Western Australia

Guardianship and Administration Act 1990

Compare between:

[12 Dec 2023, 05-r0-01] and [27 Mar 2024, 05-s0-01]

Western Australia

Guardianship and Administration Act 1990

An Act to provide for the guardianship of adults who need assistance in their personal affairs, for the administration of the estates of persons who need assistance in their financial affairs, to confer on the State Administrative Tribunal jurisdiction in respect of guardianship and administration matters, to provide for the appointment of a public officer with certain functions relative thereto, to provide for enduring powers of attorney, enduring powers of guardianship and advance health directives, and for connected purposes.

[Long title amended: No. 55 of 2004 s. 417; No. 25 of 2008 s. 4.]

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Guardianship and Administration Act 1990*.

2. Commencement

The provisions of this Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

3. Terms used

(1) In this Act, unless the contrary intention appears —

administration order means an order made under section 64 and includes an order so made which is amended, continued or replaced under any other provision of this Act;

administrator means —

(a) the person appointed as an administrator under section 64 or the Public Advocate acting under section 99; and

(b) 2 or more persons appointed as joint administrators under section 64;

advance health directive means —

(a) an advance health directive made under Part 9B; or

(b) an instrument recognised as such under section 110ZA;

application means an application to the State Administrative Tribunal under this Act;

corporate trustee means the Public Trustee or any trustee company under the *Trustee Companies Act 1987*;

Deputy President means a Deputy President of the State Administrative Tribunal;

determination, in relation to the State Administrative Tribunal, means —

(a) a grant or refusal of leave under section 87; or

(b) the making of, or refusal to make, an order under section 43 or 64; or

(c) the refusal to issue a warrant under section 49; or

(d) the making of, or refusal to make, an order on a review under section 84, 85 or 86; or

(e) the giving of a direction under section 47 or 74; or

(f) the giving or refusal of consent under section 63; or

(g) the making of or refusal to make a declaration under section 111 or the revocation of or refusal to revoke such a declaration; or

(h) the making of, or refusal to make, an order under section 66, 104A(2), 106, 109 or 112(4); or

(i) a decision made under Part 9E Division 5;

electroconvulsive therapy has the meaning given in the *Mental Health Act 2014* section 192;

enduring guardian means —

(a) the person who is the enduring guardian under an enduring power of guardianship; or

(b) the persons who are the joint enduring guardians under an enduring power of guardianship,

and includes a substitute enduring guardian while he or she is the enduring guardian or a joint enduring guardian under an enduring power of guardianship;

enduring power of guardianship means —

(a) an enduring power of guardianship made under Part 9A; or

(b) an instrument recognised as such under section 110O;

executive officer has the meaning given to that term in the *State Administrative Tribunal Act 2004* section 3;

Full Tribunal means the State Administrative Tribunal constituted so as to consist of —

(a) the President; or

(b) a Deputy President,

and 2 other members;

guardian means —

(a) a person appointed as a guardian (including an alternate guardian) under section 43;

(b) 2 or more persons appointed as joint guardians under that section; and

(c) the Public Advocate acting under section 99;

guardianship order means an order made under section 43, and includes an order so made which is amended, continued or replaced under any other provision of this Act;

life sustaining measure means a medical, surgical or nursing procedure directed at supplanting or maintaining a vital bodily function that is temporarily or permanently incapable of independent operation, and includes assisted ventilation and cardiopulmonary resuscitation;

medical research has the meaning given in section 3AA;

member means a member of the State Administrative Tribunal;

mental disability includes an intellectual disability, a psychiatric condition, an acquired brain injury and dementia;

nearest relative in relation to a person means the first in order of priority of the following persons, who has attained the age of 18 years and is reasonably available at the relevant time —

(a) a spouse or de facto partner;

(b) a child;

(ba) a step child;

(c) a parent;

(ca) a foster parent;

(d) a brother or sister;

(e) a grandparent;

(f) an uncle or aunt;

(g) a nephew or niece,

and for the purposes of this definition —

[(h) deleted]

(i) a brother or sister of a person includes a brother or sister of the half-blood, and a person who was adopted by one or both of the parents of the first-mentioned person; and

(j) the elder or eldest of 2 or more relatives described in a paragraph of this definition shall be preferred to the other or any other of those relatives regardless of sex, and no distinction shall be made between relatives of the same age;

palliative care means a medical, surgical or nursing procedure directed at relieving a person's pain, discomfort or distress, but does not include a life sustaining measure;

party in relation to an application under this Act means the applicant, the represented person or person in respect of whom an application is made, a person to whom notice of an application is required by this Act to be given, or to whom such notice is given, and any person who is heard by the State Administrative Tribunal under clause 13(2)(a) of Schedule 1;

personal information has the meaning given in the *Freedom of Information Act 1992* Glossary clause 1;

placebo means a substance not containing an active agent under study administered to some individuals to compare the effects of the active agent administered to other individuals;

President means the President of the State Administrative Tribunal;

Public Advocate means the person for the time being holding or acting in the office of Public Advocate created by section 91(1);

Public Trustee means the Public Trustee appointed under the *Public Trustee Act 1941*;

represented person means any person in respect of whom —

(a) a guardianship order is in force;

(b) an administration order is in force; or

(c) both a guardianship order and an administration order are in force;

research candidate means an individual —

(a) whose participation is sought in medical research; or

(b) in respect of whom medical research is conducted under Part 9E;

research decision, in relation to a research candidate, means a decision to consent or refuse consent to the candidate's participation in medical research;

research decision-maker, for a research candidate, has the meaning given in section 110ZP;

substitute enduring guardian means a person appointed as a substitute enduring guardian under section 110C(1);

treatment —

(a) means —

(i) medical or surgical treatment, including a life sustaining measure or palliative care; or

(ii) dental treatment; or

(iii) other health care;

and

(b) in Parts 9B and 9E — includes medical research; and

(c) if paragraph (b) does not apply — does not include medical research;

treatment decision, in relation to a person —

(a) means a decision to consent or refuse consent to the commencement or continuation of any treatment of the person; and

(b) in Part 9B — includes a decision to consent or refuse consent to the commencement or continuation of the person's participation in medical research.

(1A) In this Act, a reference to the performance of an abortion on a person —

(a) is a reference to the provision of treatment to the person, including treatment referred to in the *Public Health Act 2016* section 202MB(2), with the intention of causing the termination of the pregnancy of the person; and

(b) does not include a reference to the provision of treatment to the person without that intention even if the treatment results or may result in the termination of the pregnancy of the person.

(2) A reference in a written law to the committee of the person of a person is to be read as a reference to the guardian of that person.

[Section 3 amended: No. 16 of 1992 s. 4 and 17; No. 7 of 1996 s. 4; No. 69 of 1996 s. 33; No. 70 of 2000 s. 4; No. 3 of 2002 s. 68; No. 65 of 2003 s. 40(2); No. 55 of 2004 s. 418 and 466(1); No. 21 of 2008 s. 667(2); No. 25 of 2008 s. 5; No. 8 of 2009 s. 68; No. 19 of 2010 s. 18(2); No. 25 of 2014 s. 20; No. 14 of 2020 s. 4; No. 9 of 2022 s. 424; No. 20 of 2023 s. 26.]

3AA. Term used: medical research

(1) For the purposes of this Act, ***medical research*** —

(a) means research conducted with or about individuals, or their data or tissue, in the field of medicine or health; and

(b) includes an activity undertaken for the purposes of that research.

(2) Without limiting subsection (1), ***medical research*** includes the following —

(a) the administration of pharmaceuticals or placebos;

(b) the use of equipment or a device;

(c) providing health care that has not yet gained the support of a substantial number of practitioners in that field of health care;

(d) providing health care to which paragraph (c) does not apply to carry out a comparative assessment referred to in paragraph (e);

(e) carrying out a comparative assessment of the health care provided under paragraphs (c) and (d);

(f) taking samples from an individual, including —

(i) a blood sample; or

(ii) a sample of tissue or fluid from the body, including the mouth, throat, nasal cavity, eyes or ears;

(g) any non-intrusive examination, including —

(i) a visual examination of the mouth, throat, nasal cavity, eyes or ears; or

(ii) the measuring of an individual's height, weight or vision;

(h) observing an individual;

(i) undertaking a survey, interview or focus group;

(j) collecting, using or disclosing information, including personal information;

(k) considering or evaluating samples or information taken under an activity listed in this subsection;

(l) any other activity prescribed by the regulations to be medical research.

(3) Despite subsections (1) and (2), ***medical research*** does not include —

(a) research conducted about individuals, or their data or tissue, in the field of medicine or health that —

(i) only involves analysing data about the individuals; and

(ii) does not result in the disclosure or publication of personal information;

and

(b) any other activity prescribed by the regulations not to be medical research.

[Section 3AA inserted: No. 14 of 2020 s. 5.]

3A. Inherent jurisdiction of Supreme Court not affected

Nothing in this Act affects the inherent jurisdiction of the Supreme Court.

[Section 3A inserted: No. 55 of 2004 s. 419.]

3B. Act does not authorise decisions about voluntary assisted dying

Nothing in this Act authorises the making of a treatment decision, whether in an advance health directive or otherwise, in relation to voluntary assisted dying as defined in the *Voluntary Assisted Dying Act 2019* section 5.

[Section 3B inserted: No. 27 of 2019 s. 170.]

Part 2 — Principles to be observed by State Administrative Tribunal

[Heading amended: No. 55 of 2004 s. 466(1).]

4. Principles stated

(1) In dealing with proceedings commenced under this Act the State Administrative Tribunal shall observe the principles set out in this section.

(2) The primary concern of the State Administrative Tribunal shall be the best interests of any represented person, or of a person in respect of whom an application is made.

(3) Every person shall be presumed to be capable of —

(a) looking after his own health and safety;

(b) making reasonable judgments in respect of matters relating to his person;

(c) managing his own affairs; and

(d) making reasonable judgments in respect of matters relating to his estate,

until the contrary is proved to the satisfaction of the State Administrative Tribunal.

(4) A guardianship or administration order shall not be made if the needs of the person in respect of whom an application for such an order is made could, in the opinion of the State Administrative Tribunal, be met by other means less restrictive of the person's freedom of decision and action.

(5) A plenary guardian shall not be appointed under section 43(1) or (2a) if the appointment of a limited guardian under that section would be sufficient, in the opinion of the State Administrative Tribunal, to meet the needs of the person in respect of whom the application is made.

(6) An order appointing a limited guardian or an administrator for a person shall be in terms that, in the opinion of the State Administrative Tribunal, impose the least restrictions possible in the circumstances on the person's freedom of decision and action.

(7) In considering any matter relating to a represented person or a person in respect of whom an application is made the State Administrative Tribunal shall, as far as possible, seek to ascertain the views and wishes of the person concerned as expressed, in whatever manner, at the time, or as gathered from the person's previous actions.

[Section 4 amended: No. 7 of 1996 s. 5; No. 55 of 2004 s. 420 and 466(1); No. 5 of 2008 s. 57(3); No. 19 of 2010 s. 51.]

Part 3 — The State Administrative Tribunal

[Heading inserted: No. 55 of 2004 s. 421.]

Division 1 — Functions and proceedings

[Heading inserted: No. 55 of 2004 s. 421; amended: No. 5 of 2008 s. 56(2).]

*[**5.** Deleted: No. 5 of 2008 s. 56(1).]*

*[**6-12.** Deleted: No. 55 of 2004 s. 423.]*

[Heading deleted: No. 55 of 2004 s. 424.]

13. Jurisdiction of State Administrative Tribunal

For the purposes of this Act, the State Administrative Tribunal has —

(a) jurisdiction to consider applications for guardianship and administration orders; and

(b) jurisdiction to make orders appointing, and as to the functions of, and for giving directions to, guardians and administrators; and

(c) jurisdiction to make orders declaring the capacity of a represented person to vote at parliamentary elections; and

(d) jurisdiction to review guardianship and administration orders and to make orders consequential thereon; and

(e) jurisdiction to give or withhold consent to the sterilisation of persons in respect of whom guardianship orders are in force; and

(ea) jurisdiction to consent or refuse consent to the performance of abortion on persons who are unable to make reasonable judgments in respect of whether abortions should be performed on them; and

(f) certain jurisdiction in relation to powers of attorney that operate after the donor has ceased to have legal capacity; and

(g) any other jurisdiction vested in it by this Act or any other Act in relation to matters of guardianship and administration; and

(h) jurisdiction otherwise conferred on the Tribunal under this Act.

[Section 13 amended: No. 7 of 1996 s. 10; No. 55 of 2004 s. 425; No. 14 of 2020 s. ~~6~~6; No. 20 of 2023 s. 27.]

*[**14-15A.** Deleted: No. 55 of 2004 s. 426.]*

16. Costs

[(1) deleted]

(2) Where a person gives evidence or information —

(a) at the instigation of the State Administrative Tribunal; or

(b) at the instigation of a party and the State Administrative Tribunal considers that the circumstances are exceptional,

the Tribunal may approve payment to him of such amount as it thinks fit in or towards defraying any costs and expenses incurred by him in doing so, and an amount so approved shall be paid from moneys appropriated by Parliament for that purpose.

[(3) deleted]

(4) The State Administrative Tribunal may, if it is satisfied that a party to proceedings commenced under this Act has acted in the best interests of the represented person or a person in respect of whom an application is made, order that such costs relative to those proceedings as the State Administrative Tribunal thinks fit be paid to that party by, or out of the assets of, that person.

(5) Nothing in this section limits any other power of the State Administrative Tribunal under the *State Administrative Tribunal Act 2004*.

[Section 16 amended: No. 16 of 1992 s. 18; No. 55 of 2004 s. 427 and 466.]

17. Further provisions as to proceedings

(1) The provisions of Schedule 1 have effect with respect to proceedings of the State Administrative Tribunal commenced under this Act.

(2) Those provisions operate in addition to the provisions of the *State Administrative Tribunal Act 2004*.

[Section 17 amended: No. 55 of 2004 s. 428; No. 19 of 2010 s. 18(2).]

Division 2A — Review of determination where State Administrative Tribunal comprises one member

[Heading inserted: No. 16 of 1992 s. 8; amended: No. 55 of 2004 s. 466(1).]

17A. Review

(1) Where the State Administrative Tribunal consisting of one member makes any determination, a party who is aggrieved by the determination may request the President to arrange for a Full Tribunal to review the determination, and the President shall comply with any such request.

(2) A request under subsection (1) is to be made within 28 days of the date of the determination or, if the Full Tribunal considers there is good reason for making the request outside that time, such further time as the Full Tribunal allows.

[Section 17A inserted: No. 16 of 1992 s. 8; amended: No. 7 of 1996 s. 37; No. 70 of 2000 s. 7; No. 55 of 2004 s. 429 and 466.]

17B. Executive officer to give notice of review

(1) The executive officer shall, at least 7 days before the day on which a review commenced under this Division is to be heard, cause notice in writing of the hearing to be given to —

(a) the applicant;

(b) the represented person;

(c) the nearest relative of the represented person;

(d) the guardian (if any) of the represented person;

(e) the administrator (if any) of the estate of the represented person;

(f) the Public Advocate;

(g) any other person who in the opinion of the executive officer has a sufficient interest in the proceedings.

(2) A notice under subsection (1) shall include —

(a) particulars of the review and the time and place of the hearing; and

(b) in the case of the notice given to the applicant or the represented person, a summary of the provisions of section 16 and clause 13 of Schedule 1 of this Act and sections 39, 87 and 88 of the *State Administrative Tribunal Act 2004* as they affect that person.

(3) The State Administrative Tribunal may where it considers that exceptional circumstances so require —

(a) shorten the time for giving notice to all or any of the persons referred to in subsection (1); and

(b) dispense with the requirements for notice to be given to all or any of the persons referred to in that

subsection other than the represented person and the Public Advocate.

[Section 17B inserted: No. 16 of 1992 s. 8; amended: No. 7 of 1996 s. 36; No. 55 of 2004 s. 430 and 466(1); No. 19 of 2010 s. 18(2).]

[17C, 17D. *Deleted: No. 55 of 2004 s. 431.]*

Division 3 — Appeals

Subdivision 1 — Preliminary

[Heading inserted: No. 20 of 2023 s. 28.]

18. Term used: Court

(1) In this Division —

Court means a single judge of the Supreme Court or the Court of Appeal, as the case requires.

(2) Where under this Division the Court varies a determination of the State Administrative Tribunal or substitutes its determination for that of the Tribunal, the determination of the Court has effect for the purposes of this Act (other than this Division) as if it were a determination of the Tribunal.

[Section 18 amended: No. 7 of 1996 s. 13; No. 45 of 2004 s. 37; No. 55 of 2004 s. 466.]

18A. Application of Division

(1) Subdivision 2 provides for appeals, by leave as provided in that Subdivision, from determinations of the State Administrative Tribunal generally.

(2) Subdivision 3 provides for appeals from decisions of the State Administrative Tribunal under section 110ZND to consent or refuse consent to the performance of an abortion on a person.

(3) There is no appeal from a determination of the State Administrative Tribunal other than as provided under this Division.

[Section 18A inserted: No. 20 of 2023 s. 29.]

Subdivision 2 — Appeals by leave from determinations of State Administrative Tribunal generally

[Heading inserted: No. 20 of 2023 s. 30.]

19. Right of appeal by leave

By leave as provided in this ~~Division~~Subdivision, an appeal lies to —

(a) a single judge of the Supreme Court from a determination of the State Administrative Tribunal when constituted by 3 members not including the President; or

(b) the Court of Appeal from a determination of the State Administrative Tribunal when constituted by 3 members including the President~~,~~.

~~but otherwise there is no appeal from a determination of the State Administrative Tribunal.~~

[Section 19 inserted: No. 7 of 1996 s. 14; amended: No. 45 of 2004 s. 37; No. 55 of 2004 s. 432 and 466(1~~).~~); No. 20 of 2023 s. 31.]

20. Application for leave

(1) An application for leave to appeal may be made to a judge in chambers or in court.

(2) The application may be made by any party who is aggrieved by the determination, and shall be made ex parte unless the judge orders that the application be served on any person.

(3) One application for leave to appeal may be made in respect of 2 or more determinations given at the same hearing, and the appeals for which leave is granted on any such application shall

be consolidated unless, or except to the extent that, the Court otherwise orders.

(4) An application for leave to appeal must be made within 28 days of the determination appealed from unless a judge extends the period for making such an application on the ground that there is good reason to allow it to be made outside that time.

[Section 20 amended: No. 7 of 1996 s. 15.]

21. Grounds

An application for leave to appeal may only be made on a ground or grounds coming within the following —

(a) that the State Administrative Tribunal —

(i) made an error of law or fact, or of both law and fact; or

(ii) acted without or in excess of jurisdiction,

or did both of those things; or

(b) that there is some other reason that is sufficient to justify a review of the determination.

[Section 21 amended: No. 55 of 2004 s. 466(1).]

22. Grant or refusal of leave

(1) The judge shall grant leave to appeal only if it is shown to his satisfaction that there is a prima facie case justifying an appeal on one or more of the grounds specified in section 21.

(2) An order granting leave to appeal shall show the ground or grounds of the appeal and, subject to section 27, the appeal shall not be heard or determined on any ground that is not shown in the order.

(3) In determining an application for leave to appeal the judge may inform himself in such manner as he thinks fit.

23. Ancillary orders and directions

Where leave to appeal is granted —

(a) the judge who makes the order granting leave shall include in the order a time within which the appeal shall be entered for hearing, and may include in the order such directions and further orders as he thinks fit for the purpose of facilitating the hearing or disposal of the appeal;

(b) any judge may subsequently give any direction or make any further order of the kind referred to in paragraph (a), or may vary or revoke any previous direction or order under this section.

24. Reference of application to Court

(1) Where a judge refuses to grant leave to appeal or grants leave but not on a ground sought by the applicant, the judge shall, if the applicant so requires within 7 days of the decision, refer the application for leave to the Court for determination.

(2) Subject to any order of the Court, a determination of the State Administrative Tribunal, other than a consent by the Tribunal under Division 3 of Part 5, continues to have effect pending the disposal of a reference under this section.

[Section 24 inserted: No. 16 of 1992 s. 10; amended: No. 55 of 2004 s. 466.]

25. Application and appeal may be heard together

Where an application for leave to appeal is granted, the appeal may be determined at the same time as the application if —

(a) it is in the interests of justice to do so; and

(b) sufficient notice that the appeal may be so determined has been given to such persons as, in the opinion of the Court, ought to have such notice.

Subdivision 3 — Appeals from decisions relating to consent to performance of abortion

[Heading inserted: No. 20 of 2023 s. 32.]

25A. Appeal from Tribunal's decision relating to consent to performance of abortion

(1) A party to a proceeding for a decision of the State Administrative Tribunal under section 110ZND to consent or refuse consent to the performance of an abortion on a person may appeal from the decision.

(2) The appeal lies to the Court of Appeal.

(3) The appeal must be instituted —

(a) in accordance with the rules of the Supreme Court; and

(b) within the period of 2 days after the day on which the State Administrative Tribunal gives its reasons for the final decision under section 110ZND, unless the Court extends the period for making an application on the ground that there is good reason to allow it to be made outside that time.

Note for this subsection:

For the purposes of paragraph (b) — see the *State Administrative Tribunal Act 2004* section 77 for the requirement for the State Administrative Tribunal to give its reasons for a final decision.

(4) The party instituting the appeal must notify the executive officer about the institution of the appeal, but the Tribunal is not a party to the appeal and nor is any member of the Tribunal.

[Section 25A inserted: No. 20 of 2023 s. 32.]

25B. Grounds

An appeal from a decision of the State Administrative Tribunal under section 110ZND may only be made on a ground or grounds coming within the following —

(a) that the State Administrative Tribunal —

(i) made an error of law or fact, or of both law and fact; or

(ii) acted without or in excess of jurisdiction; or

(iii) did both of the things referred to in subparagraph (i) and (ii);

or

(b) that there is some other reason that is sufficient to justify a review of the decision.

[Section 25B inserted: No. 20 of 2023 s. 32.]

25C. Status of State Administrative Tribunal's decision pending disposal of appeal

Where an appeal from a decision of the State Administrative Tribunal under section 110ZND is instituted under section 25A, the operation of the decision is stayed pending the disposal of the appeal.

[Section 25C inserted: No. 20 of 2023 s. 32.]

Subdivision 4 — General provisions about appeals

[Heading inserted: No. 20 of 2023 s. 33.]

26. Notice to other parties

~~Except where section 25 applies, the~~(1) The appellant ~~shall~~must give notice of the appeal to —

(a) the other party or other parties to the proceedings before the State Administrative Tribunal; and

(b) any other person to whom the Court may direct that notice be given.

(2) The appeal may be determined if, in the opinion of the Court, sufficient notice of the appeal is given to each person who ought to be notified of the appeal.

(3) This section does not apply if section 25 applies.

[Section 26 amended: No. 55 of 2004 s. 466(1~~).~~); No. 20 of 2023 s. 34.]

27. Amendment of grounds of appeal

The Court may, on such terms and conditions as it thinks fit —

(a) on application made by the appellant before the hearing of the appeal; or

(b) on the hearing of the appeal,

amend or add to, or grant leave to the appellant to amend or add to, the grounds of the appeal.

28. Status of State Administrative Tribunal's determination pending disposal of appeal

(1) Where an application for leave is made under section 20 in respect of a determination of the State Administrative Tribunal, the determination shall, unless the judge who hears the application otherwise orders, continue to have effect pending the disposal of that application and of the appeal, if leave is granted.

(2) Any judge may at any time make an order as to the operation or otherwise of the determination and may revoke or amend an order made under subsection (1).

(3) Subsections (1) and (2) do not apply to a consent by the State Administrative Tribunal under Division 3 of Part 5 to the sterilisation of a represented person.

Note for this section:

See section 25C in relation to the status of a decision of the State Administrative Tribunal under section 110ZND pending disposal of an appeal from the decision.

[Section 28 amended: No. 55 of 2004 s. 466(1~~).~~); No. 20 of 2023 s. 35.]

29. Nature of appeal, and evidence

(1) The Court shall determine the appeal —

(a) on the material that was before the State Administrative Tribunal; and

(b) on such further evidence either oral or by affidavit as the Court thinks fit to receive.

(2) For the purposes of subsection (1) the Court may ascertain what material was before the State Administrative Tribunal on such evidence, statement or record of what occurred before the Tribunal as the Court considers sufficient.

[Section 29 amended: No. 55 of 2004 s. 466.]

30. Powers of Court

(1A) In this section —

determination includes a decision under section 110ZND to consent or refuse consent to the performance of an abortion on a person;

(1) Upon the hearing of an appeal, the Court may do one or more of the following —

(a) confirm, set aside, or vary the determination of the State Administrative Tribunal and any order made or thing done as a result of the determination;

(b) substitute a determination that could be made under this Act;

(c) remit the case for redetermination by the State Administrative Tribunal, with or without any direction to the Tribunal;

(d) exercise any power that the Court may exercise on an application for certiorari, mandamus, prohibition, or habeas corpus;

(e) make such other order as it thinks fit, including an order as to costs.

(2) The Court is not required to set aside, quash or vary a determination of the State Administrative Tribunal because the Tribunal omitted to make any necessary finding if the facts or evidence —

(a) in substance support the determination; or

(b) justify the finding,

and the Court may instead under subsection (1) either vary the determination or substitute another determination for it.

(3) The State Administrative Tribunal may take all such steps as are necessary to give effect to any decision of the Court of a kind mentioned in subsection (1)(c).

[Section 30 amended: No. 55 of 2004 s. 466; No. 20 of 2023 s. 36.]

31. Want of form

Notwithstanding anything in section 21 or 25B, no decision of, or proceedings before, the State Administrative Tribunal, nor any document in such proceedings, shall be held to be bad for want of form.

[Section 31 amended: No. 55 of 2004 s. 466(1).]; No. 20 of 2023 s. 37.]

32. Notification of result of appeal to executive officer

(1) The registrar of the Court shall send a memorandum of the determination of the Court on an appeal, or of the dismissal of an appeal under section 34, to the executive officer.

(2) A copy of the memorandum shall be entered in the records of the executive officer and shall be sufficient evidence of the matters stated therein.

[Section 32 inserted: No. 16 of 1992 s. 11.]

33. Discontinuance of appeal

(1) An appellant may at any time discontinue an appeal by giving notice of discontinuance to the Court and serving a copy of the notice on the other parties to the appeal and on the executive officer.

(2) A party on whom a notice of discontinuance is served may within 60 days after service apply to the Court for an order as to costs or as to any other matter relating to the discontinued appeal, and the Court may make such order as to costs or otherwise as it thinks fit.

[Section 33 amended: No. 16 of 1992 s. 18; No. 55 of 2004 s. 433.]

34. Dismissal for want of prosecution

(1) If the appellant is in default in entering the appeal for hearing within the required time or taking any necessary step in connection therewith, any party to the appeal may apply to the Court by summons served on the appellant for an order dismissing the appeal.

(2) If the appellant does not appear, either personally or by a legal practitioner, at the hearing of the appeal, or if the Court is satisfied on an application under subsection (1) that the

appellant is in default as mentioned in that subsection, the Court may do one or more of the following —

(a) dismiss the appeal;

(b) require the appellant to take any specified step within a specified time, and dismiss the appeal if he fails to comply with that requirement;

(c) require the appellant to pay costs;

(d) make such other order as the Court thinks fit.

(3) An application by way of summons under subsection (1) may be heard and determined in the absence of the appellant if it is proved that ~~he~~the appellant was served with the summons.

(4) This section does not limit the power of the Court to determine an appeal under section 26(2).

[Section 34 amended: No. 20 of 2023 s. 38.]

35. Application for reinstatement of appeal

(1) Where an appeal is dismissed under section 34 in the absence of the appellant, ~~he~~the appellant may apply to the Court for an order reinstating the appeal.

(1A) Subsection (1) does not apply to an appeal from a decision under section 110ZND to consent or refuse consent to the performance of an abortion on a person.

(2) The Court shall make an order reinstating the appeal only if it is satisfied that there was reasonable cause for the failure of the applicant to appear at the hearing of the appeal or the application under section 34(1), as the case may be.

(3) Sections 25, 26 and 28 apply with all necessary changes —

(a) to an application for, or order of, reinstatement under this section; and

(b) upon the making of the application or order,

as if they were respectively an application for leave to appeal and an order granting leave to appeal.

[Section 35 amended: No. 20 of 2023 s. 39.]

36. Time may be extended or shortened

(1) The Court may, on such terms as it thinks fit, extend or shorten the time allowed under this Division or by rules of court for doing any act.

(2) An application under subsection (1) shall be made ex parte unless it is ordered that the application be served on any person.

37. Enforcement of order for costs

If any costs ordered under this Division to be paid by a party are not paid —

(a) the registrar of the Court shall, upon application made by the party entitled to such costs, grant to him a certificate specifying the amount of such costs; and

(b) the party so entitled may recover the costs from the party against whom the order was made as a debt due in a court of competent jurisdiction.

[Division 4 (s. 37A, 38) deleted: No. 55 of 2004 s. 434.]

Part 4 — Applications for guardianship and administration orders

*[**39.** Deleted: No. 7 of 1996 s. 17.]*

40. Application

(1) A person may apply to the State Administrative Tribunal for a guardianship order or an administration order in respect of a person —

(a) in writing;

(b) orally; or

(c) partly in writing and partly orally.

[(2) deleted]

(3) Where an application has been made orally the executive officer shall ensure that, wherever possible, the applicant is given the necessary notice orally as well as in written form.

[Section 40 amended: No. 16 of 1992 s. 18; No. 7 of 1996 s. 18; No. 55 of 2004 s. 435 and 466(1).]

41. Notice of hearing

(1) The executive officer shall, at least 14 days before the day on which an application for a guardianship or administration order is to be heard, cause notice of the hearing to be given to —

(a) in every case —

(i) the applicant;

(ii) the person in respect of whom the application is made;

(iii) the nearest relative of that person;

(iv) the Public Advocate; and

(v) any other person who in the opinion of the executive officer has a proper interest in the proceedings;

(b) in the case of an application for a guardianship order —

(i) any proposed guardian (including a proposed alternate guardian) of the person in respect of whom the application is made; and

(ii) the administrator (if any) of the estate of that person;

and

(c) in the case of an application for an administration order —

(i) any proposed administrator of the estate of the person in respect of whom the application is made;

(ii) the Public Trustee; and

(iii) the guardian (if any) of the person in respect of whom the application is made.

(2) A notice under subsection (1) shall include —

(a) particulars of the application and the time and place of the hearing; and

(b) in the case of the notice given to the applicant or to the person in respect of whom the application is made, a summary of —

(i) the provisions of section 16 and clause 13 of Schedule 1, and sections 39, 87 and 88 of the *State Administrative Tribunal Act 2004*, as they affect that person; and

(ii) the kinds of order that may be made by the State Administrative Tribunal on the application.

(3) The State Administrative Tribunal may, where it considers that exceptional circumstances so require —

(a) shorten the time for giving notice to all or any of the persons referred to in subsection (1); and

(b) dispense with the requirements for notice to be given to all or any of the persons referred to in that subsection, other than the applicant, the person in respect of whom the application is made and the Public Advocate.

[Section 41 amended: No. 16 of 1992 s. 18; No. 7 of 1996 s. 36; No. 55 of 2004 s. 436 and 466(1); No. 19 of 2010 s. 18(2).]

*[**42.** Deleted: No. 55 of 2004 s. 437.]*

Part 5 — Guardianship

Division 1 — Appointment of guardian

43. Making of guardianship order

(1) Subject to section 4, where the State Administrative Tribunal is satisfied that a person in respect of whom an application for a guardianship order is made under section 40 —

(a) has attained the age of 18 years;

(b) is —

(i) incapable of looking after his own health and safety;

(ii) unable to make reasonable judgments in respect of matters relating to his person; or

(iii) in need of oversight, care or control in the interests of his own health and safety or for the protection of others;

and

(c) is in need of a guardian,

the Tribunal may by order declare the person to be in need of a guardian, and if it does so shall appoint —

(d) a person to be a plenary guardian or a limited guardian and, if it is expedient, a person to be an alternate guardian; or

(e) persons to be joint plenary guardians or joint limited guardians,

as the case may require, of the person in respect of whom the application is made.

(2) Where under subsection (1) the State Administrative Tribunal declares that a person is in need of a guardian, it shall also declare the matter or matters set out in paragraph (b) of that subsection of which it is satisfied.

(2a) Subject to section 4, where the State Administrative Tribunal is satisfied that a person in respect of whom an application for a guardianship order is made under section 40 —

(a) has attained the age of 17 but not 18 years; and

(b) will, when he attains the age of 18 years, be —

(i) incapable of looking after his own health and safety; or

(ii) unable to make reasonable judgments in respect of matters relating to his person; or

(iii) in need of oversight, care or control in the interests of his own health and safety or for the protection of others;

and

(c) will, when he attains the age of 18 years, be in need of a guardian,

the Tribunal may by order declare the person will be in need of a guardian when he attains the age of 18 years, and if it does so shall appoint —

(d) a person to be a plenary guardian or a limited guardian and, if it is expedient, a person to be an alternate guardian; or

(e) persons to be joint plenary guardians or joint limited guardians,

as the case may require, of the person in respect of whom the application is made.

(2b) Where under subsection (2a) the State Administrative Tribunal declares that a person will be in need of a guardian, it shall also declare the matter or matters set out in paragraph (b) of that subsection of which it is satisfied.

(2c) An appointment made under subsection (2a) in respect of a person comes into operation on the day on which the person attains the age of 18 years.

(3) An appointment under subsection (1) or (2a) may be made subject to such conditions and restrictions as the State Administrative Tribunal thinks fit.

(4) An order appointing a limited guardian shall specify the functions that are vested in the limited guardian under section 46.

[Section 43 amended: No. 55 of 2004 s. 466; No. 5 of 2008 s. 57(1) and (2).]

44. Who may be appointed guardian

(1) A guardian (including a joint guardian) shall be an individual of or over the age of 18 years who has consented to act and who in the opinion of the State Administrative Tribunal —

(a) will act in the best interests of the person in respect of whom the application is made;

(b) is not in a position where his interests conflict or may conflict with the interests of that person; and

(c) is otherwise suitable to act as the guardian of that person.

(2) For the purposes of subsection (1)(c) the State Administrative Tribunal shall take into account as far as is possible —

(a) the desirability of preserving existing relationships within the family of the person in respect of whom the application is made;

(b) the compatibility of the proposed appointee with that person and with the administrator (if any) of that person's estate;

(c) the wishes of the person in respect of whom the application is made; and

(d) whether the proposed appointee will be able to perform the functions vested in him.

(3) Where a proposed appointee is a relative of the person in respect of whom the application is made, he shall not by virtue only of that fact be taken to be in a position where his interests conflict or may conflict with those of that person.

(4) The fact that a person is the administrator of the estate of a person does not disqualify him from being appointed as guardian of that person.

(5) Except where he is appointed to act jointly with another person or other persons, the State Administrative Tribunal shall not appoint the Public Advocate as a guardian unless there is no other person who is suitable and willing to act.

[Section 44 amended: No. 7 of 1996 s. 36; No. 55 of 2004 s. 466(1).]

44A. Interstate arrangements for guardianship orders

(1) If the Minister is satisfied that the laws of another State or Territory relating to the guardianship of adults correspond sufficiently with this Act the Minister may enter into an arrangement with the relevant Minister in that State or Territory for the recognition of guardianship orders made under the laws of that State or Territory in respect of persons who —

(a) enter this State from that State or Territory; or

(b) enter that State or Territory from this State.

(2) The Minister is to cause any such arrangement to be published in the *Gazette*.

(3) Where an interstate arrangement is in effect under subsection (1) a guardianship order in force under the laws of the other State or Territory has, while the person to whom it relates is in this State, the same force and effect according to its terms as a guardianship order made under this Act.

(4) If an interstate arrangement under subsection (1) ceases to operate the Minister is to cause notice of that cessation to be published in the *Gazette*, but for the purposes of subsection (3) the arrangement is to be deemed to continue in effect until that notice is so published.

[Section 44A inserted: No. 7 of 1996 s. 19.]

Division 2 — Functions of guardians

45. Authority of plenary guardian

(1) Subject to section 43(3), where a person is appointed as a plenary guardian, or 2 or more persons are appointed as joint plenary guardians, ~~he~~the person or ~~they~~persons have all of the functions in respect of the person of the represented person that are, under the *Family Court Act 1997*, vested in a person in whose favour has been made —

(a) a parenting order which allocates parental responsibility for a child; and

(b) a parenting order which provides that a person is to share parental responsibility for a child,

as if the represented person were a child lacking in mature understanding, but a plenary guardian does not, and joint plenary guardians do not, have the right to chastise or punish a represented person.

(2) Without limiting subsection (1), a plenary guardian may do any of the following —

(a) decide where the represented person is to live, whether permanently or temporarily;

(b) decide with whom the represented person is to live;

(c) decide whether the represented person should work and, if so, the nature or type of work, for whom ~~he~~the represented person is to work and matters related thereto;

(d) subject to ~~subsection~~ subsections (3A) and (4A), make treatment decisions for the represented person;

(e) decide what education and training the represented person is to receive;

(f) decide with whom the represented person is to associate;

(g) as the next friend of the represented person, commence, conduct or settle any legal proceedings on behalf of the represented person, except proceedings relating to the estate of the represented person;

(h) as the guardian *ad litem* of the represented person, defend or settle any legal proceedings taken against the represented person, except proceedings relating to the estate of the represented person;

(i) if the plenary guardian is a research decision-maker for the represented person — subject to subsection (4A)(a) and sections 110ZR and 110ZT, make research decisions in relation to the represented person.

(3) A plenary guardian cannot do any of the following on behalf of the represented person —

(a) vote in any election;

[(b) deleted]

(c) consent, under section 17 of the *Adoption Act 1994*, to the adoption of a child or under section 69(1)(a)(ii) of that Act to the adoption of a represented person;

(da) consent, under section 21(2)(d) of the *Surrogacy Act 2008*, to the making of a parentage order under that Act; or

(d) under the *Marriage Act 1961* of the Commonwealth, give consent in relation to the marriage of a minor, sign a notice of intended marriage or take part in the solemnization of a marriage.

(3A) A plenary guardian cannot make a decision in respect of the performance of an abortion on the represented person, including for the purposes of a treatment decision or medical research.

(4A) A plenary guardian —

(a) cannot consent, for the purposes of medical research, to —

(i) the sterilisation of the represented person; or

(ii) electroconvulsive therapy being performed on a research candidate;

and

(b) cannot consent to the sterilisation of the represented person for any other purposes, except in accordance with Division 3.

(4) A plenary guardian may not make a will or other testamentary disposition on behalf of a represented person but this subsection does not affect the operation of section 111A.

[Section 45 amended: No. 7 of 1996 s. 20; No. 69 of 1996 s. 34; No. 41 of 1997 s. 32; No. 70 of 2000 s. 8; No. 35 of 2006 s. 205; No. 27 of 2007 s. 25; No. 25 of 2008 s. 6; No. 47 of 2008 s. 64; No. 17 of 2014 s. 22(2) and (3); No. 14 of 2020 s. ~~7~~7; No. 20 of 2023 s. 40.]

46. Authority of limited guardian

Subject to section 43(3), where a person is appointed as a limited guardian, or 2 or more persons are appointed as joint limited guardians, he or they have, in respect of the person of the represented person, such of the functions mentioned in section 45 as the State Administrative Tribunal vests in him or them in the guardianship order.

[Section 46 amended: No. 55 of 2004 s. 466(1).]

47. Guardian may apply for directions

(1) A guardian may apply to the State Administrative Tribunal for directions concerning the performance of any function vested in him, and the Tribunal may on any such application give to the guardian any direction not inconsistent with this Act.

(2) A guardian shall comply with any direction given to him under subsection (1).

(3) The executive officer shall, at least 14 days before the day on which an application under subsection (1) is to be heard, cause notice of the hearing to be given to the applicant, the represented person, and such of the persons referred to in section 41(1)(a) and (b) as the State Administrative Tribunal may specify.

(4) The State Administrative Tribunal may, where exceptional circumstances so require, shorten the time for giving notice under subsection (3) to any person.

[Section 47 amended: No. 16 of 1992 s. 18; No. 55 of 2004 s. 466.]

48. Guardian may execute documents etc.

A guardian may on behalf of a represented person execute such documents and do all such other things as are necessary for the performance of the functions vested in him.

49. Guardian may obtain warrant to enter

(1) If the occupier or person in charge of premises refuses to allow a guardian to enter those premises —

(a) where the represented person is in the premises, for the purpose of performing any function in relation to the represented person; or

(b) for the purpose of ascertaining whether the represented person is in those premises,

the guardian may apply to the State Administrative Tribunal for a warrant to enter those premises.

(2) If upon an application under subsection (1) the State Administrative Tribunal is satisfied that it is necessary for the guardian to enter those premises as mentioned in paragraph (a) or (b) of that subsection, it may issue a warrant authorising the guardian to enter the premises by force if necessary during a particular period or at any time, as the warrant may specify.

(3) A guardian executing a warrant under subsection (2) may be assisted by such persons as he thinks necessary, including a police officer or police officers.

(4) A person shall not, without reasonable cause, obstruct or hinder a person acting under the authority of a warrant issued under subsection (2).

Penalty: $1 000.

[Section 49 amended: No. 50 of 2003 s. 70(2); No. 55 of 2004 s. 466(1).]

50. Effect of actions etc. of guardian

An action taken, decision made, consent given or refused, document executed or thing done by a guardian in the performance of the functions vested in him has effect as if it had been taken, made, given, refused, executed or done by the represented person and he were of full legal capacity.

[Section 50 amended: No. 25 of 2008 s. 7.]

51. Guardian to act in best interests of represented person

(1) Subject to any direction of the State Administrative Tribunal, a guardian must act according to the guardian's opinion of the best interests of the represented person.

(2) Without limiting the generality of subsection (1), a guardian acts in the best interests of a represented person if the guardian acts as far as possible —

(a) as an advocate for the represented person;

(b) in such a way as to encourage the represented person to live in the general community and participate as much as possible in the life of the community;

(c) in such a way as to encourage and assist the represented person to become capable of caring for themself and of making reasonable judgments in respect of matters relating to their person;

(d) in such a way as to protect the represented person from neglect, abuse or exploitation;

(e) in consultation with the represented person, taking into account, as far as possible, the wishes of that person as expressed, in whatever manner, or as gathered from the person's previous actions;

(f) in the manner that is least restrictive of the rights, while consistent with the proper protection, of the represented person;

(g) in such a way as to maintain any supportive relationships the represented person has; and

(h) in such a way as to maintain the represented person's familiar cultural, linguistic and religious environment.

(2A) Without limiting the generality of subsection (1), a guardian acts in the best interests of a represented person in making a research decision in relation to the represented person if the guardian acts in accordance with sections 110ZR and 110ZT.

(3) Nothing in subsection (2)(a) is to be read as authorising a guardian to act contrary to the *Legal Profession Uniform Law (WA)*.

[Section 51 amended: No. 7 of 1996 s. 21; No. 65 of 2003 s. 40(4); No. 55 of 2004 s. 466(1); No. 21 of 2008 s. 667(3); No. 14 of 2020 s. 8; No. 9 of 2022 s. 424.]

*[**52.** Deleted: No. 69 of 1996 s. 35.]*

53. Guardians to act unanimously

Where joint guardians are appointed —

(a) a guardian shall not perform any function without the concurrence of the other guardian or guardians; and

(b) if the guardians are not unanimous as to the performance of a function, any guardian may apply to the State Administrative Tribunal for directions under section 47.

[Section 53 amended: No. 55 of 2004 s. 466(1).]

54. Death of joint guardian

Subject to section 85, where joint guardians are in office, the surviving guardian or guardians may act on the death of any guardian.

55. Alternate guardian to take over on death of guardian

(1) An alternate guardian shall, without any further order or formality, be the plenary guardian or limited guardian, as the case may be under the order by which he was appointed, immediately upon his becoming aware of the death of the original guardian, and shall have the same functions, with respect to the person of the represented person, as the original guardian had immediately before his death.

(2) The alternate guardian shall as soon as is practicable after he has become aware of the death of the original guardian send to the Public Advocate evidence of the death of the original guardian.

(3) The validity of anything done in good faith by a person purporting to act under subsection (1) shall not be called in question on the ground that the occasion for his taking office as guardian had not arisen.

[Section 55 amended: No. 55 of 2004 s. 438.]

55A. Priority of guardianship order

(1) To the extent a guardianship order relates to the making of a treatment decision for the represented person, the priority to be given to the order is determined in accordance with section 110ZJ.

(1A) To the extent a guardianship order relates to the making of a research decision in relation to the represented person, a guardian appointed under the order may make the decision only if the guardian is the research decision-maker for the person the subject of the guardianship order.

(2) To the extent a guardianship order relates to the performance of any other function in relation to the represented person, the priority to be given to the order is determined in accordance with section 119.

[Section 55A inserted: No. 25 of 2008 s. 8; amended: No. 14 of 2020 s. 9.]

Division 3 — Limitations on sterilisation of persons under guardianship or where application for guardianship made

56. Terms used

In this Division, unless the contrary intention appears —

procedure for the sterilisation does not include a lawful procedure that is carried out for a lawful purpose other than sterilisation but that incidentally results or may result in sterilisation;

represented person means a person in respect of whom a guardianship order is in force.

56A. Only Full Tribunal to act under this Division

The functions of the State Administrative Tribunal under this Division may be performed only by a Full Tribunal.

[Section 56A inserted: No. 16 of 1992 s. 12; amended: No. 55 of 2004 s. 439 and 466; No. 5 of 2008 s. 58.]

57. Prerequisites for sterilisation of persons to whom this Division applies

(1) A person shall not carry out or take part in any procedure for the sterilisation of a represented person unless —

(a) both the guardian of the represented person and the State Administrative Tribunal have consented in writing to the sterilisation;

(b) all rights of appeal in respect of a determination under section 63 have lapsed or been exhausted; and

(c) the sterilisation is carried out in accordance with any condition imposed under this Act.

(2) Notwithstanding section 259 of *The Criminal Code*, a person who knows that an application has been made for a guardianship order in respect of a person shall not carry out or take part in any procedure for the sterilisation of that person before —

(a) the application has been finally dealt with by the State Administrative Tribunal; and

(b) all rights of appeal in respect of a determination under section 43 have lapsed or been exhausted.

Penalty applicable to subsections (1) and (2): $4 000 and imprisonment for 2 years.

(3) For the purposes of this section all rights of appeal have lapsed or been exhausted if —

(a) the time allowed for an application for leave to appeal, or for a reference under section 24, has expired;

(b) every application for leave to appeal has been refused;

(c) where leave to appeal has been granted, the appeal or any subsequent appeal has been discontinued or dismissed (and is not reinstated or capable of reinstatement),

and for the purposes of paragraph (b) leave to appeal has not been refused so long as there remains a right to require a reference under section 24.

[Section 57 amended: No. 55 of 2004 s. 466(1).]

58. Restriction on guardian's consent

(1) A guardian shall not consent to the sterilisation of a represented person unless the consent of the State Administrative Tribunal has been first obtained.

(2) The consent of the guardian may be given subject to compliance with any condition.

[Section 58 amended: No. 55 of 2004 s. 466(1).]

59. Application for consent

(1) A represented person, his guardian or the Public Advocate may apply to the State Administrative Tribunal for its consent to the carrying out of a procedure for the sterilisation of the represented person.

[(2) deleted]

[Section 59 amended: No. 16 of 1992 s. 18; No. 7 of 1996 s. 36; No. 55 of 2004 s. 440 and 466(1).]

60. Notice of hearing

(1) The executive officer shall, at least 7 days before the day on which an application under section 59 is to be heard, cause notice in writing of the hearing to be given to —

(a) the applicant;

(b) the represented person;

(c) the nearest relative of the represented person;

(d) the guardian of the represented person;

(e) the Public Advocate;

(f) any other person who in the opinion of the executive officer has a sufficient interest in the proceedings.

(2) A notice under subsection (1) shall include —

(a) particulars of the application and the time and place of the hearing; and

(b) in the case of the notice given to the applicant or the represented person, a summary of —

(i) the provisions of section 16 and clause 13 of Schedule 1, and sections 39, 87 and 88 of the *State Administrative Tribunal Act 2004*, as they affect that person; and

(ii) the authority conferred on the State Administrative Tribunal by section 63.

(3) The State Administrative Tribunal may where it considers that exceptional circumstances so require —

(a) shorten the time for giving notice to all or any of the persons referred to in subsection (1); and

(b) dispense with the requirements for notice to be given to all or any of the persons referred to in that subsection other than the represented person and the Public Advocate.

[Section 60 amended: No. 16 of 1992 s. 18; No. 7 of 1996 s. 36; No. 55 of 2004 s. 441 and 466(1); No. 19 of 2010 s. 18(2).]

*[**61.** Deleted: No. 55 of 2004 s. 442.]*

*[**62.** Deleted: No. 7 of 1996 s. 22.]*

63. State Administrative Tribunal may consent if in best interests of represented person

(1) The State Administrative Tribunal may, by order, consent to the sterilisation of a represented person if it is satisfied that the sterilisation is in the best interests of the represented person.

(2) The consent of the State Administrative Tribunal may be given subject to compliance with any condition.

[Section 63 amended: No. 55 of 2004 s. 466(1).]

Part 6 — Estate administration

Division 1 — Appointment of administrator

64. Making of administration order

(1) Subject to section 4, where the State Administrative Tribunal is satisfied that a person in respect of whom an application for an administration order is made under section 40 —

(a) is unable, by reason of a mental disability, to make reasonable judgments in respect of matters relating to all or any part of his estate; and

(b) is in need of an administrator of his estate,

the Tribunal may by order declare the person to be in need of an administrator of his estate, and if it does so shall appoint —

(c) a person to be the administrator; or

(d) persons to be joint administrators,

as the case may require, of the estate of the person in respect of whom the application is made.

(2) Where under subsection (1) the State Administrative Tribunal declares that a person is in need of an administrator of his estate, it shall declare the matter or matters set out in paragraph (a) of that subsection of which it is satisfied.

(3) An appointment under subsection (1) —

(a) may be made subject to such conditions and restrictions as the State Administrative Tribunal thinks fit;

(b) may, subject to section 51 of the *Public Trustee Act 1941*, include requirements as to the giving of security to the executive officer and the manner in which it is to be given.

[Section 64 amended: No. 16 of 1992 s. 18; No. 57 of 1997 s. 67; No 70 of 2000 s. 9; No. 34 of 2004 Sch. 2 cl. 11; No. 55 of 2004 s. 466.]

65. Emergency provision

Where it appears to the State Administrative Tribunal that —

(a) a person may be a person in respect of whom a declaration should be made under subsection (1) of section 64; and

(b) it is necessary to make immediate provision for the protection of the person's estate,

then, pending the determination of the question whether the person is, in fact, a person in respect of whom a declaration should be made under that subsection, the Tribunal may exercise such of the powers conferred on it by this Act as may be necessary for enabling that provision to be made.

[Section 65 amended: No. 55 of 2004 s. 466.]

66. Acts may be authorised without administration order

(1) Where it appears to the State Administrative Tribunal that subsection (1)(a) of section 64 applies to a person but that subsection (1)(b) of that section does not apply to him in that there is no need of a continuing appointment of an administrator of his estate, the Tribunal may, without making such an appointment, by order authorise or require a person who could be appointed as administrator under section 68 to perform any specified function.

(2) The provisions of sections 64(2) and (3), 67, 71(4) and (5), and 72 apply with all necessary changes in the circumstances described in subsection (1).

(3) Section 77 applies where an order is made under subsection (1) as if the order contained a declaration by the State Administrative Tribunal under section 64(1) and the person authorised by subsection (1) were appointed as administrator.

(4) Sections 69(2), (3) and (4), 70, 74, 76, 78(1)(b), 78(2) and 81 apply to a person authorised under subsection (1) as if he were an administrator.

(5) Section 79 applies with all necessary changes to any act lawfully done by a person under subsection (1).

(6) The State Administrative Tribunal may in an order under subsection (1) declare that section 80 applies to a person appointed under subsection (1), or applies subject to any specified modification.

[Section 66 amended: No. 55 of 2004 s. 466.]

67. Non-residents etc.

(1) An order may be made under section 64(1) in respect of a person who is not resident or domiciled in Western Australia, but any such order is limited to the person's estate within Western Australia.

(2) Notwithstanding section 41(3)(b) or 89(3)(b), the State Administrative Tribunal may dispense with the requirement for notice to be given under that section to the person in respect of whom the application is made or the represented person, as the case may be, where that person is not resident or domiciled in Western Australia.

(3) In making an order in respect of a person referred to in subsection (1) the State Administrative Tribunal may act on a relevant finding under the written law of a State or Territory of Australia or the written law of New Zealand or a designated country.

(4) A finding referred to in subsection (3) may be evidenced by a copy thereof duly certified by an officer of the court or other authority by which the finding was made.

(5) In subsection (3) —

designated country means any part of the Commonwealth of Nations or a country, state or territory declared to be a designated country for the purposes of that subsection by order made by the Governor and published in the *Gazette*; and

relevant finding means a finding of a kind described in section 64(1)(a) or a finding that, or to the effect that, a person is incapable of managing his affairs, or a finding having substantially the same meaning as any such finding.

[Section 67 amended: No. 55 of 2004 s. 466(1).]

68. Who may be appointed administrator

(1) An administrator (including a joint administrator) shall be —

(a) an individual of or over the age of 18 years; or

(b) a corporate trustee,

who has consented to act and who, in the opinion of the State Administrative Tribunal —

(c) will act in the best interests of the person in respect of whom the application is made; and

(d) is otherwise suitable to act as the administrator of the estate of that person.

(2) The State Administrative Tribunal shall not appoint as administrator a corporate trustee that is a trustee company under the *Trustee Companies Act 1987* unless it is satisfied that —

(a) there is an individual who would otherwise be appointed as administrator and that individual has in writing requested the appointment of that trustee company; or

(b) the person in respect of whom the application is made has made a will appointing the trustee company as executor and the will remains unrevoked at the time of the appointment.

(3) For the purposes of subsection (1), the State Administrative Tribunal shall take into account as far as is possible —

(a) the compatibility of the proposed appointee with the person in respect of whom the application is made and with the guardian (if any) of that person;

(b) the wishes of that person; and

(c) whether the proposed appointee will be able to perform the functions proposed to be vested in the administrator.

(4) The fact that a person is the guardian of a person does not disqualify him from being appointed as the administrator of the estate of that person.

(5) Except where he is appointed to act jointly with another person or other persons, the State Administrative Tribunal shall not appoint the Public Advocate as an administrator unless there is no other individual or corporate trustee who is suitable and willing to act.

[Section 68 amended: No. 7 of 1996 s. 23; No. 55 of 2004 s. 466(1).]

Division 2 — Functions of administrators

69. Authority of administrator

(1) Subject to section 64(3)(a), the administrator has, or the joint administrators have, in respect of the estate of the represented person, such of the functions provided for by this Act as the State Administrative Tribunal vests in him or them, or directs him or them to perform, in the administration order.

(2) An administrator may on behalf of a represented person execute all such documents and do all such things as are necessary for the performance of the functions vested in him.

(3) An action taken, decision made, consent given or other thing done by an administrator in the performance of the functions vested in him has effect as if it had been taken, made, given or done by the represented person and he were of full legal capacity.

(4) Nothing in this Act vests the estate of a represented person in an administrator.

[Section 69 amended: No. 55 of 2004 s. 466(1).]

70. Administrator to act in best interests of represented person

(1) An administrator shall act according to his opinion of the best interests of the represented person.

(2) Without limiting the generality of subsection (1), an administrator acts in the best interests of a represented person if he acts as far as possible —

(a) as an advocate for the represented person in relation to the estate;

(b) in such a way as to encourage the represented person to live in the general community and participate as much as possible in the life of the community;

(c) in such a way as to encourage and assist the represented person to become capable of caring for himself and of making reasonable judgments in respect of matters relating to his person;

(d) in such a way as to protect the represented person from financial neglect, abuse or exploitation;

(e) in consultation with the represented person, taking into account, as far as possible, the wishes of that person as expressed, in whatever manner, or as gathered from the person's previous actions;

(f) in the manner that is least restrictive of the rights, while consistent with the proper protection, of the represented person;

(g) in such a way as to maintain any supportive relationships the represented person has; and

(h) in such a way as to maintain the represented person's familiar cultural, linguistic and religious environment.

(3) Nothing in subsection (2)(a) shall be read as authorising an administrator to act contrary to the *Legal Profession Uniform Law (WA)*.

(4) Nothing in subsection (2) shall be read as restricting the functions of an administrator at common law or under any written law.

[Section 70 amended: No. 70 of 2000 s. 10; No. 65 of 2003 s. 40(4); No. 21 of 2008 s. 667(4); No. 9 of 2022 s. 424.]

71. Authority which may be conferred on administrator

(1) The State Administrative Tribunal may, under section 69, vest plenary functions in the administrator of the estate of a represented person.

(2) Where plenary functions are vested in an administrator he may perform, or refrain from performing, in relation to the estate of the represented person, or any part of the estate, any function that the represented person could himself perform, or refrain from performing, if he were of full legal capacity.

(2a) Despite subsection (2), a plenary administrator may not make a will or other testamentary disposition on behalf of a represented person, but this subsection does not affect the operation of section 111A.

(3) Where the State Administrative Tribunal does not under section 69 vest plenary functions in an administrator, it may, under that section, authorise the administrator to perform any specified function, including one or more of those set out in Part A of Schedule 2.

(4) The State Administrative Tribunal may require a function to be performed by an administrator and may give directions as to the time, manner or circumstances of the performance.

(5) In exercising its jurisdiction under this Part the State Administrative Tribunal may take a liberal view of the best interests of the represented person as mentioned in section 4(2), and in particular may, if the circumstances so require, empower an administrator to make a payment or enter into a transaction of

a kind described in section 72(3) on behalf of the represented person.

[Section 71 amended: No. 55 of 2004 s. 466(1); No. 27 of 2007 s. 25; No. 19 of 2010 s. 51.]

71A. Amendment of order to confer particular function

(1) The State Administrative Tribunal may decline to authorise an administrator to perform a particular function but indicate that it will entertain a later application for the amendment of the administration order to confer that authority.

(2) If a later application is so made it is not necessary for the State Administrative Tribunal, in dealing with the application, to review the administration order under Part 7.

(3) Notice of an application under this section shall be given to any person to whom notice of the original application for an administration order was given.

[Section 71A inserted: No. 7 of 1996 s. 24; amended: No. 55 of 2004 s. 466(1).]

72. Further provisions as to authority of administrators

(1) The State Administrative Tribunal may give any direction, make any order or do any other thing provided for in Part B of Schedule 2.

(2) Without limiting this section or section 71, the State Administrative Tribunal may make any other order (whether or not of the same nature as those so provided for) that it thinks necessary or expedient for the proper administration of the estate of the represented person.

(3) Notwithstanding this section or section 71, an administrator shall not without the authority of the State Administrative Tribunal under section 71(5) —

(a) make a payment or disposition of a charitable, benevolent or ex gratia nature; or

(b) make a payment in respect of a debt or demand that the represented person is not obliged by law to pay.

[Section 72 amended: No. 55 of 2004 s. 466(1).]

*[**73.** Deleted: No. 7 of 1996 s. 25.]*

74. Administrator may apply for directions

(1) Any administrator may apply to the State Administrative Tribunal for directions concerning any property forming part of the estate of the represented person, or the management or administration of such property, or the performance of any function, and the Tribunal may on any such application give to the administrator any direction not inconsistent with this Act.

(2) An administrator shall comply with any direction given to him under subsection (1).

(3) The executive officer shall, at least 14 days before the day on which an application under subsection (1) is to be heard, cause notice of the hearing to be given to the applicant, the represented person, and to such of the persons referred to in section 41(1)(a) and (c) as the State Administrative Tribunal may specify.

(4) The State Administrative Tribunal may, where exceptional circumstances so require, shorten the time for giving notice under subsection (3) to any person.

[Section 74 amended: No. 16 of 1992 s. 18; No. 55 of 2004 s. 466.]

75. Administrators to act unanimously

Where joint administrators are appointed —

(a) an administrator shall not perform any function without the concurrence of the other administrator or administrators; and

(b) if the administrators are not unanimous as to the performance of any function, any administrator may apply to the State Administrative Tribunal for directions under section 74.

[Section 75 amended: No. 55 of 2004 s. 466(1).]

76. Administrator may employ agents

(1) An administrator may, instead of acting personally, employ and pay an agent, whether a solicitor, accountant, bank, stockbroker or other person, to transact any business or do any act required to be transacted or done in the management or administration of the estate, including the receipt and payment of money, and the keeping and audit of accounts.

(2) An administrator is not liable for any default on the part of an agent employed under subsection (1) in good faith and without negligence.

(3) Nothing in this section affects section 50 of the *Public Trustee Act 1941* [4].

[Section 76 amended: No. 17 of 2014 s. 22(4).]

77. Represented person incapable of dealing with estate

(1) So long as there is in force a declaration by the State Administrative Tribunal under section 64(1) that a person is in need of an administrator of his estate, that person is —

(a) incapable of entering into any contract or making any disposition in respect of his estate or any part thereof or interest therein; or

(b) subject to Part 9, appointing or conferring any power on an agent or attorney in respect thereof,

except to the extent that the administrator, with the consent of the Tribunal, in writing authorises him to do so.

(2) Any money or property the subject of an attempted dealing by a represented person contrary to subsection (1) may be recovered by the administrator in any court of competent jurisdiction.

(3) Nothing in this section affects —

(a) any contract for necessaries entered into by a represented person; or

(b) any contract or disposition by a represented person made for adequate consideration with, or in favour of, any other person who proves that he acted in good faith and was unaware that that person was a represented person; or

(c) anything done under a power of attorney by a person who proves that he acted in good faith and was unaware that the donor of the power was a represented person.

(4) Nothing in this section affects any legal incapacity attaching to a represented person by reason of infancy.

(5) For the purpose of this section the acceptance of payment of the whole or any part of a debt shall be deemed to be a disposition in respect of the estate.

[Section 77 amended: No. 55 of 2004 s. 466.]

78. Cessation of authority of administrator

(1) A person ceases to be administrator of the estate of a represented person upon —

(a) the making of an order by the State Administrative Tribunal revoking his appointment or revoking a declaration under section 64(1) that the person is in need of an administrator of his estate; or

(b) the death of the represented person.

(2) Notwithstanding the death of a represented person or any revocation referred to in subsection (1) an administrator may continue to exercise and perform, in respect of the estate of the represented person, the powers and functions vested in him before the death or revocation until the administrator is satisfied that the person has died or, as the case may be, is served with a copy of the order of revocation.

(3) Subject to section 85, where joint administrators are in office, the surviving administrator or administrators may act on the death of any administrator.

[Section 78 amended: No. 55 of 2004 s. 466(1).]

79. Represented person bound by acts of administrator

(1) When a declaration under section 64(1) that a person is in need of an administrator of his estate is no longer in force, the person who was the represented person shall be bound by, and may take advantage of, any act lawfully done by the administrator as if it had been done by the person himself and he were of full legal capacity.

(2) Where a represented person dies, subsection (1) shall apply, with all necessary changes, to the personal representative of that person.

80. Accounts

(1) An administrator shall submit accounts to the Public Trustee as required by, or prescribed by regulations, except so far as the administrator is exempted from doing so by the Public Trustee.

(2) When a sole administrator of the estate of a represented person dies, a person having possession of any books, papers or documents relating to that estate shall deliver them to the Public Trustee.

(3) The Public Trustee shall examine any accounts lodged under subsection (1) or delivered under subsection (2) and may —

(a) allow them;

(b) disallow any amount paid;

(c) determine that any amount or asset has been omitted, or that any loss has occurred.

(4) Where the Public Trustee —

(a) disallows an amount paid or determines that an amount or asset has been omitted or that any loss has occurred; and

(b) determines that there has thereby been a loss to or diminution of the estate,

the administrator is liable to the estate for such loss or diminution, except to the extent that the Public Trustee relieves him of liability.

(5) Accounts that have been examined under this section and allowed by the Public Trustee are conclusive unless the administrator acted dishonestly, in bad faith or without reasonable cause.

(6) The Public Trustee shall issue a certificate as to any loss or diminution for which an administrator or his estate is liable under subsection (4), taking into account any relief allowed by the Public Trustee under that subsection, and the Public Trustee may recover the same from the administrator or his estate for the benefit or the estate of the represented person as a debt due in a court of competent jurisdiction.

(6a) A person aggrieved by a decision of the Public Trustee under subsection (3) may apply to the State Administrative Tribunal for a review of the decision.

(7) This section does not apply to the Public Trustee in the Public Trustee's capacity as an administrator.

[Section 80 amended: No. 16 of 1992 s. 13 and 18; No. 55 of 2004 s. 443.]

81. Enforcement of security

(1) The executive officer may, with the leave of the State Administrative Tribunal, take proceedings in a court of competent jurisdiction for the enforcement of any security given by an administrator.

(2) All money received as a result of proceedings under subsection (1) shall be applied in such manner as the State Administrative Tribunal directs.

[Section 81 amended: No. 16 of 1992 s. 18; No. 55 of 2004 s. 466(1).]

82. Transactions may be set aside

(1) Subject to subsection (2), where a person within 2 months before being declared under section 64(1) to be a person in need of an administrator of his estate has entered into a disposition of any property (including a gift) or taken on lease, mortgaged, charged, or purchased any property, or agreed to do so, the State Administrative Tribunal may, on the application of the administrator of that person's estate and on notice to such persons as the Tribunal may direct, set aside the transaction and make such consequential orders as it thinks fit for the purpose of adjusting the position or rights of the parties and other persons.

(2) The State Administrative Tribunal shall not set aside any transaction under this section where —

(a) the application is not brought within the period of 2 years commencing on the day of the completion of the transaction or, in the case of a lease taken, is not brought before the expiration of the lease; or

(b) the Tribunal is satisfied, in the case of a transaction that is not a gift, that —

(i) the other party acted in good faith and without notice of any incapacity to which the represented person was then subject; and

(ii) the consideration for the disposition was adequate or, in the case of a purchase, not excessive or, in the case of a lease taken, the rent is not excessive.

(3) For the purposes of an application under this section, the represented person shall be deemed to have been a person who was in need of an administrator of his estate, at the time when he entered into the transaction or agreed to do so, until the contrary is shown.

[Section 82 amended: No. 55 of 2004 s. 444.]

83. Saving for certain rules of court

Nothing in this Part shall be read as limiting the operation of any rules of court —

(a) whereby a person under a disability is required in any proceedings to sue by a next friend and defend by a guardian *ad litem*; or

(b) relating to the approval of any compromise, settlement or acceptance of money paid into court affecting a person under a disability.

Division 3 — Interjurisdictional arrangements in relation to administration powers

[Heading inserted: No. 7 of 1996 s. 26.]

83A. Reciprocating States

The Minister may, by notice published in the *Gazette* —

(a) declare any country, State or Territory to be a reciprocating State for the purposes of this Division; and

(b) in like manner vary or revoke any such notice.

[Section 83A inserted: No. 7 of 1996 s. 26.]

83B. Foreign administrator may authorise Public Trustee to administer property in this State

(1) A foreign administrator may, by instrument in writing —

(a) certify that a person, in respect of whom the equivalent of an administration order has been made under the laws of a reciprocating State, has property in this State; and

(b) authorise the Public Trustee to administer that property within this State.

(2) Where the Public Trustee is authorised by a foreign administrator to administer property in this State the Public Trustee has, in respect of that property, such powers of the foreign administrator as are specified in the instrument so authorising him.

(3) The Public Trustee may pay or deliver money or property to the foreign administrator and require the foreign administrator to give a discharge to him in relation to that money or property.

(4) In this section —

foreign administrator means a person who, under the laws of a reciprocating State is vested with the custody or administration of the estate of a person in respect of whom the equivalent of an administration order has been made (however such a person is described under those laws).

[Section 83B inserted: No. 7 of 1996 s. 26.]

83C. Administrator may authorise relevant official to administer property in reciprocating State

(1) Where it appears to the administrator of the estate of a represented person that the represented person has property in a

reciprocating State, that administrator may, by instrument in writing directed to the relevant official in that State —

(a) certify that he has the control and management of the estate of the represented person;

(b) authorise the relevant official in that State to exercise such powers of the administrator in respect of the property of the represented person in the reciprocating State as are specified in the instrument; and

(c) require that official to pay or deliver money or property to the administrator.

(2) An administrator is not liable for any default on the part of a relevant official in another State to whom an authority is given under subsection (1) and may give a discharge to him for money or property received from him.

(3) An administrator may revoke or vary an authority given under subsection (1).

(4) In this section —

relevant official means an officer in a reciprocating State who is, or may be, vested by the laws of that State with the custody or administration of estates of persons in respect of whom the equivalent of administration orders may be made (however such persons are described under those laws).

[Section 83C inserted: No. 7 of 1996 s. 26.]

83D. Interstate arrangements for recognition of administration orders

(1) If the Minister is satisfied that the laws of another State or Territory relating to the administration of the estates of incapable adults correspond sufficiently with this Act the Minister may enter into an arrangement with the relevant Minister in that State or Territory for the recognition of the

relevant orders (by whatever name known) made under the laws of that State or Territory in respect of persons who —

(a) enter this State from that State or Territory; or

(b) enter that State or Territory from this State.

(2) The Minister is to cause any such arrangement to be published in the *Gazette*.

(3) Where an interstate arrangement is in effect under subsection (1) a relevant order in force under the laws of the other State or Territory has, while the person to whom it relates is in this State, the same force and effect according to its terms as an administration order made under this Act.

(4) If an interstate arrangement under subsection (1) ceases to operate the Minister is to cause notice of that cessation to be published in the *Gazette*, but for the purposes of subsection (3) the arrangement is to be deemed to continue in effect until that notice is so published.

[Section 83D inserted: No. 7 of 1996 s. 26.]

Part 7 — Review of orders

84. State Administrative Tribunal to review orders periodically

The State Administrative Tribunal shall —

(a) when it makes a guardianship order or an administration order or any order amending, continuing or replacing an order specify a period, not exceeding 5 years from the date of the order, within which the order shall be reviewed; and

(b) ensure that the order is reviewed accordingly.

[Section 84 amended: No. 55 of 2004 s. 466(1).]

85. Circumstances in which review mandatory

(1) Without limiting section 84 or 86, the State Administrative Tribunal shall review a guardianship or administration order if a guardian or administrator —

(a) dies; or

(b) wishes to be discharged; or

(c) has been guilty of such neglect or misconduct or of such default as, in the opinion of the Tribunal, renders him unfit to continue as guardian or administrator; or

(d) appears to the Tribunal to be incapable by reason of mental or physical incapacity of carrying out his duties; or

(e) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or

(f) being a corporate trustee, has ceased to carry on business, has begun to be wound up, or is under official management or subject to receivership.

(2) A review under subsection (1) shall be made on the application of any person.

(3) A review under subsection (1) shall be carried out as soon as is practicable after the application for review is made.

(4) Where —

(a) a joint guardian or administrator dies; or

(b) an alternate guardian becomes the guardian under section 55 on the death of the original guardian,

the Public Advocate shall ensure that an application for review is made as soon as practicable after the date of death.

[Section 85 amended: No. 55 of 2004 s. 445 and 466; No. 18 of 2009 s. 38(2).]

86. Review on application

(1) The State Administrative Tribunal may at any time on the application of —

(a) the Public Advocate; or

(aa) the Public Trustee; or

(b) a represented person or a guardian or an administrator; or

(c) a person to whom leave has been granted under section 87,

review a guardianship order or an administration order.

(2) The eligibility of a guardian or administrator to apply under subsection (1)(b) is limited to the guardianship or administration order under which he acts.

[Section 86 amended: No. 16 of 1992 s. 14; No. 55 of 2004 s. 446; No. 5 of 2008 s. 59.]

87. Leave to apply for review

(1) Any person may request the State Administrative Tribunal for leave to apply for the review of a guardianship order or an administration order.

[(2), (3) deleted]

(4) The person making the request shall state his reasons for the request at his option —

(a) in writing;

(b) orally in an appearance before the State Administrative Tribunal; or

(c) partly in writing and partly orally.

(5) The State Administrative Tribunal may —

(a) refuse the request; or

(b) if it is satisfied that because of a change of circumstances or for any other reason a review should be held, grant, either unconditionally or subject to any condition, leave to the person to apply for the review.

[Section 87 amended: No. 16 of 1992 s. 18; No. 55 of 2004 s. 447 and 466(1).]

88. Application for review

An application for review, if made by a person to whom leave has been granted under section 87, shall be made in accordance with the leave.

[Section 88 amended: No. 16 of 1992 s. 18; No. 55 of 2004 s. 448.]

89. Notice of review

(1) The executive officer shall, at least 14 days before the day on which the review commenced under this Part is to be held, cause notice of the review to be given to —

(a) the applicant (if any);

(b) the represented person;

(c) the nearest relative of the represented person;

(d) the guardian (if any) of the represented person;

(e) the administrator (if any) of the estate of the represented person;

(f) the Public Advocate; and

(g) any other person who in the opinion of the executive officer has a sufficient interest in the proceedings.

(2) A notice under subsection (1) shall include particulars of —

(a) the time and place of the hearing;

(b) the nature of the proceedings; and

(c) in the case of the notice to the applicant and the represented person, a summary of —

(i) the provisions of section 16 and clause 13 of Schedule 1, and sections 39, 87 and 88 of the *State Administrative Tribunal Act 2004*, as they affect that person; and

(ii) the kinds of orders that may be made by the State Administrative Tribunal under section 90.

(3) The State Administrative Tribunal may where it considers that exceptional circumstances so require —

(a) shorten the time for giving notice to all or any of the persons referred to in subsection (1); and

(b) dispense with the requirement for notice to be given to all or any of the persons referred to in subsection (1) other than the represented person and the Public Advocate.

[Section 89 amended: No. 16 of 1992 s. 18; No. 7 of 1996 s. 36; No. 55 of 2004 s. 449 and 466(1); No. 19 of 2010 s. 18(2).]

90. Powers of State Administrative Tribunal on review

(1) Upon a review of a guardianship order or administration order, the State Administrative Tribunal may, as it considers necessary

in the best interests of the represented person, confirm the order or by order —

(a) amend the order so as to make any provision that may be included in a guardianship order or administration order, as the case may be;

(b) revoke the order, or revoke the order and substitute another order for it; or

(c) without limiting paragraphs (a) and (b) —

(i) revoke the appointment of any guardian or administrator;

(ii) appoint a new or additional guardian or administrator;

(iii) appoint an alternate guardian.

(2) A review under this Part is in the State Administrative Tribunal's original jurisdiction.

[Section 90 amended: No. 70 of 2000 s. 11; No. 55 of 2004 s. 450 and 466(1).]

Part 8 — The Public Advocate

[Heading amended: No. 7 of 1996 s. 36.]

91. Public Advocate

(1) There is hereby created an office of Public Advocate, the holder of which shall be appointed by the Governor.

(2) Subject to this Part, the Public Advocate holds office for such period, not exceeding 5 years, as is specified in the instrument of his appointment, and is eligible for re-appointment.

(3) The Public Advocate is entitled to such terms and conditions of service, including remuneration and travelling and other allowances, as the Minister determines from time to time on the recommendation of the Public Sector Commissioner.

[Section 91 amended: No. 7 of 1996 s. 36; No. 39 of 2010 s. 89.]

92. Resignation, removal etc.

(1) The office of Public Advocate becomes vacant if the Public Advocate —

(a) resigns his office by written notice delivered to the Minister; or

(b) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or

(c) is removed from office by the Governor under subsection (2).

(2) The Governor may remove the Public Advocate from office for neglect of duty, misbehaviour, incompetence, or mental or physical incapacity impairing the performance of his duties and proved to the satisfaction of the Governor.

[Section 92 amended: No. 7 of 1996 s. 36; No. 18 of 2009 s. 38(3).]

93. Acting Public Advocate

(1) The Minister may appoint a person to act as Public Advocate —

(a) during a vacancy in the office of Public Advocate, whether or not an appointment has previously been made to the office; or

(b) during any period or during all periods when the Public Advocate is absent from duty or from the State or is, for any other reason, unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) The Minister may —

(a) on the recommendation of the Public Sector Commissioner, determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as Public Advocate; and

(b) terminate such an appointment at any time.

(4) Where a person is acting as Public Advocate in circumstances referred to in subsection (1)(b) and the office of Public Advocate becomes vacant while that person is so acting, then, subject to subsection (2), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(5) The appointment of a person to act as Public Advocate ceases to have effect if the person resigns the appointment by written notice delivered to the Minister.

(6) The validity of anything done by a person purporting to act pursuant to an appointment made under subsection (1) shall not be called in question on the ground that the occasion for his appointment had not arisen or had ceased, that there is a defect or irregularity in or in connection with the appointment, or that the appointment had ceased to have effect.

[Section 93 amended: No. 7 of 1996 s. 36; No. 39 of 2010 s. 89.]

94. Staff

There may be appointed from time to time under and subject to Part 3 of the *Public Sector Management Act 1994* such officers as may be required for the purposes of assisting the Public Advocate in the effective performance of his functions.

[Section 94 amended: No. 32 of 1994 s. 3(2); No. 7 of 1996 s. 36.]

95. Powers of delegation

(1) The Public Advocate may either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to an officer appointed under section 94 any function of the Public Advocate other than —

(a) this power of delegation; and

(b) except as provided in subsection (2), his functions as a guardian or administrator.

(2) Where the Public Advocate is a guardian or administrator, he may with the approval of the State Administrative Tribunal, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate any of his functions as guardian or administrator, including this power of delegation, to any person specified in the instrument of delegation.

(3) The State Administrative Tribunal shall not approve a delegation by the Public Advocate under subsection (2) to a body corporate unless it is satisfied that there is no individual willing and suitable to act as delegate.

(4) An application for the approval of the State Administrative Tribunal under subsection (2) shall be made ex parte, or the Tribunal may give directions as to the persons to whom notice of the application shall be given and who shall be entitled to be heard.

[Section 95 amended: No. 7 of 1996 s. 36; No. 55 of 2004 s. 466.]

96. Existing rights etc.

Appointment as Public Advocate does not render Part 3 of the *Public Sector Management Act 1994*, or any other Act applying to persons as officers of the Public Service of the State, applicable to that person or affect or prejudice the application to him of those provisions if they applied to him at the time of his appointment.

[Section 96 amended: No. 32 of 1994 s. 3(2); No. 7 of 1996 s. 36.]

97. Functions of Public Advocate

(1) The functions of the Public Advocate are as follows —

(a) to make applications under this Act and to attend hearings of the State Administrative Tribunal when he thinks fit and when required to do so by the Tribunal;

(aa) subject to sections 44(5) and 68(5), to act as a guardian or administrator either solely or jointly with another person;

(b) at hearings before the State Administrative Tribunal commenced under this Act, or where appropriate at hearings under Division 3 of Part 3 —

(i) to seek to advance the best interests of the represented person or person to whom the proceedings relate;

(ii) to present to the Tribunal, judge or Court any information in his possession that is relevant to the hearing; and

(iii) to investigate and report to the Tribunal, judge or Court on any matter or question referred by a court or by the Tribunal, judge or Court;

(c) to investigate any complaint or allegation that a person is in need of a guardian or administrator, or is under an inappropriate guardianship or administration order, or any matter referred to him by a court or under section 98;

(d) to seek assistance for any represented person or person in respect of whom an application has been made from any government department, institution, welfare organization or the provider of any service and, where appropriate, to arrange legal representation for any represented person or persons in respect of whom an application has been made;

(e) to provide information and advice —

(i) to a proposed guardian or administrator, as to the functions of guardians and administrators; and

(ii) to any person, as to the operation of Part 4;

(f) to promote public awareness and understanding by the dissemination of information concerning —

(i) the provisions of this Act, including those relating to the functions of the State Administrative Tribunal conferred under this

Act, the Public Advocate and guardians and administrators; and

(ii) the protection of the rights of represented persons and persons who may become subject to guardianship or administration orders, and the protection of such persons from abuse and exploitation;

(g) to promote family and community responsibility for guardianship and for that purpose to undertake, co-ordinate and support community education projects;

(h) to encourage the involvement of government and private bodies and individuals in achieving the objects described in paragraphs (f) and (g);

(i) any other function conferred on the Public Advocate by a written law.

(2) The Public Advocate may do all things necessary or convenient to be done for or in connection with the performance of his functions.

[Section 97 amended: No. 7 of 1996 s. 27; No. 55 of 2004 s. 451 and 466; No. 59 of 2004 s. 141; No. 59 of 2006 s. 73.]

98. Notification to Public Advocate as to mentally impaired accused

(1) If a person becomes a mentally impaired accused (as defined in Part 5 of the *Criminal Law (Mentally Impaired Accused) Act 1996*) the registrar to the Mentally Impaired Accused Review Board shall notify the Public Advocate accordingly.

(2) On receipt of a notice under subsection (1), the Public Advocate shall investigate whether the person is in need of an administrator of his estate and take such other action as he considers appropriate.

[Section 98 amended: No. 7 of 1996 s. 36; No. 69 of 1996 s. 36; No. 84 of 2004 s. 82; No. 17 of 2014 s. 12.]

99. Public Advocate to act on death of guardian or administrator

(1) Except where section 55 applies, the Public Advocate shall, without any order or other formality, be the guardian or administrator immediately upon his becoming aware of the death of a sole guardian or administrator, and shall thereupon have the same powers and functions in respect of the person or the estate of the represented person as the original guardian or administrator, as the case may be, had immediately before his death.

(2) The validity of anything done in good faith by the Public Advocate purporting to act under subsection (1) shall not be called in question on the ground that the occasion for his taking office as guardian or administrator had not arisen.

(3) Nothing in subsection (1) affects any liability, actual or contingent, to which the original guardian or administrator was subject at the time of his death in respect of his functions under this Act.

[Section 99 amended: No. 7 of 1996 s. 36.]

100. Judicial notice

All courts, judges and persons acting judicially shall take judicial notice of —

(a) the official signature on any document of any person who is or has been the Public Advocate or acting Public Advocate; and

(b) the fact that that person holds or is acting in, or held or acted in, the office of Public Advocate, as the case may be.

[Section 100 amended: No. 7 of 1996 s. 36.]

101. Annual report of Public Advocate

(1) The Public Advocate shall, as soon as is practicable in each year but not later than 30 September, prepare and deliver to the Minister a report on the performance of his functions during the year which ended on the preceding 30 June.

(2) The Minister shall cause the report received under subsection (1) to be laid before each House of Parliament within 14 sitting days of that House after such receipt.

[Section 101 amended: No. 7 of 1996 s. 28 and 36.]

101A. Public Advocate may raise matters with Minister

(1) The Public Advocate may, at any time, raise with, or report to the Minister on, any concerns he may have about any matter arising out of or relating to the performance of his functions under this or any other Act or the operation of this Part.

(2) If the Public Advocate so requests, the Minister is to cause a report of any matter raised or reported on by the Public Advocate under subsection (1) to be laid before both Houses of Parliament as soon as practicable.

(3) The annual report prepared by the Public Advocate under section 101 is to include a summary of any matters raised or reported on under subsection (1).

[Section 101A inserted: No. 7 of 1996 s. 29.]

Part 9 — Enduring powers of attorney

102. Terms used

In this Part, unless the contrary intention appears —

donee includes 2 persons appointed, whether jointly or severally, to act under a power of attorney and may, in accordance with section 104B(2), include a substitute donee;

enduring power of attorney means a power of attorney created under section 104 or recognised by the State Administrative Tribunal under section 104A(2).

[Section 102 amended: No. 7 of 1996 s. 30; No. 70 of 2000 s. 12; No. 55 of 2004 s. 466(1).]

103. Other Acts

(1) Nothing in this Part affects the operation of Part VIII of the *Property Law Act 1969*.

(2) Notwithstanding Part VI of the *Transfer of Land Act 1893*, an enduring power of attorney that is in force shall be effective for the purposes of that Act as if it were in the form provided for by section 143 of that Act.

104. Execution of enduring power of attorney

(1a) A person who has reached 18 years of age and has full legal capacity may create an enduring power of attorney.

(1) An enduring power of attorney may be created by instrument —

(a) that is in the form or substantially in the form of Form 1 in Schedule 3; and

(b) in which the donor of the power declares that the power either —

(i) will continue in force notwithstanding his subsequent legal incapacity; or

(ii) will be in force only during any period when a declaration by the State Administrative Tribunal under section 106 that the donor does not have legal capacity is in force.

(2) An instrument is not effective to create an enduring power of attorney unless —

(a) there are 2 attesting witnesses to the instrument —

(i) both of whom are authorised by law to take declarations; or

(ii) of whom —

(I) one is authorised by law to take declarations; and

(II) the other has the qualifications specified in subsection (3);

and

(b) the instrument has endorsed on it, or annexed to it, a statement of acceptance in the form, or substantially in the form, of Form 2 in Schedule 3 executed by —

(i) the person or persons appointed to be the donee of the power; and

(ii) where applicable, the person or persons appointed to be the substitute donee of the power.

(3) A witness referred to in subsection (2)(a)(ii)(II) must be a person —

(a) who has reached 18 years of age; and

(b) who is not a person appointed to be a donee or substitute donee of the power.

[Section 104 amended: No. 70 of 2000 s. 13; No. 55 of 2004 s. 466(1); No. 25 of 2008 s. 9.]

104A. Recognition of powers of attorney created in other jurisdictions

(1) The donee of a power of attorney created under the laws of another State, Territory or country may apply to the State Administrative Tribunal for an order recognising that power of attorney as an enduring power of attorney for the purposes of this Part.

(2) Where the State Administrative Tribunal is satisfied, on an application made under subsection (1), that —

(a) a power of attorney created under the laws of another State, Territory or country corresponds sufficiently, in form and effect, to a power of attorney created under section 104; and

(b) it is appropriate to do so,

the Tribunal may make an order recognising that power of attorney as an enduring power of attorney for the purposes of this Part.

(3) Section 41(1) and (3) apply, with all necessary changes, to an application under subsection (1) as if it were an application for an administration order.

(4) The State Administrative Tribunal may at any time on the application of a person who in the opinion of the Tribunal has a proper interest in the matter revoke an order made under subsection (2).

[Section 104A inserted: No. 7 of 1996 s. 3; amended: No. 55 of 2004 s. 452 and 466.]

104B. Substitute donees

(1) A person creating an enduring power of attorney may, in the instrument creating the power of attorney, appoint a person to be a substitute donee of the power.

(2) Subject to this Act, a substitute donee referred to in subsection (1) becomes the donee of the power only on, or during, the occurrence of events or circumstances specified in the instrument.

[Section 104B inserted: No. 70 of 2000 s. 14.]

104C. Eligibility for appointment as donee or substitute donee

A person is eligible to be appointed as a donee or substitute donee of an enduring power of attorney if the person has reached 18 years of age and has full legal capacity.

[Section 104C inserted: No. 25 of 2008 s. 10.]

105. Enduring power of attorney survives incapacity

(1) Notwithstanding any rule of law to the contrary or anything in this Act, an enduring power of attorney that is in force is not affected by the subsequent legal incapacity of the donor of the power.

(2) An act done under an enduring power of attorney that is in force by the donee of the power during a period of legal incapacity of the donor is as effective as if the donor were of full legal capacity.

106. Donee may apply for declaration of legal incapacity

(1) The donee of an enduring power of attorney referred to in section 104(1)(b)(ii) may apply to the State Administrative Tribunal for an order declaring that the donor does not have legal capacity.

(2) Where the State Administrative Tribunal is satisfied that a person in respect of whom an application is made under subsection (1) —

(a) is the donor of an enduring power of attorney referred to in section 104(1)(b)(ii); and

(b) is unable, by reason of a mental disability, to make reasonable judgments in respect of matters relating to all or any part of his estate,

the Tribunal may by order declare that the donor does not have legal capacity and that the power of attorney is in force.

(3) The fact that an order has been made under subsection (2) in respect of a person does not prevent the State Administrative Tribunal from making an administration order in respect of that person.

(4) Section 41(1) and (3) apply, with all necessary changes, to an application under subsection (1) as if it were an application for an administration order.

(5) The State Administrative Tribunal may at any time on the application of a person who in the opinion of the Tribunal has a proper interest in the matter revoke an order made under subsection (2).

(6) Section 89(1) and (3) apply, with all necessary changes, to an application under subsection (5) as if it were an application for a review of an administration order and as if references to the represented person were references to the donor of the power of attorney.

[Section 106 amended: No. 70 of 2000 s. 15; No. 55 of 2004 s. 453 and 466.]

107. Obligations of donee

(1) The donee of an enduring power of attorney —

(a) shall exercise his powers as attorney with reasonable diligence to protect the interests of the donor and, if he fails to do so, he is liable to the donor for any loss occasioned by the failure;

(b) shall keep and preserve accurate records and accounts of all dealings and transactions made under the power;

(c) subject to section 109(2), may not renounce a power during any period of legal incapacity of the donor; and

(d) shall, if the donee becomes bankrupt, report that bankruptcy to the State Administrative Tribunal.

Penalty applicable to paragraph (b): $2 000.

(2) In relation to an enduring power of attorney recognised by the State Administrative Tribunal under section 104A(2), subsection (1)(a) and (b) only apply to the donor's estate within Western Australia and subsection (1)(c) does not apply.

[Section 107 amended: No. 7 of 1996 s. 32; No. 70 of 2000 s. 16; No. 55 of 2004 s. 466(1).]

108. Appointment of administrator

(1) Where it makes an administration order or an order under section 65 or 66 in respect of the estate of the donor of an enduring power of attorney —

(a) created under section 104, the State Administrative Tribunal may revoke or vary the power; or

(b) recognised by the State Administrative Tribunal under section 104A(2), the Tribunal may revoke that recognition.

(1a) Despite subsection (1), where the State Administrative Tribunal makes an order referred to in that subsection and the continued operation of an enduring power of attorney would be inconsistent with the functions of the administrator or person acting under section 65 or 66, the Tribunal —

(a) in the case of an enduring power of attorney created under section 104, shall revoke the power or vary it to remove the inconsistency; or

(b) in the case of an enduring power of attorney recognised by the Tribunal under section 104A(2), shall revoke that recognition.

(2) Subject to subsection (1), where an administrator of the estate or of part of the estate of the donor of an enduring power of attorney is appointed —

(a) the donee of the power is accountable to the administrator as if the administrator were the donor of the power; and

(b) the administrator has the same power to vary or revoke the power as the donor would have if he were of full legal capacity.

(3) In relation to an enduring power of attorney recognised by the State Administrative Tribunal under section 104A(2) —

(a) the operation of subsection (2)(a) is limited to the donor's estate within Western Australia; and

(b) subsection (2)(b) does not apply but the administrator may apply to the Tribunal to revoke recognition of the enduring power of attorney.

(4) Section 41(1) and (3) apply, with all necessary changes, to an application under subsection (3)(b) as if it were an application for an administration order.

[Section 108 amended: No. 7 of 1996 s. 33; No. 55 of 2004 s. 454 and 466.]

109. On application State Administrative Tribunal may intervene

(1) A person who has, in the opinion of the State Administrative Tribunal, a proper interest in the matter may apply to the Tribunal for an order —

(a) requiring the donee of an enduring power of attorney to file with the Tribunal and serve on the applicant a copy of all records and accounts kept by the donee of dealings and transactions made by him in connection with the power;

(b) requiring such records and accounts to be audited by an auditor appointed by the Tribunal and requiring a copy

of the report of the auditor to be furnished to the Tribunal and the applicant for the order; or

(c) revoking or varying the terms of an enduring power of attorney, appointing a substitute donee of the power or confirming that a person appointed to be the substitute donee of the power has become the donee.

(2) The donee of an enduring power of attorney may apply to the State Administrative Tribunal —

(a) for an order referred to in subsection (1)(c); or

(b) for directions as to matters connected with the exercise of the power or the construction of its terms.

(3) The State Administrative Tribunal may, upon an application under this section or upon receiving a report of a donee's bankruptcy under section 107(1)(d) —

(a) make an order referred to in subsection (1) or (2); or

(b) make such other order as to the exercise of the power or the construction of its terms as the Tribunal thinks fit.

(4) An order under this section may be made subject to such terms and conditions as the State Administrative Tribunal thinks fit.

(5) In relation to an enduring power of attorney recognised by the State Administrative Tribunal under section 104A, an order under this section is limited to the donor's estate within Western Australia.

[Section 109 amended: No. 7 of 1996 s. 34; No. 70 of 2000 s. 17; No. 55 of 2004 s. 466.]

110. Notice of application

An application for an order referred to in section 109 may be made ex parte, or the State Administrative Tribunal may give directions as to the persons to whom notice of the application shall be given and who shall be entitled to be heard.

[Section 110 amended: No. 55 of 2004 s. 466(1).]

Part 9A — Enduring powers of guardianship

[Heading inserted: No. 25 of 2008 s. 11.]

Division 1 — Preliminary matters

[Heading inserted: No. 25 of 2008 s. 11.]

110A. Term used: appointor

In this Part —

appointor, in relation to an enduring power of guardianship, means the maker of the power.

[Section 110A inserted: No. 25 of 2008 s. 11.]

Division 2 — Making of enduring power of guardianship

[Heading inserted: No. 25 of 2008 s. 11.]

110B. Appointing enduring guardian

A person who has reached 18 years of age and has full legal capacity may make an enduring power of guardianship appointing —

(a) a person as the enduring guardian of the person; or

(b) 2 or more persons as the joint enduring guardians of the person.

[Section 110B inserted: No. 25 of 2008 s. 11.]

110C. Substitute enduring guardians

(1) An appointor may, in the enduring power of guardianship, appoint one or more persons to be substitute enduring guardians.

(2) A substitute enduring guardian becomes the enduring guardian or a joint enduring guardian (as the case may be) in the circumstances specified in the enduring power of guardianship.

[Section 110C inserted: No. 25 of 2008 s. 11.]

110D. Who is eligible to be appointed

A person is eligible to be appointed under section 110B or 110C(1) if the person has reached 18 years of age and has full legal capacity.

[Section 110D inserted: No. 25 of 2008 s. 11.]

110E. Formal requirements

(1) An enduring power of guardianship is not valid unless —

(a) it is in the form or substantially in the form prescribed by the regulations; and

(b) it is signed by the appointor or by another person in the presence of, and at the direction of, the appointor; and

(c) the signature referred to in paragraph (b) is witnessed by 2 persons —

(i) both of whom are authorised by law to take declarations; or

(ii) of whom —

(I) one is authorised by law to take declarations; and

(II) the other has the qualifications specified in subsection (2);

and

(d) it is signed by the witnesses referred to in paragraph (c) in the presence of —

(i) the appointor; and

(ii) the person who signed it at the appointor's direction (if applicable); and

(iii) each other;

and

(e) it is signed by each person being appointed as an enduring guardian or substitute enduring guardian (an ***appointee***) to indicate the appointee's acceptance of the appointment; and

(f) the signature of the appointee is witnessed by 2 persons —

(i) both of whom are authorised by law to take declarations; or

(ii) of whom —

(I) one is authorised by law to take declarations; and

(II) the other has the qualifications specified in subsection (2);

and

(g) it is signed by the witnesses referred to in paragraph (f) in the presence of the appointee and each other.

(2) A witness referred to in subsection (1)(c)(ii)(II) or (f)(ii)(II) must be a person —

(a) who has reached 18 years of age; and

(b) who is not —

(i) the appointor; or

(ii) the person who signed the enduring power of guardianship at the appointor's direction (if applicable); or

(iii) an appointee.

[Section 110E inserted: No. 25 of 2008 s. 11.]

Division 3 — Operation of enduring power of guardianship

[Heading inserted: No. 25 of 2008 s. 11.]

110F. When enduring guardian may act

An enduring power of guardianship has effect, subject to its terms, at any time the appointor is unable to make reasonable judgments in respect of matters relating to his or her person.

[Section 110F inserted: No. 25 of 2008 s. 11.]

110G. Functions generally

(1) Subject to this section, an enduring guardian has the same functions under section 45(1) and (2), and is subject to the same limitations under sections 45(3), (3A), (4A) and (4), 110ZR and 110ZT, in relation to the appointor as a plenary guardian has and is subject to in relation to a represented person.

(2) An enduring power of guardianship may limit the functions of the enduring guardian to the functions specified in the power.

(3) An enduring power of guardianship may limit the circumstances in which the enduring guardian may act to the circumstances specified in the power.

(4) An enduring power of guardianship may include directions about how the enduring guardian is to perform any of his or her functions.

[Section 110G inserted: No. 25 of 2008 s. 11; amended: No. 17 of 2014 s. 22(5); No. 14 of 2020 s. ~~10~~10; No. 20 of 2023 s. 41.]

110H. Certain provisions apply in relation to enduring guardian and appointor

The following provisions apply (with the necessary changes) in relation to an enduring guardian and appointor as if they were a guardian and represented person respectively —

(a) sections 48 to 51;

(b) section 53(a);

(c) subject to the terms of the enduring power of guardianship, section 54 as if it were not subject to section 85;

(d) Part 5 Division 3 other than section 57(2).

[Section 110H inserted: No. 25 of 2008 s. 11.]

110I. Priority of enduring power of guardianship

(1) To the extent an enduring power of guardianship relates to the making of a treatment decision for the appointor, the priority to be given to the power is determined in accordance with section 110ZJ.

(1A) To the extent an enduring power of guardianship relates to the making of a research decision in relation to the appointor, the power may be exercised only if the enduring guardian is the research decision-maker for the appointor.

(2) To the extent an enduring power of guardianship relates to the performance of any other function in relation to the appointor, the priority to be given to the power is determined in accordance with section 119.

[Section 110I inserted: No. 25 of 2008 s. 11; amended: No. 14 of 2020 s. 11.]

Division 4 — Jurisdiction of State Administrative Tribunal

[Heading inserted: No. 25 of 2008 s. 11.]

110J. Who may apply

A person who, in the opinion of the State Administrative Tribunal, has a proper interest in the matter may apply to the Tribunal for a decision under this Division.

[Section 110J inserted: No. 25 of 2008 s. 11.]

110K. Declaration about validity of enduring power of guardianship

(1) The State Administrative Tribunal may declare that an enduring power of guardianship is valid or invalid.

(2) A declaration made under subsection (1) has effect according to its terms.

[Section 110K inserted: No. 25 of 2008 s. 11.]

110L. Declaration of incapacity of appointor

(1) The State Administrative Tribunal may declare that the appointor under an enduring power of guardianship is unable to make reasonable judgments in respect of matters relating to his or her person.

(2) A declaration made under subsection (1) has effect according to its terms.

(3) The Tribunal may revoke a declaration made under subsection (1).

[Section 110L inserted: No. 25 of 2008 s. 11.]

110M. Directions as to construction of terms etc.

The State Administrative Tribunal may give directions as to matters connected with —

(a) the exercise of an enduring power of guardianship; or

(b) the construction of the terms of an enduring power of guardianship.

[Section 110M inserted: No. 25 of 2008 s. 11.]

110N. Revocation or variation of enduring power of guardianship

(1) The State Administrative Tribunal may make an order —

(a) revoking an enduring power of guardianship; or

(b) revoking the appointment of one or some of the persons who are joint enduring guardians under an enduring power of guardianship if the person or each of the persons —

(i) wishes to be discharged; or

(ii) has been guilty of such neglect or misconduct or of such default as, in the opinion of the Tribunal, renders the person unfit to continue as an enduring guardian; or

(iii) appears to the Tribunal to be incapable by reason of mental or physical incapacity of carrying out the person's duties;

or

(c) revoking or varying any of the terms of an enduring power of guardianship.

(2) If the Tribunal makes an order under subsection (1)(b), subject to the terms of the enduring power of guardianship, the remaining enduring guardian or guardians may act under the power.

(3) An order made under subsection (1) may be expressed to come into effect at a time earlier than immediately after it is made.

[Section 110N inserted: No. 25 of 2008 s. 11.]

110O. Recognition of instrument created in another jurisdiction

(1) The State Administrative Tribunal may make an order recognising an instrument created under a law of another jurisdiction as an enduring power of guardianship under this Part if satisfied the instrument corresponds sufficiently, in form and effect, to an enduring power of guardianship made under this Part.

(2) The Tribunal may revoke an order made under subsection (1).

[Section 110O inserted: No. 25 of 2008 s. 11.]

Part 9B — Advance health directives

[Heading inserted: No. 25 of 2008 s. 11.]

Division 1 — Making of advance health directive

[Heading inserted: No. 25 of 2008 s. 11.]

110P. Making advance health directive

A person who has reached 18 years of age and has full legal capacity may make an advance health directive containing treatment decisions in respect of the person's future treatment.

[Section 110P inserted: No. 25 of 2008 s. 11.]

110Q. Formal requirements

(1) An advance health directive is not valid unless —

(a) it is in the form or substantially in the form prescribed by the regulations; and

(b) the maker is encouraged to seek legal or medical advice; and

(c) it is signed by its maker or by another person in the presence of, and at the direction of, its maker; and

(d) the signature referred to in paragraph (c) is witnessed by 2 persons —

(i) both of whom are authorised by law to take declarations; or

(ii) of whom —

(I) one is authorised by law to take declarations; and

(II) the other has the qualifications specified in subsection (3);

and

(e) it is signed by the witnesses in the presence of —

(i) its maker; and

(ii) the person who signed it at its maker's direction (if applicable); and

(iii) each other.

(2) Despite subsection (1)(b), the validity of an advance health directive is not affected by a failure to comply with subsection (1)(b).

(3) A witness referred to in subsection (1)(d)(ii)(II) must be a person —

(a) who has reached 18 years of age; and

(b) who is not —

(i) the maker of the advance health directive; or

(ii) the person who signed the directive at its maker's direction (if applicable).

[Section 110Q inserted: No. 25 of 2008 s. 11.]

110QA. Maker may indicate in directive whether advice obtained

The form prescribed by the regulations for section 110Q(1)(a) must include provision for the maker, if the maker wishes —

(a) to indicate whether the maker obtained legal or medical advice about the making of the directive; and

(b) if so, to identify from whom the maker obtained the advice.

[Section 110QA inserted: No. 25 of 2008 s. 11.]

110R. Requirements in relation to treatment decision in advance health directive

(1) A treatment decision in an advance health directive is invalid if the treatment decision —

(a) is not made voluntarily; or

(b) is made as a result of inducement or coercion.

(2) A treatment decision in an advance health directive is invalid if, at the time the directive is made, its maker does not understand —

(a) the nature of the treatment decision; or

(b) the consequences of making the treatment decision.

[Section 110R inserted: No. 25 of 2008 s. 11.]

*[**110RA.** Has not come into operation.]*

Division 2 — Operation of advance health directive

[Heading inserted: No. 25 of 2008 s. 11.]

110S. Operation generally

(1) A treatment decision in an advance health directive operates in respect of the treatment to which it applies —

(a) at any time the maker of the directive is unable to make reasonable judgments in respect of that treatment; and

(b) as if —

(i) the treatment decision had been made by the maker at that time; and

(ii) the maker were of full legal capacity.

(2) Subject to subsection (3), a treatment decision in an advance health directive operates only in the circumstances specified in the directive.

(3) Subject to subsection (4), a treatment decision in an advance health directive does not operate if circumstances exist or have arisen that —

(a) the maker of that directive would not have reasonably anticipated at the time of making the directive; and

(b) would have caused a reasonable person in the maker's position to have changed his or her mind about the treatment decision.

(4) In determining whether or not subsection (3) applies in relation to a treatment decision that is in an advance health directive, the matters that must be taken into account include the following —

(a) the maker's age at the time the directive was made and at the time the treatment decision would otherwise operate;

(b) the period that has elapsed between those times;

(c) whether the maker reviewed the treatment decision at any time during that period and, if so, the period that has elapsed between the time of the last such review and the time at which the treatment decision would otherwise operate;

(d) the nature of the condition for which the maker needs treatment, the nature of that treatment and the consequences of providing and not providing that treatment.

(5) For the purpose of determining whether or not subsection (3) applies in relation to a treatment decision that is in an advance health directive, subject to the terms of the directive, any of the following persons may be consulted —

(a) if the maker has an enduring guardian — the enduring guardian;

(b) if the maker has a guardian — the guardian;

(c) a person who has a relationship with the maker described in section 110ZD(3)(a) to (d);

(d) any other person considered appropriate in the circumstances.

(6) Subject to section 110T, a treatment decision in an advance health directive is taken to have been revoked if the maker of the directive has changed his or her mind about the treatment decision since making the directive.

[Section 110S inserted: No. 25 of 2008 s. 11.]

110T. Effect of subsequent enduring power of guardianship

For the purposes of this Act —

(a) a treatment decision in an advance health directive is not taken to have been revoked; and

(b) the maker of the directive is not taken to have changed his or her mind about the treatment decision since making the directive,

merely because the maker subsequently makes an enduring power of guardianship (whether about the same matter as the treatment decision or a different matter).

[Section 110T inserted: No. 25 of 2008 s. 11.]

110U. Priority of treatment decision in advance health directive

The priority to be given to a treatment decision in an advance health directive is determined ~~in accordance with section 110ZJ.~~ —

(a) in the case of a treatment decision in respect of treatment other than the performance of an abortion on the maker of the directive — in accordance with section 110ZJ; or

(b) in the case of a treatment decision in respect of the performance of an abortion on the maker of the directive — in accordance with section 110ZLA.

[Section 110U inserted: No. ~~25~~20 of ~~2008~~2023 s. ~~11~~42.]

Division 3 — Jurisdiction of State Administrative Tribunal

[Heading inserted: No. 25 of 2008 s. 11.]

110V. Who may apply

A person who, in the opinion of the State Administrative Tribunal, has a proper interest in the matter may apply to the Tribunal for a decision under this Division.

[Section 110V inserted: No. 25 of 2008 s. 11.]

110W. Declaration about validity of directive or treatment decision

(1) The State Administrative Tribunal may declare that —

(a) an advance health directive; or

(b) a treatment decision in an advance health directive,

is valid or invalid.

(2) A declaration made under subsection (1) has effect according to its terms.

[Section 110W inserted: No. 25 of 2008 s. 11.]

110X. Declaration of incapacity of maker

(1) The State Administrative Tribunal may declare that the maker of an advance health directive is unable to make reasonable judgments in respect of the treatment to which a treatment decision in the directive applies.

(2) A declaration made under subsection (1) has effect according to its terms.

(3) The Tribunal may revoke a declaration made under subsection (1).

[Section 110X inserted: No. 25 of 2008 s. 11.]

110Y. Directions as to construction of terms etc.

The State Administrative Tribunal may give directions as to matters connected with —

(a) the giving of effect to a treatment decision in an advance health directive; or

(b) the construction of the terms of an advance health directive.

[Section 110Y inserted: No. 25 of 2008 s. 11.]

110Z. Declaration that treatment decision has been revoked

(1) The State Administrative Tribunal may declare that a treatment decision in an advance health directive is taken to have been revoked under section 110S(6).

(2) A declaration made under subsection (1) has effect according to its terms.

(3) The Tribunal may revoke a declaration made under subsection (1).

[Section 110Z inserted: No. 25 of 2008 s. 11.]

110ZA. Recognition of instrument created in another jurisdiction

(1) The State Administrative Tribunal may make an order recognising an instrument created under a law of another jurisdiction as an advance health directive made under this Part if satisfied the instrument corresponds sufficiently, in form and effect, to an advance health directive made under this Part.

(2) The Tribunal may revoke an order made under subsection (1).

[Section 110ZA inserted: No. 25 of 2008 s. 11.]

Division 4 — Miscellaneous matters

[Heading inserted: No. 25 of 2008 s. 11.]

*[**110ZAA, 110ZAB, 110ZAC.** Have not come into operation.]*

110ZB. Common law preserved

This Part does not affect the common law relating to a person's entitlement to make treatment decisions in respect of the person's future treatment.

[Section 110ZB inserted: No. 25 of 2008 s. 11.]

Part 9C — Persons responsible for patients

[Heading inserted: No. 25 of 2008 s. 11.]

Division 1 — Preliminary matters

[Heading inserted: No. 25 of 2008 s. 11.]

110ZC. Term used: patient

In this Part —

patient means a person who needs treatment.

[Section 110ZC inserted: No. 25 of 2008 s. 11.]

Division 2 — Treatment decisions by persons responsible for patients

[Heading inserted: No. 25 of 2008 s. 11.]

110ZD. Circumstances in which person responsible may make treatment decision

(1) If a patient is unable to make reasonable judgments in respect of any treatment proposed to be provided to the patient, the person responsible for the patient under subsection (2) may make a treatment decision in respect of the treatment.

(2) The person responsible for the patient is the first in order of the persons listed in subsection (3) who —

(a) is of full legal capacity; and

(b) is reasonably available; and

(c) is willing to make a treatment decision in respect of the treatment.

(3) For subsection (2), the persons are the following —

(a) the patient's spouse or de facto partner if that person —

(i) has reached 18 years of age; and

(ii) is living with the patient;

(b) the patient's nearest relative who maintains a close personal relationship with the patient;

(c) the person who —

(i) has reached 18 years of age; and

(ii) is the primary provider of care and support (including emotional support) to the patient, but is not remunerated for providing that care and support;

(d) any other person who —

(i) has reached 18 years of age; and

(ii) maintains a close personal relationship with the patient.

(4) For subsection (3)(b), the patient's nearest relative is the first in order of priority of the following relatives of the patient who has reached 18 years of age —

(a) the spouse or de facto partner;

(b) a child;

(c) a parent;

(d) a sibling.

(5) For subsection (3)(b) and (d)(ii), a person maintains a close personal relationship with the patient only if the person —

(a) has frequent contact of a personal (as opposed to a business or professional) nature with the patient; and

(b) takes a genuine interest in the patient's welfare.

(6) For subsection (3)(c)(ii), a person is not remunerated for providing care and support to the patient although the person receives a carer payment or other benefit from the Commonwealth or a State or Territory for providing home care for the patient.

(6A) The person responsible for the patient cannot make a treatment decision in respect of the performance of an abortion on the patient.

(7) The person responsible for the patient cannot consent to the sterilisation of the patient.

(8) When making a treatment decision for the patient, the person responsible for the patient must act according to the person's opinion of the best interests of the patient.

(9) A treatment decision made by the person responsible for the patient has effect as if —

(a) the treatment decision had been made by the patient; and

(b) the patient were of full legal capacity.

[Section 110ZD inserted: No. 25 of 2008 s. ~~11~~11; amended: No. 20 of 2023 s. 43.]

110ZE. Priority of treatment decision of person responsible

The priority to be given to a treatment decision of a person responsible for a patient under section 110ZD is determined in accordance with section 110ZJ.

[Section 110ZE inserted: No. 25 of 2008 s. 11.]

Division 3 — Jurisdiction of State Administrative Tribunal

[Heading inserted: No. 25 of 2008 s. 11.]

110ZF. Who may apply

A person who, in the opinion of the State Administrative Tribunal, has a proper interest in the matter may apply to the Tribunal for a decision under this Division.

[Section 110ZF inserted: No. 25 of 2008 s. 11.]

110ZG. Declaration that person responsible may make treatment decision

(1) The State Administrative Tribunal may declare —

(a) that a patient is unable to make reasonable judgments in respect of the treatment proposed to be provided to the patient; and

(b) that the person identified in the declaration is the person responsible for the patient under section 110ZD.

(2) A declaration made under subsection (1) has effect according to its terms.

(3) The Tribunal may revoke a declaration made under subsection (1).

[Section 110ZG inserted: No. 25 of 2008 s. 11.]

Part 9D — Treatment decisions in relation to patients under legal incapacity

[Heading inserted: No. 25 of 2008 s. 11.]

Division 1 — Preliminary matters

[Heading inserted: No. 25 of 2008 s. 11.]

110ZH. Terms used

In this Part —

advance health directive includes a directive given by a person under the common law containing treatment decisions in respect of the person's future treatment;

health professional has the meaning given to that term in the *Civil Liability Act 2002* section 5PA;

patient means a person who needs treatment;

urgent treatment ~~means treatment urgently needed by a patient~~ —

(a) means treatment (other than the performance of an abortion) urgently needed by a patient —

(i) to save the patient's life; or

(~~b~~ii) to prevent serious damage to the patient's health; or

(~~c~~iii) to prevent the patient from suffering or continuing to suffer significant pain or distress~~,~~;

and

(b) includes the performance of an abortion on a patient if performing the abortion is urgently needed —

(i) to save the patient's life; or

(ii) to prevent serious damage to the patient's health; or

(iii) to save another foetus,

but

(c) does not include —

(di) psychiatric treatment, which is treatment as defined in the *Mental Health Act 2014* section 4; or

(eii) the sterilisation of the patient.

[Section 110ZH inserted: No. 25 of 2008 s. 11; amended: No. 25 of 2014 s. 21; No. 20 of 2023 s. 44.]

Division 2 — Provision of treatment

[Heading inserted: No. 25 of 2008 s. 11.]

Subdivision 1 — Urgent treatment

[Heading inserted: No. 20 of 2023 s. 45.]

110ZI. Urgent treatment generally

(1) Subsection (2) applies if —

(a) a patient needs urgent treatment; and

(b) the patient is unable to make reasonable judgments in respect of the treatment; and

(c) it is not practicable for the health professional who proposes to provide the treatment to determine whether or not the patient has made an advance health directive containing a treatment decision that is inconsistent with providing the treatment; and

(d) it is not practicable for the health professional to obtain —

(i) in any case other than the performance of an abortion on the patient — a treatment decision in respect of the treatment from the patient's guardian or enduring guardian or the person responsible for the patient under section 110ZD, as referred to in section 110ZJ; or

(ii) in the case of the performance of an abortion on the patient — a decision of the State Administrative Tribunal under Division 3 Subdivision 2 in respect of the performance of the abortion, as referred to in section 110ZLA(3).

(2) The health professional may provide the treatment to the patient —

(a) in the case referred to in subsection (1)(d)(i) — in the absence of a treatment decision in relation to the patient~~.~~ from the patient's guardian or enduring guardian or the person responsible for the patient; or

(b) in the case referred to in subsection (1)(d)(ii) — in the absence of a decision of the State Administrative Tribunal under Division 3 Subdivision 2.

[Section 110ZI inserted: No. 25 of 2008 s. ~~11~~11; amended: No. 20 of 2023 s. 46.]

110ZIA. Urgent treatment after attempted suicide

(1) Subsection (2) applies if —

(a) a patient needs urgent treatment; and

(b) the patient is unable to make reasonable judgments in respect of the treatment; and

(c) the health professional who proposes to provide the treatment reasonably suspects that the patient has attempted to commit suicide and needs the treatment as a consequence.

(2) The health professional may provide the treatment to the patient despite —

(a) the patient having made an advance health directive containing a treatment decision that is inconsistent with providing the treatment; or

(b) the patient's guardian or enduring guardian or the person responsible for the patient under section 110ZD having made such a treatment decision in relation to the patient.

[Section 110ZIA inserted: No. 25 of 2008 s. 11.]

Subdivision 2 — Other treatment

[Heading inserted: No. 20 of 2023 s. 47.]

110ZIB. Application of Subdivision

This Subdivision does not apply to the performance of an abortion on a patient.

[Section 110ZIB inserted: No. 20 of 2023 s. 48.]

110ZJ. Order of priority of persons who may make treatment decision in relation to patient

(1) Subject to ~~sections 110ZI~~Subdivision 1 and ~~110ZIA~~section 110ZIB, this section applies if a patient is unable to make reasonable judgments in respect of any treatment proposed to be provided to the patient.

(2) If the patient has made an advance health directive containing a treatment decision in respect of the treatment, whether or not the treatment is provided to the patient must be decided in accordance with the treatment decision.

(3) If —

(a) subsection (2) does not apply; and

(b) the patient has an enduring guardian who —

(i) is authorised to make a treatment decision in respect of the treatment; and

(ii) is reasonably available; and

(iii) is willing to make a treatment decision in respect of the treatment,

whether or not the treatment is provided to the patient must be decided by the enduring guardian.

(4) If —

(a) subsections (2) and (3) do not apply; and

(b) the patient has a guardian who —

(i) is authorised to make a treatment decision in respect of the treatment; and

(ii) is reasonably available; and

(iii) is willing to make a treatment decision in respect of the treatment,

whether or not the treatment is provided to the patient must be decided by the guardian.

(5) If —

(a) subsections (2) to (4) do not apply; and

(b) there is a person responsible for the patient under section 110ZD,

whether or not the treatment is provided to the patient must be decided by the person responsible.

[Section 110ZJ inserted: No. 25 of 2008 s. ~~11~~11; amended: No. 20 of 2023 s. 49.]

110ZK. Reliance by health professional on treatment decision

(1) In this section —

take treatment action means —

(a) to commence or continue any treatment of a patient; or

(b) to not commence or to discontinue any treatment of a patient.

(2) If a health professional —

(a) takes treatment action —

(i) reasonably believing that the patient is unable to make reasonable judgments in respect of the treatment action; and

(ii) relying in good faith on what is purportedly a treatment decision —

(I) in an advance health directive made by the patient; or

(II) made by the patient's guardian or enduring guardian or the person responsible for the patient under section 110ZD;

or

(b) takes treatment action —

(i) in circumstances where it is reasonable for the health professional to rely on some other health professional having ascertained whether the treatment action is in accordance with a treatment decision; and

(ii) reasonably assuming that some other health professional has ascertained that the treatment action is in accordance with a treatment decision,

the health professional is taken for all purposes to take the treatment action in accordance with a treatment decision that has effect as if —

(c) it had been made by the patient; and

(d) the patient were of full legal capacity.

(3) For subsection (2)(a)(ii), a health professional is taken to have relied in good faith on what was purportedly a treatment decision if, after considering whether or not to rely on it, the health professional acted honestly in relying on it.

(4) For the purpose of determining under subsection (2)(b)(ii) whether the health professional's assumption was reasonable, the following matters must be taken into account —

(a) whether the health professional sighted any written evidence that some other health professional had ascertained that the treatment action was in accordance with the treatment decision;

(b) anything else relevant to the determination.

[Section 110ZK inserted: No. 25 of 2008 s. 11.]

110ZL. Validity of certain treatment decisions

If a health professional —

(a) commences or continues palliative care in relation to a patient; or

(b) does not commence or discontinues any treatment of a patient,

in accordance with a treatment decision that is —

(c) in an advance health directive made by the patient; or

(d) made by the patient's guardian or enduring guardian or the person responsible for the patient under section 110ZD,

the health professional is taken for all purposes to have done so in accordance with a valid treatment decision, even if an effect of doing so is to hasten the death of the patient.

[Section 110ZL inserted: No. 25 of 2008 s. 11.]

Subdivision 3 — Performance of abortion

[Heading inserted: No. 20 of 2023 s. 50.]

110ZLA. Treatment decisions in relation to performance of abortion

(1) Subject to Subdivision 1, this section applies if it is proposed to perform an abortion on a person who —

(a) has reached 18 years of age; and

(b) is unable to make reasonable judgments in respect of whether or not the abortion should be performed on them.

(2) If the person has made an advance health directive containing a treatment decision in respect of the performance of the abortion on the person, whether or not the abortion is performed on the person must be decided in accordance with the treatment decision.

(3) If subsection (2) does not apply, whether or not the abortion is performed on the person must be decided by the State Administrative Tribunal under Division 3 Subdivision 2.

[Section 110ZLA inserted: No. 20 of 2023 s. 50.]

110ZLB. Performance of abortion without advance health directive or State Administrative Tribunal consent an offence

Except where section 110ZLA(2) has effect, a health professional must not perform an abortion on a person referred to in section 110ZLA(1) unless —

(a) the State Administrative Tribunal has, under section 110ZND, consented to the performance of the abortion on the person; and

(b) no appeal from the decision to consent is instituted within the period provided under section 25A(3)(b) or, if an appeal is instituted, the appeal is finally disposed of, or is discontinued or dismissed (and is not reinstated or capable of reinstatement); and

(c) the abortion is performed in accordance with any condition imposed by the State Administrative Tribunal under section 110ZND.

Penalty for this section: imprisonment for 2 years and a fine of $4 000.

[Section 110ZLB inserted: No. 20 of 2023 s. 50.]

110ZLC. Effect of State Administrative Tribunal consent

A decision of the State Administrative Tribunal under Division 3 Subdivision 2 in relation to the performance of an abortion on a person referred to in section 110ZLA(1) has effect as if —

(a) it were a treatment decision made by the person in respect of the performance of the abortion on the person; and

(b) the person were of full legal capacity.

[Section 110ZLC inserted: No. 20 of 2023 s. 50.]

110ZLD. Reliance by health professional on treatment decisions in respect of performance of abortion

(1) In this section —

abortion treatment decision, in relation to a person referred to in section 110ZLA(1)(a), means —

(a) a treatment decision in respect of the performance of an abortion on the person, contained in an advance health directive made by the person; or

(b) a decision of the State Administrative Tribunal under Division 3 Subdivision 2 in respect of the person;

take abortion action means to perform, or not to perform, an abortion on a person referred to in section 110ZLA(1)(a).

(2) Subsection (3) applies if a health professional —

(a) takes abortion action —

(i) reasonably believing that the person is unable to make reasonable judgments in respect of the abortion action; and

(ii) relying in good faith on what is purportedly an abortion treatment decision in respect of the person;

or

(b) takes abortion action —

(i) in circumstances where it is reasonable for the health professional to rely on some other health professional having ascertained whether the taking of the abortion action is in accordance with an abortion treatment decision in respect of the person; and

(ii) reasonably assuming that some other health professional has ascertained that the taking of the abortion action is in accordance with an abortion treatment decision in respect of the person.

(3) The health professional is taken for all purposes to take the abortion action in accordance with a treatment decision that has effect as if —

(a) it had been made by the person; and

(b) the person were of full legal capacity.

(4) Without limiting subsection (3), a health professional who takes abortion action as referred to in subsection (2) does not commit an offence under section 110ZLB.

(5) For subsection (2)(a)(ii), a health professional is taken to have relied in good faith on what was purportedly an abortion treatment decision if, after considering whether or not to rely on it, the health professional acted honestly in relying on it.

(6) For the purpose of determining under subsection (2)(b)(ii) whether the health professional's assumption was reasonable, the following matters must be taken into account —

(a) whether the health professional sighted any written evidence that some other health professional had ascertained that the taking of the abortion action was in accordance with the abortion treatment decision;

(b) anything else relevant to the determination.

[Section 110ZLD inserted: No. 20 of 2023 s. 50.]

Division 3 — Jurisdiction of State Administrative Tribunal

[Heading inserted: No. 25 of 2008 s. 11.]

Subdivision 1 — Declarations for purposes of s. 110ZJ

[Heading inserted: No. 20 of 2023 s. 51.]

110ZM. Who may apply

A person who, in the opinion of the State Administrative Tribunal, has a proper interest in the matter may apply to the Tribunal for a decision under this ~~Division~~Subdivision.

[Section 110ZM inserted: No. 25 of 2008 s. ~~11~~11; amended: No. 20 of 2023 s. 52.]

110ZN. Declaration as to who may make treatment decision

(1) The State Administrative Tribunal may declare whether section 110ZJ(2), (3), (4) or (5) applies in respect of any treatment proposed to be provided to a patient.

(2) A declaration made under subsection (1) has effect according to its terms.

(3) The Tribunal may revoke a declaration made under subsection (1).

[Section 110ZN inserted: No. 25 of 2008 s. 11.]

Subdivision 2 — Decisions for purposes of s. 110ZLA

[Heading inserted: No. 20 of 2023 s. 53.]

110ZNA. Only Full Tribunal to act under this Subdivision

The functions of the State Administrative Tribunal under this Subdivision may only be performed by a Full Tribunal.

[Section 110ZNA inserted: No. 20 of 2023 s. 53.]

110ZNB. Who may apply for decision under this Subdivision

(1) The following persons may apply to the State Administrative Tribunal for a decision under this Subdivision for the purposes of section 110ZLA(3) —

(a) the person on whom the abortion is proposed to be performed;

(b) if the person has an enduring guardian or a guardian, that guardian;

(c) a relative of the person as referred to in subsection (2);

(d) the Public Advocate;

(e) a person who, in the opinion of the Tribunal, has a proper interest in the matter.

(2) For the purposes of subsection (1)(c), a relative of the person is any of the following relatives of the person who have reached 18 years of age —

(a) a spouse or de facto partner;

(b) a child;

(c) a parent;

(d) a sibling.

[Section 110ZNB inserted: No. 20 of 2023 s. 53.]

110ZNC. Notice of hearing

(1) If an application is made under section 110ZNB(1), the State Administrative Tribunal must give the following persons reasonable notice in writing of the hearing of the application —

(a) the applicant;

(b) the person on whom the abortion is proposed to be performed;

(c) the nearest relative, as referred to in subsection (2) (if any), of the person;

(d) if the person has an enduring guardian or guardian, that guardian;

(e) the Public Advocate;

(f) any other person who in the opinion of the State Administrative Tribunal has a proper interest in the proceedings.

(2) For the purposes of subsection (1)(c), the nearest relative of the person is the first in order of priority of the following relatives of the person who have reached 18 years of age —

(a) a spouse or de facto partner;

(b) a child;

(c) a parent;

(d) a sibling.

(3) A notice under subsection (1) must include —

(a) particulars of the application and the time and place of the hearing; and

(b) in the case of the notice given to the applicant or the person on whom the abortion is proposed to be performed, a summary of —

(i) the provisions of section 16 and Schedule 1 clause 13, and the *State Administrative Tribunal Act 2004* sections 39, 87 and 88, as they affect that person; and

(ii) the functions of the State Administrative Tribunal under this Subdivision.

(4) The State Administrative Tribunal is not required to give notice to a person referred to in subsection (1) if, after reasonable enquiry, the whereabouts of the person cannot be ascertained.

(5) If, by reason of circumstances of urgency, the State Administrative Tribunal considers it necessary to do so, the Tribunal may hear an application made under

section 110ZNB(1) without giving notice to the persons referred to in subsection (1)(c), (d) and (f).

[Section 110ZNC inserted: No. 20 of 2023 s. 53.]

110ZND. State Administrative Tribunal consent to performance of abortion

(1) On hearing an application under section 110ZNB(1), the State Administrative Tribunal may, by order in writing, consent to performance of the abortion on the person if the Tribunal is satisfied that —

(a) the person has reached 18 years of age; and

(b) the person is unable to make reasonable judgments in respect of whether or not the abortion should be performed on them; and

(c) the person has not made an advance health directive containing a treatment decision that is inconsistent with the performance of the abortion on the person; and

(d) the performance of the abortion on the person is in the best interests of the person.

(2) Without limiting subsection (1)(d), in deciding whether the performance of the abortion on the person is in the best interests of the person, the Tribunal must take into account —

(a) whether the person is likely within the foreseeable future to regain the ability to make reasonable judgments in respect of whether or not the abortion should be performed on them; and

(b) any wishes of the person so far as they can be ascertained.

(3) The consent of the State Administrative Tribunal under this section may be given subject to compliance with any condition that the Tribunal considers appropriate.

[Section 110ZND inserted: No. 20 of 2023 s. 53.]

Part 9E — Medical research

[Heading inserted: No. 14 of 2020 s. 12.]

Division 1 — Preliminary

[Heading inserted: No. 14 of 2020 s. 12.]

110ZO. Terms used

In this Part —

Health Minister means the Minister administering the *Health Services Act 2016*;

HREC means a human research ethics committee established in accordance with the National Statement;

independent medical practitioner, in relation to medical research, means a medical practitioner who —

(a) is not involved in providing treatment under this Part to the research candidate whose participation is sought in the research; and

(b) is not involved in, nor connected to, the research, other than having a professional interest in the area of the research; and

(c) is not the spouse, de facto partner, parent, grandparent, sibling, child or grandchild of the research candidate whose participation is sought in the research; and

(d) is not a member of the HREC that approved the research;

lead researcher, in relation to medical research, means a registered health practitioner who has sole or joint overall responsibility for conducting the research;

medical practitioner means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession (other than as a student);

National Statement means the National Statement on Ethical Conduct in Human Research (2007), as modified or replaced from time to time, issued under the *National Health and Medical Research Council Act 1992* (Commonwealth) section 7(1)(a);

registered health practitioner has the meaning given in the *Health Practitioner Regulation National Law (Western Australia)* section 5;

researcher means —

(a) a lead researcher; or

(b) an individual who conducts, or assists with the conduct of, medical research;

review application means an application for review made under section 110ZZ;

reviewed decision means a decision made under this Part that is the subject of a review application;

urgent medical research decision means a decision to conduct medical research under section 110ZS(1).

[Section 110ZO inserted: No. 14 of 2020 s. 12; amended: No. 32 of 2023 s. 4.]

110ZP. Term used: research decision-maker

(1) A person is a ***research decision-maker*** for a research candidate if —

(a) the candidate is unable to make reasonable judgments in respect of their participation in medical research; and

(b) the person is first in order of the following persons —

(i) a person to whom subsection (2) applies;

(ii) if there is no person to whom subsection (2) applies — a person to whom subsection (3) applies;

(iii) if there is no person to whom either subsection (2) or (3) applies — a person to whom subsection (4) applies.

(2) This subsection applies to a person who is —

(a) an enduring guardian for the research candidate; and

(b) authorised to make a research decision in relation to the candidate; and

(c) reasonably available; and

(d) willing to make a research decision in relation to the candidate.

(3) This subsection applies to a person who is —

(a) a guardian for the research candidate; and

(b) authorised to make a research decision in relation to the candidate; and

(c) reasonably available; and

(d) willing to make a research decision in relation to the candidate.

(4) This subsection applies to a person who is a substitute decision-maker for the research candidate under section 110ZQ.

(5) If there are 2 or more persons who are the research decision-makers for a research candidate under this section —

(a) the persons are jointly the research decision-maker for the candidate; and

(b) if the persons cannot agree on a research decision for the candidate — the person next in order of priority under this section is the research decision-maker for the candidate.

[Section 110ZP inserted: No. 14 of 2020 s. 12.]

110ZQ. Substitute decision-maker for a research candidate

(1) For the purposes of section 110ZP(4), a person is a substitute decision-maker for a research candidate if the person is the first in order of the persons listed in subsection (2) who is —

(a) of full legal capacity; and

(b) reasonably available; and

(c) willing to make a research decision in relation to the candidate.

(2) For subsection (1), the persons are the following —

(a) the research candidate's spouse or de facto partner if that person —

(i) has reached 18 years of age; and

(ii) is living with the candidate or maintains a close personal relationship with the candidate;

(b) the person who is first in the following order of priority of relatives of the research candidate who has reached 18 years of age and maintains a close personal relationship with the candidate —

(i) a child;

(ii) a parent;

(iii) a sibling;

(c) the person who —

(i) has reached 18 years of age; and

(ii) is the primary provider of care and support (including emotional support) to the research candidate, but is not remunerated for providing that care and support;

(d) any other person who —

(i) has reached 18 years of age; and

(ii) maintains a close personal relationship with the research candidate.

(3) For subsection (2)(a)(ii), (b) and (d)(ii), a person maintains a close personal relationship with a research candidate only if the person —

(a) has frequent contact of a personal (as opposed to a business or professional) nature with the candidate; and

(b) takes a genuine interest in the candidate's welfare.

(4) For subsection (2)(c)(ii), a person is not remunerated for providing care and support to a research candidate only because the person receives a carer payment or other benefit from the Commonwealth or a State or Territory for providing home care for the candidate.

(5) If there are 2 or more persons who are the substitute decision-makers for a research candidate under this section —

(a) the persons are jointly the substitute decision-maker for the candidate; and

(b) if the persons cannot agree on a research decision for the candidate — the person next in order of priority under this section is the substitute decision-maker for the candidate.

[Section 110ZQ inserted: No. 14 of 2020 s. 12.]

Division 2 — Decisions about medical research

[Heading inserted: No. 14 of 2020 s. 12.]

110ZR. Medical research with consent of research decision-maker

(1) The research decision-maker for a research candidate may make a research decision in relation to the candidate's participation in medical research if —

(a) the research has been approved by an HREC; and

(b) the candidate is unable to make reasonable judgments in relation to participating in the research; and

(c) an independent medical practitioner determines in accordance with section 110ZV that the candidate is not likely to be able to make reasonable judgments within the timeframe for the research approved by the HREC.

(2) The research decision-maker for a research candidate must not consent to the candidate's participation in medical research unless the research decision-maker —

(a) receives the determination of an independent medical practitioner under subsection (3); and

(b) determines, having regard to the independent medical practitioner's determination under subsection (3)(a), that the candidate's participation in the research is in the best interests of the candidate or is not adverse to the interests of the candidate; and

(c) determines, having regard to the independent medical practitioner's determination under subsection (3)(b), that the candidate's participation —

(i) will only involve observing the candidate or carrying out another non-invasive examination, treatment or procedure; or

(ii) if subparagraph (i) does not apply — will not involve any known substantial risks to the candidate; or

(iii) if subparagraphs (i) and (ii) do not apply and there is an existing treatment available to the candidate — will not involve any known substantial risks to the candidate greater than the risks associated with that treatment; or

(iv) if subparagraphs (i) to (iii) do not apply — will not involve substantial risks to the candidate greater than if the candidate did not participate in the research.

(3) An independent medical practitioner must determine —

(a) whether the research candidate's participation will be in the best interests of the candidate or will not be adverse to the interests of the candidate in accordance with section 110ZU; and

(b) the matters stated in subsection (2)(c) in accordance with section 110ZW.

(4) A research decision-maker for a research candidate cannot make a research decision under this section to consent to the candidate's participation in the medical research if the participation is inconsistent with any advance health directive in operation in respect of the candidate.

(5) A research decision made under this section has effect as if —

(a) it were made by the research candidate or with the candidate's consent; and

(b) the research candidate were of full legal capacity.

(6) If a research decision-maker for a research candidate has made a research decision to consent to the candidate's participation in the medical research under subsection (1), a research decision-maker for the candidate may decide that, contrary to the research decision, the candidate will no longer participate in the research.

(7) If a research candidate regains the ability to make reasonable judgments in respect of medical research while the candidate participates in the research or a research decision-maker makes a decision under subsection (6) —

(a) the research decision made under subsection (1) ceases to have further effect; and

(b) the lead researcher in relation to the research must ensure that —

(i) the research is discontinued as soon as is safely practicable; and

(ii) the research is not recommenced unless a research decision is made by the candidate, or by the research decision-maker under subsection (1), to consent to continue to participate in the research.

[Section 110ZR inserted: No. 14 of 2020 s. 12.]

110ZS. Urgent medical research without consent

(1) A researcher may conduct medical research in relation to a research candidate if —

(a) the research has been approved by an HREC; and

(b) the candidate requires urgent treatment as defined in section 110ZH; and

(c) the candidate is unable to make reasonable judgments in respect of their participation in the research; and

(d) there is no research decision in relation to the candidate in respect of their participation in the research; and

(e) it is not practicable for the researcher to obtain a research decision in relation to the candidate from the research decision-maker for the candidate; and

(f) it is unlikely that it will be practicable for the researcher to obtain a research decision in relation to the candidate from the research decision-maker for the candidate within the timeframe for the research approved by the HREC; and

(g) the researcher receives an independent medical practitioner's determination in accordance with section 110ZV that the candidate is not likely to be able to make reasonable judgments in respect of their participation in the research within the timeframe for the research approved by the HREC; and

(h) the researcher receives an independent medical practitioner's determination in accordance with section 110ZU that the candidate's participation is in the best interests of the candidate or is not adverse to the interests of the candidate; and

(i) the researcher receives an independent medical practitioner's determination in accordance with section 110ZW that the candidate's participation in the research —

(i) will only involve observing the candidate or carrying out another non-invasive examination, treatment or procedure; or

(ii) if subparagraph (i) does not apply — will not involve any known substantial risks to the candidate; or

(iii) if subparagraphs (i) and (ii) do not apply and there is an existing treatment available to the candidate — will not involve any known substantial risks to the candidate greater than the risks associated with that treatment; or

(iv) if subparagraphs (i) to (iii) do not apply — will not involve substantial risks to the candidate greater than if the candidate did not participate in the research.

(2) A researcher must not conduct medical research in relation to a research candidate in accordance with an urgent medical research decision if the researcher is aware, or ought reasonably to be aware, the research is inconsistent with any advance health directive in operation in respect of the candidate.

(3) While a researcher conducts medical research in relation to a research candidate in accordance with an urgent medical research decision, the lead researcher in relation to the research must continue to take reasonable steps to obtain a research

decision under section 110ZR in relation to the research candidate from the research decision-maker for the candidate.

(4) Subsection (5) applies if —

(a) a researcher conducts medical research in relation to a research candidate in accordance with an urgent medical research decision; and

(b) either —

(i) the research candidate regains the ability to make reasonable judgments in respect of the medical research; or

(ii) a research decision-maker makes a research decision under section 110ZR to refuse consent to the candidate's participation in the research.

(5) The lead researcher in relation to the medical research must ensure that —

(a) the research is discontinued as soon as is safely practicable; and

(b) the research is not recommenced unless the research candidate or research decision-maker consents to continue to participate in the research.

[Section 110ZS inserted: No. 14 of 2020 s. 12.]

110ZT. Particular medical research not permitted

(1) In this section —

procedure for the sterilisation has the meaning given in section 56.

(2) A research decision-maker for a research candidate cannot consent under this Part to —

(a) a procedure for the sterilisation of the candidate; or

(b) electroconvulsive therapy being performed on the candidate~~.~~; or

(c) the performance of an abortion on the candidate.

(3) A person must not, for the purposes of medical research, carry out or take part in —

(a) a procedure for the sterilisation of a research candidate; or

(b) electroconvulsive therapy being performed on a research candidate.

Penalty for this subsection: imprisonment for 2 years or a fine of $10 000.

(4) A person must not, for the purposes of medical research, perform or assist in the performance of an abortion on a research candidate.

Penalty for this subsection: imprisonment for 2 years or a fine of $10 000.

[Section 110ZT inserted: No. 14 of 2020 s. ~~12~~12; amended: No. 20 of 2023 s. 54.]

Division 3 — Provisions about research decisions and urgent medical research decisions

[Heading inserted: No. 14 of 2020 s. 12.]

110ZU. Assessment by independent medical practitioner of research candidate's best interests

(1) An independent medical practitioner must take into account the following in making a determination under section 110ZR(3)(a) or 110ZS(1)(h) —

(a) the wishes of the research candidate (to the extent they can be ascertained) as the paramount consideration;

(b) the likely effects of the research candidate's participation, including —

(i) the existence, likelihood and severity of any potential risks to the candidate; and

(ii) whether those risks are justified by any likely benefits of the research to the candidate or to the broader community;

(c) any consequences for the research candidate if they are not involved in the research;

(d) any alternative treatments available to the research candidate;

(e) any other prescribed matters.

(2) The fact that medical research may involve the giving of placebos does not prevent a research decision-maker or an independent medical practitioner from being satisfied that it is in the best interests of a research candidate or is not adverse to the interests of the candidate that they participate in the research.

(3) The independent medical practitioner must inform a research decision-maker or researcher of the practitioner's determination, and the reasons for the determination —

(a) if practicable before the medical research commences — in writing; or

(b) if paragraph (a) does not apply —

(i) orally before the medical research commences; and

(ii) in writing after the research candidate commences participation in the medical research.

[Section 110ZU inserted: No. 14 of 2020 s. 12.]

110ZV. Assessment by independent medical practitioner of likelihood of research candidate regaining ability to consent

(1) An independent medical practitioner must take into account the following when making a determination under section 110ZR(1)(c) or 110ZS(1)(g) —

(a) the research candidate's medical, mental and physical condition;

(b) the severity of the research candidate's condition and the prognosis for the candidate;

(c) the current stage of treatment and care required for the research candidate;

(d) any other circumstances relevant to the research candidate;

(e) the nature of, and the timeframe approved by the HREC for, the medical research in which the research candidate is to participate.

(2) The independent medical practitioner must inform a research decision-maker or researcher of the practitioner's determination, and the reasons for the determination —

(a) if practicable before the medical research commences — in writing; or

(b) if paragraph (a) does not apply —

(i) orally before the medical research commences; and

(ii) in writing after the research candidate commences participation in the medical research.

[Section 110ZV inserted: No. 14 of 2020 s. 12.]

110ZW. Assessment by independent medical practitioner of risks

(1) An independent medical practitioner must take into account the following in making a determination under section 110ZR(3)(b) or 110ZS(1)(i) —

(a) whether the research candidate's participation in medical research will involve any known substantial risks to the candidate;

(b) whether there is an existing treatment available to the research candidate;

(c) if there is an existing treatment available to the research candidate —

(i) whether there are substantial risks to the candidate involved in the existing treatment available to the candidate; and

(ii) if there are substantial risks involved in the existing treatment — whether those risks are greater than the risks involved in participating in the medical research;

(d) if there is no existing treatment available — whether the risks involved in participating in the medical research are greater than not participating in the research.

(2) The independent medical practitioner must inform the research decision-maker or researcher of the practitioner's determination, and the reasons for the determination —

(a) if practicable before the medical research commences — in writing; or

(b) if paragraph (a) does not apply —

(i) orally before the medical research commences; and

(ii) in writing after the research candidate commences participation in the medical research.

[Section 110ZW inserted: No. 14 of 2020 s. 12.]

Division 4 — Effect of research decisions and urgent medical research decisions

[Heading inserted: No. 14 of 2020 s. 12.]

110ZX. Reliance by researcher on research decision or urgent medical research decision

(1) In this section —

take research action means —

(a) to commence or continue any medical research in relation to a research candidate; or

(b) to not commence or to discontinue any medical research in relation to a research candidate.

(2) This section applies if a researcher —

(a) takes research action —

(i) reasonably believing that a research candidate is unable to make reasonable judgments in respect of the research action; and

(ii) relying in good faith on what is purportedly a research decision made by the research decision-maker for the research candidate under section 110ZR;

or

(b) takes research action —

(i) in circumstances where it is reasonable for the researcher to rely on another researcher having ascertained whether the research action is in accordance with a research decision by the research decision-maker for the research candidate under section 110ZR; and

(ii) reasonably assuming that another researcher has ascertained that the research action is in accordance with a research decision by the

research decision-maker for the research candidate under section 110ZR;

or

(c) takes research action —

(i) reasonably believing that the research candidate is unable to make reasonable judgments in respect of the research action; and

(ii) relying in good faith on what is purportedly an urgent medical research decision made by a researcher;

or

(d) takes research action —

(i) in circumstances where it is reasonable for the researcher to rely on another researcher having ascertained whether the research action is in accordance with an urgent medical research decision; and

(ii) reasonably assuming that another researcher has ascertained that the research action is in accordance with an urgent medical research decision.

(3) However, this section does not apply to the extent that a researcher takes research action inconsistent with —

(a) section 110ZR(4) or (7)(b) or 110ZS(2) or (5); or

(b) section 110ZT; or

(c) a decision made under Division 5.

(4) If this section applies, the researcher is taken for all purposes to take the research action in accordance with a research decision or urgent medical research decision that has effect as if —

(a) the decision were made by the research candidate; and

(b) the research action is taken with the research candidate's consent; and

(c) the research candidate were of full legal capacity.

(5) For the purposes of subsection (2)(a)(ii) and (c)(ii), a researcher is taken to have relied in good faith on what was purportedly a research decision or urgent medical research decision if, after considering whether or not to rely on it, the researcher acted honestly in relying on it.

(6) For the purposes of determining under subsection (2)(b)(ii) and (d)(ii) whether the researcher's assumption was reasonable, the following matters must be taken into account —

(a) whether the researcher sighted any written evidence that another researcher had ascertained that the research action was in accordance with a research decision or urgent medical research decision;

(b) anything else relevant to the determination.

[Section 110ZX inserted: No. 14 of 2020 s. 12.]

110ZY. Validity of certain research decisions or urgent medical research decisions

(1) If a researcher does not commence or discontinues medical research in relation to a research candidate in accordance with a research decision or urgent medical research decision, the researcher is taken for all purposes to have done so in accordance with a valid decision, even if an effect of doing so is to worsen the severity of the candidate's condition or the prognosis for the candidate.

(2) However, subsection (1) does not apply to the extent that an act or omission of a researcher is inconsistent with —

(a) section 110ZR(4) or (7)(b) or 110ZS(2) or (5); or

(b) section 110ZT; or

(c) a decision made under Division 5.

[Section 110ZY inserted: No. 14 of 2020 s. 12.]

Division 5 — Jurisdiction of State Administrative Tribunal

[Heading inserted: No. 14 of 2020 s. 12.]

110ZZ. Applying for review of decision made under this Part

A person who, in the opinion of the State Administrative Tribunal, is interested in a decision made under this Part may apply for a review of a decision.

[Section 110ZZ inserted: No. 14 of 2020 s. 12.]

110ZZA. Procedure on review

(1) The following provisions of the *State Administrative Tribunal Act 2004* do not apply in relation to a review application —

(a) section 20;

(b) subject to subsection (4) — sections 21, 22 and 23;

(c) sections 26(e) and 31;

(d) section 29(3)(c)(ii);

(e) section 29(5)(b).

(2) For the purposes of the *State Administrative Tribunal Act 2004* section 26(c), a reviewed decision may be varied or ceased by the person making the decision.

(3) A person who makes a review application may request (a ***report request***) the independent medical practitioner's written reports under Division 3 made in relation to the reviewed decision from —

(a) the research decision-maker or researcher who made the reviewed decision; or

(b) the independent medical practitioner who made the report.

(4) The *State Administrative Tribunal Act 2004* sections 21(3) to (5), 22 and 23 apply to a report request as if —

(a) the report request were a request made under section 21(1) or 22(1) of that Act; and

(b) the person to whom the report request is made were the decision-maker.

[Section 110ZZA inserted: No. 14 of 2020 s. 12.]

110ZZB. Effect of State Administrative Tribunal's decision under this Division

(1) A decision of the State Administrative Tribunal on a review application takes effect on the day on which the Tribunal's decision is made.

(2) If the State Administrative Tribunal sets aside a reviewed decision, the Tribunal's decision does not affect the operation of sections 110ZX and 110ZY in relation to actions or omissions of a researcher before the day the Tribunal's decision takes effect under subsection (1).

[Section 110ZZB inserted: No. 14 of 2020 s. 12.]

Division 6 — Reporting

[Heading inserted: No. 14 of 2020 s. 12.]

110ZZC. Researcher to report medical research conducted under this Part to Health Minister

If a researcher conducts medical research in relation to a research candidate under this Part, the researcher must give the Health Minister a written notice, in the form approved by the Health Minister, stating the following —

(a) that the researcher is conducting medical research in relation to the candidate;

(b) whether the medical research is carried out pursuant to —

(i) a research decision by the research decision-maker for the candidate under section 110ZR; or

(ii) an urgent medical research decision;

(c) the type of medical research the researcher is conducting in relation to the candidate;

(d) the purpose of the medical research;

(e) any other information required by the approved form.

[Section 110ZZC inserted: No. 14 of 2020 s. 12.]

110ZZD. Health Minister to report to Parliament on medical research carried out under this Part

(1) The Health Minister must, as soon as practicable after each anniversary of the day on which the *Guardianship and Administration Amendment (Medical Research) Act 2020* section 12 comes into operation, report to Parliament on the following in relation to the year to which the report relates —

(a) the number of research candidates who have participated in medical research under this Part;

(b) whether the medical research is carried out pursuant to —

(i) a research decision by the research decision-maker for the candidate under section 110ZR; or

(ii) an urgent medical research decision;

(c) the type of medical research the researcher is conducting in relation to the candidate;

(d) the purpose of the medical research;

(e) any other matter relating to the operation of this Part that the Health Minister considers appropriate.

(2) The report under subsection (1) —

(a) may include statistics or other general information derived from a written notice the Health Minister receives under section 110ZZC; but

(b) must not include personal information.

[Section 110ZZD inserted: No. 14 of 2020 s. 12.]

Division 7 — Reviews

[Heading inserted: No. 14 of 2020 s. 12.]

110ZZE. Review of this Part

(1) The Minister must review the operation and effectiveness of this Part and prepare a report based on the review —

(a) as soon as practicable after the 1st anniversary of the day on which the *Guardianship and Administration Amendment (Medical Research) Act 2020* section 12 comes into operation; and

(b) after that, at intervals of not more than 3 years.

(2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 1st anniversary or the expiry of the period of 3 years, as the case may be.

[Section 110ZZE inserted: No. 14 of 2020 s. 12.]

Part 10 — Miscellaneous provisions

111. Declaration as to capacity to vote

(1) Whenever the State Administrative Tribunal makes a guardianship or administration order or an order under section 66 or 106 in respect of a person who is enrolled as an elector under the *Electoral Act 1907* it shall consider whether he is capable of making judgments for the purpose of complying with the provisions of that Act relating to compulsory voting; and if it is satisfied that the person is not capable of doing so it shall include in the guardianship or administration order or order under section 66 or 106 a declaration to that effect.

(2) The State Administrative Tribunal may also —

(a) consider the matter referred to in subsection (1) at any later time and make a declaration mentioned in that subsection; or

(b) at any time revoke a declaration under that subsection.

(3) A declaration under subsection (1) ceases to have effect when a guardianship or administration order or order under section 66 or 106 is revoked.

(4) As soon as is practicable after a declaration under subsection (1), or a revocation of a declaration, is made by the State Administrative Tribunal, or after a guardianship or administration order or order under section 66 or 106 is revoked, the executive officer shall, for the purposes of section 51AA of the *Electoral Act 1907*, give notice in writing to the Electoral Commissioner appointed under that Act of the declaration or revocation showing particulars of the name, address, age and occupation of the person to whom the notice relates.

(5) The powers in subsection (2) may be exercised by the State Administrative Tribunal on the application of the guardian or administrator or donee of a power of attorney under Part 9, and

any such application may be made ex parte or the Tribunal may give directions as to the persons to whom notice of the application shall be given and who shall be entitled to be heard.

[Section 111 amended: No. 16 of 1992 s. 18; No. 55 of 2004 s. 455 and 466.]

111A. Applications under *Wills Act 1970* s. 40

Subject to sections 43(3) and 64(3)(a), a plenary guardian or a plenary administrator may, in accordance with Part XI of the *Wills Act 1970*, make an application to the Supreme Court for an order under section 40 of that Act if the plenary guardian or the plenary administrator considers that the represented person lacks testamentary capacity.

[Section 111A inserted: No. 27 of 2007 s. 25.]

112. Inspection of records

(1) A represented person, a person in respect of whom an application under this Act is made or a person representing any such person in any proceedings commenced under this Act is, unless the State Administrative Tribunal otherwise orders, entitled to inspect or otherwise have access to —

(a) any document or material lodged with or held by the Tribunal for the purposes of any application in respect of that person;

(b) any accounts submitted under section 80 by the administrator of the estate of that person.

(2) Any other party to any proceedings commenced under this Act, or a person representing any such party, is, unless the State Administrative Tribunal otherwise orders, entitled to inspect or otherwise have access to any document or material lodged with or held by the Tribunal for the purpose of those proceedings, other than a document or material that is or contains a medical opinion not being an opinion concerning that party.

(3) Except as provided in this section, no person (not being a member of the State Administrative Tribunal or a member of staff of the Tribunal) shall, unless he is authorised to do so by order of the Tribunal, inspect or otherwise have access to a document or material lodged with or held by the Tribunal for the purposes of any application, or to any accounts submitted under section 80.

Penalty: $2 000 or imprisonment for 9 months.

(4) The State Administrative Tribunal may on the application of any person —

(a) by order, authorise any person, whether conditionally or unconditionally, to inspect or otherwise have access to any document or material lodged with or held by the Tribunal for the purposes of any application; and

(b) make any other order contemplated by this section.

(5) An application under subsection (4) may be made ex parte or the State Administrative Tribunal may give directions as to the persons to whom notice of the application shall be given and who shall be entitled to be heard.

[Section 112 amended: No. 50 of 2003 s. 70(3); No. 55 of 2004 s. 456 and 466.]

113. Confidentiality

(1) No person performing any function under this Act shall, whether directly or indirectly, divulge any personal information obtained in the course of duty relating to a represented person or person in respect of whom an application is made, other than information that he is authorised or required to divulge —

(a) in the course of duty;

(b) by this Act or any other law;

(c) with the consent of the person, if he is capable of giving consent; or

(d) in other prescribed circumstances.

Penalty: $5 000.

(2) Subsection (1) does not apply to statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.

(3) The provisions of this section are in addition to, and do not derogate from, the provisions of the *State Administrative Tribunal Act 2004* relating to the disclosure of information and documents.

[Section 113 amended: No. 50 of 2003 s. 70(4); No. 55 of 2004 s. 457.]

114. Immunity

(1) A person, other than a member of the State Administrative Tribunal, who performs any function under this Act, or under an order of the Tribunal, is not personally liable for any act done by him in the performance or purported performance of his functions unless the act was done, dishonestly, in bad faith or without reasonable cause.

[(2), (3) deleted]

(4) In this section ***act*** includes an omission to act.

[Section 114 amended: No. 55 of 2004 s. 458 and 466.]

115. Service of notices

(1) Where under this Act a notice is required to be given to a person in respect of whom an application has been made or to a represented person, that notice shall be given personally to that person in accordance with this section.

(2) The contents of any notice referred to in subsection (1) shall, at the time when the notice is given to the person, be explained to him by the person who gives the notice or some other person and, as far as is practicable, in the language, mode of

communication and in terms which the recipient is most likely to understand.

(3) An explanation given under subsection (2) shall, so far as is practicable, be given both orally and in writing.

(4) Subject to this section, section 76 of the *Interpretation Act 1984* applies to the giving of a notice under this Act.

*[**116.** Deleted: No. 55 of 2004 s. 459.]*

117. Remuneration

(1) The State Administrative Tribunal may fix remuneration or a rate of remuneration and order that the same be paid to an administrator out of the estate of the represented person if the Tribunal considers that, because of the size or complexity of the estate or both, remuneration should be paid to the administrator.

(2) A guardian, and except as provided in subsection (1) an administrator, shall not receive remuneration for services rendered to the represented person.

(3) Nothing in this section —

(a) prevents the Public Trustee from receiving remuneration under the *Public Trustee Act 1941*; or

(b) limits the operation of section 16 of this Act or section 39, 87 or 88 of the *State Administrative Tribunal Act 2004*.

(4) Subject to subsection (3)(a), a corporate trustee shall only be entitled to commission in respect of the capital of the estate of a represented person to the extent that the State Administrative Tribunal expressly allows.

[Section 117 amended: No. 55 of 2004 s. 460 and 466.]

118. Expenses

(1) An administrator may reimburse himself for or pay out of the estate of the represented person all expenses reasonably incurred in or about the performance of his functions.

(2) A guardian is entitled to receive from the represented person such expenses as are reasonably incurred in or about the performance of his functions and are allowed by the State Administrative Tribunal, either generally or in any particular case.

(3) If expenses to which a guardian is entitled under subsection (2) are not paid, he may recover them as a debt due in a court of competent jurisdiction.

[Section 118 amended: No. 55 of 2004 s. 466(1).]

119. Order of priority of enduring guardian and guardian for matters other than treatment decisions

(1) This section applies if a person is unable to make reasonable judgments in respect of a matter relating to their person other than —

(a) treatment proposed to be provided to the person; or

(b) medical research proposed to be conducted in relation to the person.

(2) If the person has an enduring guardian who —

(a) is authorised to make a decision in respect of the matter; and

(b) is reasonably available; and

(c) is willing to make a decision in respect of the matter,

a decision in respect of the matter must be made by the enduring guardian.

(3) If —

(a) subsection (2) does not apply; and

(b) the person has a guardian who —

(i) is authorised to make a decision in respect of the matter; and

(ii) is reasonably available; and

(iii) is willing to make a decision in respect of the matter,

a decision in respect of the matter must be made by the guardian.

[Section 119 inserted: No. 25 of 2008 s. 13; amended: No. 14 of 2020 s. 14.]

119A. No fee for application to State Administrative Tribunal

No fee is payable in respect of an application made to the State Administrative Tribunal under this Act.

[Section 119A inserted: No. 55 of 2004 s. 461.]

120. Regulations

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

[(2) deleted]

[Section 120 amended: No. 55 of 2004 s. 462.]

[121-123. *Deleted: No. 55 of 2004 s. 463.]*

124. Transitional provisions

Schedule 5 has effect.

Schedule 1 — Provisions as to proceedings of State Administrative Tribunal

[s. 17]

[Heading inserted: No. 19 of 2010 s. 18(3).]

*[**1**-**10**. Deleted: No. 55 of 2004 s. 464(3).]*

11. Hearings

[(1) deleted]

(2) Where, in a particular case, the State Administrative Tribunal determines that it would be in the best interests of the person to whom proceedings commenced under this Act relate for the hearing or part of the hearing to be closed to the public, the Tribunal may, subject to subclause (3), direct that a person shall not be present at the hearing unless —

(a) in the opinion of the Tribunal, he is directly interested in the proceedings; or

(b) he has been authorised by the Tribunal to be present.

(3) Any person bona fide engaged in reporting or commenting upon the proceedings of the State Administrative Tribunal commenced under this Act for dissemination through a public news medium shall not be excluded from the place where the hearings are being held.

[Clause 11 amended: No. 50 of 2003 s. 70(5); No. 55 of 2004 s. 464(4)-(7) and 466.]

12. Limitations on publication of proceedings

(1) A person who publishes in a newspaper or periodical publication or by radio broadcast or television, or otherwise disseminates to the public or to a section of the public by any means, any account of any proceedings, or of any part of any proceedings, commenced under this Act that identifies —

(a) a party to the proceedings;

(b) a person who is related to, or associated with, a party to the proceedings or is, or is alleged to be, in any other way concerned in the matter to which the proceedings relate; or

(c) a witness in the proceedings,

is guilty of a crime and is liable —

(d) in the case of a body corporate, to a fine of $10 000;

(e) in any other case, to imprisonment for one year or a fine of $5 000.

Summary conviction penalty:

(a) for a body corporate, a fine of $5 000;

(b) for an individual, a fine of $2 500.

(2) A person who, except as permitted by regulations, publishes in a newspaper or periodical publication or by radio broadcast or television, or otherwise disseminates to the public or to a section of the public by any means (otherwise than by the display of a notice in the premises of the State Administrative Tribunal), a list of proceedings commenced under this Act, identified by reference to the names of the parties to the proceedings, that are to be dealt with by the Tribunal is guilty of a crime and is liable —

(a) in the case of a body corporate, to a fine of $10 000;

(b) in any other case, to imprisonment for one year or a fine of $5 000.

Summary conviction penalty:

(a) for a body corporate, a fine of $5 000;

(b) for an individual, a fine of $2 500.

(3) Without limiting the generality of subclause (1), an account of proceedings, or of any part of proceedings, referred to in that subclause shall be taken to identify a person if —

(a) it contains any particulars of —

(i) the name, title, pseudonym or alias of the person;

(ii) the address of any premises at which the person resides or works, or the locality in which any such premises are situated;

(iii) the physical description or the style of dress of the person;

(iv) any employment or occupation engaged in, profession practised or calling pursued, by the person or any official or honorary position held by the person;

(v) the relationship of the person to identified relatives of the person or the association of the person with identified friends or identified business, official or professional acquaintances of the person;

(vi) the recreational interests, or the political, philosophical or religious beliefs or interests, of the person; or

(vii) any real or personal property in which the person has an interest or with which the person is otherwise associated,

being particulars that are sufficient to identify that person to a member of the public, or to a member of the section of the public to which the account is disseminated, as the case requires;

(b) in the case of a written or televised account, it is accompanied by a picture of the person; or

(c) in the case of a broadcast or televised account, it is spoken in whole or in part by the person and the person's voice is sufficient to identify that person to a member of the public, or to a member of the section of the public to which the account is disseminated, as the case requires.

[(4)-(6) deleted]

(7) Proceedings for an offence against subclause (1) or (2) shall not be commenced except with the written consent of the Attorney General.

(8) Subclauses (1) and (2) do not apply to or in relation to —

(a) the communication to persons concerned in proceedings in any court of any transcript of evidence or other document for use in connection with those proceedings;

(b) the communication of any transcript of evidence or other document to —

(i) a body that is responsible for disciplining members of the legal or medical profession; or

(ii) persons concerned in disciplinary proceedings against a member of the legal or medical profession, being proceedings before a body that is responsible for disciplining members of the legal or medical profession as the case may be;

(c) the communication to a body that grants assistance by way of legal aid of any transcript of evidence or other document for the purpose of facilitating the making of a decision as to whether assistance by way of legal aid should be granted, continued or provided in a particular case;

(d) the publishing of a notice or report in pursuance of the direction of the State Administrative Tribunal or of a court;

(e) the publishing of any publication bona fide intended primarily for use by the members of any profession, being —

(i) a separate volume or part of a series of law reports; or

(ii) any other publication of a technical character;

or

(f) the publication or other dissemination of an account of proceedings or any part of proceedings —

(i) to a person who is a member of a profession, in connection with the practice by that person of that profession or in the course of any form of professional training in which that person is involved; or

(ii) to a person who is a student, in connection with the studies of that person.

[Clause 12 amended: No. 50 of 2003 s. 70(6); No. 4 of 2004 s. 58; No. 55 of 2004 s. 464(8) and 466.]

13. Entitlement to appear, and representation

[(1) deleted]

(2) The State Administrative Tribunal may —

(a) hear any person who, in the opinion of the Tribunal, has a proper interest in proceedings commenced under this Act;

(b) adjourn any hearing and direct that notice of proceedings commenced under this Act be given to any person who in the opinion of the Tribunal should be given the opportunity to be heard.

[(3) deleted]

(4) Where in any proceedings before the State Administrative Tribunal commenced under this Act a person in respect of whom a guardianship or administration order is in force or a person in respect of whom an application is made is not represented, the Tribunal may direct the executive officer to apply on behalf of the person for legal aid under the *Legal Aid Commission Act 1976*.

[Clause 13 amended: No. 16 of 1992 s. 18; No. 55 of 2004 s. 464(9)-(11) and 466.]

Schedule 2 — Functions for administration of estates

[s. 71(3) and 72(1)]

[Heading inserted: No. 19 of 2010 s. 18(4).]

Part A — Administrator

[Heading inserted: No. 19 of 2010 s. 18(4).]

1. To take possession of all or any of the property of the represented person.

2. To demand, receive and recover income of, and moneys due or that become due to, and any compensation or damages for injury to the estate or the person of, the represented person.

3. To pay any debts of, and settle or compromise, any demand made by, or against, the represented person or against the estate and discharge any encumbrance on the estate.

4. To invest any moneys forming part of the estate in any securities in which trustees may by law invest.

5. To sell, or grant an option to purchase, any property of the represented person, by public auction or private contract, in such manner and on such terms or conditions and for such purposes as the State Administrative Tribunal, or, if the Tribunal so orders, the administrator, thinks fit.

6. To grant or concur in granting a lease of any property of the represented person for such term and on such covenants, including, without limitation, an option or options of renewal as the State Administrative Tribunal or, if the Tribunal so orders, the administrator thinks fit.

7. To surrender, or concur in surrendering any lease, accept any lease, accept the surrender of any lease or renew any lease.

8. To execute any power of leasing vested in the represented person where he has a limited estate only in the property over which the power extends.

9. To repair, and effect any insurance necessary for the protection of, any of the property of the represented person.

10. To expend money in the improvement of any property of the represented person by way of building or otherwise.

11. To make exchange or partition of any property of the represented person, or in which he is interested, and give or receive money for equality of exchange or partition.

12. To carry on, or join in carrying on, any trade or business of the represented person or in which he is interested and raise and employ in the trade or business any additional capital.

13. To agree to the alteration of the conditions of, or to a dissolution of and the distribution of the assets of, any partnership that the represented person has entered into or sell any partnership interest of that person.

14. To complete any contract for the performance of which the represented person is liable or enter into any agreement terminating his liability thereunder.

15. To bring, and defend, actions, suits and other legal proceedings in the name of the represented person.

16. To exercise any power, or give any consent required for the exercise of any power where the power is vested in the represented person for his own benefit or the power of consent is in the nature of a beneficial interest in him.

17. To surrender, assign, or otherwise dispose of, with or without consideration, any onerous property of the represented person.

18. To sequestrate the estate of the represented person, under the provisions of the bankruptcy laws.

19. To bring lands of the represented person under the operation of the *Transfer of Land Act 1893*.

20. To surrender any policy of life assurance of the represented person.

21. To apply or expend moneys of the represented person, whether arising from real or personal property and whether income or capital, for the maintenance of that person, or the husband or wife or de facto partner of that person or of any person wholly or partially dependent on that person, or for the maintenance, education and advancement of the

children, grandchildren or any infant relative of that person, in such manner and to such extent as the State Administrative Tribunal, having regard to the circumstances and the value of the estate of that person, considers proper and reasonable.

22. To expend moneys of the represented person in the purchase of a home for that person, or for the wife, husband, de facto partner or children of that person.

23. To mortgage, charge (with or without power of sale and on such terms as the State Administrative Tribunal thinks fit), deal with or dispose of, as the Tribunal thinks most expedient, any property of the represented person, for the purpose of raising, securing or repaying, with or without interest, money that is to be, or that has been, applied to or for the carrying into effect of all or any of the things authorised by the Tribunal.

[Part A amended: No. 3 of 2002 s. 70; No. 55 of 2004 s. 466.]

Part B — State Administrative Tribunal

[Heading inserted: No. 19 of 2010 s. 18(5).]

The State Administrative Tribunal may —

(a) direct that any property taken in exchange, and any renewed lease accepted, on behalf of the represented person shall be subject to the same trusts, charges, encumbrances, dispositions, devises and conditions as the property given in exchange or the surrendered lease was, or would, but for the exchange or surrender, have been subject;

(b) direct that any fine, premium or other payment made on the renewal of a lease be paid out of the estate or be charged with interest on the leasehold property;

(c) where capital moneys are to be raised for the purposes of the administration of the estate, direct the manner in which those moneys are to be raised and how the incidence of those moneys shall be borne;

(d) direct the manner in which any surplus out of capital moneys raised for the purposes of the administration of the estate is to be held or applied;

(e) make such orders as it thinks fit for the purpose of preserving the nature, quality, tenure or devolution of any property forming part of the estate and direct that any money be carried to a separate account and declare the notional character which the money in that account bears;

(f) for the purpose of making an order referred to in paragraph (e) of this Part or informing itself for the purposes of section 68(2)(b), exercise its powers to require the production of documents by calling for, and inspecting, any testamentary instrument of the represented person;

(g) where, in its opinion, any disposition or transaction is expedient in the administration of the estate of the represented person, or would be in that person's best interest, confer upon the administrator the necessary power for the purpose on such terms and subject to such conditions (if any) as the State Administrative Tribunal thinks fit;

(h) where a power is vested in a represented person in the character of a trustee or guardian, or the consent of a represented person to the exercise of a power is necessary in a similar character or as a check upon the undue exercise of the power, the State Administrative Tribunal may, upon the application of the administrator or any person interested in the exercise of the power or the giving of the consent, authorise the administrator to exercise the power or give the consent in such manner as the Tribunal may direct.

[Part B amended: No. 55 of 2004 s. 466.]

Schedule 3 — Forms for enduring power of attorney

[s. 104]

[Heading inserted: No. 19 of 2010 s. 18(6).]

Form 1

ENDURING POWER OF ATTORNEY

This Enduring Power of Attorney is made on the ..... day of ..... 20....., by A.B. of ..... under section 104 of the *Guardianship and Administration Act 1990*.

1. I APPOINT C.D. of .....
(or C.D. of ..... and E.F. of ..... jointly)
(or C.D. of ..... and E.F. of ..... jointly and severally) to be my attorney(s).

1a. I APPOINT G.H. of .....
(or G.H. of ..... and I.J. of ..... jointly)
(or G.H. of ..... and I.J. of ..... jointly and severally) to be my attorney(s) in substitution of C.D. (or C.D. and/or E.F.) on (or during) the occurrence of the following events or circumstances —
.....
.....

2. I AUTHORISE my attorney(s) to do on my behalf anything that I can lawfully do by an attorney.

3. The authority of my attorney(s) is subject to the following conditions or restrictions —
.....
.....

4. I DECLARE that this power of attorney* —

(a) will continue in force notwithstanding my subsequent legal incapacity; or

(b) will be in force only during any period when a declaration by the State Administrative Tribunal that I do not have legal capacity is in force under section 106 of the *Guardianship and Administration Act 1990*.

* One of these paragraphs must be deleted.

SIGNED AS A DEED by: .....

WITNESSED by:

.....	.....
(Signature of Witness)	(Signature of Witness)
.....	.....
(Name of Witness)	(Name of Witness)
.....	.....
(Address of Witness)	(Address of Witness)

[Form 1 amended: No. 70 of 2000 s. 20(1); No. 55 of 2004 s. 465.]

Form 2

ACCEPTANCE OF ENDURING POWER OF ATTORNEY

I/We ....., the person(s) appointed to be attorney under paragraph 1 or 1a of the instrument on which this acceptance is endorsed [or to which this acceptance is annexed] accept the appointment, and acknowledge —

(a) that the power of attorney is an enduring power of attorney and* —

* One of these sub-paragraphs must be deleted

(i) will continue in force notwithstanding the subsequent legal incapacity of the donor;

(ii) will be in force only during any period when a declaration by the State Administrative Tribunal that the donor does not have legal capacity is in force under section 106 of the *Guardianship and Administration Act 1990*;

and

(b) that I/we will, by accepting this power of attorney, be subject to the provisions of Part 9 of the *Guardianship and Administration Act 1990*.

Signed:

.....
(Attorney appointed under paragraph 1 of the Enduring Power of Attorney)

or

.....
(Attorney appointed under paragraph 1a of the Enduring Power of Attorney)

[Form 2 amended: No. 70 of 2000 s. 20(2); No. 55 of 2004 s. 465.]

[Schedule 4 omitted under the Reprints Act 1984 s. 7(4)(e).]

Schedule 5 — Transitional provisions

[s. 124]

[Heading amended: No. 19 of 2010 s. 18(7).]

Division 1 — Transitional matters for *Guardianship and Administration Act 1990*

[Heading inserted: No. 25 of 2014 s. 22.]

1A. Application of this Division

This Division does not apply in relation to the estate of a person to whom Division 2 applies.

[Clause 1A inserted: No. 25 of 2014 s. 23.]

1. Existing functions of Public Trustee to continue

(1) Where immediately before the commencement of section 123 the Public Trustee had the care and management of the estate of an incapable patient under section 24 of the *Public Trustee Act 1941* or of an infirm person under section 36C of that Act, he shall, subject to this clause, continue to have those functions under that section and other functions conferred on him in that capacity by any other written law, and the *Public Trustee Act 1941* and such other written law shall continue to apply for that purpose, as if section 123 had not come into operation.

(2) Subclause (1) also applies, with all necessary changes, where the Public Trustee derives his authority from section 34 of the *Public Trustee Act 1941*.

(3) The Public Trustee shall cease to have the functions under section 24 referred to in subclause (1) when he is notified —

(a) that the incapable patient has died;

(b) under subclause (5), that the incapable patient —

(i) is capable of managing his affairs; or

(ii) is no longer an involuntary patient under the *Mental Health Act 1996* or, in the case of a voluntary patient, has left the hospital;

or

(c) that an administration order has been made under Part 6 in respect of the incapable patient.

(4) The Public Trustee shall cease to have the functions under section 36C referred to in subclause (1) when he is notified —

(a) that the infirm person has died; or

(b) that an administration order has been made under Part 6 in respect of the infirm person,

or when he certifies under the *Public Trustee Act 1941* that a person is not, or has ceased to be, an infirm person.

(5) Where the functions of the Public Trustee under section 24 of the *Public Trustee Act 1941* are continued under subclause (1) in respect of an incapable patient, the officer in charge of the authorised hospital in which the person is a patient under the *Mental Health Act 1996* shall notify the Public Trustee in the prescribed form if the patient —

(a) dies;

(b) in the opinion of a psychiatrist at the hospital becomes capable of managing his affairs; or

(c) is no longer an involuntary patient under the *Mental Health Act 1996* or, in the case of a voluntary patient, leaves the hospital.

(6) The officer in charge of an authorised hospital, when notifying the Public Trustee under subclause (5) that a person is no longer an involuntary patient or has left the hospital, shall also report to the Public Trustee whether or not, in the opinion of a psychiatrist at the hospital, the person is capable of managing his affairs.

(7) If the officer in charge reports to the Public Trustee under subclause (6) that the person is not capable of managing his affairs, the Public Trustee shall continue to have the care and management of the estate of that person by virtue of subclause (1) as if immediately

before the commencement of this Act the person had been an infirm person under section 36C of the *Public Trustee Act 1941*.

[Clause 1 amended: No. 69 of 1996 s. 37.]

2. Existing managers under *Mental Health Act 1962* to continue

(1) Where immediately before the commencement of section 123, a manager of the estate of an incapable person is in office under Part VI of the *Mental Health Act 1962*[7], he shall, subject to this clause, continue to have that function and other functions conferred on him in that capacity by any other written law, and Part VI of that Act and such other written law shall continue to apply for that purpose, as if section 123 had not come into operation.

(2) Subclause (1) also applies, with all necessary changes, where the Public Trustee is the manager of the estate of a person under section 25 of the *Public Trustee Act 1941*.

(3) A manager referred to in this clause shall cease to hold office as manager of the estate of a person when he is notified —

(a) that the person has died;

(b) that the Supreme Court has made an order under section 66 of the *Mental Health Act 1962*[7] or the appointment has been revoked under section 25(2) of the *Public Trustee Act 1941*; or

(c) that an administration order has been made under Part 6 in respect of the person.

3. Application for administration order may be made

(1) A person may at any time apply to the State Administrative Tribunal under Part 4 for an administration order in respect of a person notwithstanding that —

(a) the Public Trustee has the care and management of the estate of that person; or

(b) a manager of the estate of that person is in office under Part IV of the *Mental Health Act 1962*[7],

as provided in clause 1 or 2 or by operation of clause 5.

(2) Where an application is made for an administration order and a manager is in office as mentioned in subclause (1)(b), notice under section 41 shall be given to the Principal Registrar of the Supreme Court and to the manager.

[Clause 3 amended: No. 55 of 2004 s. 466(1).]

4. References in other laws

(1) In any written law and in any deed or other instrument, unless clause 1 or 2 applies or the context is such that it would be incorrect or inappropriate, a reference to —

(a) an incapable person within the meaning in section 5 of the *Mental Health Act 1962*[7] shall be read as a reference to a person in respect of whom an administration order is in force under Part 6;

(b) a manager within the meaning in that section shall be read as a reference to an administrator under this Act.

(2) In any written law other than this Act, unless the context is such that it would be incorrect or inappropriate, a reference to a represented person shall include a person who, after the commencement of this Act, is an incapable person, an incapable patient or infirm person in the circumstances provided for in clause 1 or 2.

5. Proceedings in progress under *Mental Health Act 1962* Pt. VI

If —

(a) an application under section 64(1) of the *Mental Health Act 1962*[7] has been made but not disposed of before the commencement of section 123; or

(b) any matter or thing has been commenced under section 64(6) or (7) of that Act but not completed to the satisfaction of the court before the commencement of section 123,

the application, matter or thing may be completed under Part VI of the *Mental Health Act 1962*[7] after the commencement of section 123 as if that section had not come into operation.

6. **Final accounts where administration order made**

Where an administration order is made as mentioned in clause 2(3)(c), the accounts of the manager shall be taken in accordance with rules of court having application for the purposes of clause 2(1) as if the manager had been discharged on the day on which the administration order is made.

Division 2 — Transitional matters in connection with *Mental Health Act 2014*

[Heading inserted: No. 25 of 2014 s. 24.]

7. **Estates being managed by Public Trustee under Division 1**

(1) Subclause (2) applies to a person whose estate was, immediately before the day on which the *Mental Health Legislation Amendment Act 2014* section 24 commences (the ***prescribed day***) —

(a) under the care and management of the Public Trustee as provided by clause 1; or

(b) being managed by the Public Trustee as provided by clause 2 or because of clause 5.

(2) The person is taken to be under an administration order appointing the Public Trustee as the administrator of the person's estate.

(3) Despite any other provision of this Act or any provision of the *Public Trustee Act 1941*, the Public Trustee has the same functions, duties and powers in relation to the person's estate that the Public Trustee had immediately before the prescribed day.

(4) An administration order referred to in subclause (2) must be reviewed under section 84 on or within 3 years after the prescribed day.

(5) The Public Trustee must, on or as soon as practicable after the prescribed day, give to the Public Advocate and the State Administrative Tribunal a list of the persons to whom subclause (2) applies.

[Clause 7 inserted: No. 25 of 2014 s. 24.]

Notes

This is a compilation of the *Guardianship and Administration Act 1990* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
Guardianship and Administration Act 1990	24 of 1990	7 Sep 1990	s. 1 and 2: 7 Sep 1990; Act other than s. 1 and 2, Pt. 4-7, s. 123, 124 and Sch. 2, 4 and 5: 1 Jul 1992 (see s. 2 and *Gazette* 26 Jun 1992 p. 2649); Pt. 4-7, s. 123, 124 and Sch. 2, 4 and 5: 20 Oct 1992 (see s. 2 and *Gazette* 2 Oct 1992 p. 4811)
Guardianship and Administration Amendment Act 1992	16 of 1992	17 Jun 1992	17 Jun 1992 (see s. 2)
Acts Amendment (Public Sector Management) Act 1994 s. 3(2)	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and *Gazette* 30 Sep 1994 p. 4948)
Guardianship and Administration Amendment Act 1996	7 of 1996	24 May 1996	s. 1 and 2: 24 May 1996; Act other than s. 1 and 2: 1 Jul 1996 (see s. 2 and *Gazette* 28 Jun 1996 p. 3014)
Mental Health (Consequential Provisions) Act 1996 Pt. 8	69 of 1996	13 Nov 1996	13 Nov 1997 (see s. 2)
Reprint of the *Guardianship and Administration Act 1990* as at 21 Apr 1997 (includes amendments listed above except those in the *Mental Health (Consequential Provisions) Act 1996*)			
Acts Amendment and Repeal (Family Court) Act 1997 s. 32	41 of 1997	9 Dec 1997	26 Sep 1998 (see s. 2 and *Gazette* 25 Sep 1998 p. 5295)
Statutes (Repeals and Minor Amendments) Act 1997 s. 67	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))

Short title	Number and year	Assent	Commencement
Guardianship and Administration Amendment Act 1998	8 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2)
Guardianship and Administration Amendment Act 2000 [8]	70 of 2000	4 Dec 2000	4 Dec 2000 (see s. 2)
Acts Amendment (Lesbian and Gay Law Reform) Act 2002 Pt. 10	3 of 2002	17 Apr 2002	21 Sep 2002 (see s. 2 and *Gazette* 20 Sep 2002 p. 4693)
Reprint of the *Guardianship and Administration Act 1990* as at 22 Nov 2002 (includes amendments listed above)			
Sentencing Legislation Amendment and Repeal Act 2003 s. 70	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and *Gazette* 14 May 2004 p. 1445)
Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 40	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and *Gazette* 30 Dec 2003 p. 5722)
Criminal Code Amendment Act 2004 s. 58	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)
Children and Community Services Act 2004 Sch. 2 cl. 11	34 of 2004	20 Oct 2004	1 Mar 2006 (see s. 2 and *Gazette* 14 Feb 2006 p. 695)
Acts Amendment (Court of Appeal) Act 2004 s. 37 (Sch. 1 cl. 7) [9]	45 of 2004 (as amended by No. 2 of 2008 s. 75(3))	9 Nov 2004	Sch. 1 cl. 7 (the amendments to s. 18(1) and 19(b)): 1 Feb 2005 (see s. 2 and *Gazette* 14 Jan 2005 p. 163)
Courts Legislation Amendment and Repeal Act 2004 s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128)
State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 56 Subdiv. 1 [10, 11]	55 of 2004	24 Nov 2004	24 Jan 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7130)
Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction in *Gazette* 7 Jan 2005 p. 53))

Short title	Number and year	Assent	Commencement
Reprint 3: The *Guardianship and Administration Act 1990* as at 1 Apr 2005 (includes amendments listed above except those in the *Children and Community Services Act 2004*, the *Courts Legislation Amendment and Repeal Act 2004* and the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004*)			
Family Legislation Amendment Act 2006 Pt. 6 Div. 2	35 of 2006	4 Jul 2006	15 Jul 2006 (see s. 2 and *Gazette* 14 Jul 2006 p. 2559)
Criminal Investigation (Consequential Provisions) Act 2006 s. 73	59 of 2006	16 Nov 2006	1 Jul 2007 (see s. 2 and *Gazette* 22 Jun 2007 p. 2838)
Wills Amendment Act 2007 s. 25	27 of 2007	26 Oct 2007	9 Feb 2008 (see s. 2 and *Gazette* 8 Feb 2008 p. 313)
Acts Amendment (Justice) Act 2008 Pt. 12	5 of 2008	31 Mar 2008	30 Sep 2008 (see s. 2(d) and *Gazette* 11 Jul 2008 p. 3253)
Legal Profession Act 2008 s. 667	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and *Gazette* 27 Feb 2009 p. 511)
Medical Practitioners Act 2008 Sch. 3 cl. 22	22 of 2008	27 May 2008	1 Dec 2008 (see s. 2 and *Gazette* 25 Nov 2008 p. 4989)
Acts Amendment (Consent to Medical Treatment) Act 2008 Pt. 2 [12]	25 of 2008	19 Jun 2008	Pt. 2 other than s. 11 (to the extent that it inserts s. 110RA, 110ZAA, 110ZAB and 110ZAC) and s. 12: 15 Feb 2010 (see s. 2 and *Gazette* 8 Jan 2010 p. 9)
Surrogacy Act 2008 Pt. 4 Div. 4	47 of 2008	10 Dec 2008	1 Mar 2009 (see s. 2(b) and *Gazette* 27 Feb 2009 p. 512)
Reprint 4: The *Guardianship and Administration Act 1990* as at 6 Feb 2009 (includes amendments listed above except those in the *Legal Profession Act 2008*, the *Surrogacy Act 2008* and the *Acts Amendment (Consent to Medical Treatment) Act 2008*)			
Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 68	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
Acts Amendment (Bankruptcy) Act 2009 s. 38	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))
Reprint 5: The *Guardianship and Administration Act 1990* as at 5 Mar 2010 (includes amendments listed above)			

Short title	Number and year	Assent	Commencement
Standardisation of Formatting Act 2010 s. 18 and 51	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and *Gazette* 10 Sep 2010 p. 4341)
Public Sector Reform Act 2010 s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and *Gazette* 5 Nov 2010 p. 5563)
Statutes (Repeals and Minor Amendments) Act 2014 s. 12 and 22	17 of 2014	2 Jul 2014	6 Sep 2014 (see s. 2(b) and *Gazette* 5 Sep 2014 p. 3213)
Mental Health Legislation Amendment Act 2014 Pt. 4 Div. 2	25 of 2014	3 Nov 2014	30 Nov 2015 (see s. 2(b) and *Gazette* 13 Nov 2015 p. 4632)
Voluntary Assisted Dying Act 2019 Pt. 12 Div. 3	27 of 2019	19 Dec 2019	1 Jul 2021 (see s. 2(b) and SL 2021/83 cl. 2)
Guardianship and Administration Amendment (Medical Research) Act 2020 [13]	14 of 2020 (as amended by No. 32 of 2023 Pt. 3)	6 Apr 2020	s. 1 and 2: 6 Apr 2020 (see s. 2(a)); Act other than s. 1, 2, 13 and 15: 7 Apr 2020 (see s. 2(c))
Legal Profession Uniform Law Application Act 2022 s. 424	9 of 2022	14 Apr 2022	1 Jul 2022 (see s. 2(c) and SL 2022/113 cl. 2)
Abortion Legislation Reform Act 2023 Pt. 4 Div. 5	20 of 2023	27 Sep 2023	27 Mar 2024 (see s. 2(b) and SL 2024/21 cl. 2)
Guardianship and Administration Amendment (Medical Research) Act 2023 Pt. 2	32 of 2023	11 Dec 2023	12 Dec 2023 (see s. 2(b))

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
Acts Amendment (Consent to Medical Treatment) Act 2008 Pt. 2	25 of 2008	19 Jun 2008	s. 11 (to the extent that it inserts s. 110RA, 110ZAA, 110ZAB and 110ZAC) and s. 12: to be proclaimed (see s. 2)

Short title	Number and year	Assent	Commencement
Criminal Law (Mental Impairment) Act 2023 Pt. 15 Div. 16	10 of 2023	13 Apr 2023	~~To be proclaimed~~1 Sep 2024 (see s. 2(b~~)~~) and SL 2024/175 cl. 2)
~~*Abortion Legislation Reform Act 2023* Pt. 4 Div. 5~~	~~20 of 2023~~	~~27 Sep 2023~~	~~27 Mar 2024 (see s. 2(b) and SL 2024/21 cl. 2)~~

Other notes

[1-3] Footnotes no longer applicable.

[4] The *Public Trustee Act 1941* s. 53 was deleted by the *Public Trustee and Trustee Companies Amendment Act 2008* s. 31.

[5, 6] Footnotes no longer applicable.

[7] Repealed by the *Mental Health (Consequential Provisions) Act 1996*.

[8] The *Guardianship and Administration Amendment Act 2000* s. 21 reads as follows:

> **21. Transitional and validation**
>
> (1) A person appointed before the commencement day under an enduring power of attorney (as defined in section 102) as the donee of the power in substitution of another donee on or during the occurrence of certain events or circumstances —
>
> (a) is, from the commencement day, to be regarded as having been appointed a substitute donee under section 104B; and
>
> (b) any act of that person under that power of attorney before the commencement day is to be regarded as having been as valid as if section 104B had been in operation at that time and the person had been appointed a substitute donee under it.
>
> (2) Nothing in subsection (1) affects any decision of —
>
> (a) the Board under section 109; or
>
> (b) a court or other tribunal,
>
> and to the extent that subsection (1) conflicts or is inconsistent with such a decision, that decision prevails.
>
> (3) In subsection (1) —
>
> ***commencement day*** means the day on which this Act comes into operation;

section means a section of the *Guardianship and Administration Act 1990.*

[9] The *Acts Amendment (Court of Appeal) Act 2004* Sch. 1 cl. 7 (to amend s. 37A and the heading to Part 3 Div. 4) was deleted by the *Criminal Law and Evidence Amendment Act 2008* s. 75(3).

[10] The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

[11] The *State Administrative Tribunal Regulations 2004* r. 52 reads as follows:

52. ***Guardianship and Administration Act 1990***

(1) In this regulation —

commencement day means the day on which the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Part 2 Division 56 comes into operation;

the GA Act means the *Guardianship and Administration Act 1990.*

(2) Unless the context otherwise requires, where in —

(a) an arrangement entered into under the GA Act section 44A(1); or

(b) a notice of an arrangement published in the *Gazette* under the GA Act section 44A(2),

there is a reference to the Guardianship and Administration Board, on or after the commencement day that reference is to be read and construed as a reference to the State Administrative Tribunal.

(3) If immediately before the commencement day —

(a) the Guardianship and Administration Board is required under the GA Act section 80(3) to examine any accounts lodged under section 80(1) or delivered under section 80(2) of the GA Act; and

(b) the Board has not made a decision under the GA Act section 80(3),

on the commencement day, the obligation to examine those accounts is transferred to the Public Trustee and the Public Trustee is to examine the accounts in accordance with the GA Act section 80.

(4) If immediately before the commencement day the Guardianship and Administration Board is carrying out, but has not completed, a

review under the GA Act section 85 or 86, on or after the commencement day the review is to be carried out and completed by the State Administrative Tribunal as if the application for the review had been made to it under the relevant section.

(5) If —

(a) before the commencement day a report is made to the Guardianship and Administration Board under the GA Act section 107(1)(d); and

(b) the Board has not made an order under the GA Act section 109(3) in relation to that report,

on or after the commencement day, the State Administrative Tribunal may make an order under the GA Act section 109(3) as if the report had been made to it under the GA Act section 107(1)(d).

(6) If before the commencement day the Guardianship and Administration Board has appointed an auditor under the GA Act section 109(1)(b) and a copy of the auditor's report has not been furnished to the Board under that provision, on and after the commencement day, the auditor is to be taken to have been appointed by the State Administrative Tribunal and is to furnish the report to the Tribunal and the applicant for the order.

(7) If immediately before the commencement day a notice is required to be given under the GA Act section 111(4) but that notice has not been given before the commencement day, on or after the commencement day that notice is to be given by the executive officer of the State Administrative Tribunal.

(8) If immediately before the commencement day the Guardianship and Administration Board is dealing with, but has not completed the consideration of, an application under the GA Act section 111(5) or 112(4), on or after the commencement day the application is to be transferred to the State Administrative Tribunal and the Tribunal is to deal with the application as if the application had been made to it under the relevant subsection.

(9) If —

(a) an enduring power of attorney created by instrument in the form or substantially in the form of the GA Act Schedule 3 Form 1; or

(b) a statement of acceptance in the form, or substantially in the form, of the GA Act Schedule 3 Form 2,

in effect immediately before the commencement day contains a reference to the Guardianship and Administration Board, on and

after the commencement day that reference is to be taken to be a reference to the State Administrative Tribunal.

12 The *Acts Amendment (Consent to Medical Treatment) Act 2008* s. 14 reads as follows:

> **14. Review of the *Guardianship and Administration Act 1990***
>
> (1) The Minister administering the *Guardianship and Administration Act 1990* is to carry out a review of the operation and effectiveness of the provisions of the *Guardianship and Administration Act 1990* and the relevant sections of *The Criminal Code* as soon as practicable after the expiration of 3 years from the commencement of this Act.
>
> (2) The Minister is to prepare a report based on the review made under subsection (1) and cause the report to be laid before each House of Parliament within 4 years after the commencement of this Act.

13 The *Guardianship and Administration Amendment (Medical Research) Act 2020* s. 13 and 15 were deleted before they came into operation by the *Guardianship and Administration Amendment (Medical Research) Act 2023* s. 7 and 8.

© State of Western Australia ~~2023~~2024.
This work is licensed under a Creative Commons Attribution 4.0 International Licence (CC BY 4.0).
To view relevant information and for a link to a copy of the licence, visit www.legislation.wa.gov.au.
Attribute work as: © State of Western Australia ~~2023~~2024.
By Authority: GEOFF O. LAWN, Government Printer