

**GUARDIANSHIP AND
ADMINISTRATION AMENDMENT
ACT 1992**

No. 16 of 1992

AN ACT to amend the *Guardianship and Administration Act 1990*.

[Assented to 17 June 1992.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Guardianship and Administration Amendment Act 1992*.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Principal Act

3. In this Act the *Guardianship and Administration Act 1990** is referred to as the principal Act.

[*Act No. 24 of 1990.]

Section 3 amended

4. Section 3 (1) of the principal Act is amended —

- (a) by inserting after the definition of “date of determination” the following definitions —

“ **“executive officer”** means the executive officer of the Board appointed under section 10;

“Full Board” means the Board constituted so as to consist of —

(a) the chairperson; or

(b) the deputy chairperson,

and 2 other members; ”;

- (b) in the definition of “member” by deleting “clause 2 or 3” and substituting the following —

“ section 6 (4) or clause 2 ”;

and

- (c) by deleting the definition of “registrar”.

**Sections 5 and 6 repealed and
sections 5, 6, 6A and 6B substituted**

5. Sections 5 and 6 of the principal Act are repealed and the following sections are substituted —

Establishment of Board

“ 5. (1) A board called the Guardianship and Administration Board is established.

(2) The Board is to have a seal.

(3) For the purpose of the performance of the functions of the Board in respect of any particular matter, the Board consists of the member or members specified by the chairperson under section 6B for that matter.

(4) The Board constituted in accordance with this Division may perform the functions of the Board in respect of a particular matter, notwithstanding that the Board differently constituted in accordance with this Division is at the same time performing the functions of the Board in respect of some other matter.

Chairperson and deputy chairperson

6. (1) The Governor is to appoint a person as chairperson and a person as deputy chairperson of the Board.

(2) A person may be appointed as chairperson only if he or she —

(a) is a Judge of the Supreme Court or has been a Judge of the Supreme Court, the District Court or the Family Court of the State; and

- (b) has been recommended for appointment by the Chief Justice.

(3) A person may be appointed as deputy chairperson only if he or she —

- (a) is or has been a practitioner as defined in the *Legal Practitioners Act 1893*; or

- (b) is a Registrar of the Supreme Court.

(4) A person may at the same time hold office as deputy chairperson and as a Registrar of the Supreme Court.

(5) The deputy chairperson is to act as chairperson during the illness, unavailability or absence of the chairperson and while so acting has, and may perform, the functions of the chairperson.

Other members

6A. The Governor may appoint not more than 10 other persons as members of the Board.

Arrangement of business

6B. (1) The chairperson —

- (a) is responsible for the arrangement of the business of the Board; and
- (b) subject to subsection (2), is to specify, for the purpose of any particular matter or any particular class of matters, the member or members who is, or are, to perform the functions of the Board for the purpose of that matter or those matters.

(2) The Board must be constituted by either one or 3 members, and not otherwise.

(3) The chairperson may amend or revoke a specification made under subsection (1) (b).

(4) This section has effect subject to section 56A. ”.

Section 8 amended

6. Section 8 of the principal Act is amended —

(a) by inserting after the section designation “8.” the subsection designation “(1)”;

(b) by deleting “ A member, other than the chairman or the deputy chairman,” and substituting the following —

“ Subject to subsection (2), a member ”;

and

(c) by inserting after subsection (1) the following subsection —

“ (2) A chairperson who holds office as a Judge of the Supreme Court, or any other member who holds a full-time position that is remunerated out of moneys appropriated by Parliament or by virtue of a written law, is not entitled to remuneration under subsection (1) but may be paid travelling and other allowances with the approval of the Minister. ”.

**Section 10 repealed
and a section substituted**

7. Section 10 of the principal Act is repealed and the following section is substituted —

Executive officer and other officers

“ 10. (1) There shall be appointed an executive officer of the Board, and there may be appointed such other officers as are necessary for the proper functioning of the Board.

(2) The executive officer and officers referred to in subsection (1) —

(a) shall be appointed and hold office under the *Public Service Act 1978*; and

(b) may hold office in conjunction with any other office in the Public Service of the State. ”.

Part 3 Division 2A inserted

8. Part 3 of the principal Act is amended by inserting after Division 2 the following Division —

“ ***Division 2A — Review of determination
where Board comprises one member***

Review

17A. (1) Where under Division 1 the Board consisting of one member makes any determination, a party who is aggrieved by the determination may request the chairperson to arrange for a Full Board to review the determination, and the chairperson shall comply with any such request.

(2) A request under subsection (1) is to be made in the approved form and within 10 days of the date of the determination.

Executive officer to give notice of review

17B. (1) The executive officer shall, at least 7 days before the day on which a review 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 Guardian;
- (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 be in the approved form and shall include —

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

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- (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 Part B of Schedule 1 as they affect that person; and
 - (ii) the authority conferred on the Board by section 17C.

(3) The Board 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 Guardian.

Review powers of Full Board

17C. On a review of a determination under this Division, a Full Board may —

- (a) confirm, vary or quash the determination;
- (b) substitute a determination that could be made under this Act; or
- (c) remit the case for redetermination, with or without any direction.

Status of determination pending review

17D. (1) Where a request for review is made under section 17A in respect of a determination, the determination shall, unless the Full Board which is to deal with the review otherwise orders, continue to have effect pending the review.

(2) The Full Board which is to deal with the review may, at any time before the completion of the review, make an order as to the operation or otherwise of the determination and may revoke or amend an order made under subsection (1). ”.

Section 19 amended

9. Section 19 of the principal Act is amended by deleting “Board,” and substituting the following —

“ Board when constituted so as to consist of 3 members, ”.

Section 24 repealed and a section substituted

10. Section 24 of the principal Act is repealed and the following section substituted —

Reference of application to Court

“ **24.** (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 Board, other than a consent by the Board under Division 3 of Part 5, continues to have effect pending the disposal of a reference under this section.

”.

Section 32 repealed and a section substituted

11. Section 32 of the principal Act is repealed and the following section substituted —

Notification of result of appeal to executive officer

“ 32. (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 56A inserted

12. After section 56 of the principal Act the following section is inserted —

Only Full Board to act under this Division

“ 56A. Notwithstanding section 6B (1), the functions of the Board under this Division may be performed only by a Full Board.

”.

Section 80 amended

13. Section 80 of the principal Act is amended —

- (a) by inserting after subsection (1) the following subsection —

“ (1a) The Board may make rules providing for the Public Trustee to perform any function of the Board under this section, and for matters incidental to the performance of that function. ”;

and

- (b) by repealing subsection (7) and substituting the following subsection —

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

Section 86 amended

14. Section 86 (1) (b) (ii) of the principal Act is amended by inserting a comma after “87”.

Schedule 1 Part A amended

15. Schedule 1 to the principal Act is amended in Part A —

- (a) by repealing clauses 1, 2 and 3 and substituting the following clauses —

Term of office

“ 1. (1) Except as otherwise provided in this Act, a member holds office for such term, not exceeding in the case of the chairperson

or deputy chairperson 5 years and in other cases 3 years, as is specified in the instrument of appointment, but may from time to time be reappointed.

(2) Notwithstanding anything in this Act, where the term of office of a member has expired or he has resigned he may, with the approval of the Minister, continue in office for the purpose of completing the performance of any function.

Registrar may act as deputy chairperson

2. The Minister may appoint a Registrar of the Supreme Court to act as the deputy chairperson during the illness or absence of the deputy chairperson, and while so acting the Registrar shall have and may perform, the functions of the deputy chairperson. ”;

(b) in clause 4 —

(i) in subclause (1) by deleting “, other than the chairman or deputy chairman,”; and

(ii) by repealing subclause (2) and substituting the following —

“ (2) If the holder of the office of deputy chairperson is also a Registrar of the Supreme Court but ceases to hold the last-mentioned office, he or she also ceases to be the holder of the office of deputy chairperson. ”;

and

- (c) in clause 6 by deleting “clause 2 or 3” and substituting the following —

“ this Act ”.

Schedule 1 Part B amended

16. Schedule 1 to the principal Act is amended in Part B —

- (a) by repealing clause 1 and substituting the following clause —

Chairperson to decide who presides

“ 1. (1) The chairperson shall preside at any meeting or proceedings of the Board if it is constituted to include the chairperson, but if not a member designated by the chairperson by practice direction, or otherwise in writing, shall preside.

(2) The chairperson shall determine any question relating to the admissibility of evidence or any other question of law or procedure at any meeting or proceedings of the Board if it is constituted by, or to include, the chairperson, but if not any such question shall be determined by a member authorized in that behalf by practice directions given by the chairperson.

”;

- (b) by repealing clause 2 (1);

(c) in clause 4 —

(i) in subclause (1) by inserting after “clause 1,” the following —

“ where a Board is constituted so
as to consist of 3 members ”;

and

(ii) in subclause (3) by inserting after “Where a member” the following —

“ of a Board that is constituted so as to
consist of 3 members ”;

and

(d) in clause 7 (2) by deleting “chairman” and substituting the following —

“ chairperson, the presiding member or the
member who constitutes the Board, as the
case may require, ”.

References to “chairman” amended

17. The principal Act is amended by deleting “chairman” wherever it occurs in the provisions referred to in the Table to this section and substituting in each case the following —

“ chairperson ”.

TABLE

section 3 (1) definition of “chairman” (twice)
section 3 (1) definition of “deputy chairman” (twice)
section 9
section 11 (b) (twice)
section 11 (c) (twice)
Schedule 1 Part B clause 2 (2)

References to “registrar” amended

18. The principal Act is amended by deleting “registrar” wherever it occurs in the provisions referred to in the Table to this section and substituting in each case the following —

“ executive officer ”.

TABLE

section 11 (b)	section 60 (1) (twice)
section 11 (c)	section 64 (3) (b)
section 14 (1) and (3)	section 74 (3)
section 16 (5) (a)	section 80 (6)
section 33 (1)	section 81 (1)
section 39 (2)	section 87 (2)
section 40 (1)	section 88
section 41 (1) (twice)	section 89 (1) (twice)
section 47 (3)	section 111 (4)
section 59 (2)	Schedule 1 Part B
	clauses 3 (1), 7 (1) (a), 7 (1) (b) and 13 (4)
