



Australian Capital Territory

Guardianship and Management of Property Amendment Act 2007

A2007-23

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J2005 - 779

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au



Australian Capital Territory

Guardianship and Management of Property Amendment Act 2007

A2007-23

An Act to amend the *Guardianship and Management of Property Act 1991*, and
for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as
follows:

J2005 -779

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Guardianship and Management of Property Amendment Act 2007*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Legislation amended

This Act amends the *Guardianship and Management of Property Act 1991*.

4 New sections 8AA to 8AC

before section 8A, insert

8AA Manager for missing person's property

- (1) This section applies if the tribunal is satisfied, on application, that—
- (a) someone is a missing person; and
 - (b) the person usually lives in the ACT; and
 - (c) while the person is missing, there is, or is likely to be, a need for a decision in relation to the person's financial matters or property; and
 - (d) the person's interests will be significantly adversely affected if a manager is not appointed.

-
- (2) However, the tribunal must not consider an application under subsection (1) in relation to a person if—
- (a) the public trustee has made an application to the Supreme Court to be appointed the manager of the person's property under the *Public Trustee Act 1985*, section 34 (Application for appointment as manager of property) and the application has not been finally dealt with; or
 - (b) the Supreme Court has appointed the public trustee manager of the person's property under that Act, section 34 (2).
- (3) The tribunal may be satisfied that a person is a missing person only if satisfied that—
- (a) it is not known whether the person is alive; and
 - (b) reasonable efforts have been made to find the person; and
 - (c) for at least 90 days, the person has not contacted—
 - (i) anyone who lives at the person's last-known home address; or
 - (ii) any relative or friend of the person with whom the person is likely to communicate.

Examples of contact

- 1 telephone call
- 2 physical sighting of the person

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) The tribunal may, by order, appoint a manager to manage all, or a stated part, of the missing person's property, with the powers that the tribunal is satisfied are necessary or desirable to allow the manager to make decisions in relation to the property in accordance with the decision-making principles as if the missing person were a protected person.

Note The tribunal's power to appoint a manager is restricted under s 8A.

- (5) An application under subsection (1), or an appointment under subsection (4), does not prevent the public trustee making an application under the *Public Trustee Act 1985*, section 34 in relation to the property to which the application or appointment relates.
- (6) The Legislation Act, part 19.3 (Appointments) does not apply to an appointment under subsection (4).

8AB Missing people's property—who may apply for appointment of manager?

An application for the appointment of a manager for a person under section 8AA may be made by any of the following:

- (a) a domestic partner of the person;
- (b) a relative of the person;
- (c) a carer of the person;
- (d) the Attorney-General;
- (e) the public trustee;
- (f) the public advocate;
- (g) anyone else who has an interest in the property of the person.

8AC Missing people's property—powers and term of manager

- (1) The powers that may be given to the manager under section 8AA (4) (Manager for missing person's property) are the powers the missing person would have if the person were able to exercise them.
- (2) However, an order under section 8AA (4) must state the kind of decisions the manager may make and the property in relation to which the power may be exercised.
- (3) An order under section 8AA (4) must also state the term of the appointment.
- (4) An appointment under section 8AA (4) must not be for more than 2 years, but the tribunal may, on application by the manager or a person mentioned in section 8AB, extend the term for up to 2 years.

5 New section 27A

in division 2.3, insert

27A Missing people's property—liability of manager and third party dealings

- (1) A manager does not incur any liability, either to a missing person or anyone else, because of conduct done honestly during the manager's appointment under section 8AA (4) (Manager for missing person's property) in relation to a missing person's property if the conduct was for the exercise of a function under the appointment or of a function that the manager believed, on reasonable grounds, was a function under the appointment.
- (2) A person (the *third party*) who deals with a manager in relation to property that is under the manager's control because of the manager's appointment under section 8AA (4), does not incur any liability because of the dealing if it was done in the honest belief that the dealing was for the exercise of a function under the appointment.

- (3) In this section:

conduct—see the Criminal Code, section 13.

6 New section 30A

insert

30A Missing people’s property—ending of order

An order appointing a manager to manage a missing person’s property under section 8AA (Manager for missing person’s property) ends if the Supreme Court appoints the public trustee manager of the property under the *Public Trustee Act 1985*, section 34.

**7 Removal by tribunal
Section 31**

omit

The tribunal

substitute

- (1) The tribunal

8 New section 31 (2)

insert

- (2) The tribunal may, by order, remove a manager of a missing person’s property if satisfied, on application by the person or anyone else, that—
- (a) the person is alive; or
 - (b) the person is dead; or
 - (c) the person may be presumed to be dead.

**9 Notice of inquiry
New section 35 (1) (f)**

insert

- (f) if an application is made under section 8AA (Manager for missing person's property)—the applicant; and

10 Section 35 (1) (f) to (g) (as amended)

renumber as section 35 (1) (f) to (h)

**11 Emergency appointments
Section 67 (1) (b)**

substitute

- (b) under section 8 or section 8AA, appoint the public advocate or the public trustee to be a manager of a person's property;

12 Dictionary, definition of *manager*

substitute

manager means a manager under any of the following sections:

- section 8 (Appointment and powers of managers)
- section 8AA (Manager for missing person's property)
- section 12 (Recognition of interstate etc guardians and managers)
- section 32 (Surviving or substitute guardians etc).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 19 October 2005.

2 Notification

Notified under the Legislation Act on 5 September 2007.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Guardianship and Management of Property Amendment Bill 2007, which originated in the Legislative Assembly as the Guardianship and Management of Property Amendment Bill 2005 and was passed by the Assembly on 22 August 2007.

Clerk of the Legislative Assembly

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