



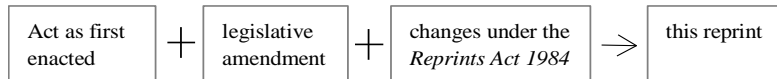
Western Australia

Guardianship and Administration Act 1990

Reprinted as at 22 November 2002

Guide for using this reprint

What the reprint includes



Endnotes, Compilation table, and Table of provisions that have not come into operation

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

Notes amongst text (italicised and within square brackets)

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
 - removed (because it was repealed or deleted from the law); or
 - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

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Defined Terms



Western Australia

Reprinted under the
Reprints Act 1984 as
at 22 November 2002

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 establish a Board with jurisdiction in respect of guardianship and administration matters, to provide for the appointment of a public officer with certain functions relative thereto, to make provision for a power of attorney to operate after the donor has ceased to have legal capacity, and for connected purposes.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Guardianship and Administration Act 1990*¹.

2. Commencement

The provisions of this Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation¹.

3. Interpretation

(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;

“application” means an application to the Board under this Act, and includes a review under Part 7 which is initiated by the Board of its own motion;

“approved”, in relation to a form, means approved by the Board for the purposes of the provision of this Act in which the expression appears;

“Board” means the Guardianship and Administration Board established by section 5;

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

“deputy president” means the deputy president of the Board;

“determination”, in relation to the Board, means —

- (a) a grant or refusal of leave under section 87;
- (b) the making of, or refusal to make, an order under section 43 or 64;
- (c) the refusal to issue a warrant under section 49;
- (d) the making of, or refusal to make, an order on a review under section 84, 85 or 86;
- (e) the giving of a direction under section 47 or 74;
- (f) the giving or refusal of consent under section 63;
- (g) the making of or refusal to make a declaration under section 111 or the revocation of or refusal to revoke such a declaration;
- (h) the making of, or refusal to make, an order under section 66, 104A(2), 106, 109 or 112(4);
- (i) a decision under section 15A; and
- (j) a decision under section 17C;

“date of the determination” means the date appearing in a written determination pursuant to clause 4(2) of Part B of Schedule 1;

“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 president; or
- (b) the 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 Guardian acting under section 99;

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“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;

“legal practitioner” means a practitioner as defined in section 3 of the *Legal Practitioners Act 1893*;

“member” means a member of the Board and includes a person acting under section 6(6) or clause 2 of Part A of Schedule 1;

“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;

“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 Board under clause 13(2)(a) of Part B of Schedule 1;

“president” means the president of the Board;

“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;

“treatment” means any medical, surgical, dental or related treatment or care that may lawfully be provided to a patient with the patient’s consent or the consent of any person authorised by law to consent on behalf of the patient, but does not include the procedures referred to in Division 3 of Part 5.

(2) Where a written law refers to the committee of the person of a person, the reference shall be read as a reference —

- (a) to the guardian of that person; or

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- (b) if the person does not have a guardian and is detained in an authorised hospital under the *Mental Health Act 1996*, to the person in charge of that hospital.

[Section 3 amended by 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.]

Part 2 — Principles to be observed by Board

4. Principles stated

- (1) In the performance of its functions the Board shall observe the principles set out in subsection (2).
- (2)
 - (a) The primary concern of the Board shall be the best interests of any represented person, or of a person in respect of whom an application is made.
 - (b) Every person shall be presumed to be capable of —
 - (i) looking after his own health and safety;
 - (ii) making reasonable judgments in respect of matters relating to his person;
 - (iii) managing his own affairs; and
 - (iv) making reasonable judgments in respect of matters relating to his estate,until the contrary is proved to the satisfaction of the Board.
 - (c) 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 Board, be met by other means less restrictive of the person's freedom of decision and action.
 - (d) A plenary guardian shall not be appointed under section 43(1) if the appointment of a limited guardian under that section would be sufficient, in the opinion of the Board, to meet the needs of the person in respect of whom the application is made.
 - (e) An order appointing a limited guardian or an administrator for a person shall be in terms that, in the opinion of the Board, impose the least restrictions possible in the circumstances on the person's freedom of decision and action.

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- (f) In considering any matter relating to a represented person or a person in respect of whom an application is made the Board 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 by No. 7 of 1996 s. 5.]

Part 3 — The Guardianship and Administration Board

Division 1 — Board established

5. Establishment of Board

- (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 president 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.

[Section 5 inserted by No. 16 of 1992 s. 5; amended by No. 7 of 1996 s. 37.]

6. President and deputy president

- (1) The Governor is to appoint a person as president and a person as deputy president of the Board.
- (2) A person may be appointed as president only if he —
 - (a) is or has been a Judge, Master or Registrar of the Supreme Court, a Judge of the District Court or a Judge of the Family Court of Western Australia; and
 - (b) has been recommended for appointment by the Chief Justice.

Guardianship and Administration Act 1990

Part 3 The Guardianship and Administration Board

Division 1 Board established

s. 6A

- (3) A person may be appointed as deputy president only if he —
 - (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 president or deputy president and an office referred to in subsection (2)(a) or 3(b).
- (5) Except when a person has been appointed under subsection (6) to be the acting president, the deputy president is to act as president during the illness, unavailability or absence of the president and while so acting may perform the functions of the president.
- (6) The Chief Justice may appoint a person qualified to be appointed as president, to be the acting president during the illness, unavailability or absence of the president and while so appointed that person may perform the functions of the president.
- (7) Except when a person has been appointed under subsection (8) to be the acting deputy president, a member who is a Registrar of the Supreme Court (or if there are 2 or more such members, the member to be first appointed as Registrar) is to act as deputy president during the illness, unavailability or absence of the deputy president and while so acting may perform the functions of the deputy president.
- (8) The Chief Justice may appoint a person qualified to be appointed as deputy president to be the acting deputy president during the illness, unavailability or absence of the deputy president and while so appointed that person may perform the functions of the deputy president.

[Section 6 inserted by No. 7 of 1996 s. 6; amended by No. 8 of 1998 s. 3; No. 70 of 2000 s. 5.]

6A. Other members

The Governor may appoint not more than 20 other persons as members of the Board.

[Section 6A inserted by No. 16 of 1992 s. 5; amended by No. 7 of 1996 s. 7.]

6B. Arrangement of business

- (1) The president —
 - (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 president may amend or revoke a specification made under subsection (1)(b).
- (4) This section has effect subject to section 56A.

[Section 6B inserted by No. 16 of 1992 s. 5; amended by No. 7 of 1996 s. 37.]

7. Further provisions as to constitution

The provisions of Part A of Schedule 1 have effect with respect to the constitution of the Board.

8. Remuneration and allowances of members

- (1) Subject to subsection (2), a member shall be paid such remuneration and travelling and other allowances as the Minister from time to time determines, on the recommendation of the Minister for Public Sector Management ².

Guardianship and Administration Act 1990

Part 3 The Guardianship and Administration Board

Division 1 Board established

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- (2) Unless the Minister determines otherwise in any particular case, a 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 8 amended by No. 16 of 1992 s. 6; No. 7 of 1996 s. 8.]

9. Practice directions

The president may give practice directions, not inconsistent with this Act and having application either generally or in any particular case, for or in relation to the practice and procedure of the Board.

[Section 9 amended by No. 16 of 1992 s. 17; No. 7 of 1996 s. 37.]

10. Executive officer and other officers

- (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 other officers referred to in subsection (1) shall be appointed and hold office under Part 3 of the *Public Sector Management Act 1994*.

[Section 10 inserted by No. 16 of 1992 s. 7; amended by No. 32 of 1994 s. 3(2); No. 7 of 1996 s. 9.]

11. Judicial notice of seal and signatures

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

- (a) the seal of the Board;
- (b) the signature of any person who is or has been the president, deputy president or other member or the executive officer; and

- (c) the fact that that person is or was the president, deputy president, member, or executive officer as the case may be.

[Section 11 amended by No. 16 of 1992 s. 17 and 18; No. 7 of 1996 s. 37.]

12. Annual report of Board

- (1) The Board 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 its 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.
- (3) The Board may at any time report to the Minister on any matter relating to the operation of this Act.

Division 2 — Functions and proceedings of Board

13. Functions of Board

The functions of the Board are —

- (a) to consider applications for guardianship and administration orders;
- (b) to make orders appointing, and as to the functions of, and for giving directions to, guardians and administrators;
- (c) to make orders declaring the capacity of a represented person to vote at parliamentary elections;
- (d) to review guardianship and administration orders and to make orders consequential thereon;
- (e) to give or withhold consent to the sterilization of persons in respect of whom guardianship orders are in force;

Guardianship and Administration Act 1990

Part 3 The Guardianship and Administration Board

Division 2 Functions and proceedings of Board

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- (f) to perform certain functions in relation to powers of attorney that operate after the donor has ceased to have legal capacity; and
- (g) to perform the other functions vested in it by this Act and any function vested in it by any other Act.

[Section 13 amended by No. 7 of 1996 s. 10.]

14. Registrar's powers to deal with prescribed matters

- (1) The deputy president or the executive officer may, with the approval of the Board, perform the functions of the Board in relation to any prescribed matter but shall, if the Board so directs, refer any such matter to the Board for its determination.
- (2) Nothing in subsection (1) prevents the Board from performing its functions in relation to any prescribed matter.
- (3) Anything done by the deputy president or the executive officer under subsection (1) shall be deemed to have been done by the Board.

[Section 14 amended by No. 16 of 1992 s. 18; No. 7 of 1996 s. 11.]

15. Board to act informally

In the performance of its functions, the Board shall act according to the substantial merits of the case without regard to technicalities and legal forms, and it shall not be bound by the rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

15A. Board may decline to hear application

The Board may decline to hear an application which it considers to be frivolous, vexatious, misconceived or lacking in substance.

[Section 15A inserted by No. 7 of 1996 s. 12; amended by No. 70 of 2000 s. 6.]

16. Costs

(1) Each party to any proceedings before the Board shall bear his own costs of the proceedings except to the extent that provision is otherwise made under subsection (2), (3) or (4).

(2) Where a person gives evidence or information —

(a) at the instigation of the Board; or

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

the Board 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) Where in the opinion of the Board a party to proceedings has behaved unreasonably, vexatiously or frivolously in relation to the proceedings, the Board may order that that party pay such costs as the Board thinks fit to any other party who has not so behaved.

(4) The Board may, if it is satisfied that a party to proceedings 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 Board thinks fit be paid to that party by, or out of the assets of, that person.

(5) If any costs ordered by the Board to be paid by a party are not paid —

(a) the executive officer 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.

[Section 16 amended by No. 16 of 1992 s. 18.]

17. Further provisions as to proceedings

The provisions of Part B of Schedule 1 have effect with respect to the proceedings of the Board.

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

[Heading inserted by No. 16 of 1992 s. 8.]

17A. Review

- (1) Where the Board consisting of one member makes any determination, a party who is aggrieved by the determination may request the president to arrange for a Full Board to review the determination, and the president shall comply with any such request.
- (2) A request under subsection (1) is to be made in the approved form and within 28 days of the date of the determination or, if the Full Board considers there is good reason for making the request outside that time, such further time as the Full Board allows.

[Section 17A inserted by No. 16 of 1992 s. 8; amended by No. 7 of 1996 s. 37; No. 70 of 2000 s. 7.]

17B. Executive officer to give notice of review

- (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 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 be in the approved form and 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 —
 - (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 Advocate.

[Section 17B inserted by No. 16 of 1992 s. 8; amended by No. 7 of 1996 s. 36.]

17C. Review powers of Full Board

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.

[Section 17C inserted by No. 16 of 1992 s. 8.]

17D. Status of determination pending review

- (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 17D inserted by No. 16 of 1992 s. 8.]

Division 3 — Appeals

18. Interpretation

- (1) In this Division —
“**Court**” means a single Judge of the Supreme Court or the Full Court of the Supreme Court, as the case requires.
- (2) Where under this Division the Court varies a determination of the Board or substitutes its determination for that of the Board, 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 Board.

[Section 18 amended by No. 7 of 1996 s. 13.]

19. Right of appeal by leave

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

- (a) a single Judge of the Supreme Court from a determination of the Board when constituted by 3 members not including the president; or

- (b) the Full Court of the Supreme Court from a determination of the Board when constituted by 3 members including the president,

but otherwise there is no appeal from a determination of the Board.

[Section 19 inserted by No. 7 of 1996 s. 14.]

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 by 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 Board —
 - (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.

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 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 24 inserted by No. 16 of 1992 s. 10.]

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.

26. Notice to other parties

Except where section 25 applies, the appellant shall give notice of the appeal to —

- (a) the other party or other parties to the proceedings before the Board; and
- (b) any other person to whom the Court may direct that notice be given.

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 Board's determination pending disposal of appeal

- (1) Where an application for leave is made under section 20 in respect of a determination of the Board, 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 Board under Division 3 of Part 5 to the sterilization of a represented person.

29. Nature of appeal, and evidence

- (1) The Court shall determine the appeal —
 - (a) on the material that was before the Board; 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 Board on such evidence, statement or record of what occurred before the Board as the Court considers sufficient.

30. Powers of Court

- (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 Board 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 Board, with or without any direction to the Board;
 - (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 Board because the Board 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 Board 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).

31. Want of form

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

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 by 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 of the Board.
- (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 by No. 16 of 1992 s. 18.]

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 was served with the summons.

35. Application for reinstatement of appeal

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

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 — Referral of question of law to Full Court

37A. Interpretation

In this Division —

“**Court**” means the Full Court of the Supreme Court.

[Section 37A inserted by No. 7 of 1996 s. 16.]

38. Board may refer question

- (1) Where a question of law arises in proceedings before the Board, the Board may, of its own motion or on the application of any party, refer the question for determination by the Court.
- (2) Where a question of law has been referred for determination by the Court under subsection (1), the Board shall not in those proceedings make a decision to which the question is relevant until the Court has made a determination and shall not proceed in a manner or make a decision that is inconsistent with the determination of the Court on the question.
- (3) The Court may make an order as to costs in respect of proceedings under this section and section 37 shall apply thereto.

Part 4 — Applications for guardianship and administration orders

[39. Repealed by No. 7 of 1996 s. 17.]

40. Application

- (1) A person may apply to the Board 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) The Board shall hear the application as soon as practicable after the day on which it is lodged or made.
- (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 the approved form.

[Section 40 amended by No. 16 of 1992 s. 18; No. 7 of 1996 s. 18.]

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

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- (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 be in the approved form and 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 Part B of Schedule 1 as they affect that person; and
 - (ii) the kinds of order that may be made by the Board on the application.

- (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 applicant, the person in respect of whom the application is made and the Public Advocate.

[Section 41 amended by No. 16 of 1992 s. 18; No. 7 of 1996 s. 36.]

42. Withdrawal of application

A person who has made an application under section 39 may at any time prior to the determination of the application by the Board, with the approval of the Board, withdraw the application.

Part 5 — Guardianship

Division 1 — Appointment of guardian

43. Making of guardianship order

(1) Subject to section 4, where the Board 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 Board 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 Board 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.

- (3) An appointment under subsection (1) may be made subject to such conditions and restrictions as the Board thinks fit.
- (4) An order appointing a limited guardian shall specify the functions that are vested in the limited guardian under section 46.

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 Board —
 - (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 Board 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.

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- (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 Board 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 by No. 7 of 1996 s. 36.]

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 by 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 or they 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 specific issues order which confers responsibility for the long-term care, welfare and development of a child; and
 - (b) a specific issues order which confers responsibility for the day-to-day care, welfare and development of 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 —
- (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 is to work and matters related thereto;
 - (d) subject to Division 3, consent to any treatment or health care of 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; and

- (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.

(3) A plenary guardian may not —

- (a) vote in any election;
- (b) make a will or other testamentary instrument;
- (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; 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,

on behalf of a represented person; or

- (e) consent to the sterilization of a represented person except in accordance with Division 3.

[Section 45 amended by No. 7 of 1996 s. 20; No. 69 of 1996 s. 34; No. 41 of 1997 s. 32; No. 70 of 2000 s. 8.]

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 Board vests in him or them in the guardianship order.

47. Guardian may apply for directions

- (1) A guardian may apply to the Board for directions concerning the performance of any function vested in him, and the Board 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 Board may specify.
- (4) The Board may, where exceptional circumstances so require, shorten the time for giving notice under subsection (3) to any person.

[Section 47 amended by No. 16 of 1992 s. 18.]

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 Board for a warrant to enter those premises.

- (2) If upon an application under subsection (1) the Board 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 and imprisonment for 6 months.

50. Effect of actions etc., of guardian

An action taken, decision made, consent given, 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, executed or done by the represented person and he were of full legal capacity.

51. Guardian to act in best interests of represented person

- (1) Subject to any direction of the Board, a guardian shall act according to his 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 he 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 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 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 a guardian to act contrary to the *Legal Practitioners Act 1893*.

[Section 51 amended by No. 7 of 1996 s. 21.]

[52. Repealed by 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 Board for directions under section 47.

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 Board 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.

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

56. Definitions

In this Division, unless the contrary intention appears —

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

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

56A. Only Full Board to act under this Division

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

[Section 56A inserted by No. 16 of 1992 s. 12.]

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

- (1) A person shall not carry out or take part in any procedure for the sterilization of a represented person unless —
- (a) both the guardian of the represented person and the Board have consented in writing to the sterilization;
 - (b) all rights of appeal in respect of a determination under section 63 have lapsed or been exhausted; and
 - (c) the sterilization 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 sterilization of that person before —
- (a) the application has been finally dealt with by the Board; 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.

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

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58. Restriction on guardian's consent

- (1) A guardian shall not consent to the sterilization of a represented person unless the consent of the Board has been first obtained.
- (2) The consent of the guardian may be given subject to compliance with any condition.

59. Application for consent

- (1) A represented person, his guardian or the Public Advocate may apply to the Board for its consent to the carrying out of a procedure for the sterilization of the represented person.
- (2) An application to the Board under subsection (1) shall be in the approved form and shall be lodged with the executive officer.

[Section 59 amended by No. 16 of 1992 s. 18; No. 7 of 1996 s. 36.]

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 be in the approved form and 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 Part B of Schedule 1 as they affect that person; and
 - (ii) the authority conferred on the Board by section 63.
- (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 Advocate.

[Section 60 amended by No. 16 of 1992 s. 18; No. 7 of 1996 s. 36.]

61. Withdrawal of application

A person who has made an application under section 59 may at any time prior to the determination of the application by the Board, with the approval of the Board, withdraw the application.

[62. Repealed by No. 7 of 1996 s. 22.]

63. Board may consent if in best interests of represented person

- (1) The Board may, by order, consent to the sterilization of a represented person if it is satisfied that the sterilization is in the best interests of the represented person.
- (2) The consent of the Board may be given subject to compliance with any condition.

Part 6 — Estate administration

Division 1 — Appointment of administrator

64. Making of administration order

- (1) Subject to section 4, where the Board 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 Board 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 Board 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 Board 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; and
 - (c) shall not be made where the Director-General of the department established under section 4 of the *Community Services Act 1972* is empowered to act for

the person in respect of whom the application is made by virtue of section 14 or 15 of that Act, unless the Director-General consents to the appointment.

[Section 64 amended by No. 16 of 1992 s. 18; No. 57 of 1997 s. 67; No 70 of 2000 s. 9.]

65. Emergency provision

Where it appears to the Board 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 Board may exercise such of the powers conferred on it by this Act as may be necessary for enabling that provision to be made.

66. Acts may be authorised without administration order

- (1) Where it appears to the Board 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 Board 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 Board 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 Board 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.

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 Board 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 Board 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.

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 Board —
- (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 Board 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 Board 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 Board 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 by No. 7 of 1996 s. 23.]

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 Board 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.

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 Practitioners Act 1893*.

- (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 by No. 70 of 2000 s. 10.]

71. Authority which may be conferred on administrator

- (1) The Board 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.
- (3) Where the Board 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 Board 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 Board may take a liberal view of the best interests of the represented person as mentioned in section 4(2)(a), 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.

71A. Amendment of order to confer particular function

- (1) The Board 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 Board, 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 by No. 7 of 1996 s. 24.]

72. Further provisions as to authority of administrators

- (1) The Board 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 Board 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 Board 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.

[73. Repealed by No. 7 of 1996 s. 25.]

74. Administrator may apply for directions

- (1) Any administrator may apply to the Board 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 Board 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 Board may specify.
- (4) The Board may, where exceptional circumstances so require, shorten the time for giving notice under subsection (3) to any person.

[Section 74 amended by No. 16 of 1992 s. 18.]

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 Board for directions under section 74.

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 sections 50 and 53 of the *Public Trustee Act 1941*.

77. Represented person incapable of dealing with estate

- (1) So long as there is in force a declaration by the Board 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 Board, 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 necessities 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.

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 Board 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.

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 Board as required by, or prescribed by rules made by, the Board, except so far as the administrator is exempted from doing so by the Board.
- (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.
- (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 Board.
- (3) The Board 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 Board —
 - (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 Board relieves him of liability.
- (5) Accounts that have been examined under this section and allowed by the Board are conclusive unless the administrator acted dishonestly, in bad faith or without reasonable cause.
- (6) The Board 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

Board under that subsection, and the executive officer 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.

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

[Section 80 amended by No. 16 of 1992 s. 13 and 18.]

81. Enforcement of security

- (1) The executive officer may, with the leave of the Board, 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 Board directs.

[Section 81 amended by No. 16 of 1992 s. 18.]

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 Supreme Court may, on the application of the administrator of that person's estate and on notice to such persons as the Court 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 Court 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 Court 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.

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 by 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

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

[Section 83A inserted by 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 by 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 by 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

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- (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 by No. 7 of 1996 s. 26.]

Part 7 — Review of orders

84. Board to review orders periodically

The Board 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.

85. Circumstances in which review mandatory

- (1) Without limiting section 84 or 86, the Board shall review a guardianship or administration order if a guardian or administrator —
 - (a) dies;
 - (b) wishes to be discharged;
 - (c) has been guilty of such neglect or misconduct or of such default as, in the opinion of the Board, renders him unfit to continue as guardian or administrator;
 - (d) appears to the Board to be incapable by reason of mental or physical incapacity of carrying out his duties;
 - (e) is bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy; 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 motion of the Board or on the application of any person.

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- (3) A review under subsection (1) shall be carried out as soon as is practicable after the Board becomes aware of the grounds which give rise to the review but 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 review shall be carried out not later than 6 months after the date of death.

86. Review on application or at initiative of Board

- (1) The Board may at any time —
- (a) of its own motion; or
 - (b) on the application of —
 - (i) a represented person or a guardian or an administrator; or
 - (ii) 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)(i) is limited to the guardianship or administration order under which he acts.

[Section 86 amended by No. 16 of 1992 s. 14.]

87. Leave to apply for review

- (1) Any person may request the Board for leave to apply for the review of a guardianship order or an administration order.
- (2) The request shall be in the approved form and shall be lodged with the executive officer.
- (3) The Board shall consider the request as soon as is practicable.

- (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 Board; or
 - (c) partly in writing and partly orally.
- (5) The Board 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 by No. 16 of 1992 s. 18.]

88. Application for review

An application for review shall be made in the approved form and shall be lodged with the executive officer, and 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 by No. 16 of 1992 s. 18.]

89. Notice of review

- (1) The executive officer shall, at least 14 days before the day on which the review 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

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- (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 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 Part B of Schedule 1 as they affect that person; and
 - (ii) the kinds of orders that may be made by the Board under section 90.
- (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 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 by No. 16 of 1992 s. 18; No. 7 of 1996 s. 36.]

90. Powers of Board on review

Upon a review of a guardianship order or administration order, the Board 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.

[Section 90 amended by No. 70 of 2000 s. 11.]

Part 8 — The Public Advocate

[Heading amended by 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 Minister for Public Sector Management².

[Section 91 amended by No. 7 of 1996 s. 36.]

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;
 - (b) is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy; 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 by No. 7 of 1996 s. 36.]

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 Minister for Public Sector Management², 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.

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- (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 by No. 7 of 1996 s. 36.]

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 by 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 Board, 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 Board 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 Board under subsection (2) shall be made *ex parte*, or the Board 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 by No. 7 of 1996 s. 36.]

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 by 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 —
- (a) to make applications under section 40 and to attend hearings of the Board when he thinks fit and when required to do so by the Board;
 - (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 Board, 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;

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- (ii) to present to the Board, Judge or Court any information in his possession that is relevant to the hearing; and
 - (iii) to investigate and report to the Board, Judge or Court on any matter or question referred to him by the Board, 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 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 Board, 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;
and

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

- (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 by No. 7 of 1996 s. 27.]

98. Notification to Public Advocate as to mentally impaired defendants

- (1) If a person becomes a mentally impaired defendant (as defined in Part 5 of the *Criminal Law (Mentally Impaired Defendants) Act 1996*) the secretary to the Mentally Impaired Defendants 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 by No. 7 of 1996 s. 36; No. 69 of 1996 s. 36.]

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.

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- (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 by 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 by 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 by 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 by No. 7 of 1996 s. 29.]

Part 9 — Enduring powers of attorney

102. Definitions

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 recognized by the Board under section 104A(2).

[Section 102 amended by No. 7 of 1996 s. 30; No. 70 of 2000³ s. 12.]

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

- (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 Board 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 and both of them are persons authorised by law to take declarations; 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.

[Section 104 amended by No. 70 of 2000 s. 13.]

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 Board for an order recognizing that power of attorney as an enduring power of attorney for the purposes of this Part.
- (2) Where the Board 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 Board may make an order recognizing that power of attorney as an enduring power of attorney for the purposes of this Part.

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- (3) Sections 41(1) and (3) and 42 apply, with all necessary changes, to an application under subsection (1) as if it were an application for an administration order.
- (4) The Board may at any time on the application of a person who in the opinion of the Board has a proper interest in the matter revoke an order made under subsection (2).

[Section 104A inserted by No. 7 of 1996 s. 31.]

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 by No. 70 of 2000³ s. 14.]

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 Board for an order declaring that the donor does not have legal capacity.

- (2) Where the Board 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 Board 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 Board from making an administration order in respect of that person.
- (4) Sections 41(1) and (3) and 42 apply, with all necessary changes, to an application under subsection (1) as if it were an application for an administration order.
- (5) The Board may at any time on the application of a person who in the opinion of the Board 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 by No. 70 of 2000 s. 15.]

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;

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- (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 Board.

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

- (2) In relation to an enduring power of attorney recognized by the Board 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 by No. 7 of 1996 s. 32; No. 70 of 2000 s. 16.]

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 board may revoke or vary the power; or
 - (b) recognized by the Board under section 104A(2), the Board may revoke that recognition.
- (1a) Despite subsection (1), where the Board 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 Board —
 - (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 recognized by the Board 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 recognized by the Board 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 Board to revoke recognition of the enduring power of attorney.
- (4) Sections 41(1) and (3) and 42 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 by No. 7 of 1996 s. 33.]

109. On application Board may intervene

- (1) A person who has, in the opinion of the Board, a proper interest in the matter may apply to the Board for an order —
- (a) requiring the donee of an enduring power of attorney to file with the Board 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 Board and requiring a copy of the report of the auditor to be furnished to the Board and the applicant for the order; or

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- (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 Board —
 - (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 Board 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 Board thinks fit.
- (4) An order under this section may be made subject to such terms and conditions as the Board thinks fit.
- (5) In relation to an enduring power of attorney recognized by the Board under section 104A, an order under this section is limited to the donor's estate within Western Australia.

[Section 109 amended by No. 7 of 1996 s. 34; No. 70 of 2000³ s. 17.]

110. Notice of application

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

Part 10 — Miscellaneous provisions

111. Declaration as to capacity to vote

- (1) Whenever the Board 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 Board 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 Board, 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 Board of its own motion or 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 Board may

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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 by No. 16 of 1992 s. 18.]

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 is, unless the Board otherwise orders, entitled to inspect or otherwise have access to —
 - (a) any document or material lodged with or held by the Board 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, or a person representing any such party, is, unless the Board otherwise orders, entitled to inspect or otherwise have access to any document or material lodged with or held by the Board 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 or officer of the Board) shall, unless he is authorised to do so by order of the Board, inspect or otherwise have access to a document or material lodged with or held by the Board for the purposes of any application, or to any accounts submitted under section 80.
Penalty: \$2 000 or imprisonment for 6 months.
- (4) The Board may on the application of any person, or of its own motion —
 - (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 Board 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 Board may give directions as to the persons to whom notice of the application shall be given and who shall be entitled to be heard.

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: \$2 000 or imprisonment for 6 months.

- (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.

114. Immunity

- (1) A person, other than a member of the Board, who performs any function under this Act, or under an order of the Board, 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.

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- (2) A member of the Board is not personally liable for any act done by the Board in good faith in the exercise or purported exercise of the functions of the Board.
- (3) Nothing in subsection (1) affects the operation of section 80(4).
- (4) In this section “act” includes an omission to act.

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. Failure to give notice not to invalidate hearing

A hearing or determination of the Board shall not be invalidated or affected by reason only of a failure to give notice to a person to whom notice is required to be given under this Act.

117. Remuneration

- (1) The Board 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 Board 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.
- (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 Board expressly allows.

118. Expenses

- (1) An administrator may re-imburse 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 Board, 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.

119. Medical and dental treatment

- (1) If in the opinion of a practitioner a person presented to him for treatment —
 - (a) is in need of urgent treatment;
 - (b) is incapable of consenting to the proposed treatment; and
 - (c) is at the time of presentation a person for whom a guardian could be appointed under this Act,

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the practitioner may provide the treatment if the person referred to in subsection (3) consents to it.

- (1a) A practitioner may provide treatment under subsection (1) without the consent of the person referred to in subsection (3) if in the opinion of the practitioner it is not practicable to obtain that consent.
- (2) If in the opinion of a practitioner a person presented to him for treatment —
- (a) is in need of treatment that is not urgent treatment;
 - (b) is incapable of consenting to the proposed treatment; and
 - (c) is at the time of presentation a person for whom a guardian could be appointed under this Act,

the practitioner may provide the treatment if the person referred to in subsection (3) consents to it.

- (3) For the purposes of subsections (1) and (2), the person who may consent to treatment is the first in order of priority of the following persons —
- (a) a guardian of the person needing the treatment;
 - (b) the spouse or de facto partner of the person needing the treatment;
 - (c) a person who, on a regular basis, provides or arranges for domestic services and support to the person needing the treatment but does not receive remuneration for doing so;
 - (d) a person who is the nearest relative (other than the spouse or de facto partner) of the person needing the treatment and who maintains a close personal relationship with the person needing the treatment;
 - (e) any other person who maintains a close personal relationship with the person needing treatment; or
 - (f) a person prescribed in the regulations.

- (3a) For the purposes of subsection (3) a person is to be regarded as maintaining a close personal relationship with the person needing the treatment if the relationship is maintained through frequent personal contact and a personal interest in the welfare of the person needing the treatment.
- (4) In this section —
- “**practitioner**” in relation to medical treatment means a medical practitioner within the meaning of the *Medical Act 1894*, and in relation to dental treatment means a dentist registered under the *Dental Act 1939*; and
- “**urgent treatment**” means treatment that in the opinion of the practitioner concerned is urgently needed —
- (a) to save the life of the person needing the treatment;
 - (b) to prevent serious damage to the health of the person needing the treatment; or
 - (c) to prevent the person needing the treatment from suffering or continuing to suffer significant pain or distress.

[Section 119 amended by No. 70 of 2000 s. 18; No. 3 of 2002 s. 69.]

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) Without limiting the generality of subsection (1) the Governor may make regulations —
 - (a) for or with respect to the practice and procedure of the Board and the conduct of all business, matters and things to be done by or in relation to the Board;
 - (b) requiring the payment of fees in connection with proceedings before, and other matters within the

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functions of, the Board, prescribing those fees, and specifying the persons liable for payment.

121. Rules of Board

The Board may make rules providing for all matters that are required or permitted to be prescribed by rules made by the Board, and for matters that are incidental thereto.

122. Review of Act

- (1) The Minister shall carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 5 years from its commencement, and in the course of that review the Minister shall consider and have regard to —
 - (a) the effectiveness of the operations of the Board and the Public Advocate;
 - (b) the need for the continuation of the functions of the Board and the Public Advocate; and
 - (c) such other matters as appear to him to be relevant to the operation and effectiveness of this Act.
- (2) The Minister shall prepare a report based on his review made under subsection (1) and shall, as soon as is practicable after the preparation of the report, cause it to be laid before each House of Parliament.

[Section 122 amended by No. 7 of 1996 s. 36.]

[123. Omitted under the Reprints Act 1984 s. 7(4)(e).]

124. Transitional provisions

Schedule 5 has effect.

Schedule 1

[sections 7 and 17]

Part A

Provisions as to constitution of Board

1. Term of office

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

[2, 3. *repealed*]

4. Removal and resignation

- (1) The Governor may remove a member from office —
 - (a) if he is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy; or
 - (b) on the grounds of neglect of duty, misbehaviour, incompetence or mental or physical incapacity impairing the performance of his functions and proved to the satisfaction of the Governor.
- (2) If the holder of the office of deputy president 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 president.
- (3) A member may resign his office by written notice delivered to the Governor.

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5. Leave of absence

The Minister may grant leave of absence to a member on such terms and conditions as he thinks fit.

6. Saving

No act or omission of a person acting in place of another under this Act shall be questioned on the ground that the occasion for his acting had not arisen or had ceased.

Part B

Provisions as to proceedings of Board

1. President to decide who presides

- (1) The president shall preside at any meeting or proceedings of the Board if it is constituted to include the president, but if not a member designated by the president by practice direction, or otherwise in writing, shall preside.
- (2) The president 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 president, but if not any such question shall be determined by a member authorised in that behalf by practice directions given by the president.

2. Arrangement of business

[(1) repealed]

- (2) The Board shall not sit in a law court unless the president is satisfied that no other suitable accommodation is available.

3. Register of applications and determinations

- (1) The executive officer shall keep a register in a form approved by the Board containing particulars of all applications made to, and all determinations of, the Board.
- (2) Subject to any limitation prescribed by the regulations, a person may inspect the register referred to in subclause (1).

4. Determinations of Board

- (1) Subject to clause 1, where a Board is constituted so as to consist of 3 members a determination in which any 2 members concur is a determination of the Board.
- (2) A determination of the Board shall be in writing and show the date thereof and, except as provided in subclause (3), shall be signed by the members of the Board who made the determination.
- (3) Where a member of a Board that is constituted so as to consist of 3 members is unavailable to sign a determination, he may authorise another member to sign the determination on his behalf.

5. Statement of reasons for determination

Where the Board makes a determination, it shall, if requested to do so by a party to the proceedings within 30 days of the date of the determination or such further time as the Board allows, furnish that party, within a reasonable time after the request, with a statement of its reasons for the determination.

6. Correcting minor errors in decision

The Board may at any time of its own motion or on the application of any person amend a determination where there has occurred —

- (a) a clerical error or an error arising from any accidental omission;
- (b) any evident material miscalculation of figures or any evident material error in the description of any person, thing or property referred to in the determination.

7. Power to summon witnesses etc.

- (1) In the performance of its functions, the Board may —
 - (a) by summons signed by a member or the executive officer, require the attendance of any person before the Board;
 - (b) by summons signed by a member or the executive officer require the production of any book, document or other record;
 - (c) inspect any book, document or other record produced before it and retain it for such reasonable period as it thinks fit, and make copies of it or of any of its contents;

Schedule 1

- (d) require any person attending before the Board to answer any relevant question put to him by a member or by any other person appearing before the Board; and
 - (e) receive any affidavit.
- (2) The president, the presiding member or the member who constitutes the Board, as the case may require, may administer an oath or affirmation to a person attending before the Board.
- (3) Subject to clause 8, a person shall not, without lawful excuse, refuse or fail —
- (a) to attend before the Board;
 - (b) to be sworn or make an affirmation; or
 - (c) to answer a relevant question or produce a book, document or record,

when so required under this clause.

Penalty: \$2 000 or imprisonment for 6 months.

8. Liability of persons under clause 7

- (1) Except as provided in subclause (2), a person is not compelled to answer a question, or produce any book, document or other record under clause 7 if he could not be compelled to answer the question or produce the book, document or record in proceedings before a court.
- (2) A person is not excused from answering a question or producing any book document or other record under clause 7 on the ground that the answer to the question, or the contents of the book, document or other record, might tend to incriminate him or make him liable to a penalty, but the answer, book, document or record is not admissible in evidence against him in proceedings other than proceedings for an offence against clause 7 or subclause (3).
- (3) A person shall not —
- (a) make a statement to the Board under clause 7, whether orally or in writing, that he knows to be false or misleading in a material particular; or

- (b) produce to the Board under clause 7 a book, document or other record that to his knowledge contains information that is false or misleading in a material particular.

Penalty: \$2 000 or imprisonment for 6 months.

9. Protection of persons giving evidence

Subject to clause 8(2), a person giving or tendering evidence or information under this Act has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the Supreme Court.

10. Offences against Board

A person shall not —

- (a) create a disturbance or take part in creating or continuing a disturbance in or near a place where the Board is sitting; or
- (b) do any act or thing that would, if the Board were a court of record, constitute a contempt of that court.

Penalty: \$2 000 or imprisonment for 6 months.

11. Open hearings

- (1) Subject to subclause (2), all hearings before the Board shall be open to the public.
- (2) Where, in a particular case, the Board determines that it would be in the best interests of the person to whom the proceedings relate for the hearing or part of the hearing to be closed to the public, the Board may, subject to subclause (3), order that a person shall not be present at the hearing unless —
 - (a) in the opinion of the Board, he is directly interested in the proceedings; or
 - (b) he has been authorised by the Board to be present.
- (3) Any person bona fide engaged in reporting or commenting upon the proceedings of the Board for dissemination through a public news medium shall not be excluded from the place where the hearings are being held.

Schedule 1

- (4) A person shall not fail to comply with an order under subclause (2).
Penalty: \$2 000 or imprisonment for 6 months.

12. Limitations on publication of proceedings

- (1) No person shall publish in a newspaper or periodical publication or by radio broadcast or television, or otherwise disseminate 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, 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.

Penalty, except where subclause (6) applies: \$10 000 in the case of a body corporate and, in any other case, \$5 000 or imprisonment for 12 months.

- (2) No person shall, except as permitted by regulations, publish in a newspaper or periodical publication or by radio broadcast or television, or otherwise disseminate 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 Board), a list of proceedings under this Act, identified by reference to the names of the parties to the proceedings, that are to be dealt with by the Board.

Penalty, except where subclause (6) applies: \$10 000 in the case of a body corporate and, in any other case, \$5 000 or imprisonment for 12 months.

- (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) An offence against subclause (1) or (2) is an indictable offence.
 - (5) Notwithstanding subclause (4), a court of summary jurisdiction may hear and determine proceedings in respect of an offence against subclause (1) or (2) if the court is satisfied that it is appropriate to do so and the defendant and the prosecutor consent.
 - (6) Where a court of summary jurisdiction convicts a person of an offence against subclause (1) or (2) the person is liable —
 - (a) in the case of a body corporate, to a fine of \$5 000; or

Schedule 1

- (b) in any other case to a fine of \$2 500 or imprisonment for 6 months.
- (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 Board 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.

13. Entitlement to appear, and representation

- (1) In any proceedings before the Board a party is entitled to appear and be heard.
- (2) The Board may —
 - (a) hear any person who, in the opinion of the Board, has a proper interest in the proceedings;
 - (b) adjourn any hearing and direct that notice of the proceedings be given to any person who in the opinion of the Board should be given the opportunity to be heard.
- (3) A party may —
 - (a) appear in person; or
 - (b) be represented —
 - (i) by a legal practitioner; or
 - (ii) by some other person of his choice, if the Board grants leave for the person to be so represented.
- (4) Where in any proceedings before the Board 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 Board may direct the executive officer to apply on behalf of the person for legal aid under the *Legal Aid Commission Act 1976*.

[Schedule 1 amended by No. 16 of 1992 s. 15, 16, 17 and 18; No. 7 of 1996 s. 35 and 37; No. 70 of 2000 s. 19.]

Schedule 2

[sections 71(3) and 72(1)]

Part A

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 Board, or, if the Board 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 Board or, if the Board 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 Board, having regard to the

Schedule 2

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 Board thinks fit), deal with or dispose of, as the Board 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 Board.

Part B

The Board 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 Board 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 Board 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 Board may direct.

[Schedule 2 amended by No. 3 of 2002 s. 70.]

Schedule 3

[section 104]

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 Guardianship and Administration Board 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)

Schedule 3

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 Guardianship and Administration Board 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)

[Schedule 3 amended by No. 70 of 2000 s. 20.]

[Schedule 4 omitted under the Reprints Act 1984 s. 7(4)(e).]

Schedule 5

[section 124]

Transitional provisions

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,

Schedule 5

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*.

2. Existing managers under *Mental Health Act 1962*⁴ 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*⁴, 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*⁴ 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 Board 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*⁴,

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.

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*⁴ 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

Schedule 5

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 Part VI of the *Mental Health Act 1962*⁴

If —

- (a) an application under section 64(1) of the *Mental Health Act 1962*⁴ 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*⁴ 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.

[Schedule 5 amended by No. 69 of 1996 s. 37.]

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Notes

¹ This reprint is a compilation as at 22 November 2002 of the *Guardianship and Administration Act 1990* and includes the amendments made by the other written laws referred to in the following table. This table also contains information about any previous reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Guardianship and Administration Act 1990</i>	24 of 1990	7 Sep 1990	Act other than Pt. 4-7, s. 123, 124 and Sch. 2, 4 and 5: 1 Jul 1992 (see s. 2 and <i>Gazette</i> 26 Jun 1992 p. 2649); Pt. 4-7, s. 123, 124 and Sch. 2, 4 and 5: 20 Oct 1992 (see s. 2 and <i>Gazette</i> 2 Oct 1992 p. 4811)
<i>Guardianship and Administration Amendment Act 1992</i>	16 of 1992	17 Jun 1992	17 Jun 1992 (see s. 2)
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 3(2)	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Guardianship and Administration Amendment Act 1996</i>	7 of 1996	24 May 1996	1 Jul 1996 (see s. 2 and <i>Gazette</i> 28 Jun 1996 p. 3014)
<i>Mental Health (Consequential Provisions) Act 1996</i> Pt. 8	69 of 1996	13 Nov 1996	13 Nov 1997 (see s. 2)
Reprint of the <i>Guardianship and Administration Act 1990</i> as at 21 Apr 1997 (includes amendments listed above except those in the <i>Mental Health (Consequential Provisions) Act 1997</i>)			
<i>Acts Amendment and Repeal (Family Court) Act 1997</i> s. 32	41 of 1997	9 Dec 1997	26 Sep 1998 (see s. 2 and <i>Gazette</i> 25 Sep 1998 p. 5295)
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 67	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Guardianship and Administration Amendment Act 1998</i>	8 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2)
<i>Guardianship and Administration Amendment Act 2000</i> ³	70 of 2000	4 Dec 2000	4 Dec 2000 (see s. 2)

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Lesbian and Gay Law Reform) Act 2002 Pt. 10</i>	3 of 2002	17 Apr 2002	21 Sep 2002 (see s. 2 and <i>Gazette</i> 20 Sep 2002 p. 4693)

² Under the *Public Sector Management Act 1994* s. 112(2), a reference in a written law to the Public Service Commissioner is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management (as defined in the *Interpretation Act 1984*). This reference was amended under the *Reprints Act 1984* s. 7(5)(a).

³ 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*.

”

⁴ Repealed by the *Mental Health (Consequential Provisions) Act 1996*.

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
act.....	114(4)
administration order	3(1)
administrator	3(1)
application.....	3(1)
approved.....	3(1)
Board.....	3(1)
corporate trustee.....	3(1)
Court	18(1), 37A
date of the determination.....	3(1)
deputy president	3(1)
designated country	67(5)
determination	3(1)
donee.....	102
enduring power of attorney	102
executive officer.....	3(1)
foreign administrator.....	83B(4)
Full Board	3(1)
guardian	3(1)
guardianship order	3(1)
legal practitioner	3(1)
member	3(1)
mental disability	3(1)
nearest relative	3(1)
party	3(1)
practitioner	119(4)
president.....	3(1)
procedure for the sterilization	56
Public Advocate	3(1)
Public Trustee	3(1)
relevant finding	67(5)
relevant official	83C(4)
represented person	3(1), 56
treatment	3(1)
urgent treatment	119(4)