

**House of Assembly—No 25**

As laid on the table and read a first time, 25 March 2020

South Australia

**Public Trustee (Public Trustee and Guardian)  
Amendment Bill 2020**

A BILL FOR

An Act to amend the *Public Trustee Act 1995*, to make related amendments to various other Acts and for other purposes.

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

5 This Act may be cited as the *Public Trustee (Public Trustee and Guardian) Amendment Act 2020*.

#### 2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

#### 3—Amendment provisions

10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### Part 2—Amendment of *Public Trustee Act 1995*

#### 4—Amendment of long title

Long title—after "Public Trustee" insert:  
 and Guardian

#### 15 5—Amendment of section 1—Short title

Section 1—after "*Public Trustee*" insert:  
*and Guardian*

#### 6—Amendment of section 3—Interpretation

- 20 (1) Section 3, definition of *common fund*—delete "by the Public Trustee"  
 (2) Section 3, definition of *estate*—after "Public Trustee" wherever occurring insert:  
 and Guardian

- (3) Section 3, definition of *Public Trustee*—delete the definition and substitute:

*Public Trustee and Guardian* means the person holding or acting in the office of Public Trustee and Guardian under Part 2;

### **7—Amendment of heading to Part 2**

- 5           Heading to Part 2—after "Public Trustee" insert:  
                    and Guardian

### **8—Amendment of section 4—Public Trustee and Guardian**

- (1) Section 4(1)—after "*Public Trustee*" insert:

*and Guardian*

- 10          (2) Section 4(2) and (3)—delete subsections (2) and (3)

- (3) Section 4(4)—after "Public Trustee" insert:

and Guardian

- (4) Section 4(4)(e)—delete paragraph (e)

- (5) Section 4—after subsection (4) insert:

- 15                   (4a) The Governor may, by notice published in the Gazette, appoint a person to be the Public Trustee and Guardian.

(4b) Subject to this Act, the terms and conditions of appointment and employment (including salary and allowances) of the Public Trustee and Guardian will be as determined by the Governor.

- 20                   (4c) The Public Trustee and Guardian will be appointed for a term (not exceeding 7 years) and, on the expiration of a term of office, is eligible for reappointment.

(4d) The office of Public Trustee and Guardian becomes vacant if the Public Trustee and Guardian—

- 25                           (a) dies; or  
                                 (b) completes a term of office and is not reappointed; or  
                                 (c) resigns by notice in writing to the Governor; or  
                                 (d) is removed from office by the Governor under subsection (4e).

- 30                   (4e) The Governor may remove the Public Trustee and Guardian from office for—

- (a) mental or physical incapacity to carry out official duties satisfactorily; or  
(b) neglect of duty; or  
35                   (c) dishonourable conduct.

- (6) Section 4(5)—after "Public Trustee" wherever occurring insert:

and Guardian



(7) Section 4—after subsection (5) insert:

- (6) To avoid doubt, the Public Trustee and Guardian is the same body corporate as the Public Trustee under the *Public Trustee Act 1995*, as in force immediately before the commencement of the *Public Trustee (Public Trustee and Guardian) Amendment Act 2020*.

## **9—Amendment of section 5—Functions and powers**

(1) Section 5—after "Public Trustee" wherever occurring insert:  
and Guardian

(2) Section 5(2) and (3)—delete subsections (2) and (3) and substitute:

(2) The Public Trustee and Guardian has the following functions:

- (a) to act as a trustee, executor of a will, administrator of an estate (whether or not of a deceased person), manager, receiver, committee, curator, guardian, next friend, agent, attorney or stakeholder;
- (b) to act as guardian of last resort for persons with a mental incapacity;
- (c) to provide advisory services in relation to—
  - (i) the powers that may be exercised in respect of persons with a mental incapacity, or impaired decision-making capacity, under the *Guardianship and Administration Act 1993*, the *Advance Care Directives Act 2013* and the *Consent to Medical Treatment and Palliative Care Act 1995*; and
  - (ii) the operation of those Acts generally; and
  - (iii) appropriate alternatives to taking action under those Acts;
- (d) to provide dispute resolution services in relation to advance care directives and consent to medical treatment in accordance with provisions of the *Advance Care Directives Act 2013* and the *Consent to Medical Treatment and Palliative Care Act 1995*;
- (e) to provide systemic advocacy in respect of the needs of mentally incapacitated persons, including—
  - (i) to keep under review, within both the public and the private sector, all programmes designed to meet the needs of mentally incapacitated persons; and
  - (ii) to identify any areas of unmet needs, or inappropriately met needs, of mentally incapacitated persons and to recommend to the Minister the development of programmes for meeting those needs or the improvement of existing programmes; and

- 5
- (iii) to speak for and promote the rights and interests of any class of mentally incapacitated persons or of mentally incapacitated persons generally; and
- (iv) to promote the interests of carers of mentally incapacitated persons; and
- 10
- (v) to monitor the administration of the *Guardianship and Administration Act 1993* and, if the Public Trustee and Guardian thinks fit, make recommendations to the Minister for legislative change;
- (f) to provide individual advocacy in respect of the needs of mentally incapacitated persons, including—
- 15
- (i) to speak for and negotiate on behalf of any mentally incapacitated person in the resolution of a problem faced by that person arising out of their mental incapacity; and
- (ii) to give support to carers of mentally incapacitated persons; and
- 20
- (iii) to make applications to SACAT, or to seek review of decisions made by SACAT, where the Public Trustee and Guardian considers it appropriate, in respect of the care and treatment of mentally incapacitated persons in accordance with provisions of the *Guardianship and Administration Act 1993*, the *Advance Care Directives Act 2013*, the *Consent to Medical Treatment and Palliative Care Act 1995* or the *Mental Health Act 2009*; and
- 25
- (iv) to appear before SACAT on behalf of persons who are the subject of applications made under the *Guardianship and Administration Act 1993*, the *Advance Care Directives Act 2013*, the *Consent to Medical Treatment and Palliative Care Act 1995* or the *Mental Health Act 2009*;
- 30
- (g) to investigate the affairs of a person who is the subject of an application for an order under Part 4 of the *Guardianship and Administration Act 1993*, or who has had an advance care directive revoked by SACAT under the *Advance Care Directives Act 2013*, if so directed by SACAT;
- 35
- (h) to perform such other functions as are assigned to the Public Trustee and Guardian by or under this or any other Act, or by the Minister.
- 40
- (3) The Public Trustee and Guardian acting in 1 capacity may, with the approval of the Court, commence or maintain proceedings against the Public Trustee and Guardian acting in another capacity.

(3) Section 5—after subsection (4) insert:

(5) The Public Trustee and Guardian may establish committees for the purpose of providing the Public Trustee and Guardian with advice in relation to the performance of any of the Public Trustee and Guardian's functions.

(6) A committee established under subsection (5) will be taken to be an advisory body for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

### **10—Amendment of section 6—Ministerial control**

(1) Section 6—after "Public Trustee" wherever occurring insert:  
and Guardian

(2) Section 6(1)—after "policy" insert:  
in respect of functions under section 5(2)(a)

(3) Section 6—after subsection (1) insert:

(1a) The Public Trustee and Guardian is not subject to control and direction by the Minister in respect of functions under—

(a) section 5(2)(b) to (g); and

(b) the *Advance Care Directives Act 2013*; and

(c) the *Consent to Medical Treatment and Palliative Care Act 1995*; and

(d) the *Criminal Law Consolidation Act 1935*; and

(e) the *Guardianship and Administration Act 1993* relating to guardianship; and

(f) the *Mental Health Act 2009*; and

(g) the *Problem Gambling Family Protection Orders Act 2004*; and

(h) the *Wills Act 1936* relating to acting as a guardian.

(1b) Except where the contrary intention appears, the Public Trustee and Guardian is subject to control and direction by the Minister on matters of policy in respect of any other function assigned to the Public Trustee and Guardian.

(4) Section 6(2)—delete "Public Trustee's" and substitute:  
Public Trustee and Guardian's

## 11—Insertion of section 6A

After section 6 insert:

### **6A—Public Trustee and Guardian may raise matters with Minister and Attorney-General**

- 5                   (1) The Public Trustee and Guardian may, at any time, raise with the Minister and the Attorney-General any concerns the Public Trustee and Guardian may have over any matter arising out of or relating to the performance of the Public Trustee and Guardian's functions under this Act or any other Act.
- 10                   (2) If the Public Trustee and Guardian so requests, the Attorney-General must cause a report of any matter raised by the Public Trustee and Guardian under subsection (1) to be laid as soon as practicable before both Houses of Parliament.
- 15                   (3) The annual report furnished by the Public Trustee and Guardian under this Act must include a summary of any matters raised by the Public Trustee and Guardian under subsection (1).

## 12—Amendment of section 7—Execution of documents

Section 7—after "Public Trustee" wherever occurring insert:  
and Guardian

## 13—Amendment of section 8—Delegations

- 20                   (1) Section 8(1)—delete subsection (1) and substitute:
- (1) Subject to this section, the Public Trustee and Guardian may delegate a function or power (other than a prescribed function or power) to a specified person or body that is, in the Public Trustee and Guardian's  
25                   opinion, competent to perform or exercise the relevant function or power.
- (2) Section 8—after subsection (2) insert:
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

## 14—Amendment of section 9—Administration of deceased estate

Section 9—after "Public Trustee" wherever occurring insert:  
and Guardian

## 15—Amendment of section 10—Public Trustee and Guardian need not give security

Section 10—after "Public Trustee" insert:  
and Guardian

**16—Amendment of section 11—No action to be instituted after Public Trustee and Guardian has obtained administration**

Section 11—after "Public Trustee" wherever occurring insert:  
and Guardian

5 **17—Amendment of section 12—Appointment as administrator until certain actions determined**

Section 12—after "Public Trustee" wherever occurring insert:  
and Guardian

**18—Amendment of section 13—Administration of trust estate**

10 Section 13(1)—after "Public Trustee" insert:  
and Guardian

**19—Amendment of section 14—Appointment as executor or trustee**

Section 14—after "Public Trustee" wherever occurring insert:  
and Guardian

15 **20—Amendment of section 15—Appointment of Public Trustee and Guardian by executors, administrators or trustees**

Section 15—after "Public Trustee" wherever occurring insert:  
and Guardian

20 **21—Amendment of section 16—Appointment by court as trustee of amount of judgment etc**

Section 16—after "Public Trustee" wherever occurring insert:  
and Guardian

**22—Amendment of section 17—Custodian trustee**

25 Section 17(1)—after "Public Trustee" insert:  
and Guardian

**23—Amendment of section 18—Power of attorney continues despite subsequent legal incapacity**

Section 18—after "Public Trustee" wherever occurring insert:  
and Guardian

30 **24—Amendment of section 19—Payments to or from executors etc elsewhere in Australia or in New Zealand**

Section 19—after "Public Trustee" wherever occurring insert:  
and Guardian

**25—Amendment of section 20—Public Trustee and Guardian must require delivery or transfer of property to which Public Trustee and Guardian is entitled**

(1) Section 20—after "Public Trustee" wherever occurring insert:

and Guardian

(2) Section 20(4), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$25 000 or imprisonment for 1 year.

**26—Amendment of section 21—Court may summons administrator etc on application of Public Trustee and Guardian**

Section 21—after "Public Trustee" wherever occurring insert:

and Guardian

**27—Amendment of section 22—Result of disobedience to summons**

Section 22(1)—after "Public Trustee" wherever occurring insert:

and Guardian

**28—Amendment of section 23—Public Trustee and Guardian to give notice to beneficiary entitled to property**

Section 23—after "Public Trustee" wherever occurring insert:

and Guardian

**29—Amendment of section 24—Administration of Public Trustee and Guardian may be referred to Court**

Section 24—after "Public Trustee" wherever occurring insert:

and Guardian

**30—Amendment of section 25—Public Trustee and Guardian may make advances for purposes of administration**

Section 25—after "Public Trustee" wherever occurring insert:

and Guardian

**31—Amendment of section 26—Public Trustee and Guardian to keep accounts in respect of estates etc**

(1) Section 26—after "Public Trustee" wherever occurring insert:

and Guardian

(2) Section 26(1)—delete "Public Trustee's" and substitute:

Public Trustee and Guardian's

**32—Amendment of section 27—Investment of estate funds**

Section 27—after "Public Trustee" insert:

and Guardian

**33—Amendment of section 28—Money from several estates may be invested as one fund**

Section 28—after "Public Trustee" wherever occurring insert:  
and Guardian

5 **34—Amendment of section 29—Common funds**

(1) Section 29—after "Public Trustee" wherever occurring insert:  
and Guardian

(2) Section 29(10)—delete "Public Trustee's" and substitute:  
Public Trustee and Guardian's

10 **35—Amendment of section 30—Accounts, audits and reports in respect of common funds**

(1) Section 30—after "Public Trustee" wherever occurring insert:  
and Guardian

(2) Section 30(3)—delete "Public Trustee's" and substitute:  
Public Trustee and Guardian's

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**36—Amendment of section 31—Information for investors or prospective investors in common funds**

(1) Section 31—after "Public Trustee" wherever occurring insert:  
and Guardian

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(2) Section 31—delete "Public Trustee's" wherever occurring and substitute in each case:  
Public Trustee and Guardian's

**37—Amendment of section 32—Public Trustee and Guardian's duties with respect to unclaimed money or land**

Section 32—after "Public Trustee" wherever occurring insert:  
and Guardian

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**38—Amendment of section 33—Provision for parties subsequently claiming to apply to Court etc**

Section 33—after "Public Trustee" wherever occurring insert:  
and Guardian

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**39—Amendment of section 34—Appointment as manager of unclaimed property**

Section 34—after "Public Trustee" wherever occurring insert:  
and Guardian

**40—Amendment of section 35—Powers of Public Trustee and Guardian as manager**

(1) Section 35—after "Public Trustee" wherever occurring insert:  
and Guardian

5 (2) Section 35(1)(i)—delete "Public Trustee's" and substitute:  
Public Trustee and Guardian's

**41—Amendment of section 36—Public Trustee and Guardian to have discretion as to exercise of powers as manager**

Section 36—after "Public Trustee" wherever occurring insert:  
and Guardian

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**42—Amendment of section 37—Public Trustee and Guardian may apply to Court for directions**

Section 37(1)—after "Public Trustee" insert:  
and Guardian

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**43—Amendment of section 38—Money to be invested in common fund**

Section 38—after "Public Trustee" insert:  
and Guardian

**44—Amendment of section 39—Remuneration and expenses of Public Trustee and Guardian**

Section 39—after "Public Trustee" wherever occurring insert:  
and Guardian

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**45—Amendment of section 40—Property managed by Public Trustee and Guardian to be held for owner**

Section 40—after "Public Trustee" wherever occurring insert:  
and Guardian

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**46—Amendment of section 41—Termination of management**

(1) Section 41—after "Public Trustee" wherever occurring insert:  
and Guardian

(2) Section 41—delete "Public Trustee's" wherever occurring and substitute in each case:  
Public Trustee and Guardian's

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**47—Amendment of section 42—Transfer of unclaimed property to Crown**

Section 42—after "Public Trustee" wherever occurring insert:  
and Guardian



**48—Amendment of section 43—Expenditure of money on land**

(1) Section 43—after "Public Trustee" wherever occurring insert:  
and Guardian

(2) Section 43(1)(a)—delete "Public Trustee's" and substitute:  
Public Trustee and Guardian's

**49—Amendment of section 44—Fee for administering perpetual trust**

(1) Section 44—after "Public Trustee" wherever occurring insert:  
and Guardian

(2) Section 44(1)—delete "Public Trustee's" and substitute:  
Public Trustee and Guardian's

**50—Amendment of section 45—General provision relating to Public Trustee and Guardian's charges**

Section 45—after "Public Trustee" wherever occurring insert:  
and Guardian

**51—Amendment of section 45A—Recovery of GST**

Section 45A(1)—after "Public Trustee" wherever occurring insert:  
and Guardian

**52—Amendment of section 46—ADI accounts, investment and overdraft**

(1) Section 46—after "Public Trustee" wherever occurring insert:  
and Guardian

(2) Section 46(2)(b)—delete "Public Trustee's" and substitute:  
Public Trustee and Guardian's

**53—Amendment of section 47—Tax and other liabilities of Public Trustee and Guardian**

Section 47—after "Public Trustee" wherever occurring insert:  
and Guardian

**54—Amendment of section 48—Dividends**

Section 48—after "Public Trustee" wherever occurring insert:  
and Guardian

**55—Amendment of section 49—Responsibility of Government for acts of Public Trustee and Guardian**

(1) Section 49(1)—after "Public Trustee" insert:  
and Guardian

- (2) Section 49(2)—delete "Public Trustee's" and substitute:  
Public Trustee and Guardian's

**56—Amendment of section 50—Accounts and external audit**

- (1) Section 50—after "Public Trustee" wherever occurring insert:  
5 and Guardian
- (2) Section 50(1)—delete "Public Trustee's" and substitute:  
Public Trustee and Guardian's

**57—Amendment of section 51—Annual reports**

- (1) Section 51—after "Public Trustee" wherever occurring insert:  
10 and Guardian
- (2) Section 51(1)—delete "Public Trustee's" and substitute:  
Public Trustee and Guardian's
- (3) Section 51(2)—after paragraph (a) insert:  
15 (ab) include prescribed particulars of all applications made by the Public Trustee and Guardian for the issue of a warrant under the *Guardianship and Administration Act 1993* during the year; and

**58—Amendment of section 52—Certain documents may be deposited with Public Trustee and Guardian for safe keeping**

- Section 52—after "Public Trustee" wherever occurring insert:  
20 and Guardian

**59—Amendment of section 53—Certificate by Public Trustee and Guardian of appointment to act**

- Section 53—after "Public Trustee" wherever occurring insert:  
and Guardian

**60—Amendment of section 54—Indemnity to persons having dealings with Public Trustee and Guardian**

- Section 54—after "Public Trustee" wherever occurring insert:  
and Guardian

**61—Substitution of section 55**

- Section 55—delete the section and substitute:

**55—Regulations and fee notices**

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

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- (2) Without limiting the generality of subsection (1), the regulations may—
    - (a) exempt a person, or a class of persons, from the application of this Act or a specified provision or provisions of this Act; and
    - (b) provide for the payment, recovery or waiver of fees prescribed by fee notice; and
    - (c) provide for fines, not exceeding \$10 000, for offences against the regulations; and
    - (d) provide for expiation fees, not exceeding \$315, for offences against the regulations; and
    - (e) provide for the facilitation of proof of the commission of offences against the regulations.
  - (3) The regulations may—
    - (a) be of general or limited application; and
    - (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
    - (c) make provisions of a saving or transitional nature; and
    - (d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or a specified person or body; and
    - (e) apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or a specified person or body.
  - (4) If a code, standard or other document is referred to or incorporated in the regulations—
    - (a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and
    - (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.
  - (5) The Minister may prescribe fees for the purposes of this Act by fee notice under the *Legislation (Fees) Act 2019*.
  - (6) A provision made by a regulation under subsection (3)(c) may, if the regulations so provide, take effect from the commencement of the amendment or from a later day.



**7—Amendment of section 56—Statement and account to be delivered**

Section 56(1)—after "Public Trustee" wherever occurring insert:  
and Guardian

**8—Amendment of section 56A—Court may order delivery of statement and account**

Section 56A—after "Public Trustee" wherever occurring insert:  
and Guardian

**9—Amendment of section 58—Proceedings to compel account**

Section 58—after "Public Trustee" wherever occurring insert:  
and Guardian

**10—Amendment of section 61—Rules in insolvency administration to prevail in certain cases**

(1) Section 61(1)—after "Public Trustee" insert:  
and Guardian

(2) Section 61(1)—delete "*Public Trustee Act 1995*" and substitute:  
*Public Trustee and Guardian Act 1995*

**11—Amendment of section 62—Estate how administered**

(1) Section 62—delete "*Public Trustee Act 1995*" and substitute:  
*Public Trustee and Guardian Act 1995*

(2) Section 62—after "Public Trustee" insert:  
and Guardian

**12—Amendment of section 64—Court may give permission to postpone realisation or carry on business**

Section 64(1)—after "Public Trustee" insert:  
and Guardian

**13—Amendment of section 65—Administrator to pay over money and deliver property to Public Trustee and Guardian**

Section 65—after "Public Trustee" wherever occurring insert:  
and Guardian

**14—Amendment of section 66—Effect of delivery etc to Public Trustee and Guardian**

Section 66—after "Public Trustee" insert:  
and Guardian

**15—Amendment of section 67—Judge may dispense wholly or partially with compliance with section 65**

Section 67(6)—after "Public Trustee" insert:  
and Guardian

5 **16—Amendment of section 69—Public Trustee and Guardian and other persons may obtain judicial advice or direction**

Section 69—after "Public Trustee" wherever occurring insert:  
and Guardian

10 **17—Amendment of section 72L—Election by spouse or domestic partner to take dwellinghouse**

Section 72L(3)(b)—after "Public Trustee" insert:  
and Guardian

**18—Amendment of section 121A—Statement of assets and liabilities to be provided with application for probate or administration**

15 Section 121A(8), definition of *administration*—delete the definition and substitute:  
*administration* includes an order under section 9 of the *Public Trustee and Guardian Act 1995* authorising the Public Trustee and Guardian to administer the estate of a deceased person.

20 **19—Amendment of section 128—Power of Public Trustee and Guardian to move for attachment of an administrator**

Section 128—after "Public Trustee" wherever occurring insert:  
and Guardian

**Part 2—Amendment of *Advance Care Directives Act 2013***

**20—Amendment of section 3—Interpretation**

25 Section 3(1), definition of *Public Advocate*—delete the definition and substitute:  
*Public Trustee and Guardian* means the person holding or acting in the office of Public Trustee and Guardian under the *Public Trustee and Guardian Act 1995*;

**21—Amendment of section 43—Interpretation**

30 Section 43, definition of *eligible person*, (d)—delete "Public Advocate" and substitute:  
Public Trustee and Guardian

**22—Amendment of heading to Part 7 Division 2**

35 Heading to Part 7 Division 2—delete "Public Advocate" and substitute:  
Public Trustee and Guardian

**23—Amendment of section 45—Resolution of disputes by Public Trustee and Guardian**

(1) Section 45—delete "Public Advocate" wherever occurring and substitute in each case:  
Public Trustee and Guardian

5 (2) Section 45(9)—delete "Public Advocate's" and substitute:  
Public Trustee and Guardian's

**24—Amendment of section 46—Public Trustee and Guardian may refer matter to Tribunal**

10 Section 46(1)—delete "Public Advocate" wherever occurring and substitute in each case:

Public Trustee and Guardian

**25—Amendment of section 46A—Public Trustee and Guardian may refer question of law to Supreme Court**

Section 46A—delete "Public Advocate" and substitute:

15 Public Trustee and Guardian

**26—Amendment of section 48—Resolution of disputes by Tribunal**

Section 48—delete "Public Advocate" wherever occurring and substitute in each case:

Public Trustee and Guardian

**27—Amendment of section 49—Tribunal may refer matter to Public Trustee and Guardian**

20 Section 49(1)—delete "Public Advocate" wherever occurring and substitute in each case:

Public Trustee and Guardian

**28—Amendment of section 51—Orders of Tribunal in relation to substitute decision-makers**

25 Section 51(2)—delete "Public Advocate" and substitute:

Public Trustee and Guardian

**29—Amendment of section 53—Reviews and appeals**

Section 53(b)(iii)—delete "Public Advocate" and substitute:

30 Public Trustee and Guardian

**30—Amendment of section 54—Tribunal must give notice of proceedings**

Section 54(1)(c)—delete "Public Advocate" and substitute:

Public Trustee and Guardian

**31—Amendment of section 54B—Representation of person who is subject of proceedings**

Section 54B(1)(a)—delete "Public Advocate" and substitute:

Public Trustee and Guardian

5 **Part 3—Amendment of *Aged and Infirm Persons' Property Act 1940***

**32—Amendment of section 8—Application for protection order**

Section 8(1)(d)—after "Public Trustee" insert:

and Guardian

10 **33—Amendment of section 8A—Protection order on court's own initiative**

Section 8A(4)(d)—after "Public Trustee" insert:

and Guardian

**34—Amendment of section 10—Appointment of manager**

Section 10—after "Public Trustee" wherever occurring insert:

15 and Guardian

**35—Amendment of section 19—Filing of statement**

Section 19—after "Public Trustee" wherever occurring insert:

and Guardian

20 **36—Amendment of section 20—Percentage of moneys collected payable to Public Trustee and Guardian**

Section 20—after "Public Trustee" wherever occurring insert:

and Guardian

**37—Amendment of section 22—Proceedings**

Section 22—after "Public Trustee" wherever occurring insert:

25 and Guardian

**38—Amendment of section 24—Application to court by Public Trustee and Guardian**

Section 24(1)—after "Public Trustee" wherever occurring insert:

and Guardian

30 **39—Amendment of section 31—Expenses and remuneration of manager**

Section 31(2)—after "Public Trustee" wherever occurring insert:

and Guardian



**40—Amendment of section 32—Change of managers**

Section 32(1)—after "Public Trustee" insert:  
and Guardian

**41—Amendment of section 32A—Provision for Public Trustee and Guardian  
to manage estates of persons in other parts of the world**

Section 32A—after "Public Trustee" wherever occurring insert:  
and Guardian

**Part 4—Amendment of *Burial and Cremation Act 2013***

**42—Amendment of section 56—Power of Public Trustee and Guardian to act  
on behalf of holder of interment right etc**

Section 56—after "Public Trustee" wherever occurring insert:  
and Guardian

**Part 5—Amendment of *Children and Young People (Safety)  
Act 2017***

**43—Amendment of section 161—Payment of money to Chief Executive on  
behalf of child or young person**

Section 161—after "Public Trustee" wherever occurring insert:  
and Guardian

**Part 6—Amendment of *Consent to Medical Treatment and  
Palliative Care Act 1995***

**44—Amendment of section 4—Interpretation**

Section 4(1), definition of *Public Advocate*—delete the definition and substitute:

*Public Trustee and Guardian* means the person holding or acting in the  
office of Public Trustee and Guardian under the *Public Trustee and Guardian  
Act 1995*;

**45—Amendment of section 18A—Interpretation**

Section 18A, definition of *eligible person*, (d)—delete "Public Advocate" and  
substitute:

Public Trustee and Guardian

**46—Amendment of heading to Part 3A Division 2**

Heading to Part 3A Division 2—delete "Public Advocate" and substitute:

Public Trustee and Guardian

**47—Amendment of section 18C—Resolution of disputes by Public Trustee and Guardian**

Section 18C—delete "Public Advocate" wherever occurring and substitute in each case:

5 Public Trustee and Guardian

**48—Amendment of section 18D—Public Trustee and Guardian may refer matter to Tribunal**

Section 18D(1)—delete "Public Advocate" wherever occurring and substitute in each case:

10 Public Trustee and Guardian

**49—Amendment of section 18DA—Public Trustee and Guardian may refer question of law to Supreme Court**

Section 18DA—delete "Public Advocate" and substitute:

Public Trustee and Guardian

**50—Amendment of section 18E—Resolution of disputes by Tribunal**

Section 18E—delete "Public Advocate" wherever occurring and substitute in each case:

Public Trustee and Guardian

**51—Amendment of section 18F—Tribunal may refer matter to Public Trustee and Guardian**

Section 18F(1)—delete "Public Advocate" wherever occurring and substitute in each case:

Public Trustee and Guardian

**52—Amendment of section 18H—Reviews and appeals**

Section 18H(b)(iii)—delete "Public Advocate" and substitute:

Public Trustee and Guardian

**53—Amendment of section 18I—Tribunal must give notice of proceedings**

Section 18I(1)(c)—delete "Public Advocate" and substitute:

Public Trustee and Guardian

**54—Amendment of section 18K—Representation of person who is subject of proceedings**

Section 18K(1)(a)—delete "Public Advocate" and substitute:

Public Trustee and Guardian

## **Part 7—Amendment of *Criminal Law Consolidation Act 1935***

### **55—Amendment of section 269ND—Variation or revocation of condition of Division 3A order**

Section 269ND—delete "Public Advocate" and substitute:

5 Public Trustee and Guardian

### **56—Amendment of section 269P—Variation or revocation of supervision order**

Section 269P(1)—delete "Public Advocate" and substitute:

Public Trustee and Guardian

### **10 57—Amendment of section 269UC—Variation or revocation of continuing supervision order**

Section 269UC(1)—delete "Public Advocate" and substitute:

Public Trustee and Guardian

## **Part 8—Amendment of *Fisheries Management Act 2007***

### **15 58—Amendment of section 57—Transfer of licence or permit**

Section 57(9), definition of *personal representative*, (b)—after "Public Trustee" insert:

and Guardian

## **Part 9—Amendment of *Freedom of Information Act 1991***

### **20 59—Amendment of Schedule 2—Exempt agencies**

Schedule 2, paragraph (m)—after "Public Trustee" insert:

and Guardian

## **Part 10—Amendment of *Guardianship and Administration Act 1993***

### **25 60—Amendment of section 3—Interpretation**

Section 3(1), definition of *the Public Advocate*—delete the definition and substitute:

*Public Trustee and Guardian* means the person holding or acting in the office of Public Trustee and Guardian under the *Public Trustee and Guardian Act 1995*;

### **30 61—Amendment of section 5—Principles to be observed**

Section 5—delete "Public Advocate" and substitute:

Public Trustee and Guardian

### **62—Repeal of Part 2**

Part 2—delete the Part

**63—Amendment of section 28—Investigations by Public Trustee and Guardian**

Section 28—delete "Public Advocate" wherever occurring and substitute in each case:  
Public Trustee and Guardian

5 **64—Amendment of section 29—Guardianship orders**

Section 29—delete "Public Advocate" wherever occurring and substitute in each case:  
Public Trustee and Guardian

**65—Amendment of section 33—Applications under this Division**

10 Section 33—delete "Public Advocate" wherever occurring and substitute in each case:  
Public Trustee and Guardian

**66—Amendment of section 35—Administration orders**

Section 35—after "Public Trustee" wherever occurring insert:  
and Guardian

**67—Amendment of section 37—Applications under this Division**

- 15 (1) Section 37(1)(b)—delete "Public Advocate" and substitute:  
Public Trustee and Guardian
- (2) Section 37(1a)(b)—after "Public Trustee" insert:  
and Guardian

20 **68—Amendment of section 38—Copy of order must be forwarded to Public Trustee and Guardian**

Section 38—after "Public Trustee" insert:  
and Guardian

**69—Amendment of section 44—Reporting requirements for private administrators**

- 25 (1) Section 44—after "Public Trustee" wherever occurring insert:  
and Guardian
- (2) Section 44(7)(c)—delete "Public Trustee's" and substitute:  
Public Trustee and Guardian's

**70—Amendment of section 45—Reporting by Public Trustee and Guardian**

30 Section 45—after "Public Trustee" wherever occurring insert:  
and Guardian

**71—Amendment of section 46—Remuneration of professional administrators**

- (1) Section 46(3)—delete "Public Advocate" and substitute:  
Public Trustee and Guardian

(2) Section 46(4)—after "Public Trustee" insert:  
and Guardian

**72—Amendment of section 48—Reciprocal administration powers with certain states**

5 Section 48(2)—after "Public Trustee" wherever occurring insert:  
and Guardian

**73—Amendment of section 51—Consent to appointment**

Section 51—delete "Public Advocate or the Public Trustee" and substitute:  
Public Trustee and Guardian

10 **74—Amendment of section 64—Reviews and appeals**

Section 64(b)(iii)—delete "Public Advocate" and substitute:  
Public Trustee and Guardian

**75—Amendment of section 66—Tribunal must give notice of proceedings**

15 Section 66(1)(c)—delete "Public Advocate" and substitute:  
Public Trustee and Guardian

**76—Amendment of section 68—Representation of person who is subject of proceedings**

Section 68(1)(a)—delete "Public Advocate" and substitute:  
Public Trustee and Guardian

20 **77—Amendment of section 69—Tribunal may require reports**

Section 69(2)—delete "Public Advocate" and substitute:  
Public Trustee and Guardian

**Part 11—Amendment of *Inheritance (Family Provision) Act 1972***

25 **78—Amendment of section 16—Public Trustee and Guardian deemed to be administrator where order has been made authorising him to administer estate**

Section 16—after "Public Trustee" wherever occurring insert:  
and Guardian

30 **Part 12—Amendment of *Law of Property Act 1936***

**79—Amendment of section 7—Interpretation**

Section 7, definition of *representative*—after "Public Trustee" insert:  
and Guardian

**80—Amendment of section 114—Power of Court to sell interest of Crown in real estate**

Section 114(2)—after "Public Trustee" insert:  
and Guardian

5 **81—Amendment of section 115—Power to waive right of Crown in certain cases**

Section 115(1)—after "Public Trustee" insert:  
and Guardian

**Part 13—Amendment of *Mental Health Act 2009***

10 **82—Amendment of section 3—Interpretation**

Section 3(1), definition of *Public Advocate*—delete the definition and substitute:

*Public Trustee and Guardian* means the person holding or acting in the office of Public Trustee and Guardian under the *Public Trustee and Guardian Act 1995*;

15 **83—Amendment of section 16—Level 2 community treatment orders**

Section 16—delete "Public Advocate" wherever occurring and substitute in each case:  
Public Trustee and Guardian

**84—Amendment of section 29—Level 3 inpatient treatment orders**

20 Section 29—delete "Public Advocate" wherever occurring and substitute in each case:  
Public Trustee and Guardian

**85—Amendment of section 48—Patients' right to communicate with others outside treatment centre**

Section 48(3)(c)—delete "Public Advocate" and substitute:  
Public Trustee and Guardian

25 **86—Amendment of section 81—Reviews of orders (other than Tribunal orders)**

Section 81(1)(b)—delete "Public Advocate" and substitute:  
Public Trustee and Guardian

30 **87—Amendment of section 83—Review of directions for transfer of patients to interstate treatment centres**

Section 83(1)(b)—delete "Public Advocate" and substitute:  
Public Trustee and Guardian

**88—Amendment of section 83A—Reviews and appeals**

35 Section 83A(b)(iii)—delete "Public Advocate" and substitute:  
Public Trustee and Guardian

**89—Amendment of section 84—Representation on reviews or appeals**

Section 84(4)—delete "Public Advocate" and substitute:

Public Trustee and Guardian

**90—Amendment of section 85—Tribunal must give notice of proceedings**

5 Section 85(1)(c)—delete "Public Advocate" and substitute:

Public Trustee and Guardian

**91—Amendment of section 85B—Representation of person who is subject of proceedings**

Section 85B(1)(a)—delete "Public Advocate" and substitute:

10 Public Trustee and Guardian

**Part 14—Amendment of *Problem Gambling Family Protection Orders Act 2004***

**92—Amendment of section 7—Complaints**

Section 7(3)(c)—delete paragraph (c) and substitute:

15 (c) the person holding or acting in the office of Public Trustee and Guardian under the *Public Trustee and Guardian Act 1995*; or

**93—Amendment of section 8—Complaints or applications by or on behalf of child**

Section 8(b)(iv)—delete subparagraph (iv) and substitute:

20 (iv) the person holding or acting in the office of Public Trustee and Guardian under the *Public Trustee and Guardian Act 1995*; or

**Part 15—Amendment of *Real Property Act 1886***

**94—Amendment of section 135A—Mode of payment of encumbrance**

Section 135A(1)—after "Public Trustee" insert:

25 and Guardian

**95—Amendment of section 175—Transmission of estate of deceased persons**

Section 175—after "Public Trustee" wherever occurring insert:

and Guardian

**96—Amendment of section 176—Application to be made in such case**

30 Section 176—after "Public Trustee" wherever occurring insert:

and Guardian

**97—Amendment of section 178—Effect of such entry**

Section 178—after "Public Trustee" insert:

and Guardian

**98—Amendment of section 181—Proceedings when executor etc refuse to transfer**

Section 181—after "Public Trustee" wherever occurring insert:  
and Guardian

5 **Part 16—Amendment of *Stamp Duties Act 1923***

**99—Amendment of Schedule 2—Stamp duties and exemptions**

Schedule 2, clause 16, item 25—after "Public Trustee" insert:  
and Guardian

**Part 17—Amendment of *Trustee Act 1936***

10 **100—Amendment to section 4—Interpretation**

Section 4(1), definition of *representative*—after "Public Trustee" insert:  
and Guardian

**101—Amendment of section 14—Power of appointing new trustees**

Section 14(2)(c)—after "Public Trustee" wherever occurring insert:  
15 and Guardian

**102—Amendment of section 14A—Appointment of separate trustees**

Section 14A(3)—after "Public Trustee" wherever occurring insert:  
and Guardian

20 **103—Amendment of section 49—Power for Court to authorise purchase of trust property by trustee**

Section 49(1)(b)—after "Public Trustee" insert:  
and Guardian

**104—Amendment of section 84B—Records to be kept by trustee**

Section 84B(2)—after "Public Trustee" wherever occurring insert:  
25 and Guardian

**Part 18—Amendment of *Wills Act 1936***

**105—Amendment of section 6—Will of minor pursuant to leave of Court**

Section 6(4)(a)—after "Public Trustee" insert:  
or Guardian

30 **106—Amendment of section 7—Will of person lacking testamentary capacity pursuant to permission of court**

Section 7(7)(c)—delete paragraph (c) and substitute:

- (c) the person holding or acting in the office of Public Trustee and Guardian under the *Public Trustee and Guardian Act 1995*;



## Part 19—Transitional provisions etc

### 107—Appointments

5 An appointment of the Public Advocate to act in any capacity (whether under the  
*Guardianship and Administration Act 1993* or any other Act or law) in force  
immediately before the commencement of this clause will be taken to be an  
appointment of the Public Trustee and Guardian from the commencement of this  
clause and will continue in accordance with its terms.

### 108—Assets, rights and liabilities

10 Subject to this Part, all assets, rights and liabilities of the Public Advocate transfer to  
the Public Trustee and Guardian on the commencement of this clause.

### 109—References

- 15 (1) Unless the context otherwise requires, a reference in any Act, statutory instrument,  
will, order, direction, or other document or instrument to the Public Advocate will be  
taken to be a reference to the Public Trustee and Guardian.
- (2) Unless the context otherwise requires, a reference in any Act, statutory instrument,  
will, order, direction or other document or instrument to the Public Trustee will be  
taken to be a reference to the Public Trustee and Guardian.

### 110—Processes and proceedings

- 20 (1) Any process or proceedings commenced by the Public Advocate, or to which the  
Public Advocate is a party, may be continued and completed by the Public Trustee and  
Guardian.
- (2) Without limiting subclause (1), the Public Trustee and Guardian may, in relation to  
such processes or proceedings, adopt any findings, determinations, report or  
recommendations of the Public Advocate that may be relevant to the continuation or  
25 completion of any process or proceeding by the Public Trustee and Guardian.

### 111—Causes of action

- 30 (1) A right to take legal action against the Public Advocate in relation to a matter in  
existence (but not yet exercised) before the commencement of this clause, may be  
exercised as if this Act had been in operation before the right arose, so that relevant  
proceedings may be commenced instead against the Public Trustee and Guardian.
- (2) A right of the Public Advocate to take legal action in relation to a matter in existence  
(but not yet exercised) before the commencement of this clause, may be exercised as if  
this Act had been in operation before the right arose, so that relevant proceedings may  
be commenced instead by the Public Trustee and Guardian.

### 112—Committees

35 A committee established by the Public Advocate under section 21(3) of the  
*Guardianship and Administration Act 1993* in existence immediately before the  
commencement of this clause continues in existence and will be taken to be a  
committee established under section 5(5) of the *Public Trustee and Guardian*  
40 *Act 1995*.

### **113—Reports**

If—

- 5 (a) the Public Advocate has requested that the Attorney-General cause a report to be laid before both Houses of Parliament under section 22(2) of the *Guardianship and Administration Act 1993*; and
- (b) the report has not been laid before both Houses of Parliament before the commencement of this clause,

the request will be taken to have been a request from the Public Trustee and Guardian under section 6A(2) of the *Public Trustee and Guardian Act 1995*.

### **114—Delegations**

10 A delegation of the Public Advocate under section 23 of the *Guardianship and Administration Act 1993* in force immediately before the commencement of this clause continues in force and will be taken to be a delegation of the Public Trustee and Guardian under section 8 of the *Public Trustee and Guardian Act 1995*.

### **115—Common funds**

15 A common fund under Part 5 of the *Public Trustee Act 1995* in force immediately before the commencement of this clause continues in accordance with its terms.

### **116—Common seal**

20 A document apparently bearing the common seal of the Public Trustee will be presumed, in the absence of proof to the contrary, to have been duly executed by the Public Trustee and Guardian.

### **117—Information and documents**

25 Despite any provision of the *Guardianship and Administration Act 1993*, or any other Act or law, information and documents held by, or in the possession of, the Public Advocate may be transferred to the Public Trustee and Guardian.