



New South Wales

NSW Trustee and Guardian Bill 2009

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to constitute the NSW Trustee and Guardian as a statutory corporation and to confer on it the functions currently exercised by the Public Trustee and the Protective Commissioner, and
- (b) for that purpose, to repeal and re-enact and update, with some modifications, the provisions of the *Public Trustee Act 1913* and the *Protected Estates Act 1983*.

Outline of provisions

Chapter 1 Preliminary

Clause 1 sets out the name of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed.

Clause 3 defines words and expressions used in the proposed Act.

Clause 4 repeals the *Public Trustee Act 1913* and the *Protected Estates Act 1983*.

Chapter 2 Constitution of NSW Trustee

Part 2.1 Constitution and management of NSW Trustee

Clause 5 constitutes the NSW Trustee and Guardian (the *NSW Trustee*).

Clause 6 provides that the NSW Trustee is to be a NSW Government agency (that is, a statutory body representing the Crown).

Clause 7 provides for the appointment of the Chief Executive Officer of the NSW Trustee, who is to be responsible for the day-to-day management of the affairs of the NSW Trustee.

Clause 8 enables an acting Chief Executive Officer to be appointed during the illness or absence of the Chief Executive Officer or a vacancy in the office of the Chief Executive Officer.

Clause 9 enables the NSW Trustee and the Chief Executive Officer to delegate their functions.

Part 2.2 General functions

Clause 10 confers on the NSW Trustee functions that are conferred or imposed on it by or under the proposed Act or any other Act and also confers on it ancillary functions. The NSW Trustee may not employ staff, staff are to be provided under the *Public Sector Employment and Management Act 2002*.

Clause 11 confers on the NSW Trustee the trustee and estate management functions previously conferred on the Public Trustee and also the financial management functions on behalf of certain incapable and missing persons previously conferred on the Protective Commissioner. It also makes it clear that the NSW Trustee may prepare wills and carry out professional services in connection with wills, probate and administration.

Clause 12 re-enacts, and applies to the NSW Trustee, provisions that permit the NSW Trustee to be appointed as a trustee and as a sole trustee in the place of 2 original trustees. The existing prohibition on appointment contrary to a trust instrument is retained.

Clause 13 re-enacts, and applies to the NSW Trustee, a provision that enables the NSW Trustee to refuse to act in a trust capacity. The prohibition relating to trusts that may not be accepted is also re-enacted.

Clause 14 re-enacts, and applies to the NSW Trustee, a provision enabling the Supreme Court to waive the requirement for the consent of a person to the appointment of the NSW Trustee as a trustee.

Clause 15 re-enacts, and applies to the NSW Trustee, provisions that regulate the functions of joint trustees where the NSW Trustee is a joint trustee, including

provision for money and property under the trustees' control to be dealt with in the same way as if the NSW Trustee were the sole trustee.

Clause 16 re-enacts the current powers of the Public Trustee and the Protective Commissioner relating to property and confers them on the NSW Trustee. The current power to grant and renew leases for 10 years is applied to both the trust capacities (that is wills, trustee and deceased estate administration functions) and protective capacities (that is, the functions relating to management of the affairs of persons who are incapable of managing their affairs and missing persons) of the NSW Trustee.

Clause 17 re-enacts, and applies to the NSW Trustee, provisions allowing money held on trust to be advanced for the maintenance, education, advancement or benefit of a minor or incapable person and makes it clear that this power will extend to past or future maintenance. Existing powers to obtain Supreme Court directions relating to money held to or in respect of such persons, and existing exonerations, are also re-enacted.

Clause 18 re-enacts a provision allowing the payment of small amounts owed by a person who has died without waiting for administration of the person's estate.

Clause 19 re-enacts, and applies to the NSW Trustee, a provision releasing the NSW Trustee from any requirements to provide a bond or other security before being appointed in a trust capacity.

Clause 20 enables the NSW Trustee to appoint agents, including a power to appoint registrars and deputy registrars of Local Courts as agents, and to employ persons to advise or assist it.

Clause 21 enables the NSW Trustee when acting in one capacity (for example, a trust capacity) to sue itself when acting in another capacity (for example, a protective capacity). The NSW Trustee may apply to the Supreme Court for directions in any such case.

Chapter 3 Deceased estates

Part 3.1 Appointment of NSW Trustee as executor or administrator or collector under order to collect

Clause 22 enables the Supreme Court to grant probate of a will or administration of any estate to the NSW Trustee.

Clause 23 entitles the NSW Trustee to a grant of administration of an intestate estate where the deceased person left property in New South Wales if administration of the estate has not been previously granted, has been revoked or the administrator dies without completing the administration.

Clause 24 enables the Supreme Court to transfer administration of an estate to the NSW Trustee on application by an executor or administrator, whether or not there is any other existing executor or administrator. Existing provisions about the effect of

such a transfer and the liability of former executors and administrators and the NSW Trustee are re-enacted.

Clause 25 enables the Supreme Court to order the NSW Trustee to act as the collector of an estate of a person if there are reasonable grounds to suppose that the person has died intestate leaving property in New South Wales. Existing provisions prohibiting distribution of the estate without special authorisation by the Court are re-enacted.

Part 3.2 Small estates

Division 1 Elections to administer small estates

Clause 26 re-enacts provisions enabling small estates to be dealt with by filing an election to administer instead of applying for probate or administration where probate or administration has not previously been obtained. On an election being filed, the NSW Trustee is taken to have been appointed as the executor or administrator of the estate.

Clause 27 re-enacts provisions enabling small estates to be dealt with by filing an election to administer instead of applying for probate or administration where an executor or administrator has died and part of the estate is unadministered. On an election being filed, the NSW Trustee is taken to have been appointed as the administrator de bonis non of the unadministered estate.

Clause 28 provides for administration under the proposed Division to end if an estate is found to be worth more than the amount required to be dealt with as a small estate. The NSW Trustee may obtain probate or administration in the ordinary manner.

Clause 29 provides for administration under the proposed Division to end if a later will, or a will, is found. The NSW Trustee may obtain probate or administration in the ordinary manner.

Clause 30 provides for the form and advertisement of notices of elections under the proposed Division.

Division 2 Small estates for which probate or administration not required

Clause 31 re-enacts, and applies to the NSW Trustee, provisions which enable certain small estates to be dealt with by the NSW Trustee, after giving notice in accordance with the regulations, as if probate or administration had been granted to the NSW Trustee.

Part 3.3 General

Clause 32 re-enacts, and applies to the NSW Trustee, a provision which excuses the NSW Trustee from having to file or pass accounts if acting alone in relation to an

estate or when acting jointly (unless the other person wishes to claim commission or if ordered to file or pass accounts by the Supreme Court).

Clause 33 sets out the entitlement of the NSW Trustee to costs out of estates where the NSW Trustee applies for probate or administration.

Clause 34 re-enacts, and applies to the NSW Trustee, provisions relating to the obligation to repay the proceeds of the sale of goods of a person for whom the NSW Trustee is not acting in a trust capacity.

Clause 35 provides for the NSW Trustee to pay to the equivalent body in another State or Territory, or a country recognised by the regulations for the purpose of the proposed section, (the *Public Trustee of a reciprocating State*) money collected under an order to collect relating to a person who was domiciled in that reciprocating State. It also provides for the payment to the NSW Trustee of the proceeds of an estate by a Public Trustee of a reciprocating State that is acting as the collector of an estate of a person who was domiciled in New South Wales when the person died.

Clause 36 re-enacts provisions that preserve the appointment of a specified person appointed under a will to conduct legal or other business of an estate for which the NSW Trustee is the executor or administrator. The NSW Trustee is not liable for any act or omission of that person.

Clause 37 requires the NSW Trustee to be notified of debts, shares, property and other assets of a deceased person whose estate is vested in the NSW Trustee.

Chapter 4 Management functions relating to persons incapable of managing their affairs

Part 4.1 Preliminary

Clause 38 defines words and expressions used in the proposed Chapter.

Clause 39 sets out the duties of persons exercising functions under the proposed Chapter with respect to protected persons and patients. The duties reflect those established under the *Guardianship Act 1987*.

Clause 40 enables an order for the management of an estate under the proposed Chapter to be made for part of the estate.

Part 4.2 Orders by Supreme Court that estates of persons subject to management

Clause 41 re-enacts the power of the Supreme Court to declare that a person is incapable of managing his or her own affairs and to appoint a suitable person as the manager of the person's estate or to commit the management of the person's estate to the NSW Trustee.

Clause 42 enables orders for the management of estates of persons to be made by the Supreme Court if a finding of incapacity has been made in another State or Territory or a country to which the proposed section applies.

Part 4.3 Orders for management of estates of mental health patients

Division 1 Orders by MHRT

Clause 43 re-enacts provisions requiring information about the question of capacity to manage affairs to be given by an authorised medical officer who is bringing a person before a mental health inquiry (that is, an inquiry to determine whether a person should be involuntarily detained in a mental health facility) under the *Mental Health Act 2007*.

Clause 44 requires the Mental Health Review Tribunal (the *MHRT*) to order that the estate of a person be subject to management under the proposed Act if the MHRT has ordered the detention of the person in a mental health facility and it is satisfied that the person is not capable of managing his or her own affairs. Currently, the MHRT must make a management order unless it is satisfied that a person is capable of managing his or her own affairs. A person the subject of such an order or any such order under any other provision of the proposed Part is a *protected person*.

Clause 45 requires the MHRT to consider the capacity of a person to manage his or her own affairs after reviewing the person's case under the *Mental Health (Forensic Provisions) Act 1990* and order that the estate of a person be subject to management under the proposed Act if the MHRT has ordered the detention of the person in a mental health facility and it is satisfied that the person is not capable of managing his or her own affairs. Currently, the MHRT must make a management order unless it is satisfied that a person is capable of managing his or her own affairs.

Clause 46 enables the MHRT, on application, to consider the capacity of a person to manage his or her own affairs and to order that the estate of a person be subject to management under the proposed Act if it is satisfied that the person is not capable of managing his or her own affairs. Currently, the MHRT must make a management order unless it is satisfied that a person is capable of managing his or her own affairs.

Clause 47 re-enacts a provision enabling the MHRT to make interim management orders but limits the period of such orders to 6 months.

Clause 48 re-enacts a provision enabling the MHRT to review an interim management order.

Clause 49 re-enacts a provision providing for an appeal to the Supreme Court by the protected person against a management order made by the MHRT.

Clause 50 re-enacts a provision providing for an appeal to the Administrative Decisions Tribunal (the *ADT*) by the protected person against a management order made by the MHRT.

Clause 51 re-enacts a provision that requires the MHRT, on request, to give formal written reasons for a decision to make a management order.

Clause 52 provides that the estate of a person ordered by the MHRT to be subject to management is committed to the management of the NSW Trustee, subject to any special order of the Supreme Court.

Division 2 Applications by patients who are not protected persons

Clause 53 re-enacts, and applies to the NSW Trustee, a provision that enables the NSW Trustee to undertake the management of the estate of a patient in a mental health facility, on application by the patient or, if the patient is under 18 years, on application by the person having parental responsibility for the patient.

Part 4.4 Orders for management of estates of missing persons

Clause 54 re-enacts the provision conferring power on the Supreme Court to declare that a person is a missing person and to make a management order. The Supreme Court may appoint a suitable person as the manager of the missing person's estate or commit the management of the missing person's estate to the NSW Trustee. A person subject to such an order is a *managed missing person*.

Part 4.5 Management of estates

Division 1 Management of estates by NSW Trustee

Clause 55 applies the proposed Division to the estate of a protected person or managed missing person or patient (a *managed person*) that is committed to the management of the NSW Trustee.

Clause 56 confers on the NSW Trustee, in respect of the management of the estate of a managed person, all necessary and incidental functions and such other functions as are directed or authorised by the Supreme Court.

Clause 57 confers on the NSW Trustee, for the purposes of exercising its protective capacities, all the functions of a managed person (including those that the person would have if not under incapacity or missing).

Clause 58 re-enacts, and applies to the NSW Trustee, provisions conferring power to execute and sign documents in the name of and on behalf of a managed person and relating to the effect of any such document.

Clause 59 sets out the things for which money of the estate of a managed person may be used, including for the payment of debts and engagements, repayment of expenses chargeable to the estate, the person's funeral expenses, maintenance of dependants, maintenance of the person and the preservation and improvement of the estate.

Clause 60 enables the NSW Trustee to pay money, or hand over chattels or documents, of the estate of a protected person to the person or another person as directed if the person is absent from a mental health facility.

Clause 61 re-enacts, and applies to the NSW Trustee, a provision conferring jurisdiction on the Supreme Court, on application, to give necessary directions with respect to the exercise by the NSW Trustee of its protective capacities.

Clause 62 re-enacts, and applies to the NSW Trustee, a provision enabling an application to be made to the ADT for a review of a decision by the NSW Trustee made in connection with the exercise of its functions under the proposed Division or a decision that is of a class prescribed by the regulations for the purposes of the proposed section.

Division 2 Management of estates by other persons

Clause 63 applies the proposed Division to the estate of a managed person that is managed by a person other than the NSW Trustee.

Clause 64 re-enacts, and applies to the NSW Trustee, provisions enabling the Supreme Court and the NSW Trustee to make orders as to the administration and management of the estates of managed persons, including orders in connection with authorising, directing and enforcing the functions of managers. The Supreme Court may also make orders in connection with supervising the exercise of functions of managers. Any order by the NSW Trustee is subject to the regulations or any direction by the Supreme Court or, in the case of a person under guardianship, the Guardianship Tribunal.

Clause 65 re-enacts, and applies to the NSW Trustee, provisions enabling the Supreme Court and the NSW Trustee to make orders as to the property of the estate of a managed person. Any order by the NSW Trustee is subject to the regulations or any direction by the Supreme Court or, in the case of a person under guardianship, the Guardianship Tribunal.

Clause 66 re-enacts, and applies to the NSW Trustee, a provision conferring on the NSW Trustee power to make orders authorising managers to have necessary and incidental functions for the management and care of a managed estate and to give the manager direction in respect of such orders. Any order by the NSW Trustee is subject to the regulations or any direction by the Supreme Court or the Guardianship Tribunal (in the case of a person under guardianship).

Clause 67 confers on the manager of an estate power to execute and sign documents in the name of and on behalf of a managed person, in accordance with an order or direction of the Supreme Court or the NSW Trustee or the Guardianship Tribunal (in the case of a person under guardianship), and provides for the effect of any such document.

Clause 68 re-enacts a provision enabling the Supreme Court and the Guardianship Tribunal to require the manager of an estate to provide security in respect of the management. Any such security must be approved by the NSW Trustee and the NSW Trustee is to ensure compliance with the conditions of any such security.

Clause 69 enables the manager of an estate to lodge money of an estate with the NSW Trustee.

Clause 70 re-enacts, and applies to the NSW Trustee, a provision enabling an application to be made to the ADT for a review of a decision by the NSW Trustee made in relation to the functions of a person appointed as a manager.

Division 3 Management of estates generally

Clause 71 re-enacts the provision suspending the power of a managed person to deal with so much of his or her estate as is subject to management. It continues the power of the manager to authorise the managed person to deal with part of the estate and also continues the entitlement to seek a review by the ADT of a decision by the NSW Trustee relating to an authorisation.

Clause 72 re-enacts, and applies to the NSW Trustee, the provision requiring consideration of whether consultation with the managed person or his or her relatives should be undertaken before taking any action with respect to the estate of the person and requiring consultation if appropriate.

Clause 73 enables the NSW Trustee to authorise payments from a managed person's estate for the temporary provision of maintenance and other necessary requirements of the managed person or the managed person's estate pending the making of a management order.

Clause 74 confers on the NSW Trustee power to prepare a financial plan for the estate of a managed person and to charge a fee for doing so.

Clause 75 requires the NSW Trustee or other manager of the estate of a managed person, as far as is reasonably practicable, to ensure that items of a personal nature are preserved if the managed person or the relatives of the managed person have requested they be preserved.

Clause 76 enables the NSW Trustee or other manager of the estate of a managed person to use property of the estate for gifts to relatives or close friends of a seasonal nature or for a special event or for donations of a nature that the managed person made or would reasonably be expected to make. A gift must be of an amount that is reasonable in the circumstances, including having regard to the size of the estate.

Clause 77 re-enacts a provision that enables the cost of the improvement of the property of a managed person to be charged, with interest, on the improved property or other property of the estate. Such a charge cannot confer a right of foreclosure or sale during the life of the managed person and is subject to a restriction that interest be able to be paid out of the income of the estate.

Clause 78 re-enacts a provision that confers power on the Supreme Court to order that a manager exercise powers on behalf of and in the name of the managed person that the managed person has as a trustee or guardian and provides for the effect of such an exercise of power.

Clause 79 re-enacts a provision that confers power on the Supreme Court to dissolve a partnership if a member of the partnership becomes a managed person.

Clause 80 enables the manager of the estate of a managed person to require, by written notice, the person who has custody of the managed person's will to provide a certified copy of the will within 14 days. It will be an offence, without reasonable excuse, to fail to comply with any such notice or order. A person who has custody of the will may obtain a direction from the Supreme Court that the person is not required to provide a copy of the will.

Clause 81 enables the NSW Trustee to exercise in NSW functions relating to the estate of an interstate protected person, if authorised to do so by the equivalent body in another State or Territory or in a country recognised by the regulations for the purpose of the proposed section (the *Public Trustee of a reciprocating State*). The NSW Trustee may also, by notice in writing, authorise the Public Trustee of a reciprocating State to exercise specified management functions of the NSW Trustee in relation to the estate of a managed person in the reciprocating State.

Clause 82 re-enacts a provision preserving uses, trusts and other rights attached to property of a managed person that is exchanged on behalf of the managed person.

Clause 83 re-enacts a provision that protects the interests of a managed person and any beneficiary of a managed person where property of the managed person is disposed of or otherwise dealt with under the proposed Act.

Clause 84 provides that a managed person may give a power of attorney even though the estate of the person is subject to management. The effect of a management order on existing powers of attorney is dealt with in amendments made to the *Powers of Attorney Act 2003* by **Schedule 2.46 [6]** to the proposed Act.

Part 4.6 Suspension or termination of management

Division 1 Revocation of management orders

Clause 85 provides for the termination of the management of an estate under the proposed Act if the management order is revoked.

Clause 86 enables the Supreme Court, on application by a protected person, to revoke a declaration that a person is incapable of managing his or her affairs and to revoke a management order and make any other necessary orders to give effect to that order.

Clause 87 enables the Supreme Court, on application by a managed missing person or other person, to revoke a declaration that a person is a missing person and to revoke a management order and make any other necessary orders to give effect to that order.

Clause 88 enables the MHRT, on application by a protected person, to revoke the management order.

Division 2 Termination by NSW Trustee

Clause 89 enables the NSW Trustee, by certificate, to terminate management of the estate of a managed person who ceases to be under guardianship or to be a patient if the NSW Trustee is satisfied that the person is capable of managing his or her own affairs.

Clause 90 requires the NSW Trustee to notify a managed person who ceases to be under guardianship or to be a patient and who the NSW Trustee is not satisfied is capable of managing his or her affairs of the person's right to apply for revocation of the order. Pending such a revocation, the NSW Trustee may, at its discretion, continue to manage the person's estate.

Clause 91 enables the NSW Trustee, by certificate, to terminate management of the estate of a managed person who ceases to be a missing person.

Clause 92 enables the NSW Trustee, on application by a person or a patient who is not a protected person or the person having parental responsibility for that person, to terminate management of the estate of the person.

Division 3 Termination on death

Clause 93 terminates the management of the estate of a managed person if the person dies.

Clause 94 provides for the NSW Trustee to pay money, and hand over chattels or documents, of the estate of a managed person who has died to the legal representative of the managed person, subject to any order of the Supreme Court and proposed section 95.

Clause 95 re-enacts a power to pay money, and hand over chattels or documents, to a beneficiary of the estate of a managed person without probate or administration of the estate having been granted and without legal proof of the right or title of the beneficiary.

Clause 96 re-enacts, and applies to the NSW Trustee, a power to complete transactions relating to the estate of a managed person that were commenced before the death of the person.

Division 4 General matters relating to termination of management of estates

Clause 97 sets out the circumstances in which the NSW Trustee may continue to act as the manager of an estate after the occurrence of a termination event, pending proof of the event.

Clause 98 provides for the NSW Trustee to pay money, and hand over chattels or documents, of the estate of a managed person (other than a person who has died) to the managed person on termination of the management.

Clause 99 re-enacts, and applies to the NSW Trustee, a provision that, on termination of management, provides for the acts of the NSW Trustee as the manager

of the estate of the managed person to have continuing force as if they had been done by the managed person not suffering from incapacity.

Clause 100 re-enacts, and applies to the NSW Trustee, a power to sell unclaimed personal effects of a managed person after 2 years after management of the estate is terminated and provides for the payment and recovery of the proceeds.

Chapter 5 Investments and funds

Part 5.1 Investments

Clause 101 enables the NSW Trustee to invest funds held in its trust or protective capacities in accordance with the *Trustee Act 1925* and also enables other managers of estates of managed persons to so invest funds of those estates.

Clause 102 re-enacts, and applies to the NSW Trustee, a power to purchase real estate from the estate of a managed person and a power to invest in the preferred investments (if known) of the managed person.

Part 5.2 Common funds and Reserve Fund

Clause 103 requires the NSW Trustee to keep a separate account with respect to each trust matter and each managed estate.

Clause 104 enables the NSW Trustee to establish one or more common funds and to pay into those funds money in respect of one or more trust matters or managed estates. Any such amounts are held on trust by the NSW Trustee. The NSW Trustee may establish portfolios and accounts within a common fund and may establish it on the basis of a unitised system or other basis.

Clause 105 provides that trust funds or protective funds, amounts payable from the Reserve Fund, certain money paid into court and other money required to be so paid by law may be included in a common fund. Funds must not be included if payment to the common fund is prohibited by an applicable trust instrument or a person who jointly holds funds with the NSW Trustee objects.

Clause 106 requires investment income from a common fund to be applied for investments, to the Reserve Fund, proportionately to the relevant accounts from which the fund is derived and for payment of the costs incurred by the NSW Trustee in the exercise of functions under the proposed Act. The Director-General of the Attorney General's Department must approve the maximum amount of payments for costs.

Clause 107 enables the NSW Trustee to determine policies relating to the nature, management and operation of a common fund.

Clause 108 enables the NSW Trustee to sell and withdraw investments belonging to a common fund for the purpose of exercising functions in a trust or protective capacity and to withdraw from a common fund amounts on account of a particular matter in which the funds for a particular matter are invested.

Clause 109 requires the NSW Trustee to establish a Reserve Fund, which is to be applied for repayment to the common fund of losses on investments, payment of costs of protecting investments, certain legal costs and other costs that are not properly chargeable against a particular estate or trust or able to be paid out of a particular estate or trust.

Clause 110 enables the NSW Trustee to make advances from a common fund for any purpose of or relating to a trust matter or managed estate and also enables the NSW Trustee to advance to a person beneficially entitled to an estate or trust an amount not exceeding half of the value of the person's beneficial interest. Interest is payable on any such advance and any such advance is a charge on the assets of the estate or trust.

Chapter 6 General

Part 6.1 Fees and charges

Clause 111 enables the NSW Trustee to charge fees and provides for the amount of the fees to be prescribed by the regulations.

Clause 112 enables the NSW Trustee to retain or pay from trust property any costs that it could retain or pay if it were a private trustee.

Clause 113 enables the NSW Trustee to retain or pay from a managed estate costs incurred in the care and management or supervision of the estate. Such costs are chargeable whether or not management of the estate is terminated.

Clause 114 enables the NSW Trustee to recover any costs due or payable to the NSW Trustee as a debt in a court of competent jurisdiction.

Clause 115 enables the Supreme Court and the NSW Trustee to order the payment from the estate of a managed person of costs with respect to actions taken to comply with an order or direction under the proposed Act or a transfer or conveyance under Chapter 4 of the proposed Act or for a specified amount of remuneration for a manager. The NSW Trustee may only make such an order in relation to costs arising from an order or direction given by the NSW Trustee or work carried out by a manager for the purposes of such an order or direction.

Part 6.2 Miscellaneous

Clause 116 provides that the NSW Trustee may require, by notice in writing, a person to provide specified information or records in connection with a responsibility of the NSW Trustee when acting in a protective capacity.

Clause 117 confers on the Supreme Court, on application by the NSW Trustee, power to set aside the disposition of an interest in real or personal property by a mental health patient while a managed person.

Clause 118 provides for orders of the NSW Trustee under the proposed Act to have effect according to their tenor and makes it an offence to fail, without reasonable excuse, to comply with an order or direction of the NSW Trustee.

Clause 119 re-enacts, and applies to the NSW Trustee, a provision requiring a person who obtains an order directing payment to be made to the NSW Trustee or an order vesting property in the NSW Trustee or appointing the NSW Trustee as a trustee, executor or administrator to serve a copy of the order and other information on the NSW Trustee.

Clause 120 re-enacts, and applies to the NSW Trustee, a provision appropriating the Consolidated Fund for the discharge of certain liabilities of the NSW Trustee that it would be personally liable to discharge if it were a private trustee. It also re-enacts the exclusion from liability of the NSW Trustee for acts that do not arise out of an act or omission of its staff.

Clause 121 contains provisions excluding the Chief Executive Officer and other staff of the NSW Trustee from personal liability for acts done in good faith for the purpose of executing the proposed Act or any other Act or the functions of the NSW Trustee.

Clause 122 provides for certificates by the Chief Executive Officer relating to the appointment of the NSW Trustee as the administrator or executor of an estate, a trustee or as manager of an estate to have evidentiary effect.

Clause 123 re-enacts, and applies to the NSW Trustee, a power to direct a specified person to visit a managed person and report on the state of mind, bodily health and general condition of the managed person and on the care and treatment of the managed person.

Clause 124 provides for the service of documents on the NSW Trustee.

Clause 125 provides that proceedings for an offence under the proposed Act are to be dealt with summarily.

Clause 126 enables the Director-General of the Attorney General's Department to require the NSW Trustee to submit a budget to the Director-General in relation to the NSW Trustee's costs, including projected costs.

Clause 127 provides that savings, transitional and other provisions are contained in proposed Schedule 1.

Clause 128 enables the Governor to make regulations for the purposes of the proposed Act.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

The Schedule:

- (a) provides for the construction of references in laws and documents to the Public Trustee, the Protective Commissioner and related matters, and

- (b) provides for the exercise by the NSW Trustee of functions relating to matters currently being dealt with by the Public Trustee and the Protective Commissioner, and
- (c) continues in force existing regulations (that would otherwise be repealed), and
- (d) abolishes the offices of the Public Trustee and the Protective Commissioner, and
- (e) provides for the NSW Trustee to be the universal successor of the corporations sole established under the *Public Trustee Act 1913* and the *Protected Estates Act 1983* (the *repealed Acts*), and
- (f) provides for the continuing operation of existing common funds and reserve funds under the repealed Acts, while enabling parts of the existing Interest Suspense Account under the *Public Trustee Act 1913* to be used for costs incurred by the NSW Trustee in the exercise of functions under the proposed Act, and
- (g) makes other provision of a savings and transitional nature.

Schedule 2 Amendment of other Acts

Guardianship Act 1987 No 257

Schedule 2.27 [8] substitutes section 77 of the *Guardianship Act 1987* to provide that the Public Guardian is to be a person appointed under Chapter 1A of the *Public Sector Employment and Management Act 2002*. Currently, the Public Guardian is the holder of the office of Protective Commissioner (an office that is abolished by the proposed Act).

Schedule 2.27 [9] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

The other amendments made by Schedule 2.27 are amendments consequential on the enactment of the proposed Act.

Powers of Attorney Act 2003 No 53

Schedule 2.46 [6] substitutes section 50 of the *Powers of Attorney Act 2003* to re-enact provisions relating to the effect on an existing power of attorney of a principal whose estate has become subject to management. These provisions were formerly contained in the *Protected Estates Act 1983*.

The other amendments made by Schedule 2.46 are amendments consequential on the enactment of the proposed Act.

Trustee Companies Act 1964 No 6

Schedule 2.60 inserts proposed sections 15A–15AD relating to the powers of trustee companies with respect to small estates. The provisions mirror the powers of the NSW Trustee with respect to small estates and replace provisions that apply the small estate provisions of the *Public Trustee Act 1913* (repealed by the proposed Act).

NSW Trustee and Guardian Bill 2009

Explanatory note

Amendment of other Acts

The remainder of Schedule 2 makes amendments consequential on the enactment of the proposed Act to the other Acts specified in that Schedule.



New South Wales

NSW Trustee and Guardian Bill 2009

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New South Wales

NSW Trustee and Guardian Bill 2009

No. , 2009

A Bill for

An Act to constitute the NSW Trustee and Guardian; to confer on it functions as a trustee, executor or administrator and functions relating to the financial and other management of estates; to repeal the *Public Trustee Act 1913* and the *Protected Estates Act 1983*; and for other purposes.

The Legislature of New South Wales enacts:	1
Chapter 1 Preliminary	2
1 Name of Act	3
This Act is the <i>NSW Trustee and Guardian Act 2009</i> .	4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6
3 Definitions	7
(1) In this Act:	8
<i>ADT</i> means the Administrative Decisions Tribunal established by the <i>Administrative Decisions Tribunal Act 1997</i> .	9
<i>adult</i> means an individual who is aged 18 years or over.	10
<i>Chief Executive Officer</i> means the Chief Executive Officer of the NSW Trustee.	11
<i>common fund</i> —see section 104.	12
<i>costs</i> includes fees, charges, commission, disbursements, expenses and remuneration.	13
<i>Director-General</i> means the Director-General of the Attorney General’s Department.	14
<i>exercise</i> a function includes perform a duty.	15
<i>function</i> includes a power, authority or duty.	16
<i>Guardianship Tribunal</i> means the Guardianship Tribunal constituted under the <i>Guardianship Act 1987</i> .	17
<i>legal representative</i> has the same meaning as it has in the <i>Succession Act 2006</i> .	18
<i>managed missing person</i> —see section 38.	19
<i>managed person</i> —see section 38.	20
<i>management</i> of a trust matter includes administration of an estate.	21
<i>manager</i> —see section 38.	22
<i>MHRT</i> means the Mental Health Review Tribunal constituted under the <i>Mental Health Act 2007</i> .	23
<i>mortgage</i> includes a charge.	24
<i>NSW Trustee and Guardian</i> or <i>NSW Trustee</i> means the NSW Trustee and Guardian constituted by this Act.	25
<i>operational funds</i> means funds of or under the control of the NSW Trustee that are not trust funds or protective funds.	26
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<i>patient</i> —see section 38.	1
<i>protected person</i> —see section 38.	2
<i>protective capacity</i> means a capacity exercised by the NSW Trustee under this Act in relation to managed persons or the management of their estates.	3 4 5
<i>protective funds</i> means funds of the NSW Trustee that the NSW Trustee holds in any protective capacity.	6 7
<i>Reserve Fund</i> means the Fund established under section 109.	8
<i>spouse</i> means:	9
(a) a husband or wife, or	10
(b) the other party to a de facto relationship within the meaning of the <i>Property (Relationships) Act 1984</i> , in which the parties have cohabited for a period of not less than 2 years,	11 12 13
but where more than one person would so qualify as a spouse, means only the last person to so qualify.	14 15
<i>trust capacity</i> means any of the capacities specified in section 11 (1).	16
<i>trust funds</i> means funds of the NSW Trustee that the NSW Trustee holds in any trust capacity.	17 18
<i>trust instrument</i> means the will, settlement or other instrument (if any) establishing or regulating the trust or other arrangement giving rise to a trust capacity or to an appointment to a trust capacity.	19 20 21
<i>trust matter</i> means any trust, estate, fund, asset, agency or affairs.	22
(2) Words and expressions used in this Act have the same meaning as they have in the <i>Probate and Administration Act 1898</i> .	23 24
(3) Notes included in this Act do not form part of this Act.	25
Note. For the purposes of comparison, a number of provisions of this Act contain bracketed notes in headings, drawing attention (“cf”) to equivalent or comparable (though not necessarily identical) provisions of other laws. Abbreviations in the notes include PT Act (<i>Public Trustee Act 1913</i>) and PE Act (<i>Protected Estates Act 1983</i>).	26 27 28 29 30
4 Repeal of Acts	31
The <i>Public Trustee Act 1913</i> and the <i>Protected Estates Act 1983</i> are repealed.	32 33

Chapter 2	Constitution of NSW Trustee	1
Part 2.1	Constitution and management of NSW Trustee	2
		3
5	Constitution of NSW Trustee and Guardian	4
	There is constituted by this Act a corporation with the corporate name of the NSW Trustee and Guardian.	5
		6
	Note. In this Act, the NSW Trustee and Guardian is referred to as the NSW Trustee (see section 3 (1)).	7
		8
6	Status of NSW Trustee	9
	The NSW Trustee is a NSW Government agency.	10
7	Chief Executive Officer	11
(1)	The Governor may appoint a Chief Executive Officer of the NSW Trustee.	12
		13
(2)	The Chief Executive Officer may be appointed for a term not exceeding 5 years but is eligible for re-appointment.	14
		15
(3)	The employment of the Chief Executive Officer is subject to Part 3.1 of the <i>Public Sector Employment and Management Act 2002</i> , but is not subject to Chapter 2 of that Act.	16
		17
		18
(4)	The Governor may remove the Chief Executive Officer from office only for misbehaviour, incapacity or incompetence, despite anything to the contrary in section 77 of the <i>Public Sector Employment and Management Act 2002</i> .	19
		20
		21
		22
(5)	The Chief Executive Officer is responsible for the day-to-day management of the affairs of the NSW Trustee.	23
		24
(6)	Any act, matter or thing done in the name of, or on behalf of, the NSW Trustee by the Chief Executive Officer is taken to have been done by the NSW Trustee.	25
		26
		27
8	Acting Chief Executive Officer	28
(1)	The Minister may, from time to time, appoint a person to act in the office of the Chief Executive Officer during the illness or absence of the Chief Executive Officer (or during a vacancy in the office of Chief Executive Officer) and a person, while so acting, has all the functions of the Chief Executive Officer.	29
		30
		31
		32
		33
(2)	The Minister may, at any time, remove a person from the office of acting Chief Executive Officer.	34
		35

(3)	The acting Chief Executive Officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.	1 2 3
9	Delegation	4
(1)	The NSW Trustee may delegate to an authorised person any of its functions, other than this power of delegation.	5 6
(2)	The Chief Executive Officer may delegate to an authorised person any of the Chief Executive Officer's functions, other than this power of delegation.	7 8 9
(3)	A delegate may sub-delegate to an authorised person any function delegated by the NSW Trustee or Chief Executive Officer if the delegate is authorised in writing to do so by the NSW Trustee or Chief Executive Officer.	10 11 12 13
(4)	In this section, <i>authorised person</i> means:	14
(a)	a member of staff of the Division of the Government Service comprising the group of staff who are employed under Chapter 1A of the <i>Public Sector Employment and Management Act 2002</i> to enable the NSW Trustee to exercise its functions, or	15 16 17 18
(b)	a person, or committee of persons, of a class approved by the Minister or prescribed by the regulations.	19 20
Part 2.2	General functions	21
10	Functions generally	22
(1)	The NSW Trustee has such functions as are conferred or imposed on it by or under this or any other Act.	23 24
(2)	The NSW Trustee may do all such supplemental, incidental or consequential acts as may be necessary or expedient for the exercise of its functions.	25 26 27
(3)	However, the NSW Trustee cannot employ any staff.	28
	Note. Staff may be employed under Chapter 1A of the <i>Public Sector Employment and Management Act 2002</i> in the Government Service to enable the NSW Trustee to exercise its functions.	29 30 31
11	General trustee and other functions (cf PT Act, ss 12 and 13)	32
(1)	The NSW Trustee may be appointed to and act in any of the following capacities:	33 34
(a)	trustee,	35
(b)	executor or administrator,	36

(c)	collector of estates under an order to collect,	1
(d)	agent or attorney,	2
(e)	guardian or receiver of the estate of a minor,	3
(f)	receiver of any other property.	4
(2)	The NSW Trustee may be appointed to and act in the capacity of a financial manager of the estate of a managed person.	5 6
(3)	The NSW Trustee may prepare wills and carry out professional services in connection with wills, probate and administration.	7 8
(4)	The NSW Trustee, if appointed to act in a trust or protective capacity:	9
(a)	has the same liabilities, and	10
(b)	is entitled to the same rights and immunities, and	11
(c)	is subject to the same control and orders of any court,	12
	as a private person acting in the same capacity.	13
12	Appointment as trustee	14
(1)	The NSW Trustee may be appointed to be a trustee under a trust instrument as an original, new or additional trustee.	15 16
(2)	The NSW Trustee may be appointed as sole trustee, even though the trustees originally appointed were 2 or more, and despite the provisions of the trust instrument as to the number of trustees.	17 18 19
(3)	However, the NSW Trustee must not be appointed as trustee if the trust instrument contains a direction to the contrary or prohibits the appointment.	20 21 22
13	Refusal of appointment as trustee or manager (cf PT Act, s 12 (3) and (4))	23
(1)	The NSW Trustee may refuse to act in a trust capacity or may accept subject to conditions. However, the NSW Trustee must not refuse merely on the ground of the small value of the trust property or estate concerned.	24 25 26 27
(2)	The NSW Trustee must not accept:	28
(a)	any trust under a deed of arrangement, or	29
(b)	any trust exclusively for religious purposes, or	30
(c)	any trust or trust capacity, if the instrument that creates the trust or duty concerned prohibits the appointment of the NSW Trustee.	31 32
14	Court may waive consent requirement for appointment (cf PT Act, s 17)	33
(1)	This section applies if a trust instrument requires the consent of a person to the appointment of a trustee.	34 35

(2)	The Supreme Court may direct that consent is not required to the appointment of the NSW Trustee if:	1
	(a) the person refuses or fails to consent, or	2
	(b) the person is, for any reason, not capable of consenting.	3
15	Functions exercised jointly (cf PT Act, s 12 (1A))	4
(1)	This section applies if the NSW Trustee jointly accepts a trust or is appointed to act jointly in a trust capacity with another person.	5
(2)	The NSW Trustee and the other person jointly have and may exercise the same functions as the NSW Trustee would have and may exercise if the NSW Trustee were acting alone.	6
(3)	Any money or other property under the control of the NSW Trustee and the other person must be dealt with in the same manner as money or other property under the sole control of the NSW Trustee.	7
(4)	If money or other property is payable, transferable or deliverable to the NSW Trustee and the other person jointly:	8
	(a) a written receipt given by the NSW Trustee alone is a sufficient discharge for that payment, transfer or delivery, and	9
	(b) any person required to make the payment, transfer or delivery is not required to make it to the other person and is not liable for any subsequent loss or misapplication of the money or property.	10
16	Powers of NSW Trustee relating to property and other matters (cf PT Act, s 35, PE Act, s 24)	11
(1)	The NSW Trustee may exercise the following functions when acting in a trust capacity or protective capacity:	12
	(a) receive money, rent, income and profit of real and personal property,	13
	(b) grant leases of property for a term not exceeding 10 years and give to a lessee an option of renewal if the aggregate duration of the lease and any such renewal does not exceed 10 years,	14
	(c) enter into a share-farming agreement for a period not exceeding 3 years,	15
	(d) surrender a lease and accept a new lease,	16
	(e) accept a surrender of a lease and grant a new lease,	17
	(f) execute a power of leasing vested in a person having a limited estate only in the property over which the power extends,	18
	(g) buy, sell, realise and mortgage (with or without a power of sale) real and personal property,	19
	Note. Mortgage includes charge (see section 3 (1)).	20

(h)	pay interest secured by a mortgage out of capital, if income is insufficient,	1 2
(i)	postpone the sale, calling in and conversion of any property that the NSW Trustee has a duty to sell, other than property that is of a wasting, speculative or reversionary nature,	3 4 5
(j)	settle, adjust and compromise a demand made by or against the estate,	6 7
(k)	exchange or join in a partition of property and give or receive money for equality of exchange or partition,	8 9
(l)	carry on a business, so far as may appear desirable for the purpose of more advantageously disposing of, or winding up, the business or preserving the business of a managed person until the managed person is able to carry it on,	10 11 12 13
(m)	agree to an alteration of the conditions of a partnership into which a managed person has entered, for the purpose of more advantageously disposing of an interest in the partnership or terminating liability,	14 15 16 17
(n)	carry out a contract entered into before the appointment of the NSW Trustee or enter into an agreement terminating the liability,	18 19
(o)	surrender, assign or otherwise dispose of, with or without consideration, onerous property,	20 21
(p)	exercise a power, or give a consent required for the exercise of a power, where the power is vested in a managed person for the benefit of the person or the power of consent is in the nature of a beneficial interest in the person,	22 23 24 25
(q)	sequester the estate under the bankruptcy laws,	26
(r)	take proceedings to cause a company to be placed in liquidation and vote or act by proxy at meetings of creditors or shareholders, whether the company is in liquidation or not,	27 28 29
(s)	bring and defend actions, suits and other proceedings,	30
(t)	without limiting paragraph (s), take criminal proceedings touching or concerning property,	31 32
(u)	pay rates, taxes, assessments, insurance premiums, debts, obligations, costs and expenses and other outgoings,	33 34
(v)	without limiting paragraph (u), pay the reasonable costs of the erection of a memorial or a tombstone over the grave of a deceased person or, if a deceased person is cremated, the reasonable costs of a memorial or any arrangements for the preservation of the ashes of the deceased person,	35 36 37 38 39
(w)	repair and insure against fire or accident any property,	40

(x)	bring land under the <i>Real Property Act 1900</i> ,	1
(y)	do or omit all things, and execute all documents, necessary to carry into effect the functions of the NSW Trustee.	2 3
(2)	The functions conferred by this section are in addition to, and do not restrict, any other functions of the NSW Trustee.	4 5
17	Power to use funds for benefit of minors and other incapable persons	6
	(cf PT Act, s 34)	7
(1)	This section applies if:	8
(a)	a minor is entitled to money held by the NSW Trustee or is entitled to any such money contingently on attaining an age specified in an instrument creating the entitlement, or	9 10 11
(b)	a person (an <i>incapable person</i>) is entitled to money held by the NSW Trustee and is, in its opinion, not capable of giving a good discharge.	12 13 14
(2)	The NSW Trustee may pay, or pay to any person it thinks fit, amounts of the money to be used for the past or future maintenance, education, advancement or benefit of the minor or incapable person (including the reimbursement of expenses already paid in that connection).	15 16 17 18
(3)	The Supreme Court may, on application by the NSW Trustee, give or vary or revoke directions as to the payment or application of money held by the NSW Trustee to or in respect of a minor or incapable person or determine any related manner.	19 20 21 22
(4)	Any such direction or determination exonerates the NSW Trustee from any claim or demand from any person at all.	23 24
(5)	The NSW Trustee is not required to see to the application of money paid under this section.	25 26
18	Power to pay small amounts of money due to deceased persons (cf PT Act, s 34C)	27 28
(1)	The NSW Trustee may pay an amount payable by the NSW Trustee to a person who has died to another person without requiring administration to be taken out in the estate of the deceased person if:	29 30 31
(a)	the amount does not exceed the amount prescribed by the regulations for the purposes of this section, and	32 33
(b)	the NSW Trustee considers that the other person is entitled to the amount.	34 35
(2)	A person to whom an amount is paid under this section must apply the money as required by law in the administration of the estate.	36 37

(3)	A payment made by the NSW Trustee under this section is valid against all persons and the NSW Trustee is discharged from all liability in respect of all money so paid by the NSW Trustee.	1 2 3
(4)	This section does not affect any right of a person to claim or recover money paid under this section from a person other than the NSW Trustee.	4 5 6
19	No bond by NSW Trustee (cf PT Act, s 49)	7
	No bond or other security is required from the NSW Trustee before being appointed, by or under this or any other Act, in any trust capacity.	8 9
20	Appointment of agents and other persons	10
(1)	The NSW Trustee may appoint agents and act as an agent for other persons.	11 12
(2)	The NSW Trustee may appoint a registrar or deputy registrar appointed under the <i>Local Courts Act 1982</i> as an agent of the NSW Trustee.	13 14
(3)	Any such registrar or deputy registrar has, and may exercise, the agency functions which he or she is appointed to exercise.	15 16
(4)	Without limiting subsection (1) or (2), the NSW Trustee may employ another person to transact any business or do any act that is required to be done by it, or to advise or assist it, when exercising its trust or protective capacities.	17 18 19 20
(5)	The NSW Trustee is not responsible for any default of any agent so employed.	21 22
21	NSW Trustee may sue itself in another capacity	23
(1)	The NSW Trustee, acting in one capacity, may maintain proceedings against itself acting in another capacity.	24 25
(2)	However, in any such case the NSW Trustee may apply to the Supreme Court for direction as to the manner in which the opposing interests are to be represented and must comply with the Court's directions.	26 27 28

Chapter 3	Deceased estates	1
Part 3.1	Appointment of NSW Trustee as executor or administrator or collector under order to collect	2
		3
		4
22	Grant of probate or administration to NSW Trustee (cf PT Act, s 18 (1))	5
(1)	The Supreme Court may grant:	6
(a)	probate of a will, or	7
(b)	administration of any estate (whether for general, limited or special purposes),	8
	to the NSW Trustee.	9
		10
(2)	This section does not limit the generality of the powers or other functions of the Supreme Court or the NSW Trustee.	11
		12
	Note. Under section 61 of the <i>Probate and Administration Act 1898</i> , a deceased person's estate vests in the NSW Trustee until probate, administration or an order to collect is granted.	13
		14
		15
23	Intestacy where no letters of administration (cf PT Act, s 18 (1A))	16
(1)	The NSW Trustee is, on application, entitled as of right to a grant of administration of the estate of a person who died intestate leaving property in New South Wales if:	17
		18
		19
(a)	letters of administration of the deceased person's estate have not been granted, or	20
		21
(b)	letters of administration of the estate granted to a person other than the NSW Trustee are revoked, or	22
		23
(c)	a person granted letters of administration of the estate dies without completing administration of the estate.	24
		25
(2)	The NSW Trustee is not required to provide, and the Supreme Court may not require the provision of, any citation or consent before administration of the estate of the deceased person is granted.	26
		27
		28
(3)	However, if the NSW Trustee and any other person severally apply for the administration of the deceased person's estate, the Supreme Court may grant administration of the estate to the NSW Trustee or other person, as the Court thinks fit.	29
		30
		31
		32
24	Transfer of administration of estate to NSW Trustee (cf PT Act, s 18 (2))	33
(1)	The Supreme Court may make an order transferring an estate to the NSW Trustee for administration, on application by an executor who has been granted probate or an administrator who has been granted	34
		35
		36

administration. This section applies despite the existence of any other executor or administrator.	1 2
(2) The Supreme Court may, in any such order, determine the extent to which the existing executor or executors or the existing administrator or administrators remain liable for any matters arising after the making of the order.	3 4 5 6
(3) On an order transferring an estate being made, section 75A of the <i>Probate and Administration Act 1898</i> applies as if the NSW Trustee had been appointed as an administrator under that section.	7 8 9
25 Administration of estates in cases of supposed deaths (cf PT Act, s 23)	10
(1) The Supreme Court may order the NSW Trustee to administer the estate of a person if it appears to the Court that there are reasonable grounds to suppose that the person has died intestate (whether in or outside New South Wales) leaving property in New South Wales.	11 12 13 14
(2) If such an order is made, the NSW Trustee may:	15
(a) collect, manage and administer the personal estate of the person, and	16 17
(b) enter and manage the real estate of the person, including receiving the rents and profits of any such estate, and	18 19
(c) pay and discharge the debts and liabilities of the person.	20
(3) The NSW Trustee may exercise any such function as if the person were certainly dead and the NSW Trustee had obtained a grant of probate or administration.	21 22 23
(4) The NSW Trustee must not distribute any assets of the person's estate except in accordance with an order of the Supreme Court specially authorising the distribution.	24 25 26
(5) Nothing in this section affects the application of sections 40A–40C of the <i>Probate and Administration Act 1898</i> .	27 28
Part 3.2 Small estates	29
Division 1 Elections to administer small estates	30
26 Election to administer where no previous executor or administrator (cf PT Act, s 18A (1)–(3))	31 32
(1) The NSW Trustee may file an election to administer the estate of a deceased person who died testate or intestate in the registry of the Supreme Court, instead of applying for probate or administration, if:	33 34 35

(a)	the gross value of the estate in New South Wales, as estimated by the NSW Trustee, is less than the amount prescribed by the regulations for the purposes of this section, and	1 2 3
(b)	no person has obtained probate of the estate or taken out administration, and	4 5
(c)	the NSW Trustee is entitled to obtain probate or letters of administration of the estate, and	6 7
(d)	the NSW Trustee has made due inquiries as to the will, if the deceased person died testate.	8 9
(2)	An election must be sealed by the NSW Trustee and must set out:	10
(a)	the name, residence and occupation (as far as it is known to the NSW Trustee) of the deceased person, and	11 12
(b)	particulars of property forming the deceased person's estate, and	13
(c)	the date of the deceased person's death as then known to the NSW Trustee, and	14 15
(d)	if the deceased person died testate, state that, after due inquiries, the NSW Trustee believes that the document annexed to the election is the testator's last will and that the will has been validly executed according to the law governing the execution of wills.	16 17 18 19
(3)	On an election being filed, the NSW Trustee is taken to have been appointed by the Supreme Court as the executor of the estate or the administrator of the estate.	20 21 22
27	Election to administer where previous executor or administrator (cf PT Act, s 18A (3A))	23 24
(1)	The NSW Trustee may file an election to administer the unadministered estate of a deceased person who died testate or intestate in the registry of the Supreme Court, instead of taking out administration de bonis non, if:	25 26 27 28
(a)	the executor or administrator of the estate has died and no other person has taken out administration de bonis non in respect of the estate, and	29 30 31
(b)	part of the estate is unadministered, and	32
(c)	the gross value of the unadministered part of the estate in New South Wales is less than the amount prescribed by the regulations for the purposes of this section, and	33 34 35
(d)	the NSW Trustee is entitled to take out administration de bonis non.	36 37
(2)	An election must be sealed by the NSW Trustee and must set out:	38
(a)	the fact of the original grant, and	39

(b)	the fact of the death of the executor or administrator, and	1
(c)	particulars of the property left unadministered.	2
(3)	On an election being filed, the NSW Trustee is taken to have been appointed by the Supreme Court as the administrator de bonis non of the estate.	3 4 5
28	Estate not small estate (cf PT Act, s 18A (5))	6
(1)	If, after an election takes effect under this Division, the NSW Trustee becomes aware that the gross value of the estate or the unadministered estate exceeds the amount prescribed for the purposes of making an election, the NSW Trustee must file a notice to that effect in the registry of the Supreme Court.	7 8 9 10 11
(2)	The NSW Trustee is not entitled to continue to administer the estate under this Division but must obtain probate or administration in the ordinary manner.	12 13 14
29	Discovery of later will (cf PT Act, s 18A (5A))	15
(1)	If, after an election takes effect under this Division, a later will, or a will, is found, the NSW Trustee must file a notice to that effect in the registry of the Supreme Court.	16 17 18
(2)	On filing the notice, the NSW Trustee ceases to be the executor or administrator of the estate and may, if it is otherwise entitled to do so, obtain probate or administration in the ordinary manner or make a new election under this Division.	19 20 21 22
(3)	If the NSW Trustee does not obtain probate or letters of administration or make a new election under this Division, the <i>Probate and Administration Act 1898</i> applies as if a grant of probate or administration to the NSW Trustee had been revoked.	23 24 25 26
	Note. See section 40D of the <i>Probate and Administration Act 1898</i> .	27
30	Notices and elections	28
(1)	The NSW Trustee must publish, in accordance with the regulations, notice of an election made by, or a notice filed by, the NSW Trustee under this Division.	29 30 31
(2)	A notice under this Division is to be in the form (if any) prescribed by the regulations and to contain the particulars prescribed by the regulations.	32 33 34
(3)	A notice that complies with this section is conclusive evidence that the NSW Trustee is entitled to administer an estate under this Division.	35 36

Division 2	Small estates for which probate or administration not required	1 2
31	No probate or administration required (cf PT Act, s 34A)	3
(1)	This section applies to the estate of a deceased person who died testate or intestate if:	4 5
(a)	the net value of the estate in New South Wales is less than the amount prescribed by the regulations for the purposes of this section, and	6 7 8
(b)	the NSW Trustee has no knowledge of any application having been lodged for probate of the will or for the administration of the estate, and	9 10 11
(c)	the NSW Trustee has given notice in accordance with the regulations of its intention to act under this section.	12 13
(2)	The NSW Trustee may deal with the estate as if probate of the will of the deceased person or administration of the estate had been granted to the NSW Trustee.	14 15 16
(3)	The NSW Trustee is entitled to the same commission as it would be entitled to if the NSW Trustee had been granted probate or administration of the estate. The commission is a first charge on the estate.	17 18 19 20
(4)	The NSW Trustee must deposit any will of a deceased person with an estate to which this section applies in accordance with section 51 of the <i>Succession Act 2006</i> .	21 22 23
Part 3.3	General	24
32	NSW Trustee not required to file accounts (cf PT Act, s 35A)	25
(1)	The NSW Trustee, when acting alone in relation to any estate, is not required to file or pass accounts relating to the estate unless the Supreme Court, on the application by or on behalf of a person interested in the estate, so orders.	26 27 28 29
(2)	The NSW Trustee, when appointed and acting jointly with any other person in relation to any estate, is not required to file or pass accounts relating to the estate unless:	30 31 32
(a)	the other person wishes to claim commission for his or her pains and trouble, or	33 34
(b)	the Supreme Court, on application by or on behalf of a person interested in the estate, so orders.	35 36

33	Entitlement to costs (cf PT Act, ss 43A and 43B)	1
(1)	The NSW Trustee is entitled to the NSW Trustee's costs out of an estate for any application by the NSW Trustee for probate of any will or for administration with a will annexed.	2 3 4
(2)	The NSW Trustee is entitled to the NSW Trustee's costs out of an estate if the NSW Trustee applies for administration at the request of one or more beneficiaries of a deceased estate who cannot agree as to the person to be appointed administrator, whether or not the NSW Trustee is appointed administrator.	5 6 7 8 9
(3)	The NSW Trustee is not liable for the costs of any other person in respect of an application or estate referred to in subsection (1) or (2).	10 11
34	Proceeds of sale of goods of third person (cf PT Act, s 47)	12
(1)	If the NSW Trustee disposes of goods of a person other than a person for whom the NSW Trustee is acting in a trust capacity, the NSW Trustee must pay the proceeds of any such sale to the person on proof of ownership.	13 14 15 16
(2)	The NSW Trustee is not liable to pay the proceeds of the sale to any such person if the proceeds have, in good faith and without notice of the person's interest in the goods, been applied to the debts of the deceased person or in the course of the distribution or administration of the estate of the deceased person.	17 18 19 20 21
35	Reciprocal arrangements for intestacy (cf PT Act, ss 55 and 56)	22
(1)	In this section: Public Trustee of a reciprocating State means a person or body that exercises functions equivalent to the trust capacities of the NSW Trustee in the reciprocating State. reciprocating State means a State or Territory of Australia or a country prescribed by the regulations as a reciprocating State for the purposes of this section.	23 24 25 26 27 28 29
(2)	The NSW Trustee may pay to the Public Trustee of a reciprocating State the proceeds of an estate of a person for which the NSW Trustee is acting as collector of the estate, after payment of creditors and any costs under this Act, if: (a) the person was domiciled in the reciprocating State when the person died, and (b) the Public Trustee of the reciprocating State is the administrator of the estate or is the collector of the estate in the reciprocating State.	30 31 32 33 34 35 36 37 38

(3)	The NSW Trustee:	1
(a)	is not required to see to the application of, and is not liable in respect of, any money paid to the Public Trustee of a reciprocating State under this section, and	2 3 4
(b)	is not liable for any act or omission of the Public Trustee of a reciprocating State in the exercise of functions referred to in this section.	5 6 7
(4)	The NSW Trustee may receive from the Public Trustee of a reciprocating State the proceeds of the estate of a person in the reciprocating State that is being administered by that Public Trustee or for which that Public Trustee is acting as the collector of the estate if:	8 9 10 11
(a)	the person was domiciled in this State when the person died, and	12
(b)	the NSW Trustee is the administrator of the person's estate.	13
(5)	The proceeds of an estate received by the NSW Trustee under this section form part of the estate of the deceased person and are to be dealt with in accordance with the law of this State.	14 15 16
36	Appointment of other persons to conduct business of estate (cf PT Act, s 57)	17 18
(1)	This section applies to an estate of a deceased person if the NSW Trustee is acting in a trust capacity and the testator or settlor has directed in a trust instrument that a specified person is to conduct the legal or other business of the estate.	19 20 21 22
(2)	The specified person is entitled to conduct the legal or other business of the estate in accordance with the direction.	23 24
(3)	The NSW Trustee is not liable for any act or omission of the specified person in conducting the legal or other business of the estate.	25 26
(4)	The Supreme Court may, on application by the NSW Trustee, or any other person interested in the estate, on cause being shown, direct that the specified person is not to conduct the legal or other business of the estate and may appoint any other person to conduct the business concerned.	27 28 29 30 31
37	Disclosure of property to NSW Trustee (cf PT Act, s 54)	32
	An association, corporation or other person must, on or as soon as is reasonably practicable after becoming aware of the vesting of the estate of a deceased person in the NSW Trustee, notify the NSW Trustee of the following matters:	33 34 35 36
(a)	any property of the deceased person that is in the possession of the association, corporation or other person,	37 38

- (b) any amount owed to the deceased person by the association,
corporation or other person, 1
2
 - (c) any share of the deceased person in the assets of a partnership, 3
 - (d) in the case of a corporation, any shares held by the deceased
person in the corporation, 4
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 - (e) in the case of an association, any entitlement of the deceased
person to the assets of the association. 6
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- Maximum penalty: 10 penalty units. 8

Chapter 4	Management functions relating to persons incapable of managing their affairs	1
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Part 4.1	Preliminary	4
38	Interpretation	5
	In this Chapter:	6
	<i>estate</i> of a person means the property and affairs of a person and, if only part of the estate of a person is under management under this Chapter, means only that part of the property and affairs of the person.	7
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		9
	<i>involuntary patient</i> has the same meaning as it has in the <i>Mental Health Act 2007</i> .	10
		11
	<i>managed missing person</i> means a person in respect of whom an order is in force under Part 4.4 that the person's estate be subject to management under this Act.	12
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		14
	<i>managed person</i> means a protected person, managed missing person or patient whose estate is subject to management under this Act.	15
		16
	<i>manager</i> of an estate means the NSW Trustee, if management of the estate is committed to the NSW Trustee, or any person who is appointed as the manager of the estate of a managed person.	17
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		19
	<i>mental health facility</i> has the same meaning as it has in the <i>Mental Health Act 2007</i> .	20
		21
	<i>mental health inquiry</i> means a mental health inquiry under section 34 of the <i>Mental Health Act 2007</i> .	22
		23
	<i>patient</i> has the same meaning as it has in the <i>Mental Health Act 2007</i> .	24
	<i>person under guardianship</i> has the same meaning as it has in Part 3 of the <i>Guardianship Act 1987</i> .	25
		26
	<i>protected person</i> means a person in respect of whom an order is in force under Part 4.2 or 4.3 or the <i>Guardianship Act 1987</i> that the whole or any part of the person's estate be subject to management under this Act.	27
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39	General principles applicable to Chapter	30
	It is the duty of everyone exercising functions under this Chapter with respect to protected persons or patients to observe the following principles:	31
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		33
	(a) the welfare and interests of such persons should be given paramount consideration,	34
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	(b) the freedom of decision and freedom of action of such persons should be restricted as little as possible,	36
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|---|-----------------------|
| <p>(c) such persons should be encouraged, as far as possible, to live a normal life in the community,</p> | <p>1
2</p> |
| <p>(d) the views of such persons in relation to the exercise of those functions should be taken into consideration,</p> | <p>3
4</p> |
| <p>(e) the importance of preserving the family relationships and the cultural and linguistic environments of such persons should be recognised,</p> | <p>5
6
7</p> |
| <p>(f) such persons should be encouraged, as far as possible, to be self-reliant in matters relating to their personal, domestic and financial affairs,</p> | <p>8
9
10</p> |
| <p>(g) such persons should be protected from neglect, abuse and exploitation.</p> | <p>11
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40 Orders for management may apply to part of estate 13

An order may be made under this Chapter for the management of the whole or part of the estate of a person. 14
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Note. Orders for the financial management of the estates of persons under guardianship may also be made under Part 3A of the *Guardianship Act 1987*. Such persons are protected persons for the purposes of this Act. 16
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Part 4.2 Orders by Supreme Court that estates of persons subject to management 19
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41 Orders by Supreme Court for management of affairs (cf PE Act, s 13) 21

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|--|-------------------------|
| <p>(1) If the Supreme Court is satisfied that a person is incapable of managing his or her affairs, the Court may:</p> | <p>22
23</p> |
| <p>(a) declare that the person is incapable of managing his or her affairs and order that the estate of the person be subject to management under this Act, and</p> | <p>24
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| <p>(b) by order appoint a suitable person as manager of the estate of the person or commit the management of the estate of the person to the NSW Trustee.</p> | <p>27
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29</p> |
| <p>(2) The Supreme Court may make an order on its own motion or on the application of any person having a sufficient interest in the matter.</p> | <p>30
31</p> |
| <p>(3) For the purposes of this section:</p> | <p>32</p> |
| <p>(a) evidence of a person's capability to manage his or her own affairs may be given to the Supreme Court in any form and in accordance with any procedures that the Court thinks fit, and</p> | <p>33
34
35</p> |
| <p>(b) the Court may personally examine a person whose capability to manage his or her affairs is in question or dispense with any such examination, and</p> | <p>36
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38</p> |

(c)	the Court may otherwise inform itself as to the person's capability to manage his or her own affairs as it thinks fit.	1 2
(4)	Subsection (3) also applies to an application arising out of the operation of section 37 (2) of the <i>Powers of Attorney Act 2003</i> .	3 4
42	Orders relating to persons outside New South Wales (cf PE Act, s 14)	5
(1)	If a person has been found to be incapable of managing his or her own affairs by a legal inquiry in another State or a Territory, or a country to which this section applies, the Supreme Court may:	6 7 8
(a)	direct a copy of the inquiry or the finding of the inquiry, duly certified by an officer of the court or other authority to which the finding has been returned, to be filed with the Court, and	9 10 11
(b)	declare that the person is incapable of managing his or her affairs and order that the estate of the person in this State be subject to management under this Act, and	12 13 14
(c)	by order appoint a suitable person as manager of the estate of the person in this State or commit the management of the estate of the person in this State to the NSW Trustee.	15 16 17
(2)	The Governor may, by proclamation published on the NSW legislation website, extend the application of the provisions of this section to another country.	18 19 20
Part 4.3	Orders for management of estates of mental health patients	21 22
Division 1	Orders by MHRT	23
43	Notice to be given at mental health inquiry of possible estate management (cf PE Act, s 15)	24 25
	An authorised medical officer who intends to bring a person before a mental health inquiry must:	26 27
(a)	when giving the information required to be given to the person under section 76 of the <i>Mental Health Act 2007</i> , give to the person the information prescribed by the regulations with respect to the question of the capability of the person to manage his or her affairs, and	28 29 30 31 32
(b)	when giving the notice required to be given under section 76 of that Act, give to each of the persons required to be given that notice the information prescribed by the regulations with respect to the question of the capability of the person subject to the inquiry to manage his or her own affairs.	33 34 35 36 37

44	Consideration of capability to manage affairs at mental health inquiries	1
	If the MHRT after conducting a mental health inquiry orders that the person subject to the inquiry be detained in a mental health facility, it must:	2
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		4
	(a) consider whether the person is capable of managing his or her own affairs, and	5
		6
	(b) if satisfied that the person is not capable of managing his or her own affairs, order that the estate of the person be subject to management under this Act.	7
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45	Consideration of capability of forensic patients to manage affairs (cf PE Act, s 18)	10
		11
	If the MHRT, after reviewing a person's case under Part 5 of the <i>Mental Health (Forensic Provisions) Act 1990</i> , recommends to the Minister that a person be detained in a mental health facility, it must:	12
		13
		14
	(a) consider whether the person is capable of managing his or her own affairs, and	15
		16
	(b) if satisfied that the person is not capable of managing his or her own affairs, order that the estate of the person be subject to management under this Act.	17
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		19
46	Other orders by MHRT (cf PE Act, s 19)	20
	(1) The MHRT may, on application, consider a patient's capability to manage his or her affairs and, if satisfied that the patient is not capable of managing his or her affairs, must order that the estate of the person be subject to management under this Act.	21
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	(2) An application under this section may be made by any person who has, in the opinion of the MHRT, a sufficient interest in the matter.	25
		26
	(3) An order may be made under this section even though there has been no change in the capability of the patient's ability to manage his or her own affairs since that capability was last considered under this Part.	27
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47	Interim orders (cf PE Act, s 20)	30
	(1) The MHRT may, if it appears to the MHRT to be necessary or convenient to do so, make an interim order under this Part for a specified period not exceeding 6 months, pending further consideration of the person's capability to manage his or her affairs.	31
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	(2) If the further consideration of the capability of the person to whom the interim order relates to manage his or her own affairs is not completed before the expiry of the period specified in the order, the order is taken to be revoked on that expiry.	35
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48	MHRT may review interim orders	1
(1)	The MHRT may, in an order made under section 47 (an <i>interim order</i>) or a subsequent order, order that the interim order be reviewed within a specified time.	2 3 4
(2)	The MHRT must begin any required review within the time specified in the relevant order.	5 6
(3)	The MHRT may, at any time on its own motion, review an interim order.	7 8
(4)	If an interim order would cease to have effect before the completion of a review, the order is taken to be extended until the completion of the review.	9 10 11
(5)	Before carrying out the review, the MHRT must cause a notice specifying the date on which, and the time and place at which, the MHRT will carry out the review to be served on each party to the proceedings. The review is taken to have commenced on the issue of such a notice.	12 13 14 15 16
(6)	A failure to serve notice in accordance with this section does not vitiate the decision of the MHRT on the review.	17 18
49	Appeals to Supreme Court against management orders (cf PE Act, s 21)	19
(1)	An appeal may be made to the Supreme Court by a person who is subject to an order made by the MHRT that the estate of the person be subject to management under this Act.	20 21 22
(2)	An appeal:	23
(a)	is to be by way of a new hearing, and	24
(b)	fresh evidence or evidence in addition to, or in substitution for, the evidence in relation to which the order in respect of which the appeal is made may be given on the appeal.	25 26 27
(3)	If the person to whom the order relates has appealed to the ADT under this Division against the order, the person may not appeal to the Supreme Court under this section against the same order. However, the person may appeal to the Court under this section if the appeal is withdrawn with the approval of the ADT for the purpose of enabling the Court to deal with the matter.	28 29 30 31 32 33
(4)	On an appeal, the Supreme Court may revoke or confirm the order in respect of which the appeal is made.	34 35
(5)	Neither the MHRT nor any member of the MHRT is liable for any costs relating to an order of the MHRT in respect of which an appeal is made or the appeal.	36 37 38

50 Appeals to ADT against estate management orders made by MHRT (cf PE Act, s 21A)	1 2
(1) An appeal may be made to the ADT against an order by the MHRT that the estate of a person be subject to management under this Act.	3 4
(2) An appeal to the ADT under this section may be made by:	5
(a) the person to whom the order relates, or	6
(b) any other person who was a party to the proceedings in which the order was made.	7 8
(3) If the person to whom the order relates has appealed to the Supreme Court under this Division against the order, the person may not appeal to the ADT under this section against the same order. However, the person may appeal to the ADT under this section if the appeal is withdrawn with the approval of the Court for the purpose of enabling the ADT to deal with the matter.	9 10 11 12 13 14
(4) An appeal under this section is an external appeal within the meaning of the <i>Administrative Decisions Tribunal Act 1997</i> .	15 16
51 Notice of reasons for orders and appeal rights (cf PE Act, s 21B)	17
(1) If the MHRT makes an order that the estate of a person be subject to management under this Act, the MHRT must, if requested to do so by any party to the proceedings (including the person to whom the order relates), provide the party with formal written reasons for the order as soon as practicable after making the order.	18 19 20 21 22
(2) In providing those reasons, the MHRT must also advise the party concerned that an appeal may be made to the ADT against the order under this Part.	23 24 25
52 Estates committed to management of the NSW Trustee (cf PE Act, s 22)	26
The estate of a person that is ordered, under this Part, to be subject to management under this Act is committed to the management of the NSW Trustee, subject to any special order of the Supreme Court.	27 28 29
Division 2 Applications by patients who are not protected persons	30 31
53 NSW Trustee may undertake management of estates of certain patients (cf PE Act, s 63)	32 33
(1) The NSW Trustee may, on application in writing, undertake the management of the whole or part of the estate of a patient who is not a protected person.	34 35 36

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- (2) An application may be made by a patient if the patient is 18 years or over or, if the patient is under 18 years of age, by the person having parental responsibility (within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*) for the patient. 1
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- (3) If the NSW Trustee undertakes the management of the whole or part of the estate of a patient, the whole or part of the estate is taken to be committed to the management of the NSW Trustee. 5
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Part 4.4 Orders for management of estates of missing persons 8 9

54 Declaration and order where person missing (cf PE Act, s 21C) 10

- (1) The Supreme Court may: 11
- (a) declare that a person is a missing person and order that the estate of the person (or any part of it) be subject to management under this Act, and 12
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 - (b) by order appoint a suitable person as manager of the estate of the person or commit the management of the estate of the person to the NSW Trustee. 15
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- (2) A declaration and order may be made for the estate of a person under this section only if the Supreme Court is satisfied that: 18
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- (a) the person is a missing person, and 20
 - (b) it is not known whether the person is alive, and 21
 - (c) all reasonable efforts have been made to locate the person, and 22
 - (d) the person's usual place of residence is in this State, and 23
 - (e) persons residing at the place where the person was last known to reside, or relatives or friends, with whom the person would be likely to communicate, have not heard from, or of, the person for at least 90 days, and 24
25
26
27
 - (f) it is in the best interests of the person to do so. 28
- (3) An application for a declaration and order under this section in relation to a person may be made by any of the following persons: 29
30
- (a) the spouse of the person, 31
 - (b) a relative of the person, 32
 - (c) a business partner or employee of the person, 33
 - (d) the Attorney General, 34
 - (e) the NSW Trustee, 35
 - (f) any other person who has an interest in the estate of the person. 36

- (4) On the hearing of an application for the purposes of this section, evidence may be given to the Supreme Court in such form and in accordance with such procedures as the Court thinks fit. 1
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Part 4.5 Management of estates 4

Division 1 Management of estates by NSW Trustee 5

55 Application of Division 6

This Division applies in respect of the estate of a managed person that is committed to the management of the NSW Trustee. 7
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56 General management functions (cf PE Act, s 24) 9

The NSW Trustee has, and may exercise, in respect of the estate of a managed person, the following functions: 10
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- (a) all functions necessary and incidental to its management and care, 12
13
- (b) such other functions as the Supreme Court or the Guardianship Tribunal (in the case of a person under guardianship) may direct or authorise the NSW Trustee to have or exercise. 14
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Note. See also section 16, which sets out the general powers of the NSW Trustee with respect to property. 17
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57 NSW Trustee has all functions of managed person (cf PE Act, s 26 (1) and (1A)) 19 20

- (1) For the purposes of its protective capacities in respect of a protected person or patient, the NSW Trustee has, and may exercise, all the functions the person or patient has and can exercise or would have and could exercise if under no incapacity. 21
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- (2) For the purposes of its protective capacities for a managed missing person, the NSW Trustee has, and may exercise, all the functions that the person has and can exercise or would have and could exercise if the person were not missing. 25
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58 Execution of documents for managed persons (cf PE Act, s 26 (2) and (3)) 29

- (1) The NSW Trustee may execute and sign any document in the name of and on behalf of a managed person for the purpose of exercising a function in a protective capacity. 30
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- (2) An exercise of a function by the NSW Trustee under this section: 33
- (a) is as effective as if it were exercised by the managed person, and 34
- (b) to the extent to which that person lacks capacity to exercise the function, is as effective as if the person did not lack capacity. 35
36

(3)	A person acting on a document executed or signed by the NSW Trustee under this section is not bound to inquire as to the NSW Trustee's power to execute or sign the document or as to the application of any money paid pursuant to any dealing with the NSW Trustee as a consequence of the document.	1 2 3 4 5
59	Application of money of managed estates	6
	The NSW Trustee may apply money of the estate of a managed person towards any one or more of the following purposes:	7 8
(a)	the payment of the debts and engagements of the person and the repayment of expenses chargeable to the estate of the person,	9 10
(b)	in the event of the death of the person, the person's funeral expenses,	11 12
(c)	the maintenance of the spouse of the person or any child, parent or other person dependent upon the person, or for whose maintenance the person provided when not a managed person or would be expected to provide,	13 14 15 16
(d)	the payment of all proper costs incurred in or about the care, protection, recovery, sale, mortgage, leasing, disposal and management of the estate of the person,	17 18 19
(e)	the preservation and improvement of the estate of the person,	20
(f)	the taking up of rights to issues of new shares, or options for new shares, to which the person may become entitled by virtue of any shareholdings,	21 22 23
(g)	the maintenance (including future maintenance), clothing, medicine and care, past and present, of the person.	24 25
60	Arrangements during absence of patient from mental health facility (cf PE Act, s 37)	26 27
(1)	While a protected person who is a patient is absent from a mental health facility, the NSW Trustee may, at the discretion of the NSW Trustee:	28 29
(a)	pay to the patient or to any person on behalf of the patient who gives satisfactory security to the NSW Trustee for the proper management and disposal of it, or as the patient or person directs, the whole or any part of the money standing to the credit of the current account of the patient in the common fund, and	30 31 32 33 34
(b)	hand over to the patient or person, or as the patient or person directs, all or any chattels or documents forming part of the estate of the patient.	35 36 37
(2)	The receipt of a person in accordance with whose direction money is paid or chattels or documents are handed over under this section is an	38 39

	absolute release to the NSW Trustee from liability in respect of any action taken by the NSW Trustee under this section.	1 2
61	Supreme Court may give directions to NSW Trustee (cf PE Act, s 12)	3
(1)	The Supreme Court may give to the NSW Trustee such directions as the Court thinks necessary with respect to the exercise by the NSW Trustee of its functions in its protective capacities.	4 5 6
(2)	An application for directions may be made by any of the following:	7
(a)	the NSW Trustee,	8
(b)	a managed person,	9
(c)	a relative, friend or debtor of a managed person,	10
(d)	any other person who has, in the opinion of the Supreme Court, a sufficient interest in the matter.	11 12
62	Review by ADT of decisions by NSW Trustee under this Division (cf PE Act, s 28A)	13 14
(1)	An application may be made to the ADT for a review of a decision of the NSW Trustee that:	15 16
(a)	is made in connection with the exercise of the NSW Trustee's functions under this Division, and	17 18
(b)	is of a class of decision prescribed by the regulations for the purposes of this section.	19 20
(2)	Subsection (1) does not apply if the decision of the NSW Trustee was made in accordance with a direction given by the Supreme Court to the NSW Trustee.	21 22 23
(3)	An application under this section may be made by:	24
(a)	a managed person in respect of whose estate the decision was made, or	25 26
(b)	the spouse of a managed person in respect of whose estate the decision was made, or	27 28
(c)	any other person whose interests are, in the opinion of the ADT, adversely affected by the decision.	29 30
Division 2	Management of estates by other persons	31
63	Application of Division	32
	This Division applies in respect of the estate of a managed person for whom a manager (other than the NSW Trustee) has been appointed, whether under this Act or under section 25M of the <i>Guardianship Act 1987</i> .	33 34 35 36

64	Orders by Supreme Court and NSW Trustee as to management of estates	1
(1)	The Supreme Court or the NSW Trustee may make such orders as it thinks fit in relation to the administration and management of the estates of managed persons.	2 3 4
(2)	The Supreme Court or the NSW Trustee may also make such orders as it thinks fit in connection with authorising, directing and enforcing the exercise of the functions of managers under this Act.	5 6 7
(3)	The Supreme Court may also make such orders as it thinks fit in connection with supervising the exercise of the functions of managers under this Act.	8 9 10
(4)	An order by the NSW Trustee is subject to the regulations or to any direction by the Supreme Court or to any order of the Guardianship Tribunal (in the case of a person under guardianship).	11 12 13
65	Orders by Supreme Court and NSW Trustee as to property	14
(1)	General power	15
	The Supreme Court or the NSW Trustee may make such orders as appear to it necessary for rendering the property and income of a managed person available for the following purposes:	16 17 18
(a)	the payment of the debts and engagements of, and otherwise for the benefit of, the person,	19 20
(b)	the maintenance and benefit of the family of the person,	21
(c)	otherwise as it thinks necessary or desirable for the care and management of the estate of the person.	22 23
(2)	Orders as to disposal of estate	24
	Without limiting the generality of subsection (1), the Supreme Court or the NSW Trustee may order that any property of the person be sold, mortgaged, dealt with or disposed of as the Court or the NSW Trustee thinks most expedient for the purpose of raising or securing or repaying with or without interest money which is to be or which has been applied to any one or more of the following purposes:	25 26 27 28 29 30
(a)	payment of the person's debts or engagements,	31
(b)	discharge of any encumbrance on property of the person,	32
(c)	payment of any debt or expenditure incurred for the maintenance (including future maintenance), or otherwise for the benefit, of the person,	33 34 35
(d)	payment of the costs of any proceeding under this Act or of any sale or other disposition made under this Act,	36 37

(e)	payment of such other sum or sums to such person or persons as the Court or the NSW Trustee thinks fit.	1 2
(3)	Orders as to application of money	3
	Without limiting subsection (1), the Supreme Court or the NSW Trustee may authorise and direct the application of money comprising the whole or any part of the estate of the person to any one or more of the following purposes:	4 5 6 7
(a)	the preservation and improvement of the estate of the person,	8
(b)	the taking up of rights to issues of new shares, or options for new shares, to which the person may become entitled by virtue of any shareholdings,	9 10 11
(c)	the investment of money, being money not required for the time being for any of the other purposes specified in this subsection, in such manner as the Court or the NSW Trustee thinks fit.	12 13 14
(4)	An order by the NSW Trustee is subject to the regulations or to any order of the Supreme Court or to any order of the Guardianship Tribunal (in the case of a person under guardianship).	15 16 17
66	NSW Trustee may authorise and direct functions of other managers	18
(1)	The NSW Trustee may, by order:	19
(a)	authorise a manager to have all, or any specified, functions necessary and incidental to the management and care of an estate and such other functions as the NSW Trustee may direct or authorise the manager to have or exercise, and	20 21 22 23
(b)	give a manager such directions in respect of the orders, authorities and directions authorised by this subsection as the NSW Trustee thinks fit.	24 25 26
(2)	Without limiting any other provision of this Division, the NSW Trustee may authorise a manager to have functions of a kind specified in section 16.	27 28 29
(3)	An order by the NSW Trustee is subject to the regulations or to any order of the Supreme Court or to any order of the Guardianship Tribunal (in the case of a person under guardianship).	30 31 32
(4)	This section is in addition to sections 64 and 65.	33

67	Managers may execute documents (cf PE Act, s 26 (2) and (3))	1
(1)	A manager may, in accordance with an order or direction of the Supreme Court, the NSW Trustee or the Guardianship Tribunal (in the case of a person under guardianship), execute and sign any document and do any other thing in the name of and on behalf of the managed person.	2 3 4 5 6
(2)	An exercise of a function by a manager under this section:	7
(a)	is as effective as if it were exercised by the managed person, and	8
(b)	to the extent to which that person lacks capacity to exercise the function, is as effective as if the person did not lack capacity.	9 10
(3)	A person acting on a document executed or signed by a manager under this section is not bound to inquire as to the manager's power to execute or sign the document or as to the application of any money paid pursuant to any dealing with the manager as a consequence of the document.	11 12 13 14
68	Security may be required in respect of estate management (cf PE Act, s 31)	15 16
(1)	The Supreme Court or the Guardianship Tribunal may require a manager it appoints to give security (including security comprising the assets of the managed estate) to the NSW Trustee in respect of the management.	17 18 19 20
(2)	A manager is not taken to have complied with a requirement under subsection (1) unless the security given has been approved by the NSW Trustee.	21 22 23
(3)	The NSW Trustee is to ensure that the conditions of any security provided under this section, or before the commencement of this section, in respect of the management of the estate of a managed person are complied with.	24 25 26 27
(4)	The NSW Trustee must report any failure to comply with any such condition to the Supreme Court or the Guardianship Tribunal (as the case requires) immediately on becoming aware of the failure.	28 29 30
(5)	The provisions of Part 7A of the <i>Bail Act 1978</i> and Part 7 of the <i>Fines Act 1996</i> apply to the forfeiture of any security and to the recovery of any security so forfeited in the same way as they apply to the forfeiture of bail money and to the recovery of any bail money so forfeited.	31 32 33 34
69	Managers may lodge estate funds with NSW Trustee (cf PE Act, s 31A)	35
	A manager may, subject to any order of the Supreme Court under this Part or of the Guardianship Tribunal, lodge with the NSW Trustee any money that comprises the whole or part of the estate of the managed person.	36 37 38 39

70	Review by ADT of decisions by NSW Trustee in relation to managers (cf PE Act, s 28A)	1 2
(1)	An application may be made to the ADT for a review of a decision by the NSW Trustee under this Part in relation to the functions of a person appointed as a manager.	3 4 5
(2)	Subsection (1) does not apply if the decision by the NSW Trustee was made in accordance with a direction given by the Supreme Court to the NSW Trustee.	6 7 8
(3)	An application under this section may be made by:	9
(a)	the person appointed as manager, or	10
(b)	any other person who, in the opinion of the ADT, has a genuine interest in the matter to which the NSW Trustee's decision relates.	11 12 13

Division 3 Management of estates generally 14

71	Managed person cannot deal with estate (cf PE Act, s 23A)	15
(1)	The power of a managed person to deal with his or her estate is suspended in respect of so much of that estate as is subject to management under this Act.	16 17 18
(2)	However, the manager may, by instrument in writing, authorise the managed person to deal with so much of the estate as the manager considers appropriate and specifies in the instrument.	19 20 21
(3)	The authorisation may be given at any time and may be withdrawn, wholly or in part, at any time.	22 23
(4)	More than one authorisation may be given under this section.	24
(5)	An authorisation must not be given or withdrawn by a manager who is not the NSW Trustee without the approval of the NSW Trustee.	25 26
(6)	An application may be made to the ADT for a review of a decision of the NSW Trustee about whether or not to approve of the giving or withdrawal of an authorisation.	27 28 29
(7)	An application for review may be made by:	30
(a)	the manager, or	31
(b)	the managed person, or	32
(c)	the spouse of the managed person, or	33
(d)	any other person who, in the opinion of the ADT, has a genuine interest in the matter to which the NSW Trustee's decision relates.	34 35 36

72 Consultation by NSW Trustee (cf PE Act, s 50)	1
(1) The NSW Trustee must take the following steps before taking any action in respect of the estate of a managed person:	2
(a) the NSW Trustee must determine whether the action is of such a nature that the person or a relative or relatives of the person should be consulted about the action,	3
(b) if the NSW Trustee determines that consultation should take place, the NSW Trustee must cause to be taken all steps that are reasonably practicable in the circumstances to give notice to the person or the relative or relatives of the person of the action,	4
(c) the NSW Trustee must consider any submissions made in response to the notice within the time specified in the notice.	5
(2) In determining whether consultation is required in relation to the action, the NSW Trustee must consider all relevant circumstances and matters, including (without limitation) the following:	6
(a) the value of the estate,	7
(b) the value and nature of any particular property proposed to be affected,	8
(c) the consequences of the proposed action,	9
(d) the necessity or practicality of the proposed action,	10
(e) the extent (if any) to which the estate may be prejudiced by any delay in the proposed action being taken.	11
73 Temporary provision for maintenance (cf PE Act, s 72)	12
(1) The NSW Trustee may, if of the opinion that it is desirable to do so, make an order authorising payments from any part of the estate of a managed person for the provision of maintenance and other necessary requirements of the managed person or the managed person's family, pending orders being made as to the management of the estate.	13
(2) An order:	14
(a) is to be in writing addressed to the person holding the relevant part of the estate and the person to whom payment is to be made, and	15
(b) is to specify the person or persons, or the purposes, for which the payment is to be made, and	16
(c) may specify the purposes for which the payment is to be used, and	17
(d) is to specify the amount payable.	18

(3)	A person to whom an amount is paid under this section must, if directed to do so by the NSW Trustee, account to the NSW Trustee for the application of the amount.	1 2 3
74	Financial plans	4
(1)	The NSW Trustee may prepare a financial plan for the estate of a managed person and may charge a fee for the preparation of the financial plan.	5 6 7
(2)	The NSW Trustee may prepare a financial plan for the estate of a managed person for which it is not the manager only if requested to do so by the manager.	8 9 10
75	Personal items to be preserved (cf PE Act, s 51)	11
	A manager must, as far as is reasonably practicable, ensure that any items in the estate of a managed person that are of a personal nature and that the managed person or relatives of the managed person has or have requested to be preserved are preserved.	12 13 14 15
76	Gifts	16
(1)	A manager may use property of the estate of a managed person for the following gifts:	17 18
(a)	a gift to a relative or close friend of the managed person that is of a seasonal nature or is given because of a special event (such as a birthday or marriage),	19 20 21
(b)	a donation of a nature that the managed person made when the managed person had capacity to do so or that the managed person might reasonably be expected to make.	22 23 24
(2)	A manager may make a gift under this section only if the value of the gift is not more than what is reasonable having regard to all the circumstances and, in particular, the managed person's financial circumstances and the size of the managed person's estate.	25 26 27 28
77	Improvements of estate property may be charged on estate (cf PE Act, s 49)	29 30
(1)	The cost of the improvement of property of the estate of a managed person may, with interest, be charged on the property improved or on any other property of the estate.	31 32 33
(2)	A charge on property under this section may be created in favour of a person as trustee for the managed person, if the cost is paid from the personal estate of the managed person.	34 35 36
(3)	A charge on property under this section must not confer any right of sale or foreclosure during the lifetime of the managed person.	37 38

(4)	Any interest payable under a charge on property under this section must, during the lifetime of the managed person, be at a rate that is generally able to be paid out of the income of the estate. The interest must, as far as practicable, be paid out of that income.	1 2 3 4
78	Enforcement of trustee powers (cf PE Act, s 71)	5
(1)	The Supreme Court may, on application by an interested person, order that the manager, on behalf of and in the name of the managed person:	6 7
(a)	exercise a power vested in the managed person as a trustee or guardian, or	8 9
(b)	give consent as a trustee or guardian to the exercise of a power.	10
(2)	The Supreme Court may, on such an application:	11
(a)	make an order as to the manner in which the power is to be exercised, and	12 13
(b)	if it is appropriate in the circumstances of the case, make any order respecting the trust property that it could have made on the appointment of a new trustee.	14 15 16
(3)	The manager may exercise a function in accordance with an order under this section.	17 18
(4)	If the manager, in accordance with an order of the Supreme Court under this Act, appoints a trustee on behalf of and in the name of a managed person, the trustee has the same functions as the trustee would have had if lawfully appointed by the Court.	19 20 21 22
79	Supreme Court may dissolve partnership of managed person (cf PE Act, s 69)	23 24
	The Supreme Court may, on application by an interested person, by order, dissolve a partnership if a member of the partnership becomes a managed person.	25 26 27
80	Manager may obtain copy of will	28
(1)	A manager may, by notice in writing, require a person who has custody of the will of the managed person to give a copy of the will, certified in accordance with the regulations, to the manager within 14 days of the notice being given.	29 30 31 32
(2)	The Supreme Court may, on application by a person who has custody of a will, direct that the person is not required to provide a certified copy of the will to a manager of the estate.	33 34 35
(3)	A person must not, without reasonable excuse, fail to comply with a notice given under this section. Maximum penalty: 5 penalty units.	36 37 38

81 Reciprocal arrangements for management of estates	1
(1) In this section:	2
<i>management functions</i> of the NSW Trustee or the Public Trustee of a reciprocating State means functions that may be exercised in the management of the estate of a person by the NSW Trustee or the Public Trustee of the reciprocating State.	3 4 5 6
<i>Public Trustee</i> of a reciprocating State means a person or body who exercises functions equivalent to the protective capacities of the NSW Trustee in the reciprocating State.	7 8 9
<i>reciprocating State</i> means a State or Territory of Australia or a country prescribed by the regulations as a reciprocating State for the purposes of this section.	10 11 12
(2) The Public Trustee of a reciprocating State may, by notice in writing to the NSW Trustee, authorise the NSW Trustee to exercise specified management functions of the NSW Trustee in relation to the estate in New South Wales of a person who resides in the reciprocating State and is certified by the Public Trustee of the reciprocating State to be incapable of managing his or her own affairs (an <i>interstate protected person</i>).	13 14 15 16 17 18 19
(3) The NSW Trustee has the same functions in relation to the management in this State of the estate of an interstate protected person as it has in the management in this State of the estate of a protected person.	20 21 22
(4) The NSW Trustee must pay or deliver to the Public Trustee of the reciprocating State the balance of any property or money of the estate of an interstate protected person received by the NSW Trustee, after payment of creditors and any charges under this Act.	23 24 25 26
(5) The NSW Trustee may, by notice in writing to the Public Trustee of a reciprocating State, authorise the Public Trustee to exercise specified management functions of the NSW Trustee in relation to the estate in the reciprocating State of a managed person.	27 28 29 30
(6) The NSW Trustee:	31
(a) is not required to see to the application of, and is not liable in respect of, any money or property paid or delivered to the Public Trustee of a reciprocating State under this section, and	32 33 34
(b) is not liable for any act or omission of the Public Trustee of a reciprocating State in the exercise of functions referred to in this section.	35 36 37

82	Protection of interests of managed person on partition (cf PE Act, s 47)	1
	If property is exchanged under this Act on behalf of a managed person, it is subject to the same uses, trusts, charges, dispositions, devices and conditions that the property given in exchange would have been subject to if it had not been exchanged.	2 3 4 5
83	Protection of interests in property of beneficiaries and other persons (cf PE Act, s 48)	6 7
(1)	Any managed person and any beneficiary of a managed person has the same interest in any surplus money or other property arising from any sale, mortgage or disposition of any property or other dealing with property under this Act as the managed person or beneficiary would have had in the property the subject of the sale, mortgage, disposition or dealing, if no sale, mortgage, disposition or dealing had been made.	8 9 10 11 12 13
(2)	The surplus money or other property arising as referred to in subsection (1) is taken to be of the same nature as the property sold, mortgaged, disposed of or dealt with.	14 15 16
(3)	Except as provided by subsection (4), money received on or for equality of partition and exchange, and all fines, premiums and sums of money received on the grant or renewal of a lease where the property the subject of the partition, exchange or lease was real estate of the managed person are to be considered as real estate.	17 18 19 20 21
(4)	Fines, premiums and sums of money received on the grant or renewal of leases of property of which the managed person was the tenant for life are to be considered as personal estate of the managed person.	22 23 24
(5)	The Court may make such orders as it thinks fit to give effect to this section.	25 26
(6)	In this section: <i>beneficiary</i> of a managed person means a beneficiary under a will of the person or an executor, administrator or assign of the managed person. Note. Mortgage includes a charge (see section 3 (1)).	27 28 29 30
84	Powers of attorney	31
	A managed person may give a power of attorney even though the estate of the person is subject to management.	32 33
	Note. See section 50 of the <i>Powers of Attorney Act 2003</i> for provisions relating to the suspension or termination of powers of attorney given by persons whose estates are managed under this Act.	34 35 36

Part 4.6	Suspension or termination of management	1
Division 1	Revocation of management orders	2
85	Termination by revocation of orders	3
	The management of the estate of a managed person under this Act is terminated if the order that the estate be subject to management is revoked.	4 5 6
	Note. The Guardianship Tribunal may revoke a management order relating to a person under guardianship, see Division 2 of Part 3A of the <i>Guardianship Act 1987</i> .	7 8 9
86	Revocation of orders by Supreme Court (cf PE Act, s 35)	10
(1)	The Supreme Court, on application by a protected person and if the Court is satisfied that the protected person is capable of managing his or her affairs, may:	11 12 13
	(a) revoke any declaration made that the person is incapable of managing his or her affairs, and	14 15
	(b) revoke the order that the estate of the person be subject to management under this Act, and	16 17
	(c) make any orders that appear to it to be necessary to give effect to the revocation of the order, including the release of the estate of the person from the control of the Court or the manager and the discharge of any manager.	18 19 20 21
(2)	For the purposes of this section:	22
	(a) evidence of a person's capability to manage his or her own affairs may be given to the Supreme Court in any form and in accordance with any procedures that the Court thinks fit, and	23 24 25
	(b) the Court may personally examine a person whose capability to manage his or her affairs is in question or dispense with any such examination, and	26 27 28
	(c) the Court may otherwise inform itself as to the person's capability to manage his or her own affairs as it thinks fit.	29 30
87	Orders where person no longer missing (cf PE Act, s 35A)	31
	The Supreme Court, on application by a managed missing person or other person and if satisfied that a managed missing person is alive, may:	32 33 34
	(a) revoke any declaration made that the person is a missing person, and	35 36

(b)	revoke the order that the estate of the person be subject to management under this Act, and	1 2
(c)	make any orders that appear to it to be necessary to give effect to the revocation of the order, including the release of the estate of the person from the control of the Court or the manager and the discharge of any manager.	3 4 5 6
88	Revocation of order by MHRT (cf PE Act, s 36)	7
	The MHRT, on application by a protected person who was, but has ceased to be, a patient, may revoke the order that the estate of the person be subject to management under this Act, if it is satisfied that the protected person is capable of managing his or her affairs.	8 9 10 11
Division 2	Termination by NSW Trustee	12
89	NSW Trustee may terminate management of protected persons or patients (cf PE Act, s 38)	13 14
(1)	The NSW Trustee may certify that management of the estate of a protected person or patient by the NSW Trustee is terminated if:	15 16
(a)	the protected person ceases to be a person under guardianship, or	17
(b)	the protected person or patient ceases to be a patient,	18
	and the NSW Trustee is satisfied that the person is capable of managing his or her own affairs.	19 20
(2)	Any order that the estate of the person is subject to management under this Act ceases to have effect on certification by the NSW Trustee.	21 22
(3)	The NSW Trustee may refer to the Supreme Court, the MHRT or the Guardianship Tribunal (in the case of a person under guardianship) the question of whether a protected person or patient referred to in subsection (1) is capable of managing his or her own affairs.	23 24 25 26
90	Continuation of management after discharge etc (cf PE Act, s 41 (2))	27
(1)	This section applies if the NSW Trustee becomes aware that a protected person or patient whose estate is managed by the NSW Trustee:	28 29
(a)	ceases to be under guardianship, or	30
(b)	ceases to be a patient.	31
(2)	If the NSW Trustee is not satisfied that the person is capable of managing his or her own affairs, the NSW Trustee must do all reasonably practicable things to inform the person:	32 33 34
(a)	if the person is a protected person, that the person may apply to a specified body for the revocation of the order that the person's estate be subject to management, and	35 36 37

	(b) if the person is a patient who is not a protected person, that the person may apply to have the management terminated, and	1 2
	(c) in any case, that if the order is not revoked or an application for termination is not made, management of the estate will continue at the discretion of the NSW Trustee.	3 4 5
	(3) The NSW Trustee may, at the discretion of the NSW Trustee, continue to manage the property and affairs of the person until:	6 7
	(a) the order that the estate of the person be subject to management under this Act is revoked or, in the case of a person who is not a protected person, an application for termination is made, or	8 9 10
	(b) the NSW Trustee is satisfied that the person is capable of managing his or her affairs,	11 12
	whichever first occurs.	13
91	NSW Trustee may terminate management where person no longer missing (cf PE Act, s 35A)	14 15
	(1) The NSW Trustee may, if satisfied that a managed missing person is alive, certify that management of the estate of the person is terminated.	16 17
	(2) Any order that the estate of the protected person is subject to management under this Act ceases to have effect on certification by the NSW Trustee.	18 19 20
	(3) The regulations may make provision for or with respect to information that the NSW Trustee may take into account for the purpose of being satisfied that a managed missing person is alive.	21 22 23
92	NSW Trustee may terminate management of patients who are not protected persons (cf PE Act, s 64)	24 25
	(1) The NSW Trustee may, on application, terminate the management of the estate by the NSW Trustee of a patient who is not a protected person.	26 27
	(2) An application may be made by a patient if the patient is 18 years or over or, if the patient is under 18 years of age, by the person having parental responsibility (within the meaning of the <i>Children and Young Persons (Care and Protection) Act 1998</i>) for the patient.	28 29 30 31
Division 3	Termination on death	32
93	Termination on death of person	33
	The management of the estate of a managed person under this Act is terminated on the death of the person.	34 35

94	Estate to be handed over to legal representative of deceased person	1
	(cf PE Act, s 42 (1) (b))	2
(1)	On the death of a managed person, the NSW Trustee:	3
(a)	must pay to the legal representative of the person all money standing to the credit of the current account of the person in the common fund, and	4 5 6
(b)	must hand over all chattels and documents forming part of the estate of the person to the legal representative.	7 8
(2)	This section is subject to any order of the Supreme Court and to section 95.	9 10
	Note. The legal representative includes the executor or administrator of an estate and other persons entitled to administer the estate, see section 55 (2) of the <i>Succession Act 2006</i> .	11 12 13
95	Amounts may be paid to beneficiaries or other persons (cf PE Act, s 42 (1) (a))	14 15
(1)	The NSW Trustee may, at the discretion of the NSW Trustee:	16
(a)	pay to a person claiming to be entitled in the distribution of the estate or under the will of a deceased managed person (a beneficiary) any sum (not exceeding the prescribed amount) out of money standing to the credit of the account of the deceased person in the common fund, or	17 18 19 20 21
(b)	hand over to the beneficiary any chattels having a value not exceeding that amount and forming part of the estate of the deceased person or any documents having a value not exceeding that amount, or relating to property having a value not exceeding that amount, and forming part of the estate of the deceased person.	22 23 24 25 26 27
(2)	The NSW Trustee may exercise functions under this section:	28
(a)	whether or not probate of the will or letters of administration of the estate have been obtained, and	29 30
(b)	whether or not legal proof is given of the right or title of the beneficiary.	31 32
96	NSW Trustee may complete transactions (cf PE Act, s 42 (2) and (3))	33
(1)	If a managed person dies, the NSW Trustee may take such steps as are necessary to complete any transaction:	34 35
(a)	that relates to the person's estate, and	36
(b)	that was commenced before the death of the person, and	37
(c)	to which the person was a party immediately before the person's death.	38 39

Clause 97	NSW Trustee and Guardian Bill 2009	
Chapter 4	Management functions relating to persons incapable of managing their	
Part 4.6	affairs	
	Suspension or termination of management	

(2)	This section does not empower the NSW Trustee to do anything in contravention of:	1
		2
(a)	the directions of any executor, administrator or trustee of the person's estate, or	3
		4
(b)	any court order.	5
Division 4	General matters relating to termination of management of estates	6
		7
97	NSW Trustee may continue to act after termination event occurs (cf PE Act, s 43)	8
		9
	The NSW Trustee may continue to act as, and exercise the functions of, the manager of the estate of a person under this Act until:	10
		11
(a)	in the case of a deceased person, the NSW Trustee is satisfied that the person has died, or	12
		13
(b)	in the case of the revocation of management under this Act by order of the Supreme Court, the MHRT or by the Guardianship Tribunal, a copy of the order is served on the NSW Trustee.	14
		15
		16
98	Estate to be handed over on termination of management (cf PE Act, ss 39 and 40)	17
		18
(1)	If the management of the estate of a managed person by the NSW Trustee terminates (other than because of the death of the person), the NSW Trustee must, subject to any order of the Supreme Court or the Guardianship Tribunal:	19
		20
		21
		22
(a)	pay to the person, or as the person directs, all money standing to the credit of the current account of the person in the common fund, and	23
		24
		25
(b)	hand over to the person, or as the person directs, all chattels and documents forming part of the estate of the person.	26
		27
(2)	The receipt of a person in accordance with whose direction money is paid or chattels or documents are handed over under this section is an absolute release to the NSW Trustee from liability in respect of any action taken by the NSW Trustee under this section.	28
		29
		30
		31
99	Protected person or legal representative bound by acts of NSW Trustee (cf PE Act, s 45)	32
		33
	If the management of an estate of a person by the NSW Trustee is terminated, the person or the legal representative of the person is bound by and may take advantage of an act lawfully done by the NSW Trustee on behalf of the person:	34
		35
		36
		37
(a)	as if the act had been done by the person himself or herself, and	38

(b)	to the extent to which the person had no capacity to do the act, as if the person were under no such incapacity.	1 2
100	Unclaimed personal effects and money (cf PE Act, s 44)	3
(1)	The NSW Trustee may sell all personal effects in the hands of the NSW Trustee belonging to a person, and not claimed within 2 years from the date of termination of management of the estate of the person. The proceeds of the sale must be paid into the Consolidated Fund.	4 5 6 7
(2)	All money standing to the credit of the current account of a person in the common fund at the end of 6 years from the date of termination of the management of the estate of the person must be paid to the Consolidated Fund.	8 9 10 11
(3)	The owner of the proceeds of a sale referred to in subsection (1) or of any money referred to in subsection (2) is, on proving ownership, entitled to recover the proceeds or money from the Treasurer.	12 13 14
(4)	Any such proceeds are, or money is, appropriated from the Consolidated Fund for the purpose of enabling its payment to the person and the Treasurer may withdraw the proceeds or money from the Consolidated Fund and pay the proceeds or money to the person accordingly.	15 16 17 18 19

Chapter 5	Investments and funds	1
Part 5.1	Investments	2
101	Investment of trust and protective funds	3
(1)	The NSW Trustee may invest trust funds and protective funds in accordance with the <i>Trustee Act 1925</i> .	4 5
(2)	Any other manager of an estate of a managed person may invest funds of the estate in accordance with the <i>Trustee Act 1925</i> .	6 7
102	Additional investment powers of managers relating to protective funds (cf PE Act, s 28)	8 9
(1)	Purchase of real estate	10
	A manager may purchase real estate out of part of the estate of a managed person if it appears to the manager to be desirable for the purpose of:	11 12 13
(a)	protecting the estate from injury or deterioration in value, or	14
(b)	increasing the value or facilitating the sale of other lands of the estate, or	15 16
(c)	providing a home for the person or any dependants of the person.	17
(2)	Preferred investments	18
	A manager may invest any money that is part of the estate of a managed person and is not required under this Act to be applied for any other purpose in the form of investment preferred by the person, if the manager is aware that the person prefers a particular form of investment.	19 20 21 22 23
(3)	For the purpose of ascertaining whether or not a managed person prefers a particular form of investment, the manager may have regard to the following matters:	24 25 26
(a)	any investments of which the manager is aware that were made by the person before the person became a managed person,	27 28
(b)	any statements made to the manager by relatives of the person, and verified by statutory declaration, as to the views expressed to them by the person, either before or after the person became a managed person, regarding his or her preferred forms of investment,	29 30 31 32 33
(c)	any views expressed to the manager by the person regarding the person's preferred form of investment.	34 35

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- (4) **Section prevails** 1
This section has effect despite section 101. 2

Part 5.2 Common funds and Reserve Fund 3

103 Separate accounts to be kept 4

The NSW Trustee must keep a separate account in a common fund with respect to each trust matter of the NSW Trustee and each estate for which the NSW Trustee is the manager. 5
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104 Common funds 8

- (1) The NSW Trustee is to establish one or more funds to be known as common funds. 9
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- (2) If there is more than one common fund, each common fund must have a distinguishing number. 11
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- (3) The NSW Trustee may from time to time, without liability for breach of trust, pay into or withdraw money from a common fund in accordance with this Act. 13
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- (4) Without limitation, money may be paid into a common fund in respect of one or more trust matters and in respect of one or more clients or managed estates. 16
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- (5) Amounts credited to a common fund are held on trust by the NSW Trustee. 19
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- (6) The NSW Trustee may: 21
- (a) establish such portfolios and accounts within a common fund as it thinks fit, and 22
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 - (b) establish a common fund on the basis of a unitised system or any other appropriate basis. 24
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105 Amounts that may be included in common funds 26

- (1) A common fund may include only the following: 27
- (a) trust funds or protective funds, or both, 28
 - (b) amounts payable to the common fund from the Reserve Fund, 29
 - (c) money paid into court that has been subsequently paid to the NSW Trustee for payment into a common fund, 30
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 - (d) any other money required under any Act to be paid into a common fund under this Act. 32
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(2)	An amount must not be included in a common fund if:	1
(a)	the relevant trust instrument prohibits investment in the common fund, or	2 3
(b)	the amount is held by the NSW Trustee with another person who has objected in writing to the amount's inclusion in the common fund.	4 5 6
(3)	In this section, <i>court</i> means the following:	7
(a)	the Supreme Court,	8
(b)	the Land and Environment Court,	9
(c)	the District Court,	10
(d)	the Dust Diseases Tribunal,	11
(e)	a Local Court,	12
(f)	any other court or tribunal prescribed by the regulations.	13
106	Application of income of common funds	14
(1)	Income from investment of a common fund may be applied, as determined by the NSW Trustee, for the following:	15 16
(a)	investments authorised by this Act,	17
(b)	payment into the Reserve Fund,	18
(c)	payment of costs incurred by the NSW Trustee in the exercise of functions under this Act,	19 20
(d)	payments in respect of the accounts from which the fund is derived.	21 22
(2)	For the purposes of subsection (1) (d), payments (including any debits) in respect of accounts from which the fund is derived:	23 24
(a)	are to be made periodically, and	25
(b)	are to be divided between each account in the common fund in proportion to the amounts invested from those accounts and the period of the investment.	26 27 28
(3)	Payments for costs incurred by the NSW Trustee in the exercise of functions under this Act must not exceed the amount approved by the Director-General.	29 30 31
107	Policies about common funds	32
(1)	The NSW Trustee may determine policies, not inconsistent with this Act, relating to the nature, management and operation of a common fund, and in particular for or with respect to all or any of the following:	33 34 35
(a)	the class or classes of money that may be included in the fund,	36

(b)	the class or classes of investment in which money to the credit of the fund may be invested,	1 2
(c)	the portfolios and accounts of a fund,	3
(d)	the manner in which interest is to be credited and apportioned,	4
(e)	the manner in which profit or loss of a capital nature is to be determined and apportioned,	5 6
(f)	the manner of entry to and exit from the fund,	7
(g)	the determination, and the frequency of determination, of the value of investments in the fund,	8 9
(h)	the determination of the method of valuation by reference to which investments in and withdrawals from the fund are to be made,	10 11 12
(i)	the intervals at which, and the method by which, payment or allocation of the income arising from the fund is to be made.	13 14
(2)	The NSW Trustee may amend or replace the policies from time to time.	15
108	Operation of common fund	16
(1)	The NSW Trustee may sell investments belonging to a common fund and may withdraw any of the money belonging to a common fund for any purpose of or relating to its trust capacities or protective capacities.	17 18 19
(2)	The NSW Trustee may, in its discretion, at any time withdraw from a common fund any amount at credit in the common fund on account of a trust matter or a managed estate and invest the amount on the separate account of the matter or estate.	20 21 22 23
(3)	Amounts so withdrawn from a common fund, as from the date of the withdrawal, cease to have any claim for interest or otherwise from the common fund.	24 25 26
109	Reserve Fund	27
(1)	The NSW Trustee is to establish a Reserve Fund.	28
(2)	The Reserve Fund may be applied, as determined by the NSW Trustee, for the following:	29 30
(a)	payment to a common fund of amounts determined by the NSW Trustee to be equivalent to the loss on realisation of any investment of the common fund,	31 32 33
(b)	payment of any costs incurred in protecting investments of the common fund,	34 35
(c)	payment of any other costs incurred in respect of a common fund or the Reserve Fund or investment of the common fund or	36 37

	Reserve Fund that the NSW Trustee determines are appropriate to pay from the Reserve Fund,	1
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(d)	payment of any costs not ordered by a court to be charged against a particular trust or estate (including a managed estate) or otherwise not properly chargeable against a particular trust or estate (including a managed estate),	3
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(e)	payment of any costs not ordered by a court to be charged against a trust or estate (including a managed estate) but otherwise properly chargeable against a particular trust or estate (including a managed estate) where there are insufficient funds in the particular trust or estate to meet the costs,	7
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(f)	payment of any costs incurred by the NSW Trustee in obtaining any kind of advice or in any legal proceedings to which the NSW Trustee is or is made a party if the costs are such that, because of general interest and the importance of the subject-matter of the proceedings, they should not, in the opinion of the NSW Trustee, be charged against a particular trust or estate (including a managed estate).	12
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(3)	The NSW Trustee may invest the Reserve Fund as if it were money held in a common fund.	19
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(4)	In this section:	21
	<i>managed estate</i> means the estate of a managed person.	22
110	Advances (PT Act, s 36F, PE Act, s 59)	23
(1)	The NSW Trustee may make advances from a common fund for any purpose of or relating to a trust matter or estate of a managed person.	24
		25
(2)	The NSW Trustee may, on application by a person beneficially entitled to a trust or estate (including an estate of a managed person) managed or administered by the NSW Trustee, make an advance to the person of an amount not exceeding half of the value (as estimated by the NSW Trustee) of the person's beneficial interest.	26
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(3)	Any advance bears interest at the rate fixed by the NSW Trustee.	31
(4)	The advance, and any interest on the advance, are a charge on the assets of the trust or estate, or on the specific asset or the beneficial interest, in respect of which the advance was made.	32
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(5)	If the advance is applied towards the discharge of any debt or liability, the charge under this section ranks in the same order of priority as the debt or liability.	35
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- (6) Any sum advanced from a common fund under this section is, for the purposes of the rules for the fund, taken to be invested in a class of investments in which money to the credit of the fund may be invested. 1
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Chapter 6	General	1
Part 6.1	Fees and charges	2
111	Fees (cf PT Act, s 9 (1), PE Act, s 8 (1) and (2))	3
	(1) Fees may be charged in respect of the functions of the NSW Trustee.	4
	(2) The amount of any such fees may be determined by way of percentage or otherwise and is to be prescribed by the regulations.	5 6
	(3) The NSW Trustee may, at the discretion of the NSW Trustee, waive, remit or reduce any fees payable under this section.	7 8
112	Payment of costs and fees from trust property (cf PT Act, s 9 (2) and (4))	9
	(1) The NSW Trustee may retain or pay out of any trust property any costs that the NSW Trustee could retain or pay if it were a private trustee. Any fees charged under this Act may be retained or paid in the same manner as, and in addition to, any such costs.	10 11 12 13
	(2) The incidence of the fees and costs as between corpus and income is to be determined by the NSW Trustee.	14 15
113	Payment of costs relating to management of estates by NSW Trustee (cf PE Act, ss 7 and 8 (3) and (4))	16 17
	(1) The NSW Trustee may retain or pay out of the estate of a managed person, or any money of any such person received by the NSW Trustee, any costs of the NSW Trustee incurred in the care and management of the estate of the person or in the supervision of the management of the estate of the person.	18 19 20 21 22
	(2) The costs are chargeable on and payable from the estate of the person whether or not the management under this Act of the estate of the person has terminated.	23 24 25
114	Costs may be recovered on summary application to Court	26
	Any costs due or payable to the NSW Trustee may be recovered as a debt in a court of competent jurisdiction.	27 28
115	Supreme Court or NSW Trustee may order certain costs to be paid out of managed estate (cf PE Act, s 77)	29 30
	(1) The Supreme Court or the NSW Trustee may order that the following costs be paid, in accordance with the order, from the estate of a managed person:	31 32 33

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- (a) costs with respect to actions taken for the purposes of complying with any order or direction under this Act, or any transfer or conveyance under Chapter 4, 1
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- (b) remuneration, of a specified amount, to the manager of the estate. 4
- (2) The NSW Trustee may make an order under this section only in relation to costs arising from an order or direction given by the NSW Trustee under Chapter 4 or work carried out by the manager of an estate of a managed person in connection with any such order or direction. 5
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Part 6.2 Miscellaneous 9

116 NSW Trustee may require information and documents to be provided 10

- (1) The NSW Trustee may, by notice in writing given to a person, order the person to furnish to the NSW Trustee such information or records (or both) as the NSW Trustee requires in connection with any matter relating to the responsibilities of the NSW Trustee when acting in a protective capacity. 11
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- (2) Any such notice must specify the manner in which the information or records are required to be furnished and a reasonable time (not less than 14 days after the giving of the notice) by which the information or records are required to be furnished. 16
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117 Supreme Court may set aside dealing by patient (cf PE Act, s 75) 20

- (1) The Supreme Court may, on application by the NSW Trustee, set aside the disposition of an interest in real or personal property by a patient while a managed person and may make any consequential orders the Court thinks fit. 21
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- (2) The NSW Trustee must give notice of an application to such persons as the Supreme Court directs. 25
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- (3) For the purposes of an application, the patient is, in the absence of evidence to the contrary, taken to have been mentally ill when the patient disposed of the interest concerned. 27
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118 Orders and directions of NSW Trustee must be complied with 30

- (1) An order by the NSW Trustee under this Act has effect according to its tenor. 31
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- (2) A person must not, without reasonable excuse, fail to comply with an order or direction given to the person by the NSW Trustee in accordance with this Act. 33
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Maximum penalty: 10 penalty units. 36

119	Service of orders on NSW Trustee (cf PT Act, s 51)	1
(1)	This section applies to an order made by a court or a tribunal, on the application of a person other than the NSW Trustee, that:	2
(a)	directs a payment to be made to the NSW Trustee, or	3
(b)	vests property in the NSW Trustee, or	4
(c)	appoints the NSW Trustee as a trustee, executor or administrator.	5
(2)	A person who obtains an order to which this section applies must:	6
(a)	serve a copy of the order on the NSW Trustee, and	7
(b)	serve on the NSW Trustee a written statement as to any property affected by the order, the location of any such property and the name of any person who possesses the property, if known to the person who obtained the order, and	8
(c)	provide the NSW Trustee with any other information that the NSW Trustee reasonably requires the person to provide.	9
(3)	A person who obtains an order to which this section applies must not, without reasonable excuse, fail to comply with subsection (2). Maximum penalty: 10 penalty units.	10
120	Appropriation of Consolidated Fund (cf PT Act, s 37)	11
(1)	Any amount required to discharge a liability of the NSW Trustee that the NSW Trustee would be personally liable to discharge if it were a private trustee is payable from the Consolidated Fund (which is appropriated for that purpose).	12
(2)	An amount is not payable under this section for a liability, and the NSW Trustee is not subject to a liability, if the liability:	13
(a)	does not arise out of any act or omission of the NSW Trustee or a member of staff of the NSW Trustee, and	14
(b)	could not have been reasonably avoided by the exercise of reasonable diligence by the NSW Trustee or a member of staff of the NSW Trustee.	15
121	Personal liability	16
(1)	A matter or thing done or omitted to be done by the Chief Executive Officer, a member of staff of the NSW Trustee or a person acting under the direction of the NSW Trustee or any other person does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act or the functions of the NSW Trustee, subject the Chief Executive Officer, member of staff or a person so acting personally to any action, liability, claim or demand.	17

(2)	Subsection (1) also applies to any act or omission done or omitted in good faith for the purpose of executing the NSW Trustee's functions, if the NSW Trustee, in good faith, takes out probate or administration of the estate of a deceased person, administers an estate under statutory powers or acts as a trustee under a will and subsequently it is discovered that:	1
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	(a) the person is not deceased, or	7
	(b) if administration is granted or carried out, the person did not die intestate, or	8
		9
	(c) if probate is granted or the NSW Trustee is acting under a will, the will was revoked or altered by a later will or is invalid.	10
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(3)	Subsection (2) does not affect any remedy of a person against any person who has shared in the distribution of the estate concerned or received the benefit of any such trust administered or executed by the NSW Trustee.	12
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(4)	Any disposal of an interest in property, or any payment made, in the exercise of the protective capacities of the NSW Trustee in accordance with this Act is valid and binding on all persons.	16
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122	Evidentiary provisions	19
(1)	A certificate signed or purporting to be signed by the Chief Executive Officer or a person authorised in writing by the Chief Executive Officer and stating that:	20
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	(a) the NSW Trustee is, or the NSW Trustee and any other persons are, the administrators of an estate of a deceased person and the basis and date on which the NSW Trustee and any other persons became authorised to administer the estate of the person, or	23
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	(b) the NSW Trustee has, or the NSW Trustee and any other persons have, been granted probate or letters of administration of an estate of a deceased person on a specified date,	27
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	and the name, residence and occupation of the deceased person, is, despite any Act or other law to the contrary, admissible in any legal proceedings and is evidence of the death of the deceased person and of any of the matters stated in the certificate and of the authority of the NSW Trustee to act as administrator or executor.	30
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(2)	A certificate signed or purporting to be signed by the Chief Executive Officer or a person authorised in writing by the Chief Executive Officer and stating that, on a specified date or during a specified period, the estate of a specified person was or was not subject to management under this Act is admissible in any legal proceedings and is evidence of the matters stated in the certificate.	35
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123	Directions by NSW Trustee as to visitors (cf PE Act, s 79)	1
	The NSW Trustee may make the following orders:	2
	(a) an order directing a specified person to visit a managed person (other than a person who is a patient) and to report in writing to the NSW Trustee on the state of mind, bodily health and general condition of the managed person and on the care and treatment of the managed person,	3 4 5 6 7
	(b) an order directing that such information as the NSW Trustee thinks necessary be given to the person directed to visit the managed person as to the nature and extent of the assets of the managed person and as to the orders made under this Act in respect of the person,	8 9 10 11 12
	(c) an order that any fees and expenses arising in connection with the visit be paid out of the estate of the managed person.	13 14
124	Service of documents on NSW Trustee	15
	(1) A document may be served on the NSW Trustee by leaving it at, or by sending it by post to, the head office of the NSW Trustee.	16 17
	(2) Nothing in subsection (1) affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the NSW Trustee in a manner not provided for by subsection (1).	18 19 20
125	Nature of proceedings for offences	21
	Proceedings for an offence under this Act or the regulations may be dealt with summarily.	22 23
126	Submission of budgets	24
	(1) Whenever directed to do so by the Director-General, the NSW Trustee is to submit a budget to the Director-General in relation to the NSW Trustee's costs, including projected costs, in connection with the exercise of the NSW Trustee's functions.	25 26 27 28
	(2) The budget is to relate to such period, and include such information, as the Director-General directs.	29 30
127	Savings, transitional and other provisions	31
	Schedule 1 contains savings, transitional and other provisions consequent on the enactment of this Act.	32 33

128	Regulations	1
(1)	The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	2 3 4 5
(2)	In particular, regulations may be made for or with respect to the following:	6 7
(a)	the custody of property placed with the NSW Trustee and instruments of title relating to any such property,	8 9
(b)	the fixing of scales of commission and other charges by the NSW Trustee under this Act,	10 11
(c)	the waiver or reduction of costs by the NSW Trustee.	12
(3)	A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.	13 14

Schedule 1	Savings, transitional and other provisions	1
		2
	(Section 127)	3
Part 1	General	4
1	Regulations	5
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: this Act	6 7 8
(2)	Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	9 10
(3)	To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:	11 12 13
(a)	to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	14 15 16
(b)	to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	17 18 19
Part 2	Provisions consequent on enactment of this Act	20 21
Division 1	Preliminary	22
2	Definitions	23
	In this Part:	24
	<i>appointed day</i> , in its application to any act, matter, thing or circumstance referred to in this Part means:	25 26
(a)	in relation to a provision of a former Act that is repealed by this Act, the day on which the provision is repealed, or	27 28
(b)	in relation to a provision of this Act, the day on which the provision commences.	29 30
	<i>existing common fund</i> means:	31
(a)	a common fund established under the Public Trustee Act and in existence immediately before the commencement of Part 5.2 of this Act, or	32 33 34

(b) an investment fund established under the Protected Estates Act and in existence immediately before that commencement.	1 2
<i>existing reserve fund</i> means:	3
(a) the Estates Guarantee and Reserve Account established under section 36B of the Public Trustee Act, or	4 5
(b) the reserve fund established under Part 4 of the Protected Estates Act.	6 7
<i>Interest Suspense Account</i> means the Account of that name established under section 36A of the Public Trustee Act.	8 9
<i>Protective Commissioner</i> means the Protective Commissioner under the Protected Estates Act.	10 11
<i>Public Trustee</i> means the Public Trustee under the Public Trustee Act.	12
<i>the former Acts</i> means the Protected Estates Act and the Public Trustee Act.	13 14
<i>the former corporations</i> means the corporations sole constituted under section 7 of the Public Trustee Act and section 5B of the Protected Estates Act.	15 16 17
<i>the Protected Estates Act</i> means the <i>Protected Estates Act 1983</i> , as in force immediately before its repeal by this Act.	18 19
<i>the Public Trustee Act</i> means the <i>Public Trustee Act 1913</i> , as in force immediately before its repeal by this Act.	20 21
Division 2 General provisions	22
3 Construction of references	23
(1) Subject to this Schedule and the regulations, in any Act or instrument (whether enacted or made before or after the commencement of this clause):	24 25 26
(a) a reference to a provision of the former Acts for which there is a corresponding provision in this Act extends to the corresponding provision of this Act, whether or not in identical terms, and	27 28 29
(b) a reference to any act, matter or thing referred to in a provision of the former Acts for which there is a corresponding provision in this Act (including anything arising under paragraph (a)) is taken to have been done or omitted under the corresponding provision of this Act, and	30 31 32 33 34
(c) a reference (however expressed) to a protected person or a protected missing person under the Protected Estates Act is to be read as a protected person or managed missing person within the meaning of this Act, and	35 36 37 38

(d)	a reference to the Public Trustee or Protective Commissioner is to be read as a reference to the NSW Trustee, and	1 2
(e)	a reference to anything being done under the seal or hand of the Public Trustee or the Protective Commissioner is taken to be a reference to its being done under the seal of the NSW Trustee.	3 4 5
(2)	The regulations may contain provisions that deal, among other things, with the interpretation of references (however expressed) to an Act repealed or amended by this Act or a provision of an Act repealed or amended by this Act.	6 7 8 9
4	General saving	10
	Subject to this Schedule and the regulations:	11
(a)	anything begun before the appointed day under a provision of the former Acts for which there is a corresponding provision in this Act extends to the corresponding provision of this Act, and	12 13 14
(b)	subject to paragraph (a), any act, matter or thing done or omitted under a provision of the former Acts for which there is a corresponding provision in this Act (including anything arising under paragraph (a)) is taken to have been done or omitted under the corresponding provision of this Act.	15 16 17 18 19
5	NSW Trustee to exercise existing functions and responsibilities of Public Trustee and Protective Commissioner	20 21
(1)	Subject to this Schedule and the regulations:	22
(a)	any act, matter or thing done or omitted by, to or in relation to the Public Trustee or the Protective Commissioner before the commencement of this clause is taken to have been done or omitted by, to or in relation to the NSW Trustee, and	23 24 25 26
(b)	without limiting paragraph (a), anything commenced to be done by, to or in relation to the Public Trustee or the Protective Commissioner in an official capacity before that commencement is taken to have been commenced to have been done by, to or in relation to the NSW Trustee.	27 28 29 30 31
(2)	Subject to this Act and the regulations:	32
(a)	this Act and the regulations extend to and in relation to acts, matters and things occurring before the commencement of this Act, and	33 34 35
(b)	without limiting paragraph (a), this Act extends to and in relation to:	36 37
(i)	trust instruments and other documents made or executed before as well as on or after that commencement, and	38 39

(ii)	persons who died before as well as to persons who die on or after that commencement.	1 2
6	Certificate evidence	3
(1)	This clause applies to a certificate issued before the commencement of this clause under:	4 5
(a)	section 50 of the Public Trustee Act, or	6
(b)	section 79A of the Protected Estates Act, or	7
(c)	section 57 of the <i>Confiscation of Proceeds of Crime Act 1989</i> .	8
(2)	Neither the enactment of this Act nor its operation affects the existence, validity, admissibility or evidentiary value of such a certificate on or after the repeal or amendment of those provisions by this Act.	9 10 11
7	Continuation of Protected Estates Regulation 2003	12
(1)	The <i>Protected Estates Regulation 2003</i> , as in force immediately before the repeal of the Protected Estates Act, continues in force and is taken to be a regulation under this Act.	13 14 15
(2)	The Regulation may be amended or repealed in the same way as any other regulation made under this Act.	16 17
(3)	A reference in the Regulation to the Protective Commissioner is to be read as a reference to the NSW Trustee.	18 19
8	Continuation of Public Trustee Regulation 2008	20
(1)	The <i>Public Trustee Regulation 2008</i> , as in force immediately before the repeal of the Public Trustee Act, continues in force and is taken to be a regulation under this Act.	21 22 23
(2)	The Regulation may be amended or repealed in the same way as any other regulation made under this Act.	24 25
(3)	A reference in the Regulation to the Public Trustee is to be read as a reference to the NSW Trustee.	26 27
9	References to MHRT relating to mental health inquiries	28
(1)	A reference in section 44 to the MHRT is to be read as a reference to a Magistrate who conducts a mental health inquiry under the <i>Mental Health Act 2007</i> .	29 30 31
(2)	A Magistrate may refer the question of a person's capability to manage his or her own affairs to the MHRT.	32 33
(3)	If a Magistrate refers the question of a person's capability to manage his or her own affairs, the MHRT must consider the capability of the person to manage his or her own affairs and, if satisfied that the person is not	34 35 36

	capable of managing his or her own affairs, must order that the estate of the person be subject to management under this Act.	1 2
(4)	An order by the MHRT has effect as if it were made under Part 4.3.	3
(5)	Sections 47, 48, 49, 50 and 51 apply in respect of a Magistrate who conducts a mental health inquiry in the same way as they apply in respect of the MHRT.	4 5 6
(6)	This clause ceases to have effect on the commencement of section 34 of the <i>Mental Health Act 2007</i> , as inserted by Schedule 16 [6] to the <i>Courts and Crimes Legislation Further Amendment Act 2008</i> .	7 8 9
Division 3	Dissolution of offices and corporations	10
10	Abolition of offices and dissolution of corporations sole	11
(1)	The office of Public Trustee is abolished and the corporation sole constituted by section 7 of the Public Trustee Act is dissolved.	12 13
(2)	The office of Protective Commissioner is abolished and the corporation sole constituted by section 5B of the Protected Estates Act is dissolved.	14 15
11	NSW Trustee to be same entity as former corporations sole	16
	The NSW Trustee is taken, for all purposes, including the rules of private international law, to be a continuation of and the same legal entity as the former corporations.	17 18 19
12	Former Public Trustee and Protective Commissioner not entitled to compensation	20 21
(1)	In this clause: <i>former Protective Commissioner</i> means the person holding office as Protective Commissioner immediately before the abolition of the office of Protective Commissioner by this Act. <i>former Public Trustee</i> means the person holding office as Public Trustee immediately before the abolition of the office of Public Trustee by this Act.	22 23 24 25 26 27 28
(2)	The former Public Trustee and the former Protective Commissioner cease to hold office as Public Trustee and Protective Commissioner, respectively, on the abolition of those offices by this Act.	29 30 31
(3)	The former Public Trustee and the former Protective Commissioner are not entitled to any compensation for loss of office.	32 33
(4)	Subclause (3) does not affect any compensation that may be payable under the <i>Public Sector Employment and Management Act 2002</i> .	34 35

Division 4	Investment and existing funds	1
13	Existing common funds	2
(1)	The existing common funds are continued by this clause and are taken to be common funds established under this Act.	3 4
(2)	The regulations may provide that an existing common fund forms part of another common fund established under this Act.	5 6
(3)	The provisions of the Public Trustee Act and the Protected Estates Act, as in force immediately before the commencement of Chapter 5, continue to apply to and in respect of the existing common funds established under those Acts.	7 8 9 10
(4)	Despite subclause (3):	11
	(a) interest from investments from the existing common fund established under the Public Trustee Act, or any other amount payable under that Act to the Interest Suspense Account or under section 36C of that Act, is to be paid to the existing common fund or the Reserve Fund in accordance with Chapter 5, and	12 13 14 15 16
	(b) interest and other amounts must not be credited to the Interest Suspense Account, and	17 18
	(c) amounts may be paid from the existing common fund for any purposes for which they can be paid under Chapter 5 (including, without limitation, for the costs incurred by the NSW Trustee in the exercise of the NSW Trustee's functions under this Act).	19 20 21 22
(5)	Despite subclause (3):	23
	(a) section 36A (4) of the Public Trustee Act ceases to apply to the distribution of interest to accounts forming part of an existing common fund established under that Act at the end of the period of 12 months commencing on the commencement of section 106 of this Act, or at the end of such further period as may be prescribed by the regulations, and	24 25 26 27 28 29
	(b) section 106 (2) of this Act applies on and from that date to the distribution of interest to accounts forming part of any such existing common fund.	30 31 32
(6)	The provisions of Chapter 5 do not apply to and in respect of the existing common funds, except as provided by this Schedule.	33 34
(7)	Policies may be determined under Chapter 5 with respect to the existing common funds.	35 36
(8)	This clause is subject to the regulations.	37

14	Application of existing interest distribution provisions to new common funds	1 2
(1)	This clause applies to a common fund established under this Act.	3
(2)	Despite any other provision of this Act, interest may be distributed among accounts forming part of a common fund in the same manner as is permitted under clause 13 in respect of existing common funds established under the Public Trustee Act.	4 5 6 7
(3)	This clause ceases to have effect on the date that section 36A (4) of the Public Trustee Act ceases to apply to an existing common fund.	8 9
(4)	This clause is subject to the regulations.	10
15	Interest Suspense Account	11
(1)	The NSW Trustee must, not later than 12 months after the commencement of Part 5.2, determine the following matters:	12 13
(a)	the part of the Interest Suspense Account that should be allocated to the Reserve Fund for the purposes of that Fund,	14 15
(b)	the part of the Interest Suspense Account that should be allocated to the existing common funds,	16 17
(c)	the part of the Interest Suspense Account referred to in paragraph (b) that should be allocated for the current and future payment of the costs incurred by the NSW Trustee in the exercise of its functions under this Act.	18 19 20 21
(2)	In making such a determination, the NSW Trustee is to have regard to the purposes for which the Interest Suspense Account would have been used if the Public Trustee Act had not been repealed and to the purposes for which the common funds under this Act and the Reserve Fund may be used.	22 23 24 25 26
(3)	Any part of the Interest Suspense Account identified under subclause (1) (a) is taken to form part of the Reserve Fund and may be used for the purposes of the Reserve Fund.	27 28 29
(4)	Any part of the Interest Suspense Account identified under subclause (1) (b) is taken to form part of the existing common funds and may be used for the purposes of the existing common funds.	30 31 32
(5)	In addition, any part of the Interest Suspense Account identified under subclause (1) (c) may be applied, in accordance with Chapter 5, for the costs incurred by the NSW Trustee in the exercise of the NSW Trustee's functions under this Act.	33 34 35 36
(6)	Payments for costs out of the part allocated under subclause (1) (c) must not exceed the amount approved by the Director-General.	37 38

(7)	This clause is subject to the regulations.	1
16	Existing reserve funds	2
(1)	The existing reserve funds are continued by this clause and are taken to form part of the Reserve Fund established under this Act.	3 4
(2)	Any part of the existing reserve funds may be applied for the purposes for which the Reserve Fund may be used under this Act.	5 6
(3)	The Reserve Fund may be applied for any purpose for which the existing reserve funds could have been used immediately before the commencement of Part 5.2.	7 8 9
(4)	The provisions of Chapter 5 apply to and in respect of the existing reserve funds, except as provided by this Schedule.	10 11
(5)	This clause is subject to the regulations.	12

Schedule 2	Amendment of other Acts	1
2.1	Administrative Decisions Tribunal Act 1997 No 76	2
[1]	Sections 22 (1B), 71 (4A) (b) and 126 (1A) (b1) and note to section 118A (1)	3
	Omit “section 21A of the <i>Protected Estates Act 1983</i> ” wherever occurring.	4
	Insert instead “section 50 of the <i>NSW Trustee and Guardian Act 2009</i> ”.	5
[2]	Section 126 (1A) (b2) and Schedule 2, Part 4, Division 2, clause 2 (1)	6
	Omit “ <i>Protected Estates Act 1983</i> ” wherever occurring.	7
	Insert instead “ <i>NSW Trustee and Guardian Act 2009</i> ”.	8
2.2	Adoption Act 2000 No 75	9
	Section 202 Administration of certain estates	10
	Omit “Public Trustee” wherever occurring in section 202 (2) and (4).	11
	Insert instead “NSW Trustee and Guardian”.	12
2.3	Animal Research Act 1985 No 123	13
	Schedule 1 Provisions relating to the members of the Panel	14
	Omit clause 7 (1) (d). Insert instead:	15
	(d) becomes a mentally incapacitated person,	16
2.4	Anzac Memorial (Building) Act 1923 No 27	17
	Section 3 Trustees	18
	Omit “The Public Trustee” from section 3 (1).	19
	Insert instead “The Chief Executive Officer of the NSW Trustee and Guardian”.	20
2.5	Banana Industry Act 1987 No 66	21
	Schedule 1 Provisions relating to the members of the Committee	22
	Omit clause 4 (1) (d). Insert instead:	23
	(d) becomes a mentally incapacitated person,	24
		25
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2.6 Burns Philp Trustee Company Limited Act 1990 No 82	1
Section 4 Definitions	2
Omit “ <i>Protected Estates Act 1983</i> ” from paragraph (e) of the definition of <i>in the capacity of trustee</i> .	3
Insert instead “ <i>NSW Trustee and Guardian Act 2009</i> ”.	4
2.7 Child Protection (International Measures) Act 2006 No 12	5
[1] Section 5 Definitions	6
Omit “Public Trustee” from paragraph (b) of the definition of <i>New South Wales authority</i> in section 5 (1).	7
Insert instead “NSW Trustee”.	8
[2] Section 5 (1), definition of “Public Trustee”	9
Omit the definition. Insert instead in alphabetical order:	10
<i>NSW Trustee</i> means the NSW Trustee and Guardian constituted under the <i>NSW Trustee and Guardian Act 2009</i> .	11
[3] Sections 7 (1) (a) and (2), 15, 18 (2) (a) (ii), 19 (2)–(4), 20 (1), 24 (1), (2), (4) and (5), 25 (1), 28 (2), 37 and 38 (2)	12
Omit “Public Trustee” wherever occurring. Insert instead “NSW Trustee”.	13
[4] Section 19 If New South Wales authority is asked to assume jurisdiction	14
Omit “ <i>Public Trustee Act 1913</i> ” from section 19 (3) (a).	15
Insert instead “ <i>NSW Trustee and Guardian Act 2009</i> ”.	16
[5] Sections 31 and 38 (2)	17
Omit “Public Trustee’s” wherever occurring. Insert instead “NSW Trustee’s”.	18
[6] Section 33 Obligation to inform competent authority about serious danger to child	19
Omit “Public Trustee appointed under section 10 of the <i>Public Trustee Act 1913</i> ” from paragraph (b) of the definition of <i>New South Wales authority</i> in section 33 (5).	20
Insert instead “NSW Trustee”.	21
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[7] Section 38 Delegation	1
Omit the definition of <i>Public Trustee’s powers</i> from section 38 (3).	2
Insert instead:	3
<i>NSW Trustee’s powers</i> means the powers the NSW Trustee may or must exercise under this Act.	4 5
2.8 Civil Liability Act 2002 No 22	6
[1] Section 23 Court required to inform parties of proposed award	7
Omit “Protective Commissioner under the <i>Protected Estates Act 1983</i> ” from section 23 (3).	8 9
Insert instead “NSW Trustee and Guardian”.	10
[2] Sections 23 (5) and 54F	11
Omit “ <i>Protected Estates Act 1983</i> ” wherever occurring.	12
Insert instead “ <i>NSW Trustee and Guardian Act 2009</i> ”.	13
[3] Sections 26J (3A)–(5), 26L (1), 26Q (5) (b), 26R (3) and (4) (b), 26S, 54D (1), (2) and (6), 54E (1) and (3), 54G (1) and 54H	14 15
Omit “Public Trustee” wherever occurring.	16
Insert instead “NSW Trustee and Guardian”.	17
[4] Section 26J Authority for deduction from damages	18
Omit “ <i>Public Trustee Act 1913</i> ” from section 26J (3B) (b).	19
Insert instead “ <i>NSW Trustee and Guardian Act 2009</i> ”.	20
[5] Sections 26J (3C), 54G (1) and 54H	21
Omit “Public Trustee’s” wherever occurring.	22
Insert instead “NSW Trustee and Guardian’s”.	23
[6] Section 26V Protection from liability	24
Omit “Public Trustee” wherever occurring in paragraph (b) of the definition of <i>public official</i> in section 26V (2).	25 26
Insert instead “NSW Trustee and Guardian”.	27

[7] Section 54G Hindering or obstructing NSW Trustee and Guardian	1
Omit the definition of <i>Public Trustee</i> from section 54G (2). Insert instead:	2
<i>NSW Trustee and Guardian</i> includes members of staff and	3
agents of the NSW Trustee and Guardian.	4
[8] Section 54H Evidence of NSW Trustee and Guardian’s right to act	5
Omit “referred to in section 50 of the <i>Public Trustee Act 1913</i> ” from	6
section 54H.	7
Insert instead “authorised by the Chief Executive Officer of the NSW Trustee	8
and Guardian”.	9
2.9 Civil Procedure Act 2005 No 28	10
[1] Section 3 Definitions	11
Omit “ <i>Protected Estates Act 1983</i> ” from paragraph (d) of the definition of	12
<i>person under legal incapacity</i> in section 3 (1).	13
Insert instead “ <i>NSW Trustee and Guardian Act 2009</i> ”.	14
[2] Section 74 Definitions and application	15
Omit “ <i>Protected Estates Act 1983</i> ” wherever occurring in the definitions of	16
<i>manager</i> and <i>protected person</i> in section 74 (1).	17
Insert instead “ <i>NSW Trustee and Guardian Act 2009</i> ”.	18
[3] Sections 77 (3) (a) and (4) (a) and 78	19
Omit “Public Trustee” wherever occurring.	20
Insert instead “NSW Trustee and Guardian”.	21
2.10 Coal Ownership (Restitution) Act 1990 No 19	22
Section 3 Definitions	23
Omit paragraph (b) of the definition of <i>eligible claimant</i> . Insert instead:	24
(b) if such a person is a protected person within the meaning	25
of the <i>NSW Trustee and Guardian Act 2009</i> —means the	26
manager of the person’s estate under that Act, or	27
2.11 Commons Management Act 1989 No 13	28
[1] Schedule 1 Provisions applicable to administrators	29
Omit clause 3 (1) (e). Insert instead:	30
(e) becomes a mentally incapacitated person, or	31

[2] Schedule 2 Provisions relating to the members of a trust board	1
Omit clause 3 (1) (g). Insert instead:	2
(g) becomes a mentally incapacitated person, or	3
2.12 Community Welfare Act 1987 No 52	4
[1] Section 42 Investment of Community Disaster Relief Fund	5
Omit “Public Trustee” from section 42 (2).	6
Insert instead “NSW Trustee and Guardian”.	7
[2] Schedule 1 Constitution of certain councils	8
Omit clause 11 (d). Insert instead:	9
(d) becomes a mentally incapacitated person, or	10
2.13 Confiscation of Proceeds of Crime Act 1989 No 90	11
[1] Sections 42M (2) (b) and (4) (b), 42T, 43 (2) (d), 45 (1) (e) and (3) (c), 46 (1) and (2), 47 (1), (2), (4), (5) and (6), 48 (2) (c) (iii) and (4) (a), 51 (1), 51A, 52 (1)–(3), 53, 57 (1), 83 (4) (a) and 84	12
Omit “Public Trustee” wherever occurring.	13
Insert instead “NSW Trustee and Guardian”.	14
[2] Sections 47 (4) (a) and 57 (1)	15
Omit “Public Trustee’s” wherever occurring.	16
Insert instead “NSW Trustee and Guardian’s”.	17
[3] Sections 51 (2) and 52 (4)	18
Omit the definition of <i>Public Trustee</i> wherever occurring. Insert instead:	19
<i>NSW Trustee and Guardian</i> includes staff and agents of the	20
NSW Trustee and Guardian.	21
[4] Section 52 Protection of NSW Trustee and Guardian and Commissioner of Police from liability in certain cases	22
Omit “Section 45 of the <i>Public Trustee Act 1913</i> ” from section 52 (1).	23
Insert instead “Section 121 of the <i>NSW Trustee and Guardian Act 2009</i> ”.	24
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[5] Section 57 Certificate by NSW Trustee and Guardian or Commissioner of Police	1
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Omit “referred to in section 50 of the <i>Public Trustee Act 1913</i> ” from section 57 (1).	3
	4
Insert instead “authorised by the Chief Executive Officer of the NSW Trustee and Guardian”.	5
	6
2.14 Consumer, Trader and Tenancy Tribunal Act 2001 No 82	7
[1] Section 25 Notice of proceedings	8
Omit “ <i>Protected Estates Act 1983</i> ” from section 25 (3) (a).	9
Insert instead “ <i>NSW Trustee and Guardian Act 2009</i> ”.	10
[2] Section 25 (3)	11
Omit “Protective Commissioner”.	12
Insert instead “NSW Trustee and Guardian”.	13
2.15 Conveyancing Act 1919 No 6	14
[1] Section 7 Definitions	15
Omit “public trustee” from the definition of <i>Administrator</i> in section 7 (1).	16
Insert instead “NSW Trustee and Guardian”.	17
[2] Section 7 (1), definition of “Trust corporation”	18
Omit “Public Trustee”.	19
Insert instead “NSW Trustee and Guardian”.	20
[3] Section 23G Exceptions to sec 23F	21
Omit “section 24 of the <i>Protected Estates Act 1983</i> ” from section 23G (i).	22
Insert instead “the <i>NSW Trustee and Guardian Act 2009</i> ”.	23
[4] Sections 99A (3) and (4) and 155 (2)	24
Omit “Public Trustee” wherever occurring.	25
Insert instead “NSW Trustee and Guardian”.	26
[5] Section 155 Partial repeal of 1900 No 38, sec 4	27
Omit “ <i>Public Trustee Act 1913</i> ” from section 155 (2).	28
Insert instead “ <i>NSW Trustee and Guardian Act 2009</i> ”.	29

2.16 Crimes Act 1900 No 40	1
Section 249E Corrupt benefits for trustees and others	2
Omit section 249E (1) (d). Insert instead:	3
(d) a person managing or administering the property (or	4
appointed or employed to manage or administer the	5
property) under the <i>NSW Trustee and Guardian Act 2009</i> .	6
2.17 Criminal Assets Recovery Act 1990 No 23	7
[1] Sections 10 (4), 12 (1) (c1) and (d) and (2) (c), 13A (4) and (5), 14 (1), 17	8
(1), (2) and (4), 18 (1)–(4), 19, 21, 23 (1) and (2), 30 (1), (2), (4), (5) and (7),	9
31 (4), 32 (3) (a1), 52G (5) (a) and 52H	10
Omit “Public Trustee” wherever occurring.	11
Insert instead “NSW Trustee and Guardian”.	12
[2] Sections 18 (1), 21 and 30 (4) (a)	13
Omit “Public Trustee’s” wherever occurring.	14
Insert instead “NSW Trustee and Guardian’s”.	15
[3] Section 18 Protection of NSW Trustee and Guardian	16
Omit “Section 45 of the <i>Public Trustee Act 1913</i> ” from section 18 (2).	17
Insert instead “Section 121 of the <i>NSW Trustee and Guardian Act 2009</i> ”.	18
[4] Section 18 (5), definition of “Public Trustee”	19
Omit the definition. Insert instead:	20
<i>NSW Trustee and Guardian</i> includes staff and agents of the	21
NSW Trustee and Guardian.	22
[5] Section 21 Certificate by NSW Trustee and Guardian	23
Omit “referred to in section 50 of the <i>Public Trustee Act 1913</i> ”.	24
Insert instead “authorised by the Chief Executive Officer of the NSW Trustee	25
and Guardian”.	26
2.18 Crown Lands Act 1989 No 6	27
[1] Schedule 1 Members of local land boards	28
Omit clause 4 (1) (d). Insert instead:	29
(d) becomes a mentally incapacitated person,	30

[2] Schedule 3 Provisions relating to the members of a trust board	1
Omit clause 6 (1) (g). Insert instead:	2
(g) becomes a mentally incapacitated person,	3
2.19 Defamation Act 2005 No 77	4
Schedule 1 Additional publications to which absolute privilege applies	5
Omit “Protective Commissioner under section 79 of the <i>Protected Estates Act 1983</i> ” from clause 24.	6
Insert instead “NSW Trustee and Guardian under section 123 of the <i>NSW Trustee and Guardian Act 2009</i> ”.	7
2.20 Director of Public Prosecutions Act 1986 No 207	10
Schedule 1 Provisions relating to Senior Officers	11
Omit clause 4 (2) (c). Insert instead:	12
(c) becomes a mentally incapacitated person,	13
2.21 Dormant Funds Act 1942 No 25	14
[1] Section 4 Commissioner of Dormant Funds	15
Omit “Public Trustee” from section 4 (2).	16
Insert instead “Chief Executive Officer of the NSW Trustee and Guardian”.	17
[2] Section 11 Proposals for application of dormant fund	18
Omit “Public Trustee” from section 11 (2).	19
Insert instead “NSW Trustee and Guardian”.	20
2.22 Duties Act 1997 No 123	21
Section 54 Change in trustees	22
Omit “Public Trustee” wherever occurring in paragraphs (a) and (c) of the definition of <i>special trustee</i> in section 54 (1).	23
Insert instead “NSW Trustee and Guardian”.	24
	25

2.23 Education Act 1990 No 8	1
[1] Section 63A Board to be notified of certain matters	2
Omit “ <i>Protected Estates Act 1983</i> —the Protective Commissioner” from section 63A (2) (b).	3 4
Insert instead “ <i>NSW Trustee and Guardian Act 2009</i> —the NSW Trustee and Guardian”.	5 6
[2] Schedule 1 Provisions relating to members and procedure of the Board of Studies	7 8
Omit clause 9 (1) (g). Insert instead:	9
(g) becomes a mentally incapacitated person, or	10
2.24 Entertainment Industry Act 1989 No 230	11
Schedule 1 Provisions relating to the members, staff and procedure of the Council	12 13
Omit clause 5 (1) (g). Insert instead:	14
(g) becomes a mentally incapacitated person, or	15
2.25 Exhibited Animals Protection Act 1986 No 123	16
Schedule 1 Provisions relating to the members of the advisory committee	17 18
Omit clause 6 (1) (d). Insert instead:	19
(d) becomes a mentally incapacitated person,	20
2.26 Fire Brigades Act 1989 No 192	21
Schedule 2 Provisions relating to members and procedure of Council	22
Omit clause 5 (1) (g). Insert instead:	23
(g) becomes a mentally incapacitated person, or	24
2.27 Guardianship Act 1987 No 257	25
[1] Section 3 Definitions	26
Omit the definition of <i>Protective Commissioner</i> from section 3 (1).	27
Insert instead in alphabetical order:	28
<i>NSW Trustee</i> means the NSW Trustee and Guardian constituted under the <i>NSW Trustee and Guardian Act 2009</i> .	29 30

[2] Sections 3F (5) (f) and (7) (f), 25I (1) (a), 25R (b) and 25S (1) (b) (i) and (2)	1
Omit “Protective Commissioner” wherever occurring.	2
Insert instead “NSW Trustee”.	3
[3] Sections 25E (1) and 25K (2)	4
Omit “ <i>Protected Estates Act 1983</i> ” wherever occurring.	5
Insert instead “ <i>NSW Trustee and Guardian Act 2009</i> ”.	6
[4] Section 25E Tribunal may make financial management orders	7
Omit section 25E (3).	8
[5] Section 25M Tribunal may commit estate of protected person to management	9
Omit “Protective Commissioner” wherever occurring.	10
Insert instead “NSW Trustee”.	11
[6] Section 25M (1), note	12
Omit the note.	13
[7] Section 25M (2) (b)	14
Omit “section 30 (3) of the <i>Protected Estates Act 1983</i> ”.	15
Insert instead “Division 2 of Part 4.5 of the <i>NSW Trustee and Guardian Act 2009</i> ”.	16
[8] Section 77	17
Omit the section. Insert instead:	18
77 Public Guardian	19
(1) There is to be a Public Guardian.	20
(2) The Public Guardian is to be the person holding office as such under Chapter 1A of the <i>Public Sector Employment and Management Act 2002</i> .	21
(3) The Public Guardian has the functions conferred or imposed on the Public Guardian by or under this or any other law.	22
(4) The Public Guardian may delegate to a person, of a class of persons approved by the Minister or prescribed by the regulations, any of the Public Guardian’s functions, other than this power of delegation.	23
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[9] Schedule 3 Savings and transitional provisions	1
Insert at the end of clause 1 (1):	2
<i>NSW Trustee and Guardian Act 2009</i>	3
2.28 Imperial Acts Application Act 1969 No 30	4
Section 12 Definitions	5
Omit “Public Trustee” from the definition of <i>Administration</i> .	6
Insert instead “NSW Trustee and Guardian”.	7
2.29 Independent Commission Against Corruption Act 1988 No 35	8
Schedule 1 Provisions relating to Commissioner and Assistant Commissioners	10
Omit clause 6 (1) (h). Insert instead:	11
(h) becomes a mentally incapacitated person, or	12
2.30 Interpretation Act 1987 No 15	13
Section 21 Meanings of commonly used words and expressions	14
Omit “ <i>Protected Estates Act 1983</i> ” from the definition of <i>mentally incapacitated person</i> in section 21 (1).	15
Insert instead “ <i>NSW Trustee and Guardian Act 2009</i> ”.	16
2.31 Judicial Officers Act 1986 No 100	17
Schedule 1 Provisions relating to the appointed members of the Commission	18
Omit clause 5 (1) (d). Insert instead:	19
(d) becomes a mentally incapacitated person,	20
2.32 Lake Illawarra Authority Act 1987 No 285	21
Schedule 3 Provisions relating to members of the Authority	22
Omit clause 6 (1) (h). Insert instead:	23
(h) becomes a mentally incapacitated person, or	24
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2.33 Land Tax Management Act 1956 No 26	1
Section 3 Definitions	2
Omit “Public Trustee” from the definition of <i>Trustee company</i> in section 3 (1).	3
Insert instead “NSW Trustee and Guardian”.	4
2.34 Landlord and Tenant (Amendment) Act 1948 No 25	5
Section 83B NSW Trustee and Guardian’s title not a defence to recovery of possession of prescribed premises after death of lessee in certain cases	6
Omit “Public Trustee”. Insert instead “NSW Trustee and Guardian”.	7
2.35 Limitation Act 1969 No 31	8
[1] Section 11 Definitions	9
Omit “Public Trustee acting under section 23 of the <i>Public Trustee Act 1913</i> ” from the definition of <i>Personal representative</i> in section 11 (1).	10
Insert instead “NSW Trustee and Guardian acting under section 25 of the <i>NSW Trustee and Guardian Act 2009</i> ”.	11
[2] Section 50F Effect of disability on limitation period	12
Omit “ <i>Protected Estates Act 1983</i> ” wherever occurring in paragraph (b) of the definition of <i>protected person</i> in section 50F (4).	13
Insert instead “ <i>NSW Trustee and Guardian Act 2009</i> ”.	14
2.36 Liquor Act 2007 No 90	15
Sections 62 (5) and 64 (3)	16
Omit “Protective Commissioner” wherever occurring.	17
Insert instead “NSW Trustee and Guardian”.	18
2.37 Mental Health Act 2007 No 8	19
Schedule 3 Statement of rights	20
Omit “ <i>Protected Estates Act 1983</i> ”.	21
Insert instead “ <i>NSW Trustee and Guardian Act 2009</i> ”.	22

2.38 Minors (Property and Contracts) Act 1970 No 60	1
Sections 28 (2) (b) (ii) and 29 (2) (b) (ii)	2
Omit “Public Trustee” wherever occurring.	3
Insert instead “NSW Trustee and Guardian”.	4
2.39 Moratorium Act 1932 No 57	5
Sections 22 (1) and (5) and 46B	6
Omit “Public Trustee” wherever occurring.	7
Insert instead “NSW Trustee and Guardian”.	8
2.40 National Parks and Wildlife Act 1974 No 80	9
Schedule 8A Marine Mammals Advisory Committee	10
Omit clause 4 (c). Insert instead:	11
(c) becomes a mentally incapacitated person, or	12
2.41 Non-Indigenous Animals Act 1987 No 166	13
Schedule 1 Provisions relating to the members of the advisory committee	14
Omit clause 6 (1) (d). Insert instead:	15
(d) becomes a mentally incapacitated person,	16
2.42 Parliamentary Remuneration Act 1989 No 160	17
Schedule 2 Parliamentary Remuneration Tribunal	18
Omit clause 4 (1) (e). Insert instead:	19
(e) becomes a mentally incapacitated person, or	20
2.43 Parramatta Stadium Trust Act 1988 No 86	21
Schedule 1 Provisions relating to the trustees	22
Omit clause 7 (d). Insert instead:	23
(d) if the trustee becomes a mentally incapacitated person, or	24
	25

2.44 Poisons and Therapeutic Goods Act 1966 No 31	1
Schedule 1 Provisions relating to the members of the Advisory Committee	2 3
Omit clause 6 (1) (g). Insert instead:	4
(g) becomes a mentally incapacitated person, or	5
2.45 Police Regulation (Superannuation) Act 1906 No 28	6
Schedule 4 Provisions relating to members and procedure of the Police Superannuation Advisory Committee	7 8
Omit clause 5 (1) (f). Insert instead:	9
(f) becomes a mentally incapacitated person, or	10
2.46 Powers of Attorney Act 2003 No 53	11
[1] Section 3 Definitions	12
Omit “section 76 of the <i>Protected Estates Act 1983</i> ” from section 3 (3) (b).	13
Insert instead “section 50”.	14
[2] Section 16 Effect of irrevocable powers of attorney	15
Omit section 16 (1) (d) and (d1). Insert instead:	16
(d) the principal becoming a mentally incapacitated person,	17
(d1) the principal becoming a person who is a managed missing person within the meaning of the <i>NSW Trustee and Guardian Act 2009</i> ,	18 19 20
[3] Section 19 Creation of enduring power of attorney	21
Omit “Public Trustee” from paragraph (c) of the definition of <i>prescribed witness</i> in section 19 (2).	22 23
Insert instead “NSW Trustee and Guardian”.	24
[4] Section 22 Effect of adoptions of testamentary gifts by attorney under enduring power of attorney	25 26
Omit “section 48 of the <i>Protected Estates Act 1983</i> ” from section 22 (7).	27
Insert instead “section 83 of the <i>NSW Trustee and Guardian Act 2009</i> ”.	28

[5] Section 37 Review Tribunal may treat certain applications for review of power of attorney as application for management order	1 2
Omit “section 13 (Declaration and order where person incapable of managing affairs) of the <i>Protected Estates Act 1983</i> ” from section 37 (3).	3 4
Insert instead “section 41 of the <i>NSW Trustee and Guardian Act 2009</i> ”.	5
[6] Section 50	6
Omit the section. Insert instead:	7
50 Effect of management of estate	8
(1) A power of attorney is not terminated by the estate of the principal becoming subject to management under the <i>NSW Trustee and Guardian Act 2009</i> (a managed estate).	9 10 11
(2) Subsection (1) has effect subject to the terms of the instrument creating the power.	12 13
(3) A power of attorney is suspended while the estate of the principal is a managed estate.	14 15
(4) Despite subsection (3), if the Guardianship Tribunal, in making a financial management order under section 25E of the <i>Guardianship Act 1987</i> in relation to a principal, excludes a specified part of the principal’s estate from the order, the Guardianship Tribunal may order that the power of attorney is to remain in force in respect of so much of the estate as is excluded from the financial management order concerned.	16 17 18 19 20 21 22
(5) The Guardianship Tribunal may make a similar order in respect of so much of the estate of the principal as is not managed estate, but only if the estate is a managed estate because of a financial management order made by the Guardianship Tribunal.	23 24 25 26
(6) Despite subsection (3), where an attorney under a power of attorney does an act within the scope of the power while the estate of the principal is a managed estate, the act of the attorney has no less validity and effect than the act of the attorney would have had if this section had not been enacted, but this subsection does not affect the operation of subsection (9).	27 28 29 30 31 32
(7) While a power of attorney is suspended by this section, the Supreme Court may restore the power of attorney to operation to such extent, and on such terms and conditions, as the Supreme Court thinks fit.	33 34 35 36

(8)	The Supreme Court may restore a power of attorney to operation under subsection (7) as from any time whether before or after the order of restoration is made or takes effect.	1 2 3
(9)	If the estate of a principal is a managed estate, the Supreme Court may:	4 5
	(a) terminate the power of attorney, or	6
	(b) order that the power of attorney be subject to such conditions as the Court thinks fit.	7 8
(10)	An attorney under a power of attorney and persons dealing with the attorney and all other persons have the like protections against any term or condition of any restoration of the power and against any condition or restriction to which the power is subject under this section as if the term, condition or restriction were effected by act of the principal.	9 10 11 12 13 14
(11)	The estate of a person whose estate is subject to management under Division 2 of Part 4.3 of the <i>NSW Trustee and Guardian Act 2009</i> is taken to be a managed estate for the purposes of this section for the life of the person or until the Supreme Court declares that the exercise of the powers of the NSW Trustee and Guardian in relation to the estate is not required. An application to the Court for a declaration may be made by the NSW Trustee and Guardian, the person whose power of attorney is in question or an attorney under the power of attorney.	15 16 17 18 19 20 21 22 23
(12)	A declaration for the purposes of subsection (11) has no effect otherwise than for the purpose of subsection (11).	24 25
(13)	This section does not apply to a power of attorney given before the commencement of Schedule 1 to the <i>Conveyancing (Powers of Attorney) Amendment Act 1983</i> .	26 27 28
(14)	This section has effect subject to Part 3.	29
[7]	Schedule 2 Form for prescribed power of attorney	30
	Omit “*Public Trustee employee,”.	31
	Insert instead “*NSW Trustee and Guardian employee,”.	32
[8]	Schedule 2	33
	Omit “Public Trustee (www.pt.nsw.gov.au)”.	34
	Insert instead “NSW Trustee and Guardian”.	35

2.47 Probate and Administration Act 1898 No 13	1
[1] Section 3 Definitions	2
Omit “Public Trustee” from the definition of <i>Administrator</i> .	3
Insert instead “NSW Trustee”.	4
[2] Section 3	5
Insert in alphabetical order:	6
<i>NSW Trustee</i> means the NSW Trustee and Guardian constituted under the <i>NSW Trustee and Guardian Act 2009</i> .	7 8
[3] Sections 61, 64 (2), 75 (1), 75A (1) and (2), 76, 89 (1), 104 (1) (d) and 110	9
Omit “Public Trustee” wherever occurring. Insert instead “NSW Trustee”.	10
[4] Section 85 Executor, administrator or trustee to pass accounts	11
Omit “section 35A of the <i>Public Trustee Act 1913</i> ” from section 85 (1A).	12
Insert instead “section 32 of the <i>NSW Trustee and Guardian Act 2009</i> ”.	13
[5] Section 93 Claims barred against executor or administrator in certain cases	14 15
Insert “the NSW Trustee or” before “a trustee company” in section 93 (3), (4) and (6) wherever occurring.	16 17
[6] Section 93 (3) and (4)	18
Insert “the NSW Trustee or” before “the trustee company” wherever occurring.	19 20
[7] Section 93 (5)	21
Omit “A”. Insert instead “The NSW Trustee or a”.	22
2.48 Property, Stock and Business Agents Act 2002 No 66	23
[1] Section 5 Exemptions from Act	24
Omit “Public Trustee, the Protective Commissioner” from section 5 (1) (f).	25
Insert instead “NSW Trustee and Guardian”.	26
[2] Section 5 (1) (f)	27
Omit “ <i>Protected Estates Act 1983</i> ”.	28
Insert instead “ <i>NSW Trustee and Guardian Act 2009</i> ”.	29

2.49 Public Finance and Audit Act 1983 No 152	1
[1] Schedule 2 Statutory bodies	2
Omit “Protective Commissioner”.	3
Insert instead in alphabetical order “NSW Trustee and Guardian”.	4
[2] Schedule 2	5
Omit “Public Trustee”.	6
2.50 Public Sector Employment and Management Act 2002 No 43	7
Schedule 2 Executive provisions (other than non-statutory SES positions)	8
	9
Insert in appropriate order in Part 3:	10
Chief Executive Officer of the NSW Trustee and Guardian	11
2.51 Real Property Act 1900 No 25	12
[1] Section 61 Application for foreclosure order	13
Omit “Public Trustee” wherever occurring in section 61 (2A) (a) and (b).	14
Insert instead “NSW Trustee and Guardian”.	15
[2] Section 74M Withdrawal of caveats	16
Omit “protected missing person within the meaning of the <i>Protected Estates Act 1983</i> ” from section 74M (1) (g).	17
	18
Insert instead “managed missing person within the meaning of the <i>NSW Trustee and Guardian Act 2009</i> ”.	19
	20
[3] Section 74M (1) (g)	21
Omit “Protective Commissioner”.	22
Insert instead “NSW Trustee and Guardian”.	23
2.52 Retirement Villages Act 1999 No 81	24
[1] Section 75 Attendance at meetings of residents	25
Omit “ <i>Protected Estates Act 1983</i> ” from section 75 (3) (b).	26
Insert instead “ <i>NSW Trustee and Guardian Act 2009</i> ”.	27

[2] Section 75 (3) (b)	1
Omit “Protective Commissioner” wherever occurring.	2
Insert instead “NSW Trustee and Guardian”.	3
2.53 Rural Assistance Act 1989 No 97	4
Schedule 1 Constitution and procedure of New South Wales Rural Assistance Authority Board	5
	6
Omit clause 6 (1) (g). Insert instead:	7
(g) becomes a mentally incapacitated person, or	8
2.54 Sporting Injuries Insurance Act 1978 No 141	9
Section 28 Administration of amounts payable to minors	10
Omit “Public Trustee” wherever occurring.	11
Insert instead “NSW Trustee and Guardian”.	12
2.55 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)	13
	14
Schedule 2 Public offices	15
Omit “Public Trustee” from Part 1.	16
2.56 Stewards’ Foundation of Christian Brethren Act 1989 No 172	17
Schedule 1 Members of the Foundation	18
Omit clause 4 (e). Insert instead:	19
(e) becomes a mentally incapacitated person, or	20
2.57 Succession Act 2006 No 80	21
[1] Section 12 Effect of marriage on a will	22
Omit “Public Trustee” from section 12 (2) (c).	23
Insert instead “NSW Trustee and Guardian”.	24
[2] Section 54 Persons entitled to inspect will of deceased person	25
Omit “ <i>Protected Estates Act 1983</i> ” from section 54 (2) (h).	26
Insert instead “ <i>NSW Trustee and Guardian Act 2009</i> ”.	27

[3] Section 55 Interpretation	1
Omit “section 18 (2) or 23 (1) of the <i>Public Trustee Act 1913</i> ” from section 55 (1) (c).	2 3
Insert instead “section 24 or 25 of the <i>NSW Trustee and Guardian Act 2009</i> ”.	4
[4] Section 55 (1) (d)	5
Omit “Public Trustee under section 18A of the <i>Public Trustee Act 1913</i> ”.	6
Insert instead “NSW Trustee and Guardian under Division 1 of Part 3.2 of the <i>NSW Trustee and Guardian Act 2009</i> ”.	7 8
[5] Section 55 (1) (e)	9
Omit “section 15A”. Insert instead “section 15A or 15AA”.	10
2.58 Treasury Corporation Act 1983 No 75	11
[1] Schedule 1 The Chief Executive	12
Omit clause 6 (1) (h). Insert instead:	13
(h) becomes a mentally incapacitated person,	14
[2] Schedule 3 Provisions relating to the members of the Board	15
Omit clause 6 (1) (h). Insert instead:	16
(h) becomes a mentally incapacitated person, or	17
2.59 Trustee Act 1925 No 14	18
[1] Section 5 Definitions	19
Omit “public trustee” from the definitions of <i>Administrator</i> and <i>Trustee</i> wherever occurring.	20 21
Insert instead “NSW Trustee”.	22
[2] Section 5	23
Insert in alphabetical order:	24
<i>NSW Trustee</i> means the NSW Trustee and Guardian constituted under the <i>NSW Trustee and Guardian Act 2009</i> .	25 26
[3] Sections 6 (6), 7 (2), 8 (2), 10 (2), 45A (1), 47 (1)–(3), 51 (4), 64 (2) and (5), 65 (1) and 82A (1A) (b)	27 28
Omit “public trustee” wherever occurring. Insert instead “NSW Trustee”.	29

[4] Sections 14E (2) (a), 54 (1), 82A (1A) (a) and 101	1
Omit “Public Trustee” wherever occurring. Insert instead “NSW Trustee”.	2
[5] Section 47 Payment to NSW Trustee or trustee company	3
Omit “public trustee’s” from section 47 (3). Insert instead “NSW Trustee’s”.	4
2.60 Trustee Companies Act 1964 No 6	5
Sections 15A–15AD	6
Omit section 15A. Insert instead:	7
15A Election to administer where no previous executor or administrator	8
	9
(1) A trustee company may file an election to administer the estate of a deceased person who died testate or intestate in the registry of the Court, instead of applying for probate or administration, if:	10
	11
	12
(a) the gross value of the estate in New South Wales, as estimated by the trustee company, is less than the amount prescribed by the regulations for the purposes of this section, and	13
	14
	15
	16
(b) no person has obtained probate of the estate or taken out administration, and	17
	18
(c) the trustee company is entitled to obtain probate or administration.	19
	20
(2) An election must be sealed by the trustee company and must set out:	21
	22
(a) the name, residence and occupation (as far as it is known to the trustee company) of the deceased person, and	23
	24
(b) particulars of property forming the deceased person’s estate, and	25
	26
(c) the date of the deceased person’s death as then known to the trustee company, and	27
	28
(d) if the deceased person died testate, state that, after due inquiries, the trustee company believes that the document annexed to the election is the testator’s last will and that the will has been validly executed according to the law governing the execution of wills.	29
	30
	31
	32
	33
(3) On an election being filed, the trustee company is taken to have been appointed by the Court as the executor of the estate or the administrator of the estate.	34
	35
	36

15AA	Election to administer where previous executor or administrator	1
(1)	A trustee company may file an election to administer the unadministered property of the estate of a deceased person who died testate or intestate in the registry of the Court, instead of taking out administration de bonis non, if:	2
		3
		4
		5
	(a) the executor or administrator of the estate has died and no other person has taken out administration de bonis non in respect of the estate, and	6
		7
		8
	(b) part of the estate is unadministered, and	9
	(c) the gross value of the unadministered part of the estate in New South Wales is less than the amount prescribed by the regulations for the purposes of this section, and	10
		11
		12
	(d) the trustee company is entitled to take out administration de bonis non.	13
		14
(2)	An election must be sealed by the trustee company and must set out:	15
		16
	(a) the fact of the original grant, and	17
	(b) the fact of the death of the executor or administrator, and	18
	(c) particulars of the property left unadministered.	19
(3)	On an election being filed, the trustee company is taken to have been appointed by the Court as the administrator de bonis non of the unadministered part of the estate.	20
		21
		22
15AB	Estate not small estate	23
(1)	If, after an election takes effect under section 15A or 15AA, the trustee company becomes aware that the gross value of the estate or the unadministered estate exceeds the amount prescribed for the purposes of making an election, the trustee company must file a notice to that effect in the registry of the Court.	24
		25
		26
		27
		28
(2)	The trustee company is not entitled to continue to administer the estate but must obtain probate or administration in the ordinary manner.	29
		30
		31
15AC	Discovery of later will	32
(1)	If, after an election takes effect under section 15A or 15AA, a later will, or a will, is found, the trustee company must file a notice to that effect in the registry of the Court.	33
		34
		35

(2)	On filing the notice, the trustee company ceases to be the executor or administrator of the estate and may, if it is otherwise entitled to do so, obtain probate or administration in the ordinary manner or make a new election under section 15A or 15AA.	1 2 3 4
(3)	If the trustee company does not obtain probate or letters of administration or make a new election, the <i>Probate and Administration Act 1898</i> applies as if a grant of probate or administration to the trustee company had been revoked.	5 6 7 8
15AD	Notice and form of elections and notices	9
(1)	A trustee company must publish, in accordance with the regulations, notice of an election made by it under section 15A or 15AA or notice filed under section 15AB.	10 11 12
(2)	An election under section 15A or 15AA or a notice under section 15AB is to be in the form (if any) prescribed by the rules of the Court and to contain the particulars prescribed by the regulations.	13 14 15
(3)	A notice that complies with this section is evidence that the trustee company is entitled to administer an estate.	16 17
2.61	Victims Support and Rehabilitation Act 1996 No 115	18
	Section 69 Payments from Compensation Fund	19
	Omit “Public Trustee” from section 69 (c1).	20
	Insert instead “NSW Trustee and Guardian”.	21
2.62	Warehousemen’s Liens Act 1935 No 19	22
	Section 8 Disposition of proceeds of sale	23
	Omit “Public Trustee” wherever occurring in section 8 (2)–(4).	24
	Insert instead “NSW Trustee and Guardian”.	25
2.63	Wollongong Sportsground Act 1986 No 174	26
	Schedule 2 Provisions relating to the members of the Trust	27
	Omit clause 5 (1) (d). Insert instead:	28
	(d) becomes a mentally incapacitated person,	29

2.64 Workers Compensation Act 1987 No 70	1
[1] Section 3 Definitions	2
Insert in alphabetical order in section 3 (1):	3
<i>NSW Trustee</i> means the NSW Trustee and Guardian constituted under the <i>NSW Trustee and Guardian Act 2009</i> .	4 5
[2] Sections 29 (1) and (2)–(5), 30, 31 (1) (b), 83 (7), 85 (1)–(3) and (5)–(8), 86 and 87 (1)	6 7
Omit “Public Trustee” wherever occurring. Insert instead “NSW Trustee”.	8
[3] Section 86 NSW Trustee’s powers of investment	9
Omit “the common fund under section 36A of the <i>Public Trustee Act 1913</i> ” from section 86 (1).	10 11
Insert instead “a common fund established under the <i>NSW Trustee and Guardian Act 2009</i> ”.	12 13
[4] Section 86 (2)	14
Omit “ <i>Public Trustee Act 1913</i> ”.	15
Insert instead “ <i>NSW Trustee and Guardian Act 2009</i> ”.	16
2.65 Youth Advisory Council Act 1989 No 39	17
Schedule 1 Provisions relating to members of Council	18
Omit clause 5 (1) (g). Insert instead:	19
(g) becomes a mentally incapacitated person, or	20