done or made in good faith.

"(2) If a person suffers damage as a result of any act or omission in the exercise or performance, or purported exercise or performance, of a power, function or duty under this Act, or any other law in force in the Territory, done or made by –

(a) the Public Trustee or an employee, agent or representative of the Public Trustee; or

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- (b) a member of the Investment Board,

the person is entitled to the same remedy against the Public Trustee in his or her corporate capacity or against the Investment Board respectively as the person would be entitled to against a private person.

"(3) Subsection (2) applies, in relation to the Public Trustee, to damage resulting from an act or omission done or made by a person holding an office or position acting jointly with the Public Trustee only to the extent that the Public Trustee or an employee in the office of the Public Trustee has contributed to, or could by the exercise of reasonable diligence have averted, that damage.

"(4) Any liability incurred by the Public Trustee or the Investment Board may be enforced against the Public Trustee or the Investment Board respectively, or against the Territory, and is to be met by the Treasurer.

"(5) The extent of the liability of the Public Trustee or the Investment Board in particular circumstances is no greater than that of a private person in similar circumstances.

"(6) If the Treasurer meets a liability incurred under this section as a result of an act or omission done or made by a person other than in good faith, the Treasurer is entitled to recover the amount of that liability from that person.

"(7) The Regulations may provide for one or both of the following:

- (a) a guarantee of the capital in a specified common fund;
- (b) a guarantee of a prescribed rate of return for money held as cash in a specified common fund."

13. Further amendments

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

14. Savings and transitional provisions

The savings and transitional provisions set out in Schedule 2 have effect.

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SCHEDULE 1

Section 13

Provision	Amendment	
	omit	substitute
Section 11(1)	\$1,000 12 months	400 penalty units 2 years
Section 24C(1)	for the that section 19(4)	for that section 19(3)
Section 24C (2)	section 19(4)	section 19(3)
Section 74(5)	paymemts	payments
Section 76(2)	the whole subsection	

SCHEDULE 2

Section 14

SAVINGS AND TRANSITIONAL PROVISIONS

1. Continuation of administration of small estates

Despite the repeal effected by section 8, if immediately before the commencement of section 8 the Public Trustee is administering an estate under section 35 of the Principal Act, that section continues to apply in relation to the administration of the estate.

2. Public Trustee acting before grant

(1) If immediately before the commencement of section 8 the Public Trustee is acting under section 46 of the Principal Act, the Public Trustee is, on the commencement of section 8, taken to be acting under section 50 of the *Administration and Probate Act*.

(2) If before the commencement of section 8 the Public Trustee –

(a) has served a notice under section 47 of the Principal Act; and

(b) has not begun to act under section 46 of the Principal Act,

the Public Trustee is, on and after that commencement, taken to have served the notice under section 51 of the *Administration and Probate Act*.

3. Elections to administer small estates

Despite the repeal effected by section 10, if immediately before the commencement of that section –

(a) the Public Trustee has filed an election to administer an estate or part of an estate under Part VII of the Principal Act; or

(b) the Public Trustee is administering an estate or part of an estate under Part VII of the Principal Act,

the provisions of that Part continue to apply in relation to that election or that administration.

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