

EXPLANATORY MEMORANDUM

PUBLIC TRUSTEE (AMENDMENT) BILL 1991

Issued by authority of Attorney-General, Bernard Collaery MLA

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

EXPLANATORY MEMORANDUM

Public Trustee (Amendment) Bill 1991

Outline

The purpose of the Public Trustee (Amendment) Bill 1991 is to allow the Public Trustee to charge a management fee for administration of moneys in the Public Trustee's Common Fund.

The amount of the fee is to be determined by the responsible Minister by means of an instrument in writing. The instrument may provide a rate or scale for calculating the amount payable by each estate, trust or person having moneys in the Common Fund, so that it is possible to calculate amounts due for part of a charging period, and so that it is possible to have a range of charges appropriate to the different types of accounts involved.

Financial Considerations

The management fee will offset some of the costs of running the Office of the Public Trustee and assist in making it more financially viable.

Notes on Clauses

- Clause 1** provides for the Act to be cited as the Public Trustee (Amendment) Act 1991.
- Clause 2** provides that the Principal Act is the *Public Trustee Act 1985*.
- Clause 3** inserts a new section 59A into the Principal Act after section 59.

The new section 59A provides for the establishment by the Public Trustee of an account called the Fees and Commissions account, which will not be part of the common fund. It goes on to provide that the Public Trustee can charge a management fee for administration of moneys in the common fund and that the fee will be an amount specified in, or worked out by reference to, rates or scales set out in an instrument signed by the

responsible Minister. The provisions in sub-clause (5) allow the Minister to set different amounts, rates or scales for the fee in respect of different estates, trusts or persons. This will allow an appropriate rate of charge to be set for different types of matters handled by the Public Trustee.

Sub-clause (6) makes the instrument by which the amount of the management fee is set, a disallowable instrument under section 10 of the *Subordinate Laws Act 1989*. This has the effect of requiring the instrument to be notified in the Gazette and laid before the Legislative Assembly within 15 sitting days after that notification. The Legislative Assembly may then, within a further 15 sitting days, pass a resolution disallowing the provisions of the instrument.

The provisions in sub-section (7) allow for the management fee to be taken out on 31 March and 30 September each year, on completion of the administration of an estate or trust, or at such other times as the Public Trustee determines. These provisions correspond to those relating to the crediting of interest earned by moneys held in the common fund, and will allow for ease of administration. The sub-section also provides for the fee to be charged at such other times as the Public Trustee determines, in order to allow for unusual circumstances, such as completion of administration of an estate. The provision will not, of course, allow for the fee in any year to be more than that determined by the Minister, but merely allows for flexibility in charging.

Sub-clause (8) provides for the management fee to be paid into the Fees and Commissions account.