

Legislative Council—No 131

As introduced and read a first time, 30 November 2023

South Australia

**Statutes Amendment (Public Trustee and
Litigation Guardian) Bill 2023**

A BILL FOR

An Act to amend the *Guardianship and Administration Act 1993* and the *Public Trustee Act 1995*.

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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 *Statutes Amendment (Public Trustee and Litigation Guardian) Act 2023*.

2—Commencement

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

Part 2—Amendment of *Guardianship and Administration Act 1993*

3—Insertion of section 41A

After section 41 insert:

41A—Public Trustee may retain money to pay outstanding debts etc

(1) Subject to subsection (2), if an administration order appointing the Public Trustee as administrator of the whole or part of a protected person's estate (whether made before or after the commencement of this section) is revoked, or the protected person dies, the Public Trustee may retain money belonging to the protected person to apply in or towards the payment of any debts, obligations or liabilities of the protected person, or incurred by the Public Trustee in the exercise of powers or duties under this Division, that are outstanding at the time the administration order is revoked or the protected person dies (as the case may be).

(2) The amount of money retained by the Public Trustee must not exceed—

- (a) the amount the Public Trustee considers is reasonably required to be retained to pay the outstanding debts, obligations or liabilities; or
- (b) the prescribed amount,

whichever is the lesser.

(3) If the Public Trustee retains money in accordance with this section, the Public Trustee must—

(a) notify the relevant person and the guardian of the protected person (if any) of the amount of money retained and the nature of the outstanding debts, obligations or liabilities for which the money has been retained; and

(b) as soon as reasonably practicable—

(i) apply the money retained in or towards payment of the outstanding debts, obligations or liabilities; and

(ii) provide any excess money to the relevant person.

(4) In this section—

excess money means money retained by the Public Trustee in accordance with this section that is in excess of the outstanding debts, obligations or liabilities of the protected person, or incurred by the Public Trustee in the exercise of powers or duties under this Division;

relevant person means the person who takes over the control and management of the whole or part of the estate following the revocation of the administration order or the death of the protected person (as the case may be).

5 **4—Insertion of section 83**

After section 82 insert:

**83—Matters to consider when deciding whether to appoint
Public Advocate as litigation guardian**

10 In determining whether the Public Advocate should act as a litigation guardian for a person in a proceeding (whether commenced before or after the commencement of this section), a court or tribunal must consider the following matters:

- 15 (a) whether the Public Advocate has been appointed or otherwise empowered to act in a specified capacity in respect of the person;
- (b) whether there is a relative, friend or associate of the person who is willing and able to act as a litigation guardian for the person;
- 20 (c) whether in all of the circumstances, and taking into account the nature of the litigation, the Public Advocate is the most appropriate person to act as a litigation guardian for the person.

Part 3—Amendment of *Public Trustee Act 1995*

25 **5—Amendment of section 28—Money from several estates may be invested as one fund**

Section 28(2)(b)(i)—delete "and the period of each investment"

6—Amendment of section 29—Common funds

- (1) Section 29(7)(a)—delete "and the period of each investment"
- (2) Section 29(8)—delete "first" and substitute:
30 last
- (3) Section 29(11)—delete "first" and substitute:
last

7—Amendment of section 44—Fee for administering perpetual trust

35 Section 44(2)(a)—delete "first" and substitute:
last

8—Amendment of section 54—Indemnity to persons having dealings with Public Trustee

(1) Section 54(1)—after "Court" insert:

or SACAT

(2) Section 54(1)—delete "the order or an office copy of the order giving the authority" and substitute:

either (as the Public Trustee considers appropriate)—

(a) the order or an office copy of the order giving the authority; or

(b) a certificate executed by the Public Trustee certifying that the Public Trustee has been given the authority.

(3) Section 54—after subsection (1) insert:

(1a) The certificate referred to in subsection (1)(b) must include the following:

(a) the date of the order giving the authority;

(b) the court or tribunal that made the order;

(c) the scope of the authority.

(4) Section 54(2)—after "The" insert:

certificate,

9—Insertion of section 54A

After section 54 insert:

54A—Matters to consider when deciding whether to appoint Public Trustee as litigation guardian

In determining whether the Public Trustee should act as a litigation guardian for a person in a proceeding (whether commenced before or after the commencement of this section), a court or tribunal must consider the following matters:

(a) whether the Public Trustee has been appointed or otherwise empowered to act in a specified capacity in respect of the person;

(b) whether there is a relative, friend or associate of the person who is willing and able to act as a litigation guardian for the person;

(c) whether in all of the circumstances, and taking into account the nature of the litigation, the Public Trustee is the most appropriate person to act as a litigation guardian for the person.

10—Transitional provision

(1) Section 54 of the principal Act, as amended by section 8 of this Act, applies whether the order referred to in section 54(1) of the principal Act was made before or after the commencement of section 8 of this Act.

5 (2) In this section—

principal Act means the *Public Trustee Act 1995*.