

AUSTRALIAN CAPITAL TERRITORY

Public Trustee (Miscellaneous Amendments) Ordinance 1985

No. 9 of 1985

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 22 February 1985.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

LIONEL BOWEN
Attorney-General

An Ordinance to amend certain Ordinances in consequence of the making of the *Public Trustee Ordinance 1985*, and for other purposes

PART I—PRELIMINARY

Short title

1. This Ordinance may be cited as the *Public Trustee (Miscellaneous Amendments) Ordinance 1985*.¹

Commencement

2. This Ordinance shall come into operation on such date as is fixed by the Minister of State for Territories by notice in the *Gazette*.

PART II—AMENDMENTS OF THE ADMINISTRATION AND PROBATE ORDINANCE 1929

Principal Ordinance

3. The *Administration and Probate Ordinance 1929* is in this Part referred to as the Principal Ordinance.

Interpretation

4. Section 5 of the Principal Ordinance is amended by inserting after the definition of “probate” in sub-section (1) the following definition:

“ ‘Public Trustee’ has the same meaning as in the *Public Trustee Ordinance 1985*;”.

5. Section 10C of the Principal Ordinance is repealed and the following section substituted:

Grant of probate to public trustee

“10C. Where a deceased person has named, as an executor of his or her will—

- (a) the Public Trustee for the Australian Capital Territory;
- (b) the public trustee of a State; or
- (c) the Public Trustee for the Northern Territory,

the Court may grant probate of the will to that public trustee.”.

Order to assign bond in creditor’s administration

6. Section 18 of the Principal Ordinance is amended by omitting from sub-section (1) “Curator” and substituting “Public Trustee”.

Costs where caveat lodged by Public Trustee

7. Section 38 of the Principal Ordinance is amended by omitting “the Curator” and substituting “the Public Trustee”.

Estate to vest in Public Trustee until grant

8. Section 38A of the Principal Ordinance is amended by omitting “the Curator” and substituting “the Public Trustee”.

Heading to Part VI

9. The heading to Part VI of the Principal Ordinance is omitted and the following heading substituted:

“PART VI—PUBLIC TRUSTEE”.

Orders to Public Trustee to collect and administer

10. Section 88 of the Principal Ordinance is amended by omitting from sub-section (1) “the Curator” (first, second and third occurring) and substituting “the Public Trustee”.

Grant of probate or administration notwithstanding appointment of Public Trustee

11. Section 90 of the Principal Ordinance is amended by omitting from sub-section (1) “the Curator” (wherever occurring) and substituting “the Public Trustee”.

Cessation of rights and liabilities of Public Trustee

12. Section 91 of the Principal Ordinance is amended by omitting from sub-section (1) “the Curator” (wherever occurring) and substituting “the Public Trustee”.

Order to Public Trustee to collect and administer in special circumstances

13. Section 92 of the Principal Ordinance is amended by omitting from sub-section (1) “the Curator” and substituting “the Public Trustee”.

Court to have summary jurisdiction over Public Trustee

14. Section 95 of the Principal Ordinance is amended by omitting from sub-section (1) “the Curator has been ordered” and substituting “the Curator of Estates of Deceased Persons or the Public Trustee has been ordered”.

Public Trustee to act as Court directs

15. Section 97 of the Principal Ordinance is amended by omitting “the Curator” and substituting “the Public Trustee”.

Public Trustee may obtain directions of Court

16. Section 97A of the Principal Ordinance is amended by omitting from sub-section (1) “Curator” and substituting “Public Trustee”.

Receipt of Public Trustee sufficient discharge

17. Section 102 of the Principal Ordinance is amended by omitting “the Curator” and substituting “the Public Trustee”.

Further amendments

18. The Principal Ordinance is amended as set out in Schedule 1.

PART III—AMENDMENTS OF OTHER ORDINANCES

Amendments of other Ordinances

19. The Ordinances specified in Schedule 2 are amended as set out in that Schedule.

PART IV—TRANSITIONAL

Interpretation

20. In this Part—

“commencement date” means the date of commencement of this Ordinance;

“Curator” means the Curator of Estates of Deceased Persons appointed under the *Administration and Probate Ordinance 1929*;

“Public Trustee” has the same meaning as in the *Public Trustee Ordinance 1985*.

Transfer of assets, liabilities, &c.

21. (1) On the commencement date—

- (a) any rights, property or assets that, immediately before that date, were vested in the Curator are, by force of this sub-section, vested in the Public Trustee; and
- (b) the Public Trustee becomes, by force of this sub-section, liable to pay or discharge any debts, liabilities or obligations of the Curator that existed immediately before that date.

(2) Without limiting the generality of sub-section (1), where, immediately before the commencement date, the Curator was administering the estate of a deceased person, then, on the commencement date—

- (a) the Public Trustee becomes entitled to administer such portion of that estate as is left unadministered by the Curator;
- (b) all rights, property and assets that, immediately before that date, were vested in the Curator in respect of that estate are vested in the Public Trustee;
- (c) the Public Trustee becomes liable to pay and discharge all debts, liabilities and obligations of the Curator in respect of that estate that existed immediately before that date; and

- (d) the Public Trustee is entitled to possession of all books, accounts, letters, papers and documents used by or in the possession of or under the control of the Curator in respect of that estate immediately before that date.

Contracts, agreements, &c.

22. (1) Any contract, agreement or arrangement entered into by or on behalf of the Curator as a party and in force immediately before the commencement date continues in force notwithstanding the repeal of section 8 of the *Administration and Probate Ordinance 1929* effected by this Ordinance but that contract, agreement or arrangement has effect, on and after the commencement date, as if—

- (a) the Public Trustee were substituted for the Curator as a party to the contract, agreement or arrangement; and
- (b) any reference in the contract, agreement or arrangement to the Curator were (except in relation to matters that occurred before that date) a reference to the Public Trustee.

(2) A reference to the Curator in any order or other instrument, not being an instrument of a kind referred to in sub-section (1), in force immediately before the commencement date has effect on and after that date as if that reference were (except in relation to matters that occurred before that date) a reference to the Public Trustee.

Proceedings

23. Where, immediately before the commencement date, proceedings to which the Curator was a party were pending in any court or tribunal, the Public Trustee is, by force of this section, substituted for the Curator as a party to the proceedings.

Registration of changes in title to land

24. Where, by reason of the operation of section 21, any interest in land situated in the Territory becomes vested in the Public Trustee, the Public Trustee may lodge with the Registrar of Titles a notice stating that that interest in land is vested in the Public Trustee by virtue of the operation of section 21 and the Registrar shall make such entries in the relevant registers kept by the Registrar, and do such other things, as are necessary to reflect the operation of section 21 in relation to that interest in land.

SCHEDULE 1

Section 18

**FURTHER AMENDMENTS OF THE ADMINISTRATION AND PROBATE ORDINANCE
1929**

Provision	Amendment
Sub-section 5 (1)	(a) Omit the definitions of “Acting Curator”, “Acting Deputy Curator”, “Deputy Curator” and “the Curator”. (b) Omit “sub-section (3) of section seven of this Ordinance” from the definition of “Acting Deputy Registrar”, substitute “sub-section 7 (3)”. (c) Omit “sub-section (3) of section seven of this Ordinance” from the definition of “Acting Registrar”, substitute “sub-section 7 (3)”. (d) Omit the definition of “City Area”. (e) Omit “the first day of July, One thousand nine hundred and twenty-nine” from the definitions of “deceased person” and “the deceased”, substitute “1 July 1929”. (f) Omit “section seven of this Ordinance” from the definition of “Deputy Registrar”, substitute “section 7”. (g) Omit “section seven of this Ordinance” from the definition of “the Registrar”, substitute “section 7”. (h) Omit “-1963” from the definition of “the Registrar of Titles”. (i) Omit “section seven B of this Ordinance” from the definition of “the seal of the Court”, substitute “section 7B”.
Sections 6, 8, 8A and 8B	Repeal the sections.
Sub-section 8C (1).....	Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Sub-section 8C (2).....	Omit “In the last preceding sub-section”, substitute “In sub-section (1)”.

Provision	Amendment
Paragraph 8C (2) (b).....	Omit the office specified in the table opposite to the reference to the State of Western Australia, substitute the following office— “Commissioner of State Taxation”.
Sub-section 14 (2)	Omit “Two thousand dollars”, substitute “\$2,000”.
Sub-section 14 (4)	Omit “of this section”.
Paragraph 14 (4) (a).....	Omit “Curator”, substitute “Public Trustee”.
Sub-section 14 (5)	Omit “ <i>Insurance Act 1932-1966</i> ”, substitute “ <i>Insurance (Deposits) Act 1932</i> ”.
Sub-section 18 (2)	Omit “Curator”, substitute “Public Trustee”.
Sub-section 18 (3)	Omit “Curator”, substitute “Public Trustee”.
Sub-section 80 (2)	Omit “the last preceding sub-section” (wherever occurring), substitute “sub-section (1)”.
Sub-section 80 (3)	(a) Omit “of this section”. (b) Omit “Curator” (wherever occurring), substitute “Public Trustee”. (c) Omit “section eighty-eight of this Ordinance”, substitute “section 88”.
Sub-section 83B (1).....	Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Sub-section 83B (2).....	(a) Omit “the last preceding sub-section” (wherever occurring), substitute “sub-section (1)”. (b) Omit “Curator”, substitute “Public Trustee”.
Paragraph 83B (2) (b).....	Omit “sections nine B, sixty-four, sixty-five and ninety-nine of this Ordinance”, substitute “sections 9B, 64, 65 and 99”.
Sections 84, 85, 86, 87 and 87A	Repeal the sections.
Sub-section 87B (1).....	Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Sub-section 87B (2).....	(a) Omit “Curator” (wherever occurring), substitute “Public Trustee”. (b) Omit “the last preceding sub-section”, substitute “sub-section (1)”.
Sub-section 87B (3).....	(a) Omit “Curator” (wherever occurring), substitute “Public Trustee”. (b) Omit “of this section”.

Provision	Amendment
Sub-section 87B (4).....	(a) Omit “Curator” (wherever occurring), substitute “Public Trustee”. (b) Omit “of this section”.
Sub-section 87B (5).....	Omit the sub-section.
Sub-section 87C (1).....	Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Paragraph 87C (1) (d).....	Omit “the next succeeding section”, substitute “section 88”.
Sub-section 87C (2).....	(a) Omit “the last preceding sub-section”, substitute “sub-section (1)”. (b) Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Sub-section 87C (3).....	(a) Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Sub-section 87C (4).....	(a) Omit “Curator” (wherever occurring), substitute “Public Trustee”. (b) Omit “The next succeeding section”, substitute “section 88”.
Sub-section 87C (5).....	(a) Omit “Curator” (wherever occurring), substitute “Public Trustee”. (b) Omit “in the <i>Gazette</i> and”.
Sub-section 87C (6).....	Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Sub-section 87C (7).....	(a) Omit “Curator” (wherever occurring), substitute “Public Trustee”. (b) Omit “the last preceding sub-section”, substitute “sub-section (6)”.
Sub-section 87C (8).....	Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Sub-section 87C (9).....	(a) Omit “Curator” (wherever occurring), substitute “Public Trustee”. (b) Omit “the last preceding sub-section”, substitute “sub-section (8)”.
Sub-section 87C (10).....	(a) Omit “of this section”. (b) Omit “Curator”, substitute “Public Trustee”. (c) Omit “the next succeeding section”, substitute “section 88”.

- Sub-section 87C (11).....(a) Omit “Curator”, substitute “Public Trustee”.
 (b) Omit “of this section”.
 (c) Omit “section thirty-two B of this Ordinance”, substitute “section 32B”.

Provision	Amendment
Paragraph 88 (1) (h)	Omit “the Curator”, substitute “the Curator of Estates of Deceased Persons or the Public Trustee”.
Sub-section 88 (2)	Omit “Curator”, substitute “Public Trustee”.
Sub-section 88 (3)	Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Sub-section 88 (4)	Omit “of this section” (wherever occurring).
Sub-section 88 (5)	Omit “Curator”, substitute “Public Trustee”.
Sub-section 89 (1)	Omit “Curator”, substitute “Public Trustee”.
Sub-section 89 (1A).....	Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Sub-section 89 (2)	Omit “Curator”, substitute “Public Trustee”.
Paragraph 90 (1) (a).....	Omit “section eighty-seven B of this Ordinance”, substitute “section 87B”.
Paragraph 90 (1) (b)	Omit “section eighty-seven C of this Ordinance”, substitute “section 87C”.
Paragraph 90 (1) (c).....	Omit “section eighty-eight of this Ordinance”, substitute “section 88”.
Sub-section 90 (2)	(a) Omit “seven”, substitute “7”. (b) Omit “Curator”, substitute “Public Trustee”.
Sub-section 91 (2)	Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Sub-section 91 (3)	Omit “Curator”, substitute “Public Trustee”.
Sub-section 91 (4)	Omit “Curator”, substitute “Public Trustee”.
Sub-section 92 (2)	Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Sub-section 92 (3)	Omit “Curator”, substitute “Public Trustee”.
Section 93	(a) Omit “fourteen days”, substitute “1 month”. (b) Omit “Curator”, substitute “Public Trustee”.
Sections 94, 94A and 94B	Repeal the sections.

- Paragraph 95 (1) (a).....Insert “or the Public Trustee” after “the Curator”.
- Paragraph 95 (1) (i)Omit “Curator”, substitute “Public Trustee”.
- Paragraph 96 (1) (a).....Omit “or”.
- Paragraph 96 (1) (b)Omit the paragraph, substitute the following paragraph:
“(b) by the Public Trustee; or”.
- Paragraph 96 (1) (c).....Omit “Curator”, substitute “Public Trustee”.

Provision	Amendment
Section 97	Omit “of this Ordinance”.
Sub-section 97A (2).....	Omit “Curator”, substitute “Public Trustee”.
Sub-section 97A (4).....	Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Sub-section 98 (1)	(a) Omit “Curator”, substitute “Public Trustee”.
	(b) Omit “of this Ordinance”.
	(c) Omit “the next succeeding sub-section”, substitute “sub section (2)”.
Section 99	Repeal the section.
Section 101	Omit “Curator”, substitute “Public Trustee”.
Paragraph 101 (a)	Add at the end of the paragraph “and”.
Paragraphs 101 (b), (d) and (e)	Omit the paragraphs.
Section 102	Omit “of this Ordinance”.
Sections 103, 104, 105 and 106.....	Repeal the sections.
Sub-section 107 (1)	Omit “Curator” (wherever occurring), substitute “Public Trustee”.
Sub-section 107 (1A).....	Omit “Curator”, substitute “Public Trustee”.
Sub-section 107 (1B).....	(a) Omit “either of the last two preceding sub-sections”, substitute “sub-section (1) or (1A)”.
	(b) Omit “Curator”, substitute “Public Trustee”.
Sub-section 107 (2)	Omit “Curator’s”, substitute “Public Trustee’s”.
Section 108	Repeal the section.

SCHEDULE 2

Section 19

AMENDMENTS OF OTHER ORDINANCES

Ordinance	Amendments
<i>Agents Ordinance 1968</i>	Paragraph 3 (a)— Omit “the Curator of Intestate Estates”, substitute “the Public Trustee for the Australian Capital Territory”.
<i>Child Welfare Ordinance 1957</i>	Sub-section 119 (1)— Omit “Curator of the Estates of Deceased Persons”, substitute “Public Trustee for the Australian Capital Territory”. Sub-section 119 (2)— Omit “Curator of the Estates of Deceased Persons”, substitute “Public Trustee for the Australian Capital Territory”.
<i>Compensation (Fatal Injuries) Ordinance 1968</i>	Sub-section 4 (1)— Omit “the Curator of the Deceased Estates if the Curator”, from the definition of “personal representative”, substitute “the Public Trustee for the Australian Capital Territory if the Public Trustee”.
<i>Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982</i>	Section 95— Omit sub-sections (1) and (2), substitute the following sub-section: “(1) This section applies to money ordered or agreed to be paid in proceedings referred to in section 94, other than— (a) money due to a person who has not attained full age as salary, wages or otherwise in respect of his employment; and (b) money paid to the Public Trustee in pursuance of section 25 of the <i>Public Trustee Ordinance 1985</i> .”.
<i>Egg Industry Ordinance 1975</i>	Sub-section 16 (12)— (1) Omit from paragraph (a) “the Curator of Estates of Deceased Persons”, substitute “the Public Trustee for the Australian Capital Territory”. (2) Omit from paragraph (b) “the Curator”, substitute “the Public Trustee”.
<i>Evidence Ordinance 1971</i>	Paragraph 14 (5) (b)— Add at the end thereof “or the Public Trustee for the Australian Capital Territory”.
<i>Family Provision Ordinance 1969</i>	Sub-section 4 (1)— Omit “the Curator of Deceased Estates” from the definition of “administration”, substitute “the Curator of Estates of Deceased Persons or the Public Trustee for the Australian Capital Territory”.

Ordinance	Amendments
<i>Legal Practitioners Ordinance 1970</i>	Sub-section 124 (2)— Omit paragraphs (a) and (b), substitute the following paragraphs: “(a) the Public Trustee for the Australian Capital Territory or a person performing the duties of the Public Trustee; (b) a person who— (i) is an officer or employee within the meaning of the <i>Public Service Act 1922</i> ; and (ii) is exercising a power or performing a function relating to the business or affairs of the Public Trustee; or”.
<i>Real Property Ordinance 1925</i>	Paragraph 6 (1) (a)— Omit the definition of “Curator”. Sub-section 135 (1)— (1) Omit “authorizing the Curator”, substitute “authorizing the Curator of Estates of Deceased Persons or the Public Trustee for the Australian Capital Territory”. (2) Omit “or Curator”, substitute “or Public Trustee”. Sub-section 135 (2)— Omit “the Curator”, substitute “the Public Trustee for the Australian Capital Territory”. Sub-section 136 (2)— Omit “the Curator”, substitute “the Curator of Estates of Deceased Persons or the Public Trustee for the Australian Capital Territory”.
<i>Seat of Government (Administration) Ordinance 1930</i>	Second Schedule— Insert in Part I— “ <i>Public Trustee Ordinance 1985</i> <i>Public Trustee (Miscellaneous Amendments) Ordinance 1985</i> ” after— “ <i>Police Offences Ordinance 1930</i> ”.

Ordinance	Amendments
<i>Trustee Ordinance 1957</i>	<p>Section 7—</p> <p>Omit the definition of “the Curator”, substitute the following definition:</p> <p>“ ‘the Public Trustee’ means the Public Trustee for the Australian Capital Territory and includes—</p> <p>(a) a person appointed to act as Public Trustee; and</p> <p>(b) a Deputy Public Trustee;”.</p> <p>Paragraph 9 (d)—</p> <p>Omit “the Curator”, substitute “the Public Trustee”.</p> <p>Paragraph 12 (c)—</p> <p>Omit “the Curator”, substitute “the Public Trustee”.</p> <p>Sub-section 13 (3)—</p> <p>Omit “the Curator”, substitute “the Public Trustee”.</p> <p>Second Schedule—</p> <p>(1) Omit “the Curator” from the definition of “Administrator” in paragraph (b) in column 3 of item 4, substitute “the Public Trustee”.</p> <p>(2) Omit the definition of “the Curator” in paragraph (f) in column 3 of item 4, substitute the following definition:</p> <p>“ ‘the Public Trustee’ means the Public Trustee for the Australian Capital Territory and includes</p> <p>(a) a person appointed to act as Public Trustee; and</p> <p>(b) a Deputy Public Trustee.”.</p> <p>(3) Omit from sub-section (2) in column 3 of item 7 “the Curator” (wherever occurring), substitute “the Public Trustee”.</p>
<i>Workmen’s Compensation Ordinance 1951</i>	<p>First Schedule—</p> <p>(1) Insert in paragraph 6 “or (except in the case of a payment under paragraph 9A of this Schedule) dealt with in accordance with section 25 of the <i>Public Trustee Ordinance 1985</i>” after “under this Ordinance”.</p> <p>(2) Insert in paragraph 7 (3) “and, in the case of a lump sum payment, section 25 of the <i>Public Trustee Ordinance 1985</i>” after “of that paragraph”.</p>

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 8 March 1985.