

2016

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**PROTECTION OF RIGHTS (SERVICES)
LEGISLATION AMENDMENT BILL 2016**

EXPLANATORY STATEMENT

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PROTECTION OF RIGHTS (SERVICES) LEGISLATION AMENDMENT BILL 2016

This explanatory statement relates to the *Protection of Rights (Services) Legislation Amendment Bill 2016* as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and to help inform debate on it. It does not form part of the bill and has not been endorsed by the Assembly.

The Statement must be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Purpose of the Bill

The *Protection of Rights (Services) Legislation Amendment Bill 2016* ('Consequential Bill') amends a range of legislation across the ACT statute book to make changes to references to, and functions of, the statutory office holders within the restructured Human Rights Commission (HRC) and expanded Public Trustee and Guardian that were established by the *Protection of Rights (Services) Legislation Amendment Bill 2015* ('Protection of Rights Bill') which was introduced into the Assembly on 19 November 2015.

The Consequential Bill is intended to largely maintain the existing functions while of the justice-related statutory office holders (SOHOs) while making reallocations necessary as a result of the new structure for the Human Rights Commission and the Public Trustee and Guardian office.

Human Rights Considerations

This proposal promotes protection of all rights in the Human Rights Act, as it is designed to facilitate a new rights protection framework that is the interface between the community and their rights under the Human Rights Act.

The proposal changes the responsibility for the performance of functions under various laws that protect human rights and the rights and interests of vulnerable groups in the community. These changes will improve the ability of rights protection office holders to promote the rights and interests of those groups. It does not remove existing protections in statute. Fundamentally the changes are about improving internal processes and structure of the offices so as to improve the capacity of the SOHOs and staff to promote human rights and the interests of their constituent groups.

Protection of Rights (Services) Legislation Amendment Bill 2016

Detail

Part 1 – Preliminary

Clause 1 — Name of Act

This is a technical clause that names the short title of the Act. The name of the Act will be the *Protection of Rights (Services) Legislation Amendment Act 2016*.

Clause 2 — Commencement

This clause provides that the Act commences on the commencement of the *Protection of Rights (Services) Legislation Amendment Act 2015*, which will occur on 1 April 2016.

Clause 3 — Legislation amended

This clause identifies the legislation amended by the Act, which is contained in schedule 1 to the Act.

Clause 4 - Instruments repealed

This clause repeals instruments of appointment made under the *Domestic Violence Agencies Act 1986*, *Human Rights Commission Act 2005* and *Victims of Crime Act 1994*, so that appointments to the new positions under the new consolidated appointment provisions can be made from the commencement of the new legislation on 1 April 2016, without any overlap or duplication of functions.

Schedule 1 – Legislation amended

Part 1.1 – Administration and Probate Act 1929

Clause 1.1 – Section 10C

This clause substitutes references to public trustee with a reference to the public trustee and guardian to provide that the Supreme Court may grant probate to the public trustee and guardian.

Clause 1.2 - Further amendments, mentions of *public trustee*

This clause substitutes references to public trustee with references to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Part 1.2 - Adoption Act 1993

Clause 1.3 – Section 48

This clause substitutes references to public trustee with references to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Clause 1.4 – Dictionary, note 2

This clause amends note 2 in the dictionary to indicate that public trustee and guardian is defined in the *Legislation Act 2001*.

Part 1.3 - Agents Act 2003

Clause 1.5 - Sections 6, 123 and 124

This clause substitutes references to public trustee with references to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Clause 1.6 – Dictionary, note 2

This clause amends note 2 in the dictionary to indicate that public trustee and guardian is defined in the *Legislation Act 2001*.

Part 1.4 - Bail Act 1992

Clause 1.7 - Dictionary, note 2

This clause omits the definition of public trustee from note 2 in the *Bail Act 1992*, as the public trustee is not mentioned in that Act or subordinate legislation made under it.

Part 1.5 - Cemeteries and Crematoria Act 2003

Clause 1.8 - Sections 9 to 13 etc

This clause substitutes references to public trustee with references to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Part 1.6 - Charitable Collections Regulation 2003

Clause 1.9 - Section 6 (2), definition of *trustee corporation*, paragraph (a)

This clause includes the statutory office of the Public Trustee and Guardian in the definition of trustee corporation for the regulation.

Clause 1.10 - Dictionary, note 2

This clause amends note 2 in the dictionary to indicate that public trustee and guardian is defined in the *Legislation Act 2001*.

Part 1.7 - Children and Young People Act 2008

Clauses 1.11 – 1.19 – various sections

These clauses omit the public advocate from lists and notes in various provisions of the Children and Young People Act, as the public advocate will now be a commissioner exercising functions under the Human Rights Commission Act which is also included; therefore the reference to the Public Advocate in these lists and notes would be an unnecessary duplication. There is no substantive change to any rights to access or contact the Public Advocate as provided by these provisions.

Clause 1.20 – Section 283 (3), note 1

This clause amends note 1 to substitute a reference to public trustee with a reference to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Clause 1.21 - Section 359 (4), note 2

This clause omits note 2 from s 359, as the Public Advocate Act is repealed. The new section 874 (2) (ha) inserted by clause 1.25 below, performs the same function, providing that reports to the public advocate under s 359 made honestly and without recklessness to the public advocate are not a breach of confidence or a breach of professional etiquette or ethics or a breach of a rule of professional conduct. Also, civil or criminal liability is not incurred only because of the giving of the information.

Clause 1.22 - Section 576, definition of *accredited person*, paragraph (f)

This clause omits the public advocate from the list of accredited people, as the public advocate will be a commissioner exercising functions under the *Human Rights Commission Act 2005* which is also in the list; therefore retaining the reference to the Public Advocate would be an unnecessary duplication.

Clause 1.23 - Section 623 (3), note 1

This clause amends note 1 to substitute a reference to public trustee with a reference to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Clause 1.24 - Section 634 (1) (g)

This clause omits the public advocate from the list of people who may have access to the therapeutic protection register, as the public advocate will be a commissioner exercising functions under the Human Rights Commission Act which is also in the list; therefore retaining the reference to the Public Advocate would be an unnecessary duplication.

Clause 1.25 - Section 874 (2) (h), note

This clause omits the note in s 874(2)(h) as the Public Advocate Act is repealed.

Clauses 1.26 & 1.27 - New section 874 (2) (ha) and 874 (2) (r)

This clause inserts new paragraphs to provide that reports or giving of information to the public advocate under s 359 and s 879 are not a breach of confidence or a breach of professional etiquette or ethics or a breach of a rule of professional conduct. Also, civil or criminal liability is not incurred only because of the giving of the information. These sections have the same effect as s 15 of the Public Advocate Act, which is repealed.

Clause 1.28 – Section 879 (3), note

This clause omits the note in s 879 (3), as the Public Advocate Act is repealed. This effect of this note, to protect assistance to public advocate, is maintained by new section 874 (2) (r), clause 1.26 above.

Clause 1.29 - Dictionary, note 2

This clause amends note 2 in the dictionary to indicate that public trustee and guardian is defined in the *Legislation Act 2001*.

Part 1.8 - Civil Law (Property) Act 2006

Clauses 1.30 – 1.33 – various sections

These clauses substitute references to public trustee with references to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Part 1.9 - Civil Law (Wrongs) Act 2002

Clause 1.34 - Dictionary, note 2

This clause amends note 2 in the dictionary to indicate that public trustee and guardian is defined in the *Legislation Act 2001*.

Clause 1.35 - Dictionary, definition of *personal representative*

This clause includes public trustee and guardian in the definition of personal representative in the dictionary, in place of the public trustee consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Part 1.10 - Confiscation of Criminal Assets Act 2003

Clauses 1.36 & 1.37 – various sections

These clauses substitute references to public trustee with references to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Part 1.11 - Cooperatives Regulation 2003

Clauses 1.38 & 1.39 – various sections

These clauses substitute references to public trustee with references to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Part 1.12 - Corrections Management Act 2007

Clauses 1.40 - Section 31A (2) (d) (ii) and 33A (2) (d) (ii)

These clauses omit the public advocate from the list of people that are able to contact and be contacted by young detainees, as the public advocate will be a commissioner exercising functions under the Human Rights Commission Act which is a category of people that a young detainee is entitled to contact; therefore retaining the reference to the Public Advocate would be an unnecessary duplication.

Clause 1.41 - Section 51, paragraphs (c) and (d)

This clause substitutes references to Human Rights Commissioner and Public Advocate with a general reference to a commissioner exercising functions under the *Human Rights Commission Act 2005* for consistency with the formulation of the rest of the Act.

This means that communications between detainees and members of the Commission will not be able to be monitored by Corrective Services.

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

This clause substitutes references to Human Rights Commissioner and Public Advocate with a general reference to a commissioner exercising functions under the *Human Rights Commission Act 2005* for consistency with the formulation of the rest of the Act.

This means that communications between detainees and members of the Commission will not be able to be monitored.

Clause 1.43 - Section 130 (3), note 2

This clause substitutes a reference to public trustee with a reference to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Part 1.13 - Corrections Management Regulation 2010

Clause 1.44 - Section 26

This clause substitutes a reference to public trustee with a reference to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Clause 1.45 - Section 26 (2)

This clause substitutes in the new title of the *Public Trustee and Guardian Act 1985* consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Clauses 1.46 - Dictionary, note 2

This clause amends note 2 in the dictionary to indicate that public trustee and guardian is defined in the *Legislation Act 2001*.

Part 1.14 - Crimes Act 1900

Clauses 1.47 & 1.48 – various sections

These clauses substitute references to public trustee with references to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Part 1.15 Crimes (Child Sex Offenders) Act 2005

Clause 1.49 - Dictionary, definition of *forensic patient*

This clause amends the definition of forensic patient to align with the new definition in s 19B(2) of the *Public Trustee Act and Guardian Act 1985*. This is also consistent with the new definition under the *Mental Health Act 2015*.

Part 1.16 - Crimes (Sentencing) Act 2005

Clause 1.50 - Section 136 (4), definition of *criminal justice entity*, paragraph (h)

This clause omits the phrase ‘under the *Victims of Crime Act 1994*’ because the Victims of Crime Commissioner is an appointment under the Human Rights Commission Act.

Clause 1.51 - Dictionary, note 2

This clause amends note 2 in the dictionary to indicate that public trustee and guardian is defined in the *Legislation Act 2001*.

Part 1.17 - Criminal Code 2002

Clauses 1.52 - 1.54 – various sections

These clauses substitute references to public trustee with references to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Clause 1.55 - Dictionary, note 2

This clause amends note 2 in the dictionary to indicate that public trustee and guardian is defined in the *Legislation Act 2001*.

Part 1.18 - Domestic Violence and Protection Orders Act 2008

Clauses 1.56 - Dictionary, note 2

This clause amends note 2 in the dictionary to indicate that public advocate is defined in the *Legislation Act 2001*.

Part 1.19 - Electoral Regulation 1993

Clause 1.57 – Section 4AA

This clause substitutes references to public trustee with references to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Clause 1.58 - Dictionary, note 2

This clause amends note 2 in the dictionary to indicate that public trustee and guardian is defined in the *Legislation Act 2001*.

Part 1.20 – Emergencies Act 2004

Clauses 1.59 - Section 181 (3)

This clause substitutes a reference to public trustee with a reference to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Clause 1.60

This clause amends note 2 in the dictionary to indicate that public trustee and guardian is defined in the *Legislation Act 2001*.

Part 1.21 - Environment Protection Act 1997

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

This clause substitutes in the new title of the *Public Trustee and Guardian Act 1985* consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Clause 1.62 - Dictionary, note 2

This clause amends note 2 in the dictionary to indicate that public trustee and guardian is defined in the *Legislation Act 2001*.

Part 1.22 - Family Provision Act 1969

Clause 1.63- Dictionary, note 2

This clause amends note 2 in the dictionary to indicate that public trustee and guardian is defined in the *Legislation Act 2001*.

Clauses 1.64 - Dictionary, definition of *administration*

These clauses substitutes references to public trustee with references to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Part 1.23 - Guardianship and Management of Property Act 1991

Clause 1.65 – Sections 8AA, 24 and 30A

This clause substitutes in the new title of the *Public Trustee and Guardian Act 1985* consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Clause 1.66 - Section 32D (2), note

This clause substitutes a reference to public advocate with a reference to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Clause 1.67 - Section 64 (2), note

This clause omits the note to s 64(2) as it is unnecessary because the function of requesting books is a function of the consolidated statutory office of the Public Trustee and Guardian.

Part 1.24 - Health Records (Privacy and Access) Act 1997

Clause 1.68 - Dictionary, note 2

This clause amends note 2 in the dictionary to indicate that the human rights commission is defined in the *Legislation Act 2001*.

Part 1.25 - Human Rights Commission Act 2005

Clause 1.69 - Section 12 (1) (g)

This clause fixes a drafting error and inserts ‘the’ before ‘victims of crime commissioner’.

Clause 1.70 - Section 18 (2) (b)

This clause makes a minor amendment to provide that the President of the Commission does not have responsibility for the provision of health practitioner reports - which are third-party and commission initiated reports that relate to health practitioner complaints or investigations.

This amendment is necessary because the definition of health complaints entity in section 5, schedule 1 to the *Health Practitioner Regulation National Law Act 2009* (Qld) (which applies in the ACT) is “an entity whose functions include conciliating, investigating and resolving complaints made against health service providers and investigating failures in the health system”.

While the president will be able to exercise these functions, it is considered that the Health Services Commissioner should be facilitated to maintain existing links and processes of liaising with the Australian Health Practitioner Regulation Agency. For this reason health practitioner reports are not required to be provided by the President on behalf of the commission.

Clause 1.71 - New section 18 (5)

This clause supports the amendment to provide that the President of the Commission does not have responsibility for the provision of health practitioner reports, by defining health practitioner reports as notifications or reports made under s 150 of the *Health Practitioner Regulation National Law (ACT) Act 2010*.

Clause 1.72 - Section 18A (a)

This clause provides that the President will be required to consult with the other commissioners when developing the governance and corporate support protocol. This change reflects ongoing consultation with the commissioners who indicated that the process should involve input being sought from the commissioners even though the President remains responsible for developing the protocol.

Clause 1.74 - Section 18A (b)

This clause makes a minor amendment to substitute the term endorsement in place of approval in recognition of the independent nature of the commission. This change will require the governance and corporate support protocol to be provided to the Director-General Justice and Community Safety Directorate for endorsement rather than approval.

Clause 1.74 - Section 18C (a)

This clause omits the phrase ‘consistent with part 4 (Complaints)’ from s 18C to clarify that the internal operations protocol established by this section is not only about complaints but is a document that will allow the Commission to agree on its own internal processes, including processes for receiving, handling and referring complaints. The commission’s protocol will still be required to be consistent with the other provisions of the Act including those provisions dictating complaints processes as it is a subordinate document to the legislation itself.

Clause 1.75 - Section 18C (a), new note

This clause supports clause 1.73 above by including a note that draws the reader’s attention to the part of the Act that dictates how complaints must be dealt with by the Commission.

Clause 1.76 - Section 21 (1) (ab) (vi)

This clause omits sections vesting complaints handling functions for complaints about the actions of a guardian or manager or person acting or purporting to act under an enduring power of attorney. This function has been located in the Public Trustee and Guardian as consultation with the statutory office holders indicated that complaints of this nature would typically be resolved by the Public Advocate through advocacy. While reframing these processes as formal complaints would maintain consistency with the structure of the Human Rights Commission Act, it would have the effect of compromising existing methods of dealing with such concerns and allegations.

Clause 1.77 - Section 27B (1) (c)

This clause substitutes the function of representing forensic patients before the ACAT or a court, as a function of the Public Advocate.

Clause 1.78 - Section 27B (1) (ca) and (cb)

This clause transfers functions of listening to and investigating concerns from children and young people about provision of service, and investigating matters in relation to which the public advocate has a function. These functions previously were located in s 11(a), (b) & (c)(i) of the Public Advocate Act and were re-assigned to the Disability and Community Services Commissioner under changes made by the Protection of Rights (Services) Legislation Amendment Bill 2015 as complaints handling provisions. Further consideration and consultation with the Commissioners suggested that these functions should remain with the Public Advocate as this type of concern handling is performed via individual advocacy. This clause therefore reframes these functions with changes to the language to remove references to handling complaints or allegations.

Complaints of a formal nature will be handled by the Disability and Community Services Commissioner under s 21(1) of the *Human Rights Commission Act 2005*.

Clause 1.79 – Section 27B (1), note

This clause includes amends the note in section 27B to provide that 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*, rather than the *Children and Young People Act* only.

Clause 1.80 - Section 27B (2), definition of *forensic patient*, paragraph (a)

This clause substitutes the phrase ‘be suffering from a mental dysfunction or mental illness’ with the phrase ‘have a mental disorder or mental illness’ for consistency with amendments made to the *Public Advocate Act 2005* made by the *Mental Health Act 2015* which commences on 1 March 2016.

Clause 1.81 – Section 27B (2), definition of *forensic patient*, paragraph (d)

This clause makes minor amendments to paragraph (d) in the definition of forensic patient for consistency with amendments made to the *Public Advocate Act 2005* made by the *Mental Health Act 2015*.

Clause 1.82 – Section 27B (2), new definition of *mental disorder*

This clause inserts a new definition of mental disorder consistent with the definition in s 9 of the *Mental Health Act 2015* which commences on 1 March 2016.

Clause 1.83 – Section 27B (2), definition of *mental dysfunction*

This clause omits the definition of *mental dysfunction* as it is no longer necessary for the new definition of *forensic patient* under amendments introduced by the *Mental Health Act 2015*.

Clause 1.84 - Section 27B (2), definition of *mental illness*

This clause substitutes a new definition of mental illness consistent with the definition in s 10 of the *Mental Health Act 2015* which commences on 1 March 2016.

Clause 1.85 - New sections 27BA to 27BC

This clause inserts new sections replicating existing provisions of the *Public Advocate Act* which give the Public Advocate functions in relation to individual advocacy and representation work.

New section 27BA provides that the Public Advocate must report to the ACT Civil and Administrative Tribunal (ACAT) about a matter before the ACAT if asked by ACAT. This allows the ACAT to draw on the expertise and case knowledge of the Public Advocate to assist it when hearing applications relevant to people with disability and children and young people.

New section 27BB contains a similar protection for disclosure of information by the Public Advocate as was previously provided for by s 17 of the *Public Advocate Act*.

New section 27BC transfers the provision in the *Public Advocate Act* that allows the Public Advocate to engage a lawyer to appear before a court or the ACAT in relation to the exercise of the Public Advocate’s functions.

Clause 1.86 - Section 30 (3) and (4)

This clause provides that the President may call a meeting of the Commission, rather than any member being able to call a meeting. This change is to remove a potential ambiguity in whether a member of the Commission could call a meeting to discuss a question within the President's remit, such as the allocation of resources, and then outvote the President to undermine their authority to make decisions about the administration, governance and strategic direction of the Commission. This clause provides that only the President may call a meeting, but that the President must give the other members reasonable notice of the time and place of the meetings.

Clause 1.87– Section 100A

This clause clarifies that people who give the Commission information honestly and without recklessness, for the purposes of the Human Rights Commission Act, as well as other territory laws do not breach confidence, professional etiquette or ethics or rules or conduct or otherwise incur civil or criminal liability only because of the disclosure. This allows people to give information to the Human Rights Commission without that disclosure of information being unlawful. It bolsters the existing protections from liability under the Human Rights Commission, with the express provisions taken from s 17 of the Public Advocate Act, which are necessary for the advocacy unit to perform their investigative and advocacy functions.

Clause 1.88 – New section 105A

This clause inserts a clause requiring the Minister to review the operation of the *Human Rights Commission Act 2005* and the *Public Trustee and Guardian Act 1985* as amended by the *Protection of Rights (Services) Legislation Amendment Act 2015* and the *Protection of Rights (Services) Legislation Amendment Act 2016*.

The review of effectiveness of the restructure of the rights protection framework implemented in these two amending acts must start as soon as practicable after three years from the commencement of the amending acts. The review must be completed and a report provided to the Legislative Assembly within 12 months after the date the review is started.

This clause also provides that new section 105A will expire after 5 years.

Part 1.26 - Legal Profession Act 2006

Clauses 1.89 &1.90 – various sections

These clauses substitute references to public trustee with references to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Clause 1.91 - Dictionary, note 2

This clause amends note 2 in the dictionary to indicate that public trustee and guardian is defined in the *Legislation Act 2001*.

Part 1.27 - Legislation Act 2001

1.92 - Dictionary, part 1, definition of *public advocate*

This clause substitutes the Human Rights Commission Act in place of the *Public Advocate Act 2005* as the legislation that provides for the appointment of the Public Advocate in the definition of public advocate.

Clause 1.93 - Dictionary, part 1, definition of *public trustee*

This clause omits the definition of public trustee as it will be replaced by the definition of the Public Trustee and Guardian under clause 1.94 below.

Clause 1.94 - Dictionary, part 1, new definition of public trustee and guardian

This clause provides a new definition of Public Trustee consequential to the renaming of the legislation and office of the Public Trustee and Guardian. Public Trustee means the Public Trustee and Guardian under the Public Trustee and Guardian Act.

Clause 1.95 - Dictionary, part 1, new definition of *victims of crime commissioner*

This clause inserts a new definition of victims of crime commissioner which means the Victims of Crime Commissioner under the Human Rights Commission Act. Previously the Victims of Crime Commissioner was appointed under the Victims of Crime Act.

Part 1.28 - Mental Health Act 2015

Clause 1.96 - Dictionary, note 2

This clause amends note 2 in the dictionary to indicate that victims of crime commissioner is defined in the *Legislation Act 2001*.

Clause 1.97- Dictionary, definition of *victims of crime commissioner*

This clause omits the definition of victims of crime commissioner from the *Mental Health Act 2015* as the victims of crime commissioner is now defined in the *Legislation Act 2001* as a commissioner of the Human Rights Commission.

Part 1.29 - Official Visitor Act 2012

Clause 1.98 - Section 23B (1) (a)

This clause substitutes a reference to public trustee with a reference to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Clause 1.99 - Section 23B (1) (b)

This clause omits the public advocate from the Official Visitors' Board as the Board already has a representative from the Human Rights Commission, being the member nominated by the Commission to represent them. This means that the membership of the Official Visitors' Board will be reduced to four.

Clause 1.100 & 1.101– various sections

These clauses substitute references to public trustee with references to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Clause 1.102 - New section 23E

This clause inserts a new provision that provides that in a meeting of the Official Visitors' Board, each member has a vote on the questions to be decided, but in the case of equal votes, the Public Trustee and Guardian, as the chair of the Board, has the casting vote.

Clause 1.103 - Dictionary, note 2

This clause amends note 2 in the dictionary to indicate that public trustee and guardian is defined in the *Legislation Act 2001*.

Clause 1.104 - Dictionary, definition of *investigative entity*

This clause omits the separate mention of public advocate in the definition of investigative entity as the Public Advocate will be a commissioner within the Human Rights Commission which is also included in the list of investigative entities.

Part 1.30 - Ombudsman Act 1989

Clause 1.105- Section 6B (1)

This clause makes a minor drafting amendment to reflect that the Public Advocate is a commissioner within the Human Rights Commission.

Part 1.31 - Planning and Development Act 2007

Clause 1.106 - Section 345 (1), example 3

This clause substitutes a reference to public advocate with a reference to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Part 1.32 - Powers of Attorney Act 2006

Clause 1.107 - Section 14 (1) (a) (i)

This clause substitutes a reference to Public Trustee with a reference to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Clause 1.108 - Section 14 (2)

This clause amends s 14(2) to provide that a principal must not in an enduring power of attorney, appoint a corporation other than the Public Trustee and Guardian for a personal or health care matter. This change reflects the fact that the Public Trustee and Guardian will act as guardian.

Previously only the Public Advocate could be appointed as an attorney for a personal care or health care matter and the Public Trustee as an attorney for a property matter. As the guardianship functions of the Public Advocate are being moved into the new office of the Public Trustee and Guardian, it is necessary to amend this section to provide that the Public Trustee and Guardian can be appointed attorney for all matters.

Clause 1.109 - Section 14 (3)

This clause omits s 14(3) as the Public Advocate is no longer responsible for guardianship functions - these will be performed by the Public Trustee and Guardian.

Clauses 1.110 – 1.111 - various sections

These clauses substitute references to public trustee with references to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Clause 1.112 - Section 83 (3)

This clause omits the function of the Public Trustee and Guardian inspecting documents and accounts on the request of the Public Advocate, as the Public Advocate will not have the function of resolving complaints about the actions of a guardian or manager or person acting under a power of attorney. That will be the responsibility of the Public Trustee and Guardian.

Clause 1.113 - Section 85 (3), note

This clause amends the note in s 85 to provide that s 100A of the Human Rights Commission Act provides for protections from liability for giving information to the Commission including the Public Advocate.

Clause 1.114 - Dictionary, note 2

This clause amends note 2 in the dictionary to indicate that public trustee and guardian is defined in the *Legislation Act 2001*.

Part 1.33 - Public Health Act 1997

Clause 1.115 - Section 66V (2), definition of *own*, paragraph (b)

This clause substitutes a reference to public trustee with a reference to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Clause 1.116 - Dictionary, note 2

This clause amends note 2 in the dictionary to indicate that public trustee and guardian is defined in the *Legislation Act 2001*.

Part 1.34 - Public Trustee and Guardian Act 1985

Clause 1.117 – Part 2 heading

This clause substitutes a new heading for Part 2 reflecting the new name of the office of Public Trustee and Guardian.

Clause 1.118 – Division 2.2 heading

This clause substitutes a new heading for Division 2.2 reflecting the new name of the office of Public Trustee and Guardian.

Clause 1.119 - Section 19B (1) (b)

This clause transfers the function of handling complaints and allegations about the actions of a guardian or manager or person acting under a power of attorney to the Public Trustee and Guardian.

Following further consultation with Commissioners it was considered more appropriate for this function to be located within the Public Trustee and Guardian as the agency with greatest expertise about personal and financial management – noting that allegations would not have been investigated or handled as complaints within the Public Advocate, but would have been resolved through informal advocacy.

This function is substituted in place of the function of representing forensic patients in ACAT which is made a function of the Public Advocate.

Clause 1.120 - Section 19B (2), new definition of *forensic patient*, paragraph (a)

This clause substitutes the phrase ‘be suffering from a mental dysfunction or mental illness’ with the phrase ‘have a mental disorder or mental illness’ for consistency with amendments made to the *Public Advocate Act 2005* made by the *Mental Health Act 2015* which commences on 1 March 2016.

Clause 1.121 – Section 19B (2), definition of *forensic patient*

This clause makes minor amendments to paragraph (d) in the definition of forensic patient for consistency with amendments made to the *Public Advocate Act 2005* made by the *Mental Health Act 2015*.

Clause 1.122 – Section 19B (2), new definition of *mental disorder*

This clause inserts a new definition of mental disorder consistent with the definition in s 9 of the *Mental Health Act 2015* which commences on 1 March 2016.

Clause 1.123 – Section 19B (2), definition of *mental dysfunction*

This clause omits the definition of *mental dysfunction* as it is no longer necessary for the new definition of *forensic patient* under amendments introduced by the *Mental Health Act 2015*.

Clause 1.124 - Section 19B (2), definition of *mental illness*

This clause substitutes a new definition of mental illness consistent with the definition in s 10 of the *Mental Health Act 2015* which commences on 1 March 2016.

Clause 1.125 - Section 23(2)

This clause substitutes a reference to public trustee with a reference to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Clause 1.126 - Section 24 heading

This clause amends the heading of s 24 to ‘legal representation’ to more accurately reflect the subject of s 24.

Clause 1.127 - Section 24(1)

This clause amends s 24(2) to provide that either a court or ACAT can direct the Public Trustee and Guardian to represent a party to proceedings. Previously only a court could do this, but as the guardianship section is now in the Public Trustee and Guardian, the ACAT may also need to direct the office represent a party to proceedings.

Clause 1.129 - Section 24(2)(b)

This clause adds a reference to the ACAT to section 24(2)(b) allowing the ACAT to give direction as to costs where the ACAT directs the Public Trustee and Guardian to represent a party.

Clause 1.130 - New section 24 (3)

This clause amends s 24(3) to provide that the Public Trustee and Guardian may engage a lawyer to represent it in matters before ACAT, in addition to matters in other courts. This is necessary as the Public Advocate had provided for similar representation by lawyers in matters before ACAT.

Clause 1.131 - New section 24A

This clause provides that the ACAT may ask the Public Trustee and Guardian to report to it. This replicates s 11(3) of the Public Advocate Act to allow the ACAT to draw on the individual case knowledge and expertise of the guardianship unit in a matter before it. Previously only a court could request the Public Trustee to report to it but in the expanded Public Trustee and Guardian there may be circumstances where the ACAT will require assistance.

Clause 1.132- Sections 63 (2) and 66 (1)

These clauses substitute references to public trustee with references to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Clause 1.133 -Dictionary, definition of *public trustee*

This clause substitutes references to public trustee with references to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Part 1.35 - Retirement Villages Act 2012

Clause 1.134 - Section 32, definition of *trustee*, paragraph (a)

This clause amends the definition of trustee to include the public trustee and guardian, consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Clause 1.135- Dictionary, note 2

This clause amends note 2 in the dictionary to indicate that public trustee and guardian is defined in the *Legislation Act 2001*.

Part 1.36 - Territory Records Regulation 2009

Clause 1.136 - Schedule 1, item 16

This clause omits the public advocate from the schedule of principal officers for the purposes of the Territory Records Regulation.

1.137 - Schedule 1, item 17

This clause substitutes references to public trustee with references to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Clause 1.138 - Dictionary, note 2

This clause omits public advocate from the list of terms that are defined by the Legislation Act. The Public Advocate will be a Commissioner appointed under the Human Rights Commission Act.

Clause 1.139 - Dictionary, note 2

This clause amends note 2 in the dictionary to indicate that public trustee and guardian is defined in the *Legislation Act 2001*.

Clause 1.140 - Dictionary, note 2

This clause amends note 2 in the dictionary to indicate that victims of crime commissioner is defined in the *Legislation Act 2001*.

Clause 1.141 - Dictionary, definition of *Victims of Crime Commissioner*

This clause omits the definition of victims of crime commissioner from the dictionary for this Act as the victims of crime commissioner is defined in the *Legislation Act 2001*.

Part 1.37 - Trustee Act 1925

Clauses 1.42 -1.43 – various sections

These clauses substitute references to public trustee with references to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Part 1.38 - Unclaimed Money Act 1950

Clause 1.144 - Section 4 etc

These clauses substitute references to public trustee with references to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Part 1.39 - Wills Act 1968

Clause 1.145 - Section 12A

This clause substitutes a reference to public trustee with a reference to the public trustee and guardian consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.

Clause 1.146 - Dictionary, note 2

This clause amends note 2 in the dictionary to indicate that public trustee and guardian is defined in the *Legislation Act 2001*.

Part 1.40 - Workers Compensation Act 1951

Clause 1.147- Section 78 (2) (b)

This clause substitutes in the new title of the *Public Trustee and Guardian Act 1985* consistent with the new name of the consolidated statutory office of the Public Trustee and Guardian.