

WESTERN AUSTRALIA

**GUARDIANSHIP AND
ADMINISTRATION AMENDMENT
ACT 1996**

No. 7 of 1996

AN ACT to amend the *Guardianship and Administration Act 1990* and to consequently amend the *Parliamentary Commissioner Act 1971* and the *Public Trustee Act 1941*.

[Assented to 24 May 1996.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Guardianship and Administration Amendment Act 1996*.

Commencement

2. This Act comes into operation on such day as is fixed by proclamation.

Principal Act

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

[* Act No. 24 of 1990.

*For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, p. 92.]*

Section 3 amended

4. Section 3 of the principal Act is amended —

(a) in the definition of “administrator” by deleting “Guardian” and substituting the following —

“ Advocate ”;

(b) by deleting the definition of “chairperson”;

(c) by deleting the definition of “deputy chairperson” and substituting the following definition —

“

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

”;

(d) in the definition of “determination” —

(i) in paragraph (a), by deleting “39 or”; and

- (ii) in paragraph (h), by inserting after “66,” the following —
- “ 104A (2), ”;
- (e) in the definition of “Full Board” by deleting “chairperson” in the 2 places where it occurs and substituting in each case the following —
- “ president ”;
- (f) in the definition of “member” by deleting “(4)” and substituting the following —
- “ (6) ”;
- (g) in the definition of “nearest relative” by —
- (i) inserting after paragraph (b) the following paragraph —
- “ (ba) a step child; ”; and
- (ii) inserting after paragraph (c) the following paragraph —
- “ (ca) a foster parent; ”;
- (h) by inserting after the definition of “party” the following definition —
- “
“**president**” means the president of the
Board;
”;
and
- (i) in the definition of “Public Guardian” by deleting “Guardian” in the 2 places where it occurs and substituting in each case the following —
- “ Advocate ”.

Section 4 amended

5. Section 4 of the principal Act is amended in subsection (2) —

- (a) in paragraph (a), by deleting “or a request for leave to apply”; and
- (b) by inserting after paragraph (e) the following paragraph —

“

(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 6 repealed and a section substituted

6. Section 6 of the principal Act is repealed and the following section is substituted —

“

President and deputy president

6. (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.

(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 deputy president and as a Registrar of the Supreme Court.

(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.

”.

Section 6A amended

7. Section 6A of the principal Act is amended by deleting “10” and substituting the following —

“ 20 ”.

Section 8 amended

8. Section 8 of the principal Act is amended in subsection (2) by deleting “A chairperson who holds office as a Judge of the Supreme Court, or any other” and substituting the following —

“

Unless the Minister determines otherwise in any particular case, a

”.

Section 10 amended

9. Section 10 of the principal Act is amended by repealing subsection (2) and substituting the following subsection —

“

(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 13 amended

10. Section 13 (a) of the principal act is amended by deleting “requests for leave to apply and”.

Section 14 amended

11. Section 14 of the principal Act is amended by inserting before “executive officer” in the 2 places where it occurs the following —

“ deputy president or the ”.

Section 15A inserted

12. The principal Act is amended by inserting after section 15 the following section —

“
 Board may decline to hear application

 15A. The Board may decline to hear an application which it considers to be misconceived or lacking in substance.
”

Section 18 amended

13. Section 18 (1) of the principal Act is repealed and the following subsection is substituted —

“
 (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.
”

Section 19 repealed and a section substituted

14. Section 19 of the principal Act is repealed and the following section is substituted —

“
 Right of appeal by leave

 19. 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 20 amended

15. Section 20 of the principal Act is amended by inserting after subsection (3) the following subsection —

“

(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 37A inserted

16. Before section 38 of the principal Act the following section is inserted —

“

Interpretation

37A. In this Division —

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

”.

Section 39 repealed

17. Section 39 of the principal Act is repealed.

Section 40 amended

18. Section 40 of the principal Act is amended —

(a) by repealing subsection (1) and substituting the following subsection —

“

(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.

”;

(b) in subsection (2) by inserting after “lodged” the following —

“ or made ”; and

(c) by inserting after subsection (2) the following subsection —

“

(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 44A inserted

19. After section 44 of the principal Act the following section is inserted —

“

Interstate arrangements for guardianship orders

44A. (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.

”.

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

”.

Section 51 amended

21. Section 51 (2) of the principal Act is amended —

- (a) in paragraph (b), by inserting after “person to” the following —

“ live in the general community and ”;

- (b) by deleting “and” after paragraph (d);

- (c) in paragraph (e), by deleting the full stop and inserting after “that person” the following —

“
as expressed, in whatever manner, or as gathered from the person’s previous actions;
”;

and

- (d) by inserting after paragraph (e) the following paragraphs —

- “
- (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.

Section 62 repealed

22. Section 62 of the principal Act is repealed.

Section 68 amended

23. Section 68 of the principal Act is amended —

- (a) in subsection (2), by deleting “*Trustee Act 1987*” and substituting the following —

“ *Trustee Companies Act 1987* ”; and

- (b) in subsection (5) —

- (i) by deleting “Guardian” and substituting the following —

“ Advocate ”; and

- (ii) by deleting “person” in the second place where it occurs and substituting the following —

“ individual or corporate trustee ”.

Section 71A inserted

24. After section 71 of the principal Act the following section is inserted —

Amendment of order to confer particular function

71A. (1) The Board may decline to authorize 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 73 repealed

25. Section 73 of the principal Act is repealed.

Division 3 of Part 6 inserted

26. After section 83 of the principal Act the following Division is inserted —

***Division 3 — Interjurisdictional Arrangements in
Relation to Administration Powers***

Reciprocating states

83A. The Minister may, by notice published in the *Gazette* —

- (a) declare any country, State or Territory to be a reciprocating State for the purposes of this Division; and
- (b) in like manner vary or revoke any such notice.

Foreign administrator may authorize Public Trustee to administer property in this State

83B. (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) authorize the Public Trustee to administer that property within this State.

(2) Where the Public Trustee is authorized 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 authorizing 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).

Administrator may authorize relevant official to administer property in reciprocating State

83C. (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) authorize 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).

Interstate arrangements for recognition of administration orders

83D. (1) If the Minister is satisfied that the laws of another State or Territory relating to the administration of the estates of incapable adults correspond sufficiently with this Act the Minister may enter into an arrangement with the relevant Minister in that State or Territory for the recognition of the relevant orders (by whatever name known) made under the laws of that State or Territory in respect of persons who —

- (a) enter this State from that State or Territory; or
- (b) enter that State or Territory from this State.

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

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

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

”.

Section 97 amended

27. Section 97 of the principal Act is amended —

- (a) by deleting “Guardian” in the 3 places where it occurs and substituting in each case the following —

“ Advocate ”; and

- (b) in subsection (1) —

- (i) by deleting paragraph (a) and substituting the following paragraphs —

“

- (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;

”;

- (ii) in paragraph (b), by deleting “all”; and

- (iii) in paragraph (d), by inserting after “service” the following —

“

and, where appropriate, to arrange legal representation for any represented person or person in respect of whom an application has been made

”.

Section 101 amended

28. Section 101 of the principal Act is amended by repealing subsection (3).

Section 101A inserted

29. The principal Act is amended by inserting after section 101 the following section —

“

Public Advocate may raise matters with Minister

101A. (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 102 amended

30. Section 102 of the principal Act is amended —

(a) by inserting after “Part” the following —

“ , unless the contrary intention appears ”; and

- (b) in the definition of “enduring power of attorney” by inserting after “section 104” the following —

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

Section 104A inserted

31. After section 104 of the principal Act the following section is inserted —

“

Recognition of powers of attorney created in other jurisdictions

104A. (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.

(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 107 amended

32. Section 107 of the principal Act is amended —

- (a) by inserting after the section designation “**107.**” the subsection designation “(1)”; and
- (b) by inserting the following subsection —

“

(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 108 amended

33. Section 108 of the principal Act is amended —

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

“

(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.

and

- (b) by inserting after subsection (2) the following subsections —

“ (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 109 amended

34. Section 109 of the principal Act is amended by inserting after subsection (4) the following subsection —

“

(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.

”.

Schedule 1 amended

35. Part B of Schedule 1 of the principal Act is amended in clause 3 (1) by deleting “requests for leave to apply and”.

Various sections amended — Public Advocate

36. The principal Act is amended in the provisions referred to in the Table to this section by deleting “Guardian” or

“**GUARDIAN**” wherever it occurs and substituting in each case the following —

“ Advocate ” or “ **ADVOCATE** ” whichever is appropriate.

Table

Section 17B (1) (f) and (3) (b)
Section 41 (1) (a) (iv) and (3) (b)
Section 44 (5)
Section 59 (1)
Section 60 (1) (e) and (3) (b)
Section 89 (1) (f) and (3) (b)
The heading to Part 8
Section 91 (1), (2) and (3)
Section 92 (1) (twice) and (2)
Section 93 (1) (3 times), (3) (a), (4) (twice) and (5)
Section 94
Section 95 (1) (twice), (2) and (3)
Section 96
Section 98 (1) and (2)
Section 99 (1) and (2)
Section 100 (a) (twice) and (b)
Section 101 (1)
Section 122 (1) (a) and (b)

Various sections amended — chairperson

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

“ president ”.

Table

Section 5 (3)
Section 6B (1) and (3)
Section 9

Section 11 (4 times)
Section 17A (1) (twice)
Clauses 1 (1) (twice), 2 (3 times) and 4 (2) (twice) of
Part A of Schedule 1
Clauses 1 (1) (3 times) and (2) (3 times), 2 (2) and
7 (2) of Part B of Schedule 1

Consequential amendment to *Parliamentary Commissioner Act 1971*

38. The *Parliamentary Commissioner Act 1971** is amended in the Schedule by deleting “Public Guardian” and substituting the following —

“ Public Advocate ”.

[* Reprinted as at 25 May 1995.
Amended by Act No. 11 of 1995.]

Consequential amendment to *Public Trustee Act 1941*

39. Section 24 of the *Public Trustee Act 1941** is amended by deleting “Subject to section 39 of the *Guardianship and Administration Act 1990*, the Public Trustee may apply under section 40 of that Act” and substituting the following —

“ The Public Trustee may apply under section 40 of the *Guardianship and Administration Act 1990* ”.

[* Reprinted as at 8 September 1993.
For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, pp. 174-5.]