



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.

* Amended in committee—see table at end of volume.

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 [Act 2009 No 49]

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.