

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

PUBLIC TRUSTEE (AMENDMENT) BILL 1996

EXPLANATORY MEMORANDUM

Circulated by the authority

of

**Gary Humphries MLA
Attorney-General**

Outline

This Bill amends the *Public Trustee Act 1985*. That Act provides for the appointment of a Public Trustee who prepares wills, acts as an executor of wills or as an administrator of estates for deceased persons and as trustee for deceased estates. The Public Trustee also acts as a trustee of moneys awarded by the Court to minors and persons with a disability.

In general, the Act has worked well in achieving the purposes for which it was enacted but, in recent times, certain deficiencies in the Act have become apparent. The purpose of this Bill is to overcome those deficiencies (some of which are highly technical in nature) and thereby make the Act more relevant to present day circumstances.

Revenue/cost implications

This Bill has the potential to generate around \$10,000 in revenue for the Public Trustee annually.

Formal clauses

Clauses 1, 2, and 3 are formal clauses. They refer to the short title of the Bill, the commencement date and the name of the Principal Act.

Interpretation

Clause 4 amends section 59A of the Act. The ACT Auditor-General has pointed out that "the lack of clarity as to when the fees should be calculated could enable manipulation of charging dates to allow the maximisation of fees to be charged". The amendment removes this provision of the Act by limiting the deduction of a management fee to the last day of each month.

Clause 5 amends section 60 of the Act. At present subsection 60(2) provides that the Common Fund Interest Account shall not form part of the common fund. A separate bank account is operated for interest earned on moneys in the common fund. This has the undesirable effect of adding to overhead costs. It also means that accrued interest cannot readily be credited to clients' accounts as it is earned. Consequently there is no advantage in having the Common Fund Interest Account outside the common fund. The amendment makes the Account form part of the common fund.

Clause 6 amends subsection 61(4) which requires the Public Trustee to pay into the Common Fund Guarantee and Reserve Account the amount of any capital profit made from the realisation of investments made from the common fund. However, based on actuarial advice, this Account is now considered larger than it needs to be, and consequently any additional payments into the Account are unnecessary and wasteful. The amendment will allow any future capital profit to be credited to the Common Fund Interest Account so that clients of the Public Trustee will obtain the benefit of the capital profit. The amendment will also allow the Public Trustee to charge a management fee for the administration of moneys in the Common Fund Guarantee and Reserve Account.

Clause 7 reflects the reality of the present situation in that any balance remaining, after the payment of each amount required to be made from the Common Fund Interest Account, continues to remain in that Account until the next distribution of interest.