



Australian Capital Territory

Protection of Rights (Services) Legislation Amendment Act 2016 (No 2)

A2016-13

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Australian Capital Territory

Protection of Rights (Services) Legislation Amendment Act 2016 (No 2)

A2016-13

An Act to amend legislation about the protection of rights services, and for other purposes

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

J2015-668

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

1 Name of Act

This Act is the *Protection of Rights (Services) Legislation Amendment Act 2016 (No 2)*.

2 Commencement

This Act commences on the commencement of the *Protection of Rights (Services) Legislation Amendment Act 2016*, section 4.

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 legislation mentioned in schedule 1.

4 Legislation repealed

All legislative instruments under the following provisions are repealed:

- (a) the *Domestic Violence Agencies Act 1986*, section 11;
- (b) the *Human Rights Commission Act 2005*, sections 19A, 20, 22, 24 and 26;
- (c) the *Victims of Crime Act 1994*, section 7.

Schedule 1 Legislation amended

(see s 3)

Part 1.1 Administration and Probate Act 1929

[1.1] Section 10C

substitute

10C Grant of probate to public trustee and guardian etc

If a deceased person has named as an executor of the person's will the public trustee and guardian, or the public trustee of a State, the Supreme Court may grant probate of the will to that public trustee.

Note *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

[1.2] Further amendments, mentions of *public trustee*

after

public trustee

insert

and guardian

in

- section 8C (c)
- section 38A
- section 49CA
- section 80C (2)
- part 6 heading
- sections 87B to 95

- sections 97 to 102
- dictionary, note 2

Part 1.2 Adoption Act 1993

[1.3] Section 48

after

public trustee

insert

and guardian

[1.4] Dictionary, note 2

insert

- public trustee and guardian

Part 1.3 Agents Act 2003

[1.5] Sections 6, 123 and 124

after

public trustee

insert

and guardian

[1.6] Dictionary, note 2

insert

- public trustee and guardian

Part 1.4 Bail Act 1992

[1.7] Dictionary, note 2

omit

- public trustee

Part 1.5 Cemeteries and Crematoria Act 2003

[1.8] Sections 9 to 13 etc

after

public trustee

insert

and guardian

in

- sections 9 to 13
- section 15 (4)
- section 16A (1) (b)
- dictionary, note 2

Part 1.6 Charitable Collections Regulation 2003

[1.9] Section 6 (2), definition of *trustee corporation*, paragraph (a)

substitute

- (a) the public trustee and guardian; or

[1.10] Dictionary, note 2

insert

- public trustee and guardian

Part 1.7 Children and Young People Act 2008

[1.11] Section 137, definition of *accredited person*, paragraph (f)

omit

[1.12] Section 144 (2) (b) (v)

omit

[1.13] Section 153 (1) (e)

omit

[1.14] Section 179 (d)

omit

[1.15] Section 195 (5) (e)

omit

[1.16] Section 200 (5), definition of *protected electronic communication*, paragraph (d)

omit

[1.17] Section 201 (4), definition of *protected mail*, paragraph (d)

omit

[1.18] Section 222 (3) (e)

omit

[1.19] Section 280 (5), definition of *protected mail*, paragraph (f)

omit

[1.20] Section 283 (3), note 1

after

public trustee

insert

and guardian

[1.21] Section 359 (4), note 2

omit

[1.22] Section 576, definition of *accredited person*, paragraph (f)

omit

[1.23] Section 623 (3), note 1

after

public trustee

insert

and guardian

[1.24] Section 634 (1) (g)

omit

[1.25] Section 874 (2) (h), note

omit

[1.26] New section 874 (2) (ha)

insert

(ha) a person to the public advocate under section 359 (Reports made to public advocate); and

[1.27] New section 874 (2) (r)

before the note, insert

(r) an ACT child welfare service to the public advocate under section 879 (ACT child welfare services must assist public advocate).

[1.28] Section 879 (3), note

omit

[1.29] Dictionary, note 2

insert

- public trustee and guardian

Part 1.8 Civil Law (Property) Act 2006

[1.30] Section 256 (8), definition of *trust corporation*

after

public trustee

insert

and guardian

[1.31] Dictionary, note 2

after

public trustee

insert

and guardian

[1.32] Dictionary, definition of *administrator*

after

public trustee

insert

and guardian

[1.33] Dictionary, definition of *trust corporation*, paragraph (a)

after

public trustee

insert

and guardian

Part 1.9 Civil Law (Wrongs) Act 2002

[1.34] Dictionary, note 2

insert

- public trustee and guardian

[1.35] Dictionary, definition of *personal representative*

after

public trustee

insert

and guardian

Part 1.10 Confiscation of Criminal Assets Act 2003

[1.36] Sections 104 and 108

omit

public trustee's

substitute

public trustee and guardian's

[1.37] Further amendments, mentions of *public trustee*

after

public trustee

insert

and guardian

in

- sections 30 and 31
- section 33 (2) (e)
- section 39 (1), examples 10 and 11
- section 45 (1) (b) and (c)
- section 50 (5), definition of *responsible authority*, paragraph (b)
- section 60
- sections 95 to 97
- division 8.1 heading
- sections 99 to 105
- sections 107 and 108
- section 111
- section 123 (2) (b) (ii)
- section 127
- section 128, definition of *distributable funds*, paragraph (b)
- sections 131 to 133
- section 135
- section 230
- sections 243 and 244
- section 250
- section 253 (1) (c)
- dictionary, note 2
- dictionary, definition of *fully satisfied*

Part 1.11 Cooperatives Regulation 2003

[1.38] Schedule 5, section 5.2, item 4

substitute

4 public trustee and guardian

[1.39] Dictionary, note 2

after

public trustee

insert

and guardian

Part 1.12 Corrections Management Act 2007

[1.40] Sections 31A (2) (d) (ii) and 33A (2) (d) (ii)

omit

[1.41] Section 51, paragraphs (c) and (d)

substitute

(c) a commissioner exercising functions under the *Human Rights Commission Act 2005*;

[1.42] Section 103 (5), definition of *protected electronic communication*, paragraphs (c) and (d)

substitute

(c) a commissioner exercising functions under the *Human Rights Commission Act 2005*;

[1.43] Section 130 (3), note 2

after
public trustee

insert
and guardian

Part 1.13 **Corrections Management
Regulation 2010**

[1.44] Section 26

after
public trustee

insert
and guardian

[1.45] Section 26 (2)

substitute

- (2) The public trustee and guardian must, until the lump sum is paid to the person entitled to it, deal with it under the *Public Trustee and Guardian Act 1985*, section 25 (3) (Payment of money etc to public trustee and guardian on behalf of person under disability) as if the lump sum were money payable as compensation under the *Workers Compensation Act 1951*.

[1.46] Dictionary, note 2

after
public trustee

insert
and guardian

Part 1.14 Crimes Act 1900

[1.47] Sections 249 (4) and 250

after

public trustee

insert

and guardian

[1.48] Section 250

omit

public trustee's

substitute

public trustee and guardian's

Part 1.15 Crimes (Child Sex Offenders) Act 2005

[1.49] Dictionary, definition of *forensic patient*

substitute

forensic patient—see the [Public Trustee and Guardian Act 1985](#), section 19B (2).

Part 1.16 Crimes (Sentencing) Act 2005

[1.50] Section 136 (4), definition of *criminal justice entity*, paragraph (h)

omit

under the *Victims of Crime Act 1994*

[1.51] Dictionary, note 2

insert

- victims of crime commissioner

Part 1.17 Criminal Code 2002

[1.52] Sections 376 and 377

after

public trustee

insert

guardian

[1.53] Section 377

omit

public trustee's

insert

public trustee and guardian's

[1.54] Section 378 (1)

after

public trustee

insert

and guardian

[1.55] Dictionary, note 2

insert

- public trustee and guardian

**Part 1.18 Domestic Violence and
Protection Orders Act 2008**

[1.56] Dictionary, note 2

insert

- public advocate

Part 1.19 Electoral Regulation 1993

[1.57] Section 4AA

after

public trustee

insert

and guardian

[1.58] Dictionary, note 2

after
public trustee

insert
and guardian

Part 1.20 Emergencies Act 2004

[1.59] Section 181 (3)

after
public trustee

insert
and guardian

[1.60] Dictionary, note 2

insert

- public trustee and guardian

Part 1.21 Environment Protection Act 1997

**[1.61] Section 91I (4), definition of *notional lessee*,
paragraph (c) (iii)**

substitute

(iii) the public trustee and guardian because of the operation of the *Public Trustee and Guardian Act 1985*, section 19;
or

[1.62] Dictionary, note 2

insert

- public trustee and guardian

Part 1.22 Family Provision Act 1969

[1.63] Dictionary, note 2

insert

- public trustee and guardian

[1.64] Dictionary, definition of *administration*

after

public trustee

insert

and guardian

Part 1.23 Guardianship and Management of Property Act 1991

[1.65] Sections 8AA, 24 and 30A

omit

Public Trustee Act 1985

substitute

Public Trustee and Guardian Act 1985

[1.66] Section 32D (2), note 2

omit

public advocate

substitute

public trustee and guardian

[1.67] Section 64 (2), note

omit

Part 1.24 Health Records (Privacy and Access) Act 1997

[1.68] Dictionary, note 2

insert

- human rights commission

Part 1.25 Human Rights Commission Act 2005

[1.69] Section 12 (1) (g)

before

victims of crime commissioner

insert

the

[1.70] Section 18 (2) (b)

after

reports

insert

(other than a health practitioner report)

[1.71] New section 18 (5)

after the note, insert

(5) In this section:

health practitioner report means—

- (a) a notification under the *Health Practitioner Regulation National Law (ACT) Act 2010*, section 150 (2); or
- (b) a report under that [Act](#), section 150 (4A).

[1.72] Section 18A (a)

after

director-general

insert

and the other commissioners

[1.73] Section 18A (b)

omit

approval

substitute

endorsement

[1.74] Section 18C (a)

omit

consistent with part 4 (Complaints)

[1.75] Section 18C (a), new note

insert

Note For the making of complaints to the commission and how the commission deals with them, see pt 4.

[1.76] Section 21 (1) (ab) (iv)

omit

[1.77] Section 27B (1) (c)

substitute

(c) to represent forensic patients before the ACAT or a court;

[1.78] New section 27B (1) (ca) and (cb)

insert

(ca) to listen to and investigate concerns from children and young people about the provision of services for the protection of children and young people;

(cb) investigate matters in relation to which the public advocate has a function;

[1.79] Section 27B (1), note

substitute

Note The public advocate also has functions under the *Children and Young People Act 2008*, the *Guardianship and Management of Property Act 1991* and the *Mental Health Act 2015*.

**[1.80] Section 27B (2), definition of *forensic patient*,
paragraph (a)**

omit

be suffering from a mental dysfunction or mental illness

substitute

have a mental disorder or mental illness

**[1.81] Section 27B (2), definition of *forensic patient*,
paragraph (d)**

substitute

(d) found guilty of a criminal offence and is, or while serving a sentence of imprisonment has become, a person with a mental disorder or mental illness.

[1.82] Section 27B (2), new definition of *mental disorder*

insert

mental disorder—see the [Mental Health Act 2015](#), section 9.

[1.83] Section 27B (2), definition of *mental dysfunction*

omit

[1.84] Section 27B (2), definition of *mental illness*

substitute

mental illness—see the [Mental Health Act 2015](#), section 10.

[1.85] New sections 27BA to 27BC

in division 3.7A, insert

27BA Public advocate to report to ACAT

The public advocate must report to the ACAT about a matter before the ACAT if asked by the ACAT.

27BB Disclosure of information about investigations by public advocate

- (1) Section 99 (Secrecy) does not prevent the public advocate from disclosing information to a person (including members of the public) about an investigation by the public advocate if the public advocate is satisfied that the disclosure is necessary and reasonable in the public interest.
- (2) However, the public advocate must not make a disclosure—
 - (a) that is likely to prejudice the investigation; or
 - (b) that includes an opinion that is (expressly or impliedly) critical of a person or body unless the public advocate has given the person, or the principal officer of the body, an opportunity to answer the criticism; or
 - (c) if the investigation arises from a reported concern—that identifies the subject of the concern (directly or indirectly) unless it is necessary and reasonable to do so.

27BC Engagement of lawyer by public advocate

The public advocate may engage a lawyer to appear before a court or the ACAT in relation to the exercise of the public advocate's functions under this Act.

[1.86] Section 30 (3) and (4)

substitute

- (3) The president may call a meeting of the commission.
- (4) The president, when calling a meeting must give the other members reasonable notice of the time and place of the meeting.

[1.87] Section 100A

substitute

100A Protection of others from liability

- (1) Civil or criminal liability is not incurred only because of any of the following done honestly and without recklessness:
 - (a) the making of a complaint;
 - (b) the making of a statement, or the giving of a document or information, as required or permitted under a territory law, to a commissioner or a member of staff of the commission.
- (2) Also, any information, given honestly and without recklessness, to a commissioner or a member of staff of the commission is not—
 - (a) a breach of confidence; or
 - (b) a breach of professional etiquette or ethics; or
 - (c) a breach of a rule of professional conduct.

[1.88] New section 105A

insert

105A Review of protection of rights services legislation

- (1) The Minister must review the operation of this Act and the *Public Trustee and Guardian Act 1985*, as amended by the protection of rights services amendments, to review the effectiveness of the restructuring of the rights protection services including how the amendments promote the objects (express or implicit) of the Acts.
- (2) The review must be started as soon as practicable after 1 April 2019.
- (3) The Minister must present a report of the review to the Legislative Assembly within 12 months after the day the review is started.
- (4) In this section:
protection of rights services amendments means amendments of this Act and the *Public Trustee Act 1985* made by the *Protection of Rights (Services) Legislation Amendment Act 2016* and the *Protection of Rights (Services) Legislation Amendment Act 2016 (No 2)*.
- (5) This section expires 5 years after the day it commences.

Part 1.26 Legal Profession Act 2006

[1.89] Section 101 (2) (e)

after

public trustee

insert

and guardian

[1.90] Section 259

after

public trustee

insert

and guardian

[1.91] Dictionary, note 2

insert

- public trustee and guardian

Part 1.27 Legislation Act 2001

[1.92] Dictionary, part 1, definition of *public advocate*

omit

Public Advocate Act 2005

substitute

Human Rights Commission Act 2005

[1.93] Dictionary, part 1, definition of *public trustee*

omit

[1.94] Dictionary, part 1, new definition of *public trustee and guardian*

insert

public trustee and guardian means the Public Trustee and Guardian under the [Public Trustee and Guardian Act 1985](#).

[1.95] Dictionary, part 1, new definition of *victims of crime commissioner*

insert

victims of crime commissioner means the Victims of Crime Commissioner under the [Human Rights Commission Act 2005](#).

Part 1.28 Mental Health Act 2015

[1.96] Dictionary, note 2

insert

- victims of crime commissioner

[1.97] Dictionary, definition of *victims of crime commissioner*

omit

Part 1.29 Official Visitor Act 2012

[1.98] Section 23B (1) (a)

after

public trustee

insert

and guardian

[1.99] Section 23B (1) (b)

omit

[1.100] Section 23B (2)

after

public trustee

insert

and guardian

[1.101] Section 23D (2) (b)

after

public trustee

insert

and guardian

[1.102] New section 23E

in part 6, insert

23E Voting at meetings

- (1) At an official visitors board meeting, each board member has a vote on each question to be decided.
- (2) A question is to be decided by a majority of the votes of the official visitors board members present and voting but, if the votes are equal, the public trustee and guardian has a deciding vote.

[1.103] Dictionary, note 2

after

public trustee

insert

and guardian

[1.104] Dictionary, definition of *investigative entity*

omit

, the public advocate

Part 1.30 Ombudsman Act 1989

[1.105] Section 6B (1)

substitute

- (1) If the ombudsman decides that it would be more appropriate for a complaint to be investigated by the commissioner for sustainability and the environment or the human rights commission, the ombudsman must refer the complaint to the entity.

Part 1.31 Planning and Development Act 2007

[1.106] Section 345 (1), example 3

omit

public advocate

substitute

public trustee and guardian

Part 1.32 Powers of Attorney Act 2006

[1.107] Section 14 (1) (a) (i)

after

public trustee

insert

and guardian

[1.108] Section 14 (2)

after

corporation

insert

, other than the public trustee and guardian,

[1.109] Section 14 (3)

omit

[1.110] Section 74, definition of *interested person*, paragraph (e)

after

public trustee

insert

and guardian

[1.111] Section 83 (2)

after

public trustee

insert

and guardian

[1.112] Section 83 (3)

omit

[1.113] Section 85 (3), note

omit

Public Advocate Act 2005, s 15

substitute

Human Rights Commission Act 2005, s 100A

[1.114] Dictionary, note 2

insert

- public trustee and guardian

Part 1.33 Public Health Act 1997

[1.115] Section 66V (2), definition of *own*, paragraph (b)

after

public trustee

insert

and guardian

[1.116] Dictionary, note 2

insert

- public trustee and guardian

Part 1.34 Public Trustee and Guardian Act 1985

[1.117] Part 2 heading

substitute

Part 2 The public trustee and guardian

[1.118] Division 2.2 heading

substitute

Division 2.2 Protection and liability of public trustee and guardian

[1.119] Section 19B (1) (b)

substitute

- (b) investigate complaints and allegations about the actions of a guardian or manager or a person acting or purporting to act under an enduring power of attorney;

[1.120] Section 19B (2), definition of *forensic patient*, paragraph (a)

omit

be suffering from a mental dysfunction or mental illness

substitute

have a mental disorder or mental illness

[1.121] Section 19B (2), definition of *forensic patient*, paragraph (d)

substitute

- (d) found guilty of a criminal offence and is, or while serving a sentence of imprisonment has become, a person with a mental disorder or mental illness.

[1.122] Section 19B (2), new definition of *mental disorder*

insert

mental disorder—see the [Mental Health Act 2015](#), section 9.

[1.123] Section 19B (2), definition of *mental dysfunction*

omit

[1.124] Section 19B (2), definition of *mental illness*

substitute

mental illness—see the *Mental Health Act 2015*, section 10.

[1.125] Section 23 (2)

omit

public trustee's

substitute

public trustee and guardian's

[1.126] Section 24 heading

substitute

24 Legal representation

[1.127] Section 24 (1)

omit

The court may, in relation to proceedings in the court,

substitute

A court or the ACAT may, in relation to proceedings in the court or ACAT,

[1.128] Section 24 (2) (b)

after

court

insert

or the ACAT

[1.129] New section 24 (3)

insert

- (3) The public trustee and guardian may engage a lawyer to appear before a court or the ACAT in relation to the exercise of any of its functions under this Act.

[1.130] New section 24A

insert

24A Public trustee and guardian to report to ACAT

The public trustee and guardian must report to the ACAT about a matter before the ACAT if asked by the ACAT.

[1.131] Sections 63 (2) and 66 (1)

omit

public trustee's

substitute

public trustee and guardian's

[1.132] Dictionary, definition of *public trustee*

omit

[1.133] Dictionary, definition of *public trustee and guardian*

insert

public trustee and guardian means—

- (a) the public servant who is the public trustee and guardian under section 5; or
- (b) the public trustee and guardian in its corporate capacity under section 8.

Part 1.35 Retirement Villages Act 2012

[1.134] Section 32, definition of *trustee*, paragraph (a)

after

public trustee

insert

and guardian

[1.135] Dictionary, note 2

insert

- public trustee and guardian

Part 1.36 Territory Records Regulation 2009

[1.136] Schedule 1, item 16

omit

[1.137] Schedule 1, item 17

substitute

17	Public Trustee and Guardian for the Australian Capital Territory	public trustee and guardian
----	--	-----------------------------

[1.138] Dictionary, note 2

omit

- public advocate

[1.139] Dictionary, note 2

after

public trustee

insert

and guardian

[1.140] Dictionary, note 2

insert

- victims of crime commissioner

[1.141] Dictionary, definition of *Victims of Crime Commissioner*

omit

Part 1.37 Trustee Act 1925

[1.142] Section 47 (3) (a)

omit

public trustee's

substitute

public trustee and guardian's

[1.143] Further amendments, mentions of *public trustee*

after

public trustee

insert

and guardian

in

- sections 6 to 8
- section 10 (2)
- subdivision 2.2.6 heading
- section 47
- section 51 (4)
- section 54
- sections 64 and 65
- dictionary, note 2
- dictionary, definition of *administrator*
- dictionary, definition of *trustee*, paragraph (a)

Part 1.38 Unclaimed Money Act 1950

[1.144] Section 4 etc

after

public trustee

insert

and guardian

in

- section 4
- section 8

- sections 10 and 11
- sections 26 and 27
- sections 29 to 33A
- dictionary, note 2

Part 1.39 Wills Act 1968

[1.145] Section 12A

after

public trustee

insert

and guardian

[1.146] Dictionary, note 2

insert

- public trustee and guardian

Part 1.40 Workers Compensation Act 1951

[1.147] Section 78 (2) (b)

substitute

- (b) deal with it under the *Public Trustee and Guardian Act 1985*, section 25 (Payment of money etc to public trustee and guardian on behalf of person under disability).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 18 February 2016.

2 Notification

Notified under the [Legislation Act](#) on 16 March 2016.

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 Protection of Rights (Services) Legislation Amendment Bill 2016 (No 2), which originated in the Legislative Assembly as the Protection of Rights (Services) Legislation Amendment Bill 2016 and was passed by the Assembly on 8 March 2016.

Clerk of the Legislative Assembly

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