

South Australia

# Guardianship and Administration Act 1993

An Act to provide for the guardianship of persons unable to look after their own health, safety or welfare or to manage their own affairs and for the management of the estates of such persons; and for other purposes.

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## Legislative history

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Guardianship and Administration Act 1993*.

### 3—Interpretation

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

**administration order** means a full or limited administration order under this Act appointing an administrator of the whole or a part of a person's estate;

**administrator** means a person appointed as an administrator under an administration order;

**advance care directive** means an advance care directive given under the *Advance Care Directives Act 2013* that is in force;

**decision**, of the Tribunal, has the same meaning as in the *South Australian Civil and Administrative Tribunal Act 2013*;

**dental treatment** means treatment or procedures carried out by a dentist in the course of dental practice;

**dentist** means a person who is registered as a dental practitioner under the law of this State;

**domestic partner** means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

**guardian** means a person appointed as a guardian under a guardianship order;

**guardianship order** means an order under this Act placing a person under full or limited guardianship;

**health professional** means a person who is authorised under the law of this State to practise any of the following professions:

- (a) chiropractic or osteopathy;
- (b) nursing;
- (c) occupational therapy;
- (d) optometry;
- (e) pharmacy;
- (f) physiotherapy;
- (g) podiatry;
- (h) psychology;

**internal review** means a review under section 70 of the *South Australian Civil and Administrative Tribunal Act 2013*;

**medical practitioner** means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

**medical treatment** means the provision by a medical practitioner of physical, surgical or psychological therapy to a person (including the provision of such therapy for the purposes of preventing disease, restoring or replacing bodily function in the face of disease or injury or improving comfort and quality of life) and includes the prescription or supply of drugs;

**mental incapacity** means the inability of a person to look after his or her own health, safety or welfare or to manage his or her own affairs, as a result of—

- (a) any damage to, or any illness, disorder, imperfect or delayed development, impairment or deterioration, of the brain or mind; or
- (b) any physical illness or condition that renders the person unable to communicate his or her intentions or wishes in any manner whatsoever;

**mentally incapacitated person** means a person with a mental incapacity;

**person responsible** for another person, means—

- (a) any of the following persons if he or she has a close and continuing relationship with the other person:
  - (i) a prescribed relative of the other person;
  - (ii) a parent of the other person (including an adoptive parent and a step-parent);
  - (iii) if the other person is under 18 years of age—an adult who acts *in loco parentis* in relation to the other person;
  - (iv) an adult friend of the other person; or
- (b) an adult who is charged with overseeing the ongoing day-to-day supervision, care and well-being of the other person;

**Example—**

The director of nursing in an aged care facility would be such a person.

**person to whom the proceedings relate**, in relation to any proceedings before the Tribunal or a court, means the person who has or is alleged to have a mental incapacity or mental illness, or the protected person, as the case may be;

**prescribed relative**—the following persons are prescribed relatives of a person:

- (a) a person who is legally married to the person;
- (b) an adult domestic partner of the person (within the meaning of the *Family Relationships Act 1975* and whether declared as such under that Act or not);
- (c) an adult related to the person by blood or marriage;
- (d) an adult related to the person by reason of adoption;

- (e) an adult of Aboriginal or Torres Strait Islander descent who is related to the person according to Aboriginal kinship rules or Torres Strait Islander kinship rules (as the case requires);

**prescribed treatment** means—

- (a) termination of pregnancy;
- (b) sterilisation;
- (c) any other medical treatment prescribed by the regulations;

**property** means any legal or equitable interest in real or personal property;

**protected person** means the person the subject of a guardianship or administration order (or both) under this Act;

**the Public Advocate** means the person holding or acting in the office of Public Advocate under this Act;

**recognised advocate** means a person who is, by instrument in writing, recognised by the Tribunal as a person who is qualified to act as an advocate in proceedings before the Tribunal for the person to whom the proceedings relate;

**spouse**—a person is the spouse of another if they are legally married;

**sterilisation** means any treatment given to a person that results in, or is likely to result in, the person being infertile;

**substitute decision-maker**, in respect of a person, means a substitute decision-maker appointed under an advance care directive given by the person under the *Advance Care Directives Act 2013* that is in force;

**Tribunal** means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*;

**trustee company** means a trustee company within the meaning of the *Trustee Companies Act 1988*.

- (2) For the purposes of this Act, a woman who has ceased to menstruate will be regarded as being infertile.
- (3) For the purposes of this Act, the Tribunal is entitled to presume that a person who purports to be in a close and continuing relationship with another person is in such a relationship unless the Tribunal knew, or ought reasonably to have known, that the 2 persons were not in such a relationship.
- (4) For the purposes of this Act, the Tribunal is entitled to presume that a person who purports to have a particular relationship to another person (whether the relationship is based on affinity or consanguinity or otherwise) does have such a relationship unless the Tribunal knew, or ought reasonably to have known, that the person did not have such a relationship to the other person.
- (5) If a man and woman are married according to Aboriginal tradition, they will be regarded as legally married for the purposes of this Act.

#### 4—Interaction of this Act with other Acts

Subject to any express provision of this Act or the provisions of any other Act, this Act is in addition to, and does not derogate from, any other Act.

## **5—Principles to be observed**

Where a guardian, an administrator, the Public Advocate, the Tribunal or any court or other person, body or authority makes any decision or order in relation to a person or a person's estate pursuant to this Act or pursuant to powers conferred by or under this Act—

- (a) consideration (and this will be the paramount consideration) must be given to what would, in the opinion of the decision maker, be the wishes of the person in the matter if he or she were not mentally incapacitated, but only so far as there is reasonably ascertainable evidence on which to base such an opinion; and
- (b) the present wishes of the person should, unless it is not possible or reasonably practicable to do so, be sought in respect of the matter and consideration must be given to those wishes; and
- (c) consideration must, in the case of the making or affirming of a guardianship or administration order, be given to the adequacy of existing informal arrangements for the care of the person or the management of his or her financial affairs and to the desirability of not disturbing those arrangements; and
- (d) the decision or order made must be the one that is the least restrictive of the person's rights and personal autonomy as is consistent with his or her proper care and protection.

## **Part 2—Administration**

### **Division 3—The Public Advocate**

#### **18—The Public Advocate**

There will be a Public Advocate.

#### **19—Appointment of Public Advocate**

- (1) The Governor may, by notice published in the Gazette, appoint a person to be the Public Advocate.
- (2) Subject to this Act, the terms and conditions of appointment and employment (including salary and allowances) of the Public Advocate will be as determined by the Governor.

#### **20—Term of office of Public Advocate etc**

- (1) The Public Advocate will be appointed for a term of office of five years and, on the expiration of a term of office, is eligible for reappointment.
- (2) The office of Public Advocate becomes vacant if the Public Advocate—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by notice in writing to the Governor; or
  - (d) is removed from office by the Governor under subsection (3).

- (3) The Governor may remove the Public Advocate from office for—
- (a) mental or physical incapacity to carry out official duties satisfactorily; or
  - (b) neglect of duty; or
  - (c) dishonourable conduct.

## **21—General functions of Public Advocate**

- (1) The functions of the Public Advocate are—
- (a) to keep under review, within both the public and the private sector, all programmes designed to meet the needs of mentally incapacitated persons;
  - (b) to identify any areas of unmet needs, or inappropriately met needs, of mentally incapacitated persons and to recommend to the Minister the development of programmes for meeting those needs or the improvement of existing programmes;
  - (c) to speak for and promote the rights and interests of any class of mentally incapacitated persons or of mentally incapacitated persons generally;
  - (d) to speak for and negotiate on behalf of any mentally incapacitated person in the resolution of any problem faced by that person arising out of his or her mental incapacity;
  - (e) to give support to and promote the interests of carers of mentally incapacitated persons;
  - (f) to give advice on the powers that may be exercised under this Act in relation to mentally incapacitated persons, on the operation of this Act generally and on appropriate alternatives to taking action under this Act;
  - (g) to monitor the administration of this Act and, if he or she thinks fit, make recommendations to the Minister for legislative change;
  - (h) to perform such other functions as are assigned to the Public Advocate by or under this Act or any other Act.
- (2) In performing his or her functions the Public Advocate is not subject to the control or direction of the Minister.
- (3) The Public Advocate may establish committees for the purpose of providing him or her with advice in relation to the performance of any of his or her functions.

## **22—Public Advocate may raise matters with the Minister and the Attorney-General**

- (1) The Public Advocate may, at any time, raise with the Minister and the Attorney-General any concerns he or she may have over any matter arising out of or relating to the performance of his or her functions under this Act or any other Act.
- (2) If the Public Advocate so requests, the Attorney-General must cause a report of any matter raised by the Public Advocate under subsection (1) to be laid as soon as practicable before both Houses of Parliament.
- (3) The annual report furnished by the Public Advocate under this Act must include a summary of any matters raised by the Public Advocate under subsection (1).

### **23—Delegation by Public Advocate**

- (1) The Public Advocate may delegate any of his or her powers or functions under this or any other Act to any Public Service employee who has been assigned to assist the Public Advocate in the performance of his or her functions or, with the approval of the Minister, to any other person.
- (2) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be conditional or unconditional; and
  - (c) is revocable at will; and
  - (d) does not derogate from the power of the Public Advocate to act in any matter.

### **24—Annual report**

- (1) The Public Advocate must, not later than 30 September in each year, furnish the Minister with a report on the performance by the Public Advocate of his or her functions during the year ending on the previous 30 June.
- (2) A report furnished under this section must include prescribed particulars of all applications made by the Public Advocate for the issue of a warrant under this Act during the year.
- (3) The Minister must, within 12 sitting days of receiving a report under subsection (1), cause a copy of the report to be laid before each House of Parliament.

## **Part 4—Orders for guardianship or administration**

### **Division 1—Investigations**

#### **28—Investigations by Public Advocate**

- (1) The Public Advocate must, if the Tribunal so directs for the purposes of this Part, investigate the affairs of a person—
  - (a) who is the subject of application for an order under this Part; or
  - (b) who has had an advance care directive revoked by the Tribunal under the *Advance Care Directives Act 2013*.
- (2) On completing an investigation carried out at the direction of the Tribunal, the Public Advocate must furnish the Tribunal with a copy of the report of the investigation.
- (3) The Tribunal may receive the copy of the report in evidence and may have regard to the matters contained in the report.

### **Division 2—Guardianship orders**

#### **29—Guardianship orders**

- (1) If the Tribunal is satisfied (whether on an application made under this Division or on its own motion after revoking an advance care directive under the *Advance Care Directives Act 2013*)—
  - (a) that the person the subject of the application has a mental incapacity; and

- (c) that an order under this section should be made in respect of the person, the Tribunal may, by order, place the person under—
- (d) the limited guardianship; or
- (e) if satisfied that an order under paragraph (d) would not be appropriate, the full guardianship,
- of such person or persons as the Tribunal considers, in all the circumstances of the case, to be the most suitable for the purpose.
- (2) A limited guardianship order is an order by which the Tribunal specifies the particular aspects of the protected person's care or welfare that are to be the responsibility of the appointed guardian or guardians.
- (2a) The Tribunal may appoint a person (other than the Public Advocate) to be an alternative guardian who is, in accordance with section 31B, to take over full or limited guardianship, as the case may be, in the event of the death, absence or incapacity of a particular guardian (the *original guardian*).
- (3) A guardian must be a natural person.
- (4) The Public Advocate may be appointed as the guardian, or one of the guardians, of the person, but only if the Tribunal considers that no other order under this section would be appropriate.
- (5) A person who cares for the protected person on a professional basis cannot be appointed as a guardian of the person.
- (6) A guardianship order may be subject to such conditions or limitations (including a limitation as to the duration of the order) as the Tribunal thinks fit and specifies in the order.
- (7) A condition or limitation imposed under subsection (6) should, as far as is reasonably practicable, be consistent with the terms of any advance care directive that the protected person has given.

### 30—Variation or revocation of guardianship order

The Tribunal may, on an application made under this Division, by order—

- (a) vary a guardianship order; or
- (b) revoke a guardianship order.

### 31—Powers of guardian

A person appointed as a guardian under this Part has and may exercise, subject to this Act and the terms of the Tribunal's order, all the powers a guardian has at law or in equity.

### 31A—Guardian to give effect to advance care directive

- (1) A person appointed as a guardian under this Part—
- (a) must take reasonable steps to ascertain whether the protected person has given an advance care directive; and
- (b) if the protected person has given an advance care directive—must, as far as may be reasonably practicable—

- (i) give effect to any provision in the advance care directive; and
  - (ii) seek to avoid any outcome or intervention that the protected person would wish to be avoided (whether such wish is expressed or implied in the advance care directive).
- (2) For the purposes of subsection (1), a reference to an advance care directive includes an advance care directive that was revoked by the Tribunal under the *Advance Care Directives Act 2013* in proceedings that gave rise to the making of an order under this Division.
- (3) For the purposes of this section, a reference to a provision of an advance care directive includes a reference to a condition, instruction or direction of an advance care directive.

### **31B—Alternative guardian**

- (1) If an alternative guardian is appointed under section 29(2a) in relation to a protected person, the following applies on the death, absence or incapacity of the original guardian:
  - (a) the alternative guardian takes over full or limited guardianship, as the case may be, of the protected person without further proceedings;
  - (b) the alternative guardian has the same powers and duties with respect to the protected person as the original guardian had immediately before the original guardian's death, absence or incapacity.
- (2) A person who takes over guardianship under subsection (1) must, as soon as practicable after becoming aware of the circumstances of the death, absence or incapacity of the original guardian, notify the Tribunal in writing of that fact and include any relevant documentary evidence of the circumstances.

### **32—Special powers to place and detain etc protected persons**

- (a1) This section applies to the following persons:
  - (a) a protected person;
  - (b) a person who has given an advance care directive under which at least 1 substitute decision-maker has been appointed.
- (1) The Tribunal, on application made by an appropriate authority in respect of a person to whom this section applies—
  - (a) may, by order, direct that the person reside—
    - (i) with a specified person or in a specified place; or
    - (ii) with such person or in such place as the appropriate authority from time to time thinks fit,(whether or not the person or place is a person with whom, or the place in which, the person usually resides) according to the terms of the Tribunal's order; and
  - (b) may, by order, authorise the detention of the person in the place in which he or she will so reside; and

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- (c) may, by order, authorise the persons from time to time involved in the care of the person to use such force as may be reasonably necessary for the purpose of ensuring the proper medical or dental treatment, day-to-day care and well-being of the person.
- (1a) An application made by a person under this section may be heard at the same time as his or her application for appointment as guardian.
- (2) The Tribunal cannot make an order under subsection (1) unless it is satisfied that, if such an order were not to be made and carried out, the health or safety of the person or the safety of others would be seriously at risk.
- (3) Nothing in this section empowers the placement or detention of a person in—
- (a) a correctional institution or any other place in which persons charged with or convicted of offences may be detained; or
- (b) any part of an approved treatment centre under the *Mental Health Act 1993* that is set aside for the treatment of persons with a mental illness.
- (3a) For the purposes of subsection (3)(b), a ward (however described) of a hospital or other facility that is an approved treatment centre under the *Mental Health Act 2009* will not be taken to be a part of an approved treatment centre unless the whole of the ward is set aside for the treatment of persons with a mental illness.
- (4) While an order for the placement or detention of a person is in force under this section—
- (a) the appropriate authority or a member of the police force may enter any premises and take the person, or cause him or her to be taken, using only such force as is reasonably necessary for the purpose, to the place in which he or she is to be placed or detained, and any person who assists the appropriate authority or member of the police force in the matter incurs no liability for doing so; and
- (b) the person in charge of the premises in which a person is being detained pursuant to the order may take, or cause to be taken, such action as is reasonably necessary for the purpose of preventing the person from leaving the premises or for bringing the person back should he or she leave without lawful authority or excuse; and
- (c) any person who takes any such action under paragraph (b) in good faith and with the authority of the person in charge of the premises incurs no liability for doing so.
- (5) The Tribunal may, on an application under this Division, vary or revoke an order under this section.
- (6) Where a member of the police force has reasonable cause to believe that a person who is being detained in any place pursuant to powers conferred under this section is unlawfully at large, the member may, without warrant, enter any place in which he or she believes on reasonable grounds that the protected person may be and apprehend the person, using only such force as is reasonably necessary for the purpose, and may return the person to the place in which he or she is being so detained.

- (7) A person who, without lawful authority or excuse, removes a person who is being detained in any place pursuant to powers conferred under this Act from that place, or aids or abets the person unlawfully to leave that place, is guilty of an offence.

Maximum penalty: \$10 000.

- (7a) For the purposes of this section, a reference to residing in a specified place includes a reference to residing in the place on a temporary basis.

**Note—**

For example, a person may temporarily reside in a hospital or rehabilitation facility.

- (8) In this section—

***appropriate authority***, in respect of a person, means—

- (a) if the person is a protected person—the guardian of the person; or
- (b) if the person is a person who has given an advance care directive under which a substitute decision-maker has been appointed—each substitute decision-maker appointed under the advance care directive.

### **33—Applications under this Division**

- (1) An application under this Division (other than under section 32(1)) may be made by—

- (a) the person to whom the proceedings relate; or
- (b) the Public Advocate, on his or her own initiative, or at the request and on behalf of the person to whom the proceedings relate; or
- (c) a guardian of, or substitute decision-maker for, the person; or
- (d) an administrator of the person's estate; or
- (e) subject to subsection (1a)—
  - (i) a person responsible for the person; or
  - (ii) any other person who satisfies the Tribunal that they have a proper interest in the welfare of the person.

- (1a) Subsection (1)(e) applies subject to the following qualifications:

- (a) an application for an order under section 30 may not be made by a person referred to in subsection (1)(e) unless the person satisfies the Tribunal that the reason for the application is a change in the circumstances of—
  - (i) the person to whom the guardianship order applies; or
  - (ii) the appointed guardian (not being the Public Advocate);
- (b) an application for an order under section 32(5) may not be made by a person referred to in subsection (1)(e) unless the person satisfies the Tribunal that the reason for the application is a change in the circumstances of the person to whom the relevant order under section 32(1) applies.

- (2) Applications under this Division must be made in the manner and form determined by the Tribunal.

### 34—Reciprocal guardianship arrangements

- (1) If the Minister is satisfied that the laws of another State or a Territory of the Commonwealth relating to the guardianship of persons with a mental incapacity correspond sufficiently with this Act, the Minister may enter into arrangements with the relevant Minister in that State or Territory for the administration of guardianship orders made in respect of mentally incapacitated persons who wish to enter this State from that State or Territory or to enter that State or Territory from this State.
- (2) If such an arrangement exists, a guardianship order made in the other State or Territory has, while the person to whom it relates is in this State, force and effect according to its terms as if it had been made under this Act.

## Division 3—Administration orders

### 35—Administration orders

- (1) If the Tribunal is satisfied, on an application made under this Division—
  - (a) that the person the subject of the application has a mental incapacity; and
  - (b) that an order under this section should be made in respect of the person, the Tribunal may, by order, appoint an administrator, or administrators, of—
    - (c) a specified part of the person's estate (a *limited administration order*); or
    - (d) if satisfied that an order under paragraph (c) would not be appropriate, the whole of the person's estate (a *full administration order*).
- (2) Any of the following may be appointed as an administrator under this section:
  - (a) the Public Trustee;
  - (b) a trustee company;
  - (c) any natural person who the Tribunal considers suitable to act as administrator of the person's estate.
- (3) The Public Trustee may only be appointed as a sole administrator under this section.
- (4) An administration order—
  - (a) may be subject to such conditions or limitations (including a limitation as to the duration of the order) as the Tribunal thinks fit and specifies in the order; and
  - (b) may confer such further powers (beyond those conferred by this Act) on the administrator as the Tribunal thinks necessary or desirable for the proper administration of the estate and specifies in the order.

### 36—Variation or revocation of administration order

The Tribunal may, on an application made under this Division, by order—

- (a) vary an administration order; or
- (b) revoke an administration order.

### **37—Applications under this Division**

- (1) An application for an order under this Division may be made by—
  - (a) the person the subject of the application; or
  - (b) the Public Advocate, on his or her own initiative, or at the request and on behalf of the person the subject of the application; or
  - (c) a guardian of, or substitute decision-maker for, the person; or
  - (d) an administrator of the person's estate; or
  - (e) subject to subsection (1a)—
    - (i) a person responsible for the person; or
    - (ii) any other person who satisfies the Tribunal that they have a proper interest in the welfare of the person.
- (1a) An application for an order under section 36 may not be made by a person referred to in subsection (1)(e) unless the person satisfies the Tribunal that the reason for the application is a change in the circumstances of—
  - (a) the person to whom the administration order applies; or
  - (b) the appointed administrator (not being the Public Trustee).
- (2) Applications under this Division must be made in the manner and form determined by the Tribunal.

### **38—Copy of order must be forwarded to Public Trustee**

The Tribunal must, on making an order under this Division, cause a copy of the order to be forwarded to the Public Trustee.

### **39—Powers and duties of administrator**

- (1) Where an administrator is appointed under this Division—
  - (a) the estate the subject of the order does not vest in the administrator but, subject to this Act, he or she has the control and management of it;
  - (b) the administrator has the duties and obligations of and is accountable as a trustee in relation to the estate and the protected person.
- (2) Subject to this Act and the terms of the administration order, an administrator may—
  - (a) sell, either by public auction or private contract, any property, or interest in property, of the protected person; or
  - (b) purchase or otherwise acquire as an investment any property (being an authorised trustee investment) on behalf of the protected person, whether as a sole proprietor, joint tenant or tenant in common; or
  - (c) pay any amount necessary to provide proper accommodation for the protected person and, in appropriate circumstances, for a spouse, domestic partner or dependent child of the protected person; or
  - (d) take on lease or concur in taking on lease any property on behalf of the protected person; or
  - (e) lease or concur in the leasing of any property of the protected person; or

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- (f) insure any property of the protected person; or
  - (g) pay all rates, taxes, insurance premiums or other outgoings payable in respect of the protected person's property; or
  - (h) surrender any policy of life assurance vested in the protected person; or
  - (i) grant powers of attorney to any person in or out of the State to do any act or thing with respect to the property that the administrator has power to do under this section; or
  - (j) institute or defend, in the administrator's own name or in the name of the protected person, any action or other proceeding relating to the protected person's estate and suffer judgment to go by default, or consent to any judgment, decree, or order in the action or proceeding, upon such terms as he or she thinks fit; or
  - (k) compromise any claims or demands made against or by or on behalf of the protected person or his or her estate, upon such terms as the administrator thinks fit; or
  - (l) submit or join in the submission of any claim or dispute to arbitration, and take any action necessary to facilitate the arbitration of any claim or dispute; or
  - (m) take criminal proceedings concerning the property; or
  - (n) demand and receive all money payable or belonging to the protected person and take any action necessary to recover that money; or
  - (o) apply money belonging to the protected person (whether income or capital) in or towards the payment of any debt, obligation or liability of the protected person, or incurred by the administrator in the exercise of powers or duties under this Division; or
  - (p) discharge any mortgage over the protected person's property; or
  - (q) surrender, assign or otherwise dispose of, with or without consideration, any onerous property; or
  - (r) surrender or concur in surrendering any lease on behalf of the protected person; or
  - (s) accept a surrender of any lease on behalf of the protected person; or
  - (t) perform contracts entered into by the protected person; or
  - (u) exercise the powers of a proprietor under the *Real Property Act 1886* in relation to any land, or interest in land, of the protected person; or
  - (v) lodge a caveat in respect of any land under the provisions of the *Real Property Act 1886* in which the administrator claims that the protected person has an interest; or
  - (w) apply, in the administrator's discretion, and in such manner and to such extent as he or she thinks fit, any property for the maintenance or benefit of the protected person, the maintenance of the spouse or domestic partner of the protected person, or for the maintenance, education or advancement of the children or grandchildren of the protected person, or for the payment of the expenses of his or her funeral; or

- (x) take up any rights to the issue of new shares to which the protected person becomes entitled (whether an authorised trustee investment or not); or
  - (y) carry on any trade or business of the protected person; or
  - (z) repair any of the property or expend money in the improvement of any property of the protected person by way of building or otherwise; or
  - (za) apply for and, if granted, undertake administration for the use and benefit of the protected person during his or her incapacity where the protected person would, but for that incapacity, be entitled to a grant of probate or administration; or
  - (zb) execute any instruments for the purposes of exercising his or her powers under this section; or
  - (zc) exercise any other powers conferred on the administrator by or under this Act or any other Act.
- (3) The regulations—
- (a) may prescribe limits as to the amount of money that can be expended by an administrator in the exercise of any particular power under this section; and
  - (b) may provide that any such limit can be exceeded only with the approval of the Tribunal.
- (3a) The regulations may provide that powers or duties of an administrator specified by the regulations must be exercised in accordance with the regulations (and such regulations may provide that a specified power or duty may not be exercised without the approval of the Tribunal).
- (4) An administrator cannot sell, lease (except for a period not exceeding two years) or otherwise dispose of any real property or purchase, take on lease (other than for the accommodation of the protected person) or otherwise acquire any real property, without the approval of the Tribunal.
- (5) Nothing in this section obliges an administrator to convert any property into an authorised trustee investment.

#### **40—Administrator's access to wills and other records**

- (1) Subject to the terms of his or her appointment, an administrator is entitled to view, and take an extract from or copy of, any will or other testamentary disposition of the protected person and any records relating to the protected person's property.
- (2) A person who has the custody or control of a document referred to in subsection (1) must allow the administrator access to it.  
Maximum penalty: \$2 500.
- (3) An administrator must not, except with the authority of the Tribunal, disclose the contents of a will or other testamentary disposition to which he or she has had access pursuant to this section to any person other than the protected person.  
Maximum penalty: \$5 000.

#### **41—Power of administrator to continue to act after death etc of protected person**

- (1) Notwithstanding the death of the protected person or the revocation of the administrator's appointment, an administrator may continue to exercise his or her powers under this Division until he or she is notified or becomes aware of the death or revocation.
- (2) Notwithstanding that an administrator has been notified or has become aware of the death of the protected person, he or she may pay the funeral expenses of the protected person out of the estate.
- (3) The Tribunal may, by notice in writing addressed to the administrator, authorise the exercise of powers by the administrator for a further period, not exceeding two months after the death of the protected person, subject to such limitations and conditions as the Tribunal may specify in the notice.
- (4) An authorisation under subsection (3) is revoked upon the grant of probate or letters of administration in respect of the protected person's will or estate.

#### **42—Power of administrator to avoid dispositions and contracts of protected person**

- (1) Subject to this section—
  - (a) a disposition of property made by a person while his or her estate is subject to administration under this Division; or
  - (b) a contract entered into by a person while his or her estate is subject to administration under this Division,is voidable at the option of the administrator.
- (2) A transaction cannot be avoided by an administrator under subsection (1) if the other party to the transaction did not know and could not reasonably be expected to have known that the person with whom he or she dealt had a mental incapacity.
- (3) The Tribunal may, by order, exempt a disposition of property or contract from the operation of this section if the Tribunal is satisfied that to do so would be for the benefit of the protected person and that he or she has an adequate understanding of the nature of the transaction.
- (4) Nothing in this section affects the law relating to testamentary dispositions.

#### **43—Where administration has disturbed entitlements of beneficiaries, the Supreme Court has power to intervene**

- (1) Where at the death of a protected person or former protected person who died leaving a will it appears that, in consequence of any dealing with the estate by an administrator, the share of any beneficiary in that estate under the will has been affected, the Supreme Court may, on application by an interested person, make such orders as it thinks just to ensure that no beneficiary gains a disproportionate advantage, or suffers a disproportionate disadvantage, of a kind not contemplated by the will, in consequence of the estate having been subject to administration under this Division.

- (2) An order made by the Court under subsection (1) operates and takes effect as if it had been made by a codicil to the will of the protected person or former protected person executed immediately before his or her death.
- (3) The Court must, on making an order under subsection (1), direct that a certified copy of the order be made on the probate (or letters of administration) of the will and may, for the purpose, require the production of the relevant document.
- (4) An application under this section must be made within six months from the date of the grant in this State of probate or letters of administration unless the Court, after hearing such of the persons affected as the Court thinks necessary, extends the time for making the application.
- (5) An extension of time granted under subsection (4) may be granted—
  - (a) on such conditions as the Court thinks fit; and
  - (b) whether or not the time for making an application under this section has expired.
- (6) An application for extension of time must be made before the final distribution of the estate.
- (7) A distribution of any part of the estate made before an application for extension of time will not be disturbed by reason of the application or any order made on the application.
- (8) This section does not apply in respect of the will of a person who died before 1 January 1985.

#### **44—Reporting requirements for private administrators**

- (1) An administrator of a protected person's estate (other than the Public Trustee) must, at such times as the Tribunal determines, provide—
  - (a) the Public Trustee; and
  - (b) at the request of the Tribunal—the Tribunal,  
with a statement of the accounts of the estate, showing—
    - (c) the assets and liabilities of the estate; and
    - (d) the income and expenditure of the estate over a specified period; and
    - (e) such other particulars relating to the estate as the Public Trustee may require.
- (2) An administrator who fails, without reasonable excuse, to furnish a statement in accordance with subsection (1) is guilty of an offence.  
Maximum penalty: \$5 000.
- (3) A statement under this section must—
  - (a) be in a form approved by the Public Trustee; and
  - (b) be verified by the statutory declaration of the administrator and supported by such other evidence (if any) as the Tribunal or the Public Trustee may require.

- (4) The Public Trustee must examine and report to the Tribunal on the statement of accounts and—
- (a) may cause the accounts to be audited at the cost of the protected person's estate; and
  - (b) may, if of the opinion that the administrator, in making any expenditure in the exercise, or purported exercise, of his or her powers as administrator, did not act in good faith or with reasonable care, recommend to the Tribunal the disallowance of that item of expenditure; and
  - (c) may report on any other matter pertaining to the administration of the estate that the Public Trustee thinks ought to be drawn to the attention of the Tribunal.
- (5) The Tribunal, after considering a recommendation for the disallowance of an item of expenditure and hearing the administrator and any other person the Tribunal thinks fit on the matter—
- (a) may approve the item of expenditure; or
  - (b) if satisfied that, in making the expenditure, the administrator had not acted in good faith or with reasonable care in the exercise of his or her powers as administrator, may disallow the item of expenditure.
- (6) Where the Tribunal disallows an item of expenditure pursuant to subsection (5), the administrator is personally liable to the protected person for the amount of the expenditure and to the Public Trustee for such of the costs and expenses incurred by the Public Trustee in relation to the disallowance as are allowed by the Tribunal.
- (7) The Tribunal must allow the protected person or, if the protected person does not, in the opinion of the Tribunal, have the mental capacity to comprehend the contents, such other person or persons as the Tribunal thinks appropriate, to have access to and to take a copy of the following documents (which, if not in the possession of the Tribunal, must be obtained from the Public Trustee by the Tribunal for the purposes of providing that access):
- (a) a statement of accounts furnished by an administrator under this section;
  - (b) if those accounts are audited, the accounts as so audited;
  - (c) the Public Trustee's report on the statement of accounts.

#### **45—Reporting by Public Trustee**

- (1) If the Public Trustee is the administrator of a protected person's estate, the Public Trustee must, at intervals determined by the Tribunal, furnish the Tribunal with a statement of the accounts of the estate, showing—
- (a) the assets and liabilities of the estate; and
  - (b) the income and expenditure of the estate over a specified period; and
  - (c) such other particulars relating to the estate as the Tribunal may require.
- (2) The Tribunal may, by notice in writing addressed to the Public Trustee, disallow any item of expenditure shown in the statement of accounts if the Tribunal is satisfied that the Public Trustee, in making the expenditure, had not acted with reasonable care in the exercise of powers as an administrator.

- (3) Where the Tribunal disallows an item of expenditure pursuant to subsection (2), the Crown is liable to the protected person for the amount of the expenditure.
- (4) The Tribunal must allow the protected person or, if the protected person does not, in the opinion of the Tribunal, have the mental capacity to comprehend the contents, such other person or persons as the Tribunal thinks appropriate, to have access to and to take a copy of a statement of accounts furnished under this section.

#### **46—Remuneration of professional administrators**

- (1) Subject to subsection (3), an administrator who carries on a business of or including the administration of estates (whether under this Act or otherwise) is entitled to remuneration out of the estate of the protected person for the work involved in administering that estate (whether the work was or is performed before or after the commencement of this Act) if the Tribunal so determines.
- (2) The rate of remuneration will be the prescribed rate unless the Tribunal thinks good reason exists for fixing some other higher or lower rate in relation to any particular estate and orders accordingly.
- (3) Before fixing a higher rate of remuneration in relation to the estate of a protected person, the Tribunal must consider any representations made by the Public Advocate on behalf of the protected person.
- (4) Nothing in subsection (1) affects the right of the Public Trustee or a trustee company to recover charges and expenses in accordance with any other applicable law.

#### **47—Registration of administration orders**

- (1) An administration order may be registered under the *Registration of Deeds Act 1935* as an instrument affecting the title to any land in which the protected person has a legal or equitable estate or interest.
- (2) A memorandum of an administration order may, on application to the Registrar-General in a manner and form determined by the Registrar-General, be entered in the register book in relation to any land in which the protected person has an estate or interest registered under the *Real Property Act 1886*.

#### **48—Reciprocal administration powers with certain states**

- (1) The Minister may, by notice in the Gazette—
  - (a) declare any country, state or territory to be a reciprocal state for the purposes of this section;
  - (b) vary or revoke any notice under this section.
- (2) If an authority invested by the laws of any reciprocal state with the custody or administration of the estate of a person with a mental incapacity—
  - (a) certifies in writing to the Public Trustee that the person has property in this State; and
  - (b) by instrument in writing authorises the Public Trustee to administer that property within this State,

the Public Trustee has and may exercise in respect of that property all the powers that could be exercised if he or she were the administrator of the estate of that person.

- (3) Where it appears to the administrator of the estate of a protected person that the protected person has property in a reciprocal state, the administrator may, by instrument in writing directed to the authority of that reciprocal state who is or may be invested by its laws with the custody or administration of the estates of persons (however described under those laws) who have a mental incapacity—
  - (a) certify that he or she has the control and management of the estate of the protected person; and
  - (b) authorise the authority to administer the property of the protected person that is in the reciprocal state.
- (4) An administrator may revoke or vary an authority given under subsection (3).

## **Division 4—Provisions applicable to guardians and administrators appointed under this Part**

### **49—Withdrawal of applications**

Nothing in this Act will be taken to prohibit a person from withdrawing an application made by him or her under this Part at any time prior to a final determination being made on it by the Tribunal.

### **50—Criteria for determining suitability for appointment**

- (1) In determining the suitability of a person for appointment as a guardian or administrator, the Tribunal must have regard to—
  - (a) whether the potential appointee and the protected person would be incompatible;
  - (b) whether there is some existing family arrangement or relationship that should be preserved or should not be disturbed;
  - (c) whether the potential appointee would be competent to discharge the functions of guardian or administrator under the order and would do so in accordance with the principles stated by this Act;
  - (d) whether the potential appointee would be readily available for discharging those functions;
  - (e) whether any conflict of interest would arise from the appointment;
  - (f) such other matters as the Tribunal considers relevant.
- (2) The fact that a proposed appointee is related to the protected person by blood or marriage will not, of itself, be taken to give rise to a conflict of interest.

### **51—Consent to appointment**

A person (other than the Public Advocate or the Public Trustee) cannot be appointed as a guardian or an administrator unless he or she consents to the appointment.

### **52—Joint appointments**

If more than one guardian is appointed in respect of a protected person or more than one administrator is appointed, all the guardians, or all the administrators, as the case may require, must, subject to the order of appointment, concur in every act done or decision made in relation to the protected person, or to the protected person's estate.

## **54—Termination of appointment**

- (1) The appointment of a person as a guardian or administrator terminates if—
  - (a) the person dies; or
  - (b) the Tribunal revokes the guardianship or administration order on an application under Division 2 or 3; or
  - (c) the Tribunal revokes his or her appointment on an application under Division 2 or 3.
- (2) The Tribunal may, on an application made under Division 2 or 3, revoke the appointment of a guardian or an administrator—
  - (a) if the guardian or administrator seeks revocation of his or her appointment; or
  - (b) if the Tribunal is satisfied that the guardian or administrator—
    - (i) is not willing or able to act in that capacity; or
    - (ii) is not a suitable person to act in that capacity in respect of the protected person; or
    - (iii) has, in that capacity, acted in an incompetent or negligent manner or contrary to the principles stated by this Act; or
    - (iv) has committed an offence against this Act or an offence involving dishonesty.

## **55—Tribunal must give statement of appeal rights**

- (1) On making any decision or order under this Act in relation to a person, the Tribunal must cause the person to be given a written statement of—
  - (a) the effect of the decision or order; and
  - (b) his or her rights of appeal against the decision or order; and
  - (c) the procedures for instituting any such appeal.
- (2) Wherever possible, the statement should be in the language with which the person is the most familiar.
- (3) If the person is illiterate, or too disturbed to read and comprehend the statement, the Tribunal must cause such steps (if any) as may be practicable in the circumstances to be taken to have the information contained in the statement conveyed to the person.

## **56—Restriction of testamentary capacity of protected person**

- (1) The Tribunal may direct that any testamentary provisions by a protected person be made only after compliance with such precautions as the Tribunal thinks fit to direct.
- (2) If, after the Tribunal has given a direction under subsection (1), the protected person makes a testamentary provision otherwise than in accordance with that direction, the testamentary provision is ineffectual.
- (3) Except as provided by subsection (2), nothing in this section affects the law relating to testamentary dispositions.

## 57—Review of Tribunal's orders

- (1) The Tribunal must review the circumstances of a protected person—
  - (a) in the case of a protected person who is being detained in any place pursuant to an order of the Tribunal—within six months of the making of the order and thereafter at intervals of not more than one year; and
  - (b) in any other case—at intervals of not more than three years,
 for the purpose of ascertaining whether the order or orders to which the person is subject under this Act are still appropriate.
- (2) The Tribunal may conduct a review in such manner as it thinks fit.
- (3) The Tribunal must, on completion of a review, revoke the order or orders to which the protected person is subject unless the Tribunal is satisfied that there are proper grounds for the order or orders remaining in force.
- (4) If the Tribunal is satisfied that there are proper grounds for an order remaining in force, the Tribunal may, by order, vary the terms of the order.
- (5) For the purposes of the *South Australian Civil and Administrative Tribunal Act 2013*, a review under this section will be taken to come within the Tribunal's original jurisdiction.

## Part 5—Consent to prescribed medical treatment of mentally incapacitated persons

### 61—Prescribed treatment not to be carried out without Tribunal's consent

- (1) Except where circumstances exist for the giving of emergency medical treatment under the *Consent to Medical Treatment and Palliative Care Act 1995*, but otherwise notwithstanding that Act, a medical practitioner must not give prescribed treatment to a person who, by reason of his or her mental incapacity, is incapable of giving effective consent (whether or not he or she is a protected person)—
  - (a) without the Tribunal's consent; and
  - (b) otherwise than in accordance with the regulations.
 Maximum penalty: \$10 000 or imprisonment for 2 years.
- (2) The Tribunal cannot consent to a sterilisation unless—
  - (a) it is satisfied that it is therapeutically necessary for the sterilisation to be carried out on the person; or
  - (b) it is satisfied—
    - (i) that there is no likelihood of the person acquiring at any time the capacity to give an effective consent; and
    - (ii) that the person is physically capable of procreation; and
    - (iii) that—

- (A) the person is, or is likely to be, sexually active, and there is no method of contraception that could, in all the circumstances, reasonably be expected to be successfully applied; or
  - (B) in the case of a woman, cessation of her menstrual cycle would be in her best interests and would be the only reasonably practicable way of dealing with the social, sanitary or other problems associated with her menstruation,
- and has no knowledge of any refusal on the part of the person to consent to the carrying out of the sterilisation, being a refusal that was made by the person while capable of giving effective consent and that was communicated by the person to a medical practitioner.
- (3) The Tribunal cannot consent to a termination of pregnancy unless it is satisfied—
  - (a) that the carrying out of the termination would not constitute an offence under the *Criminal Law Consolidation Act 1935*; and
  - (b) that there is no likelihood of the woman acquiring the capacity to give an effective consent within the period that is reasonably available for the safe carrying out of the termination,
- and has no knowledge of any refusal on the part of the woman to consent to the termination, being a refusal that was made while capable of giving effective consent and that was communicated by her to a medical practitioner.
- (4) The Tribunal cannot consent to the carrying out of any other prescribed treatment unless it is satisfied as to prescribed matters.
- (5) Before consenting to the carrying out of any prescribed treatment, the Tribunal must, if it thinks it appropriate to do so, allow such of the person's parents whose whereabouts are reasonably ascertainable a reasonable opportunity to make submissions to the Tribunal on the matter, but the Tribunal is not required to do so if of the opinion that to do so would not be in the best interests of the mentally incapacitated person.
- (6) A decision of the Tribunal to give consent under this section has no force or effect until the period for appeal against the decision has expired or, if an appeal has been instituted, until the appeal is dismissed or withdrawn.

### **63—Tribunal's consent must be in writing**

- (1) Any consent given by the Tribunal under this Part must be in writing.
- (2) In any legal proceedings, a document purporting to be signed by a member of the Tribunal on behalf of the Tribunal and to be the consent of the Tribunal given under this Part is, in the absence of proof to the contrary, proof of the consent of the Tribunal and of the validity of that consent.

## Part 6—Reviews and appeals

### 64—Reviews and appeals

The following provisions operate in connection with the application of Part 5 of the *South Australian Civil and Administrative Tribunal Act 2013* in relation to this Act:

- (a) a decision of the Tribunal not to authorise publication of a report of proceedings before the Tribunal may not be the subject of an application for internal review;
- (b) subject to paragraph (a), an application for internal review may be made by—
  - (i) the applicant in proceedings before the Tribunal in the exercise of its original jurisdiction (within the meaning of the *South Australian Civil and Administrative Tribunal Act 2013*) for the purposes of this Act; or
  - (ii) a person to whom the proceedings relate (if not the applicant under paragraph (a)); or
  - (iii) the Public Advocate; or
  - (iv) any person who presented evidence or material before, or made submissions to, the Tribunal in the relevant proceedings; or
  - (v) any other person who satisfies the Tribunal that he or she has a proper interest in the matter;
- (c) except in the case of a decision for or affirming the detention of a person or relating to the giving of consent to a sterilisation or a termination of pregnancy, an application for internal review may only be made with the permission of the Tribunal;
- (d) an application for internal review of a decision of the Tribunal to consent to termination of pregnancy must be instituted within 2 working days after the making of the decision;
- (e) the person to whom an application for internal review relates (if he or she is not the applicant) will be a party to those proceedings;
- (f) the Tribunal must hear and determine an internal review as expeditiously as is reasonably practicable and must give priority to hearing and determining internal reviews of decisions relating to an application for consent to termination of pregnancy or relating to the detention of any person;
- (g) the Tribunal may make an order for costs against a party to proceedings for internal review, but only if the Tribunal is satisfied that the institution of the proceedings, or the party's conduct in relation to the proceedings, was frivolous, vexatious or calculated to cause delay;
- (h) subject to paragraph (i), an appeal under section 71 of the *South Australian Civil and Administrative Tribunal Act 2013* must be instituted within 14 days—
  - (i) after the making of the decision to which the appeal relates; or
  - (ii) after being furnished with the reasons for that decision,

whichever is the later (but the Supreme Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal should be instituted within that period (even if the time for instituting the appeal has expired));

- (i) an appeal against a decision of the Tribunal in relation to an application for consent to a termination of pregnancy may not be instituted under section 71 of the *South Australian Civil and Administrative Tribunal Act 2013*;
- (j) no order for costs may be made against an applicant in an appeal under section 71 of the *South Australian Civil and Administrative Tribunal Act 2013* if he or she is the person to whom the decision appealed against relates.

## **65—Representation on reviews or appeals**

- (1) In every review or appeal, or application for permission for review or appeal, under Part 5 of the *South Australian Civil and Administrative Tribunal Act 2013*, the person to whom the proceedings relate is entitled to be represented by counsel in accordance with this section.
- (2) If a person chooses to be represented by counsel pursuant to this section, he or she is entitled to be represented by a legal practitioner provided pursuant to a scheme established by the Minister for the purposes of this section, being a legal practitioner—
  - (a) chosen by the person himself or herself; or
  - (b) in default of the person making a choice, chosen by such person or authority as the scheme contemplates.
- (3) A legal practitioner (not being an employee of the Crown or a statutory authority) who represents a person pursuant to this section is entitled to receive fees for his or her services from the Minister, in accordance with a prescribed scale, and cannot demand or receive from any other person any further fee for those services.
- (4) Nothing in this section derogates from the right of the person to whom the proceedings relate to engage counsel at his or her own expense, or to appear personally or by a representative pursuant to any other provision of this Act.

## **Part 6A—Special provisions relating to Tribunal**

### **66—Tribunal must give notice of proceedings**

- (1) The Tribunal must give the following persons reasonable notice of the time and place of the hearings of proceedings before the Tribunal:
  - (a) the applicant;
  - (b) the person to whom the proceedings relate;
  - (c) the Public Advocate;
  - (d) such other persons as the Tribunal considers have a proper interest in the matter.

- (2) Despite subsection (1)—
  - (a) the Tribunal is not obliged to give notice of proceedings to a person if the person's whereabouts cannot, after reasonable enquiries, be ascertained; and
  - (b) the Tribunal may, if satisfied that urgent action is required in proceedings before the Tribunal, make an order (or any other decision) as a matter of urgency without complying with subsection (1), with effect for a period not exceeding 21 days as directed by the Tribunal.

### **67—Reasons for decisions**

The Tribunal must, on request by a person who has a right of internal review of a decision of the Tribunal or who satisfies the Tribunal that he or she has a proper interest in the matter, furnish the person with a written statement of the Tribunal's reasons for the decision, but not—

- (a) if the request is made after the period for the review has expired; or
- (b) if a review has been instituted—after the review has been decided.

### **68—Representation of person who is subject of proceedings**

- (1) A person who is the subject of proceedings before the Tribunal is entitled to appear before the Tribunal by—
  - (a) the Public Advocate; or
  - (b) except in the case of an internal review—a recognised advocate.
- (2) Subsection (1) applies in addition to section 56(1) of the *South Australian Civil and Administrative Tribunal Act 2013*.

### **69—Tribunal may require reports**

- (1) The Tribunal may require a person who is the subject of proceedings before the Tribunal to submit to the Tribunal within a specified time a psychiatric or psychological report as to his or her mental capacity or a medical report as to his or her health or any aspect of it.
- (2) If a person refuses or fails to comply with a requirement made under subsection (1) or is incapable of complying with such a request, the Public Advocate, a person authorised by the Minister for the purpose or a member of the police force may enter any place where the person is reasonably believed to be and apprehend the person, using only such force as is reasonably necessary for the purpose, and take the person to a psychiatrist, psychologist or medical practitioner nominated by the Tribunal for examination and assessment, the cost of which will be borne by the Tribunal.
- (3) The powers under subsection (2) cannot be exercised except on the authority of a warrant issued by a legally qualified member of the Tribunal (within the meaning of the *South Australian Civil and Administrative Tribunal Act 2013*).
- (4) A warrant cannot be issued under subsection (3) unless the person issuing it is satisfied, on information given on oath—
  - (a) that reasonable grounds exist for suspecting that the person to whom the warrant relates has a mental incapacity; and
  - (b) that a warrant is reasonably required in the circumstances.

- (5) The person executing a warrant under this section may be accompanied by such assistants as he or she considers necessary or desirable in the circumstances.
- (6) A person must not hinder or obstruct a person executing a warrant under this section, or a person accompanying that person.  
Maximum penalty: \$10 000.

## **Part 7—Miscellaneous**

### **74—Tribunal may give advice, direction or approval**

- (1) A guardian or administrator appointed under this Act may apply to the Tribunal for advice or direction on the exercise of his or her powers under this Act or any other Act or law or as to the scope of those powers or for approval to the taking of any action for which the approval of the Tribunal is required.
- (2) An application under this section—
  - (a) need not be served on any person; and
  - (b) may be determined by the Tribunal in the absence of any person who may be affected by the Tribunal's decision,unless the Tribunal directs otherwise.
- (3) A direction given by the Tribunal under this section is binding on the applicant and any other joint guardian or administrator.

### **75—Administrators and guardians to keep each other informed**

Where both a guardian and an administrator have been appointed under this Act in respect of the same person, each must endeavour to keep the other informed of decisions or actions of a substantial nature taken in pursuance of powers under this Act.

### **76—Illtreatment or neglect of person with mental incapacity**

A person having the oversight, care or control of a person with a mental incapacity who illtreats or wilfully neglects that person is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years.

### **76A—Death by natural causes of person while under detention order may be subject of inquest**

- (1) The death or apparent death of a person from natural causes while subject to an order under section 32(1)(b) is, despite the definition of *death in custody* in section 3(1) of the *Coroners Act 2003*, not to be taken to be a death in custody for the purposes of section 21(1)(a) of that Act.
- (2) For the purposes of section 21(1)(c) of the *Coroners Act 2003*, the Coroner's Court must, if the State Coroner considers it necessary or desirable to do so or at the direction of the Attorney-General, hold an inquest to ascertain the cause or circumstances of the death of a person who apparently died from natural causes while subject to an order under section 32(1)(b).
- (3) Subsections (1) and (2) apply regardless of whether the death of the person occurred before or after the commencement of this section.

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**77—Offences in relation to certain certificates and reports**

- (1) A medical practitioner, psychologist or member of any other health profession who signs any certificate or report for the purposes of this Act without having seen and personally examined the person to whom the certificate or report relates is guilty of an offence.

Maximum penalty: \$20 000.

- (2) A medical practitioner, psychologist or member of any other health profession who wilfully certifies that a person has a mental incapacity, not believing the person to have a mental incapacity, or who wilfully makes any other false or misleading statement in a certificate or report given under or for the purposes of this Act is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (3) A person who, not being a medical practitioner, psychologist or member of another health profession, signs any certificate or report for the purposes of this Act in which he or she describes himself or herself as, or pretends to be a medical practitioner, psychologist or member of some other health profession or otherwise purports to act under this Act in such a capacity, is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (4) A person who by fraudulent means procures or attempts to procure the making of a guardianship or administration order under this Act in respect of a person who does not have a mental incapacity is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years.

**78—Medical practitioner, psychologist or other health professional cannot act under this Act in respect of a relative**

A medical practitioner, psychologist or member of any other health profession cannot sign any certificate or report under this Act in respect of a person to whom he or she is related by blood or marriage or who is his or her domestic partner.

**80—Duty to maintain confidentiality**

- (1) A person engaged in the administration of this Act who divulges any personal information relating to a person in respect of whom any proceedings under this Act have been taken (being information obtained in the course of that administration) is guilty of an offence.

Maximum penalty: \$10 000.

- (2) Subsection (1) does not prevent a person from—

- (a) divulging information if authorised or required to do so by law or by his or her employer; or
- (b) divulging statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.

- (3) A guardian or administrator is not to be taken as being engaged in the administration of this Act.

### **81—Prohibition of publication of reports of proceedings**

- (1) Subject to subsection (2), a person must not publish a report of any proceedings under this Act.

Maximum penalty: \$10 000.

- (2) The body or court before which proceedings under this Act are heard may, on application by a person who it is satisfied has a proper interest in the matter, authorise the publication of a report of those proceedings.

- (3) A person who publishes a report pursuant to an authorisation given under subsection (2) must not disclose any information in the report that identifies, or could tend to identify, the person to whom the proceedings relate.

Maximum penalty: \$10 000.

### **82—Service of notices**

A notice required to be given to any person under this Act may be—

- (a) given to the person personally; or
- (b) posted to the person at the person's last known principal place of residence or business; or
- (c) transmitted to the person by fax or email to a fax number or email address provided by the person for the purpose of service of the notice; or
- (d) given to the person in such other manner as may be permitted by order of the Tribunal.

### **85—Regulations**

The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1993	61	<i>Guardianship and Administration Act 1993</i>	27.5.1993	6.3.1995 ( <i>Gazette 2.3.1995 p734</i> )
1994	8	<i>Guardianship and Administration (Approved Treatment Centres) Amendment Act 1994</i>	21.4.1994	21.4.1994
1995	26	<i>Consent to Medical Treatment and Palliative Care Act 1995</i>	27.4.1995	30.11.1995 ( <i>Gazette 30.11.1995 p1500</i> )
1997	75	<i>Guardianship and Administration (Extension of Sunset Clause) Amendment Act 1997</i>	18.12.1997	18.12.1997
1998	74	<i>Guardianship and Administration (Extension of Sunset Clause and Validation of Orders) Amendment Act 1998</i>	17.12.1998	17.12.1998
1999	72	<i>Guardianship and Administration (Miscellaneous) Amendment Act 1999</i>	25.11.1999	23.12.1999 ( <i>Gazette 23.12.1999 p3669</i> ) except ss 5—8 & 20—25.11.2001 (s 7(5) <i>Acts Interpretation Act 1915</i> )
2000	4	<i>District Court (Administrative and Disciplinary Division) Amendment Act 2000</i>	20.4.2000	Sch 1 (cl 17)—1.6.2000 ( <i>Gazette 18.5.2000 p2554</i> )
2000	34	<i>South Australian Health Commission (Administrative Arrangements) Amendment Act 2000</i>	6.7.2000	Sch 1 (cl 8)—6.7.2000 ( <i>Gazette 6.7.2000 p5</i> )
2005	73	<i>Guardianship and Administration (Miscellaneous) Amendment Act 2005</i>	8.12.2005	15.12.2005 ( <i>Gazette 15.12.2005 p4325</i> )
2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 38 (ss 131—140)—4.9.2006 ( <i>Gazette 17.8.2006 p2831</i> )
2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 43 (ss 122—124)—1.6.2007 ( <i>Gazette 26.4.2007 p1352</i> )
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 73 (s 173)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> )
2010	12	<i>Trustee Companies (Commonwealth Regulation) Amendment Act 2010</i>	5.8.2010	Sch 1 (cll 4 & 5)—20.12.2010 ( <i>Gazette 9.12.2010 p5580</i> )

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2013	12	<i>Advance Care Directives Act 2013</i>	18.4.2013	Sch 1 (cll 16—29, 35—37)—1.7.2014 ( <i>Gazette 6.2.2014 p546</i> )
2014	26	<i>Statutes Amendment (SACAT) Act 2014</i>	11.12.2014	Pt 8 (ss 64—98)—29.3.2015 ( <i>Gazette 5.3.2015 p883</i> )
2017	51	<i>Statutes Amendment (SACAT No 2) Act 2017</i>	28.11.2017	Pt 20 (ss 107 to 113)—14.12.2017 ( <i>Gazette 12.12.2017 p4960</i> )
<b>2017</b>	<b>70</b>	<b><i>Statutes Amendment (Attorney-General's Portfolio No 3) Act 2017</i></b>	<b>12.12.2017</b>	<b>Pt 5 (s 10)—1.3.2018 (<i>Gazette 6.2.2018 p610</i>)</b>

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
<i>s 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>15.12.2005</i>
s 3		
s 3(1)		
advance care directive	inserted by 12/2013 Sch 1 cl 16(1)	1.7.2014
<i>authorised witness</i>	<i>substituted by 72/1999 s 3(a)</i> <i>deleted by 12/2013 Sch 1 cl 16(2)</i>	<i>23.12.1999</i> <i>1.7.2014</i>
decision	inserted by 26/2014 s 64(1)	29.3.2015
dentist	substituted by 73/2005 s 4(1)	15.12.2005
domestic partner	inserted by 43/2006 s 122(1)	1.6.2007
<i>enduring guardian</i>	<i>deleted by 12/2013 Sch 1 cl 16(3)</i>	<i>1.7.2014</i>
<i>guardian appointed under this Act</i>	<i>deleted by 12/2013 Sch 1 cl 16(4)</i>	<i>1.7.2014</i>
<i>the Health Commission</i>	<i>deleted by 34/2000 Sch 1 cl 8(a)</i>	<i>6.7.2000</i>
health professional	inserted by 72/1999 s 3(b) substituted by 73/2005 s 4(2)	23.12.1999 15.12.2005
internal review	inserted by 26/2014 s 64(2)	29.3.2015
<i>medical agent</i>	<i>inserted by 26/1995 Sch 3 cl 3(a)</i> <i>deleted by 12/2013 Sch 1 cl 16(5)</i>	<i>30.11.1995</i> <i>1.7.2014</i>
medical practitioner	substituted by 73/2005 s 4(3) substituted by 12/2013 Sch 1 cl 16(6)	15.12.2005 1.7.2014
medical treatment	amended by 72/1999 s 3(c) substituted by 12/2013 Sch 1 cl 16(7)	23.12.1999 1.7.2014
person responsible	inserted by 12/2013 Sch 1 cl 16(8)	1.7.2014
person to whom the proceedings relate	amended by 26/2014 s 64(3)	29.3.2015
prescribed relative	inserted by 12/2013 Sch 1 cl 16(9)	1.7.2014
<i>putative spouse</i>	<i>deleted by 43/2006 s 122(2)</i>	<i>1.6.2007</i>

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recognised advocate	amended by 26/2014 s 64(4)	29.3.2015
<i>relative</i>	<i>amended by 73/2005 s 4(4)</i>	15.12.2005
	<i>amended by 43/2006 s 122(3)</i>	1.6.2007
	<i>deleted by 12/2013 Sch 1 cl 16(10)</i>	1.7.2014
spouse	substituted by 43/2006 s 122(4)	1.6.2007
substitute decision-maker	inserted by 12/2013 Sch 1 cl 16(11)	1.7.2014
Tribunal	inserted by 26/2014 s 64(5)	29.3.2015
trustee company	inserted by 12/2010 Sch 1 cl 4	20.12.2010
s 3(3)	inserted by 12/2013 Sch 1 cl 16(12)	1.7.2014
	amended by 26/2014 s 64(6)	29.3.2015
s 3(4)	inserted by 12/2013 Sch 1 cl 16(12)	1.7.2014
	amended by 26/2014 s 64(7)	29.3.2015
s 3(5)	inserted by 12/2013 Sch 1 cl 16(12)	1.7.2014
s 5	amended by 12/2013 Sch 1 cl 17	1.7.2014
	amended by 26/2014 s 65	29.3.2015
Pt 2		
<i>Pt 2 Div 1 before deletion</i>		
<i>by 26/2014</i>		
<i>s 6</i>		
s 6(5)	<i>substituted by 73/2005 s 5</i>	15.12.2005
s 6(5a)	<i>inserted by 74/1998 s 2</i>	17.12.1998
<i>s 8</i>		
s 8(3)	<i>amended by 73/2005 s 6(1)</i>	15.12.2005
s 8(4)	<i>deleted by 73/2005 s 6(2)</i>	15.12.2005
<i>s 12</i>		
s 12(1) and (2)	<i>substituted by 73/2005 s 7</i>	15.12.2005
s 12(3)	<i>amended by 72/1999 s 4</i>	23.12.1999
<i>s 14</i>		
s 14(2)	<i>amended by 72/1999 s 19 (Sch)</i>	23.12.1999
s 14(7)	<i>substituted by 73/2005 s 8(1)</i>	15.12.2005
s 14(8)	<i>deleted by 73/2005 s 8(1)</i>	15.12.2005
s 14(9)	<i>amended by 17/2006 s 131</i>	4.9.2006
s 14(12a)	<i>inserted by 73/2005 s 8(2)</i>	15.12.2005
<i>s 15</i>		
s 15(6)	<i>amended by 72/1999 s 19 (Sch)</i>	23.12.1999
s 15A	<i>inserted by 72/1999 s 5</i>	25.11.2001
<i>Pt 2 Div 1</i>	<i>deleted by 26/2014 s 66</i>	29.3.2015
<i>Pt 2 Div 2 before deletion heading</i>	<i>amended by 72/1999 s 6</i>	25.11.2001
<i>by 26/2014</i>		
<i>s 17</i>		
s 17(2)	<i>amended by 34/2000 Sch 1 cl 8(b)</i>	6.7.2000
s 17(3)	<i>amended by 72/1999 s 7(b)</i>	25.11.2001
s 17A	<i>inserted by 72/1999 s 8</i>	25.11.2001

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<i>Pt 2 Div 2</i>	<i>deleted by 26/2014 s 66</i>	29.3.2015
<i>Pt 2 Div 3</i>		
s 21		
s 21(3)	inserted by 72/1999 s 9	23.12.1999
s 23		
s 23(1)	amended by 72/1999 s 10	23.12.1999
	amended by 34/2000 Sch 1 cl 8(c)	6.7.2000
<i>Pt 3 before deletion by 12/2013</i>		
s 25		
s 25(4)	<i>amended by 73/2005 s 9</i>	15.12.2005
s 25(5)	<i>substituted by 72/1999 s 11</i>	23.12.1999
<i>Pt 3</i>	<i>deleted by 12/2013 Sch 1 cl 18</i>	1.7.2014
<i>Pt 4</i>		
s 28		
s 28(1)	amended by 12/2013 Sch 1 cl 19	1.7.2014
	amended by 26/2014 s 67	29.3.2015
s 28(2) and (3)	amended by 26/2014 s 67	29.3.2015
s 29		
s 29(1)	amended by 12/2013 Sch 1 cl 20(1)	1.7.2014
	(b) deleted by 12/2013 Sch 1 cl 20(2)	1.7.2014
	amended by 26/2014 s 68	29.3.2015
s 29(2), (4) & (6)	amended by 26/2014 s 68	29.3.2015
s 29(2a)	inserted by 51/2017 s 107	14.12.2017
s 29(7)	inserted by 12/2013 Sch 1 cl 20(3)	1.7.2014
s 30	amended by 26/2014 s 69	29.3.2015
s 31	amended by 72/1999 s 12	23.12.1999
	amended by 26/2014 s 70	29.3.2015
s 31A	inserted by 12/2013 Sch 1 cl 21	1.7.2014
s 31A(2)	amended by 26/2014 s 71	29.3.2015
s 31B	inserted by 51/2017 s 108	14.12.2017
s 32		
s 32(a1)	inserted by 12/2013 Sch 1 cl 22(1)	1.7.2014
s 32(1)	amended by 72/1999 s 13(a)	23.12.1999
	amended by 73/2005 s 10	15.12.2005
	amended by 12/2013 Sch 1 cl 22(2)—(6)	1.7.2014
	amended by 26/2014 s 72(1), (2)	29.3.2015
s 32(1a)	inserted by 72/1999 s 13(b)	23.12.1999
s 32(2)	amended by 12/2013 Sch 1 cl 22(7)	1.7.2014
	amended by 26/2014 s 72(1)	29.3.2015
s 32(3)	amended by 8/1994 s 2	21.4.1994
	amended by 12/2013 Sch 1 cl 22(8)	1.7.2014
s 32(3a)	inserted by 26/2014 s 72(3)	29.3.2015

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s 32(4)	amended by 12/2013 Sch 1 cl 22(9), (10)	1.7.2014
s 32(5)	amended by 26/2014 s 72(1)	29.3.2015
s 32(7)	amended by 72/1999 s 19 (Sch)	23.12.1999
s 32(7a)	inserted by 26/2014 s 72(4)	29.3.2015
s 32(8)	inserted by 12/2013 Sch 1 cl 22(11)	1.7.2014
s 33		
s 33(1)	amended by 12/2013 Sch 1 cl 23(1), (2)	1.7.2014
	amended by 26/2014 s 73	29.3.2015
	(ca) deleted by 51/2017 s 109(1)	14.12.2017
	amended by 51/2017 s 109(2)	14.12.2017
s 33(1a)	inserted by 51/2017 s 109(3)	14.12.2017
s 33(2)	amended by 26/2014 s 73	29.3.2015
s 35		
s 35(1)	amended by 26/2014 s 74	29.3.2015
s 35(2)	amended by 12/2010 Sch 1 cl 5	20.12.2010
	amended by 26/2014 s 74	29.3.2015
s 35(4)	amended by 26/2014 s 74	29.3.2015
s 36	amended by 26/2014 s 75	29.3.2015
s 37		
s 37(1)	amended by 12/2013 Sch 1 cl 24(1), (2)	1.7.2014
	amended by 26/2014 s 76	29.3.2015
	(ca) deleted by 51/2017 s 110(1)	14.12.2017
	amended by 51/2017 s 110(2)	14.12.2017
s 37(1a)	inserted by 51/2017 s 110(3)	14.12.2017
s 37(2)	amended by 26/2014 s 76	29.3.2015
s 38	amended by 26/2014 s 77	29.3.2015
s 39		
s 39(2)	amended by 17/2006 s 132	4.9.2006
	amended by 43/2006 s 123(1), (2)	1.6.2007
s 39(3) and (4)	amended by 26/2014 s 78	29.3.2015
s 39(3a)	inserted by 51/2017 s 111	14.12.2017
s 40		
s 40(2)	amended by 72/1999 s 19 (Sch)	23.12.1999
s 40(3)	amended by 72/1999 s 19 (Sch)	23.12.1999
	amended by 26/2014 s 79	29.3.2015
s 41		
s 41(3)	amended by 26/2014 s 80	29.3.2015
s 42		
s 42(3)	amended by 26/2014 s 81	29.3.2015
s 44		
s 44(1)	amended by 26/2014 s 82	29.3.2015
	substituted by 51/2017 s 112(1)	14.12.2017
s 44(2)	amended by 72/1999 s 19 (Sch)	23.12.1999

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s 44(3)—(6)	amended by 26/2014 s 82	29.3.2015
s 44(7)	amended by 26/2014 s 82	29.3.2015
	amended by 51/2017 s 112(2), (3)	14.12.2017
s 45		
s 45(1)—(4)	amended by 26/2014 s 83	29.3.2015
s 46		
s 46(1)—(3)	amended by 26/2014 s 84	29.3.2015
s 49	amended by 26/2014 s 85	29.3.2015
s 50		
s 50(1)	amended by 26/2014 s 86	29.3.2015
s 53	<i>deleted by 26/2014 s 87</i>	29.3.2015
s 54		
s 54(1) and (2)	amended by 26/2014 s 88	29.3.2015
s 55		
s 55(1) and (3)	amended by 26/2014 s 89	29.3.2015
s 56		
s 56(1) and (2)	amended by 26/2014 s 90	29.3.2015
s 57		
s 57(1)—(4)	amended by 26/2014 s 91(1)	29.3.2015
s 57(5)	inserted by 25/2014 s 91(2)	29.3.2015
Pt 5		
heading	amended by 12/2013 Sch 1 cl 25	1.7.2014
s 58	<i>substituted by 26/1995 Sch 3 cl 3(b)</i>	30.11.1995
	<i>amended by 72/1999 s 14</i>	23.12.1999
	<i>deleted by 12/2013 Sch 1 cl 26</i>	1.7.2014
<i>s 59 before deletion by 12/2013</i>		
s 59(2)	<i>amended by 72/1999 s 15(a), (b)</i>	23.12.1999
s 59(3)	<i>amended by 72/1999 s 15(c)</i>	23.12.1999
s 59	<i>deleted by 12/2013 Sch 1 cl 26</i>	1.7.2014
s 60	<i>amended by 72/1999 ss 16, 19 (Sch)</i>	23.12.1999
	<i>deleted by 12/2013 Sch 1 cl 26</i>	1.7.2014
s 61		
s 61(1)	amended by 26/1995 Sch 3 cl 3(c)	30.11.1995
	amended by 72/1999 s 19 (Sch)	23.12.1999
	amended by 12/2013 Sch 1 cl 27(1)	1.7.2014
	amended by 26/2014 s 92	29.3.2015
s 61(2)—(4)	amended by 26/2014 s 92	29.3.2015
s 61(5)	amended by 12/2013 Sch 1 cl 27(2)	1.7.2014
	amended by 26/2014 s 92	29.3.2015
s 61(6)	amended by 26/2014 s 92	29.3.2015
s 62	<i>deleted by 26/1995 Sch 3 cl 3(d)</i>	30.11.1995
s 63		

s 63(1) and (2)	amended by 26/2014 s 93	29.3.2015
s 64	amended by 51/2017 s 113	14.12.2017
<i>Pt 6 before substitution by 26/2014</i>		
<i>heading</i>	<i>substituted by 17/2006 s 133</i>	4.9.2006
<i>Pt 6 Div 1</i>		
<i>heading</i>	<i>substituted by 17/2006 s 134</i>	4.9.2006
s 65	<i>amended by 4/2000 s 9(1) (Sch 1 cl 17(a))</i>	1.6.2000
	<i>amended by 17/2006 s 135</i>	4.9.2006
<i>Pt 6 Div 2</i>	<i>heading amended by 4/2000 s 9(1) (Sch 1 cl 17(b))</i>	1.6.2000
s 66		
s 66(1)	<i>amended by 4/2000 s 9(1) (Sch 1 cl 17(c))</i>	1.6.2000
s 66(1a)	<i>inserted by 4/2000 s 9(1) (Sch 1 cl 17(d))</i>	1.6.2000
s 66(2)	<i>amended by 4/2000 s 9(1) (Sch 1 cl 17(e))</i>	1.6.2000
s 66(4)	<i>amended by 73/2005 s 11(1)</i>	15.12.2005
s 66(5)	<i>deleted by 73/2005 s 11(2)</i>	15.12.2005
s 66(6)	<i>substituted by 4/2000 s 9(1) (Sch 1 cl 17(f))</i>	1.6.2000
s 66(7)	<i>amended by 4/2000 s 9(1) (Sch 1 cl 17(g))</i>	1.6.2000
s 66(8)	<i>amended by 4/2000 s 9(1) (Sch 1 cl 17(h))</i>	1.6.2000
s 66(9)	<i>amended by 4/2000 s 9(1) (Sch 1 cl 17(i))</i>	1.6.2000
s 67		
s 67(1)	<i>amended by 4/2000 s 9(1) (Sch 1 cl 17(j))</i>	1.6.2000
	<i>amended by 17/2006 s 136(1)</i>	4.9.2006
s 67(3)	<i>amended by 17/2006 s 136(2)</i>	4.9.2006
s 67(6)	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 17(k))</i>	1.6.2000
s 67(7)	<i>amended by 4/2000 s 9(1) (Sch 1 cl 17(j))</i>	1.6.2000
	<i>amended by 17/2006 s 136(3)</i>	4.9.2006
s 67(8)	<i>amended by 4/2000 s 9(1) (Sch 1 cl 17(j))</i>	1.6.2000
s 67(10) and (11)	<i>amended by 4/2000 s 9(1) (Sch 1 cl 17(j))</i>	1.6.2000
s 67(12)	<i>amended by 4/2000 s 9(1) (Sch 1 cl 17(j))</i>	1.6.2000
	<i>amended by 17/2006 s 136(4)</i>	4.9.2006
s 67(13)—(15)	<i>amended by 4/2000 s 9(1) (Sch 1 cl 17(j))</i>	1.6.2000
s 67(15a)	<i>inserted by 4/2000 s 9(1) (Sch 1 cl 17(l))</i>	1.6.2000
s 67(16)	<i>amended by 4/2000 s 9(1) (Sch 1 cl 17(j))</i>	1.6.2000
s 68	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 17(m))</i>	1.6.2000
s 69	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 17(n))</i>	1.6.2000
s 70		
s 70(1)	<i>amended by 4/2000 s 9(1) (Sch 1 cl 17(o), (p))</i>	1.6.2000
	<i>amended by 17/2006 s 137(2)</i>	4.9.2006
s 70(2)	<i>amended by 4/2000 s 9(1) (Sch 1 cl 17(o), (q))</i>	1.6.2000
	<i>amended by 17/2006 s 137(2)</i>	4.9.2006
s 71	<i>amended by 4/2000 s 9(1) (Sch 1 cl 17(r))</i>	1.6.2000

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	<i>amended by 17/2006 s 138</i>	4.9.2006
s 72		
s 72(1)	<i>amended by 4/2000 s 9(1) (Sch 1 cl 17(s))</i>	1.6.2000
s 73		
s 73(1)	<i>amended by 4/2000 s 9(1) (Sch 1 cl 17(t))</i>	1.6.2000
	<i>amended by 17/2006 s 139</i>	4.9.2006
s 73(3)	<i>amended by 34/2000 Sch 1 cl 8(d)</i>	6.7.2000
Pt 6	substituted by 26/2014 s 94	29.3.2015
Pt 6A	inserted by 26/2014 s 94	29.3.2015
Pt 7		
s 74		
s 74(1)	amended by 26/2014 s 95	29.3.2015
s 74(2)	amended by 17/2006 s 140	4.9.2006
	amended by 26/2014 s 95	29.3.2015
s 74(3)	amended by 26/2014 s 95	29.3.2015
s 76	amended by 72/1999 s 19 (Sch)	23.12.1999
<b>s 76A</b>	<b>inserted by 70/2017 s 10</b>	<b>1.3.2018</b>
s 77		
s 77(1)—(4)	amended by 72/1999 s 19 (Sch)	23.12.1999
s 78	amended by 43/2006 s 124	1.6.2007
<i>s 79 before deletion by 12/2013</i>		
s 79(1)	<i>amended by 72/1999 s 19 (Sch)</i>	23.12.1999
s 79	<i>deleted by 12/2013 Sch 1 cl 28</i>	1.7.2014
s 80		
s 80(1)	amended by 72/1999 s 19 (Sch)	23.12.1999
s 81		
s 81(1) and (3)	amended by 72/1999 s 19 (Sch)	23.12.1999
s 82	substituted by 26/2014 s 96	29.3.2015
s 83	<i>deleted by 84/2009 s 173</i>	1.2.2010
s 84	<i>deleted by 26/2014 s 97</i>	29.3.2015
s 86	<i>amended by 75/1997 s 2</i>	18.12.1997
	<i>amended by 74/1998 s 3</i>	17.12.1998
	<i>deleted by 72/1999 s 17</i>	23.12.1999
Sch	substituted by 72/1999 s 18	23.12.1999
	<i>deleted by 12/2013 Sch 1 cl 29</i>	1.7.2014

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## Transitional etc provisions associated with Act or amendments

### *Guardianship and Administration (Miscellaneous) Amendment Act 1999*

#### 20—Transitional provision

- (1) The person who, immediately before the commencement of this section, held office as the Registrar under the principal Act, will, on that commencement, be taken to have vacated that office and to have been appointed as Executive Officer of the Board under the Act.
- (2) The transfer effected by subsection (1) does not affect the person's salary or any other benefits or accrued or accruing rights in respect of employment.

### *Advance Care Directives Act 2013, Sch 1—Transitional provisions*

#### 35—Transitional provisions relating to enduring guardians under *Guardianship and Administration Act 1993*

- (1) An instrument appointing an enduring guardian under section 25 of the *Guardianship and Administration Act 1993* that is in force immediately before the commencement of clause 18 of this Schedule will, on the commencement of that clause, be taken to be an advance care directive given in accordance with this Act.

**Note—**

See also clause 36.

- (2) A provision of such an instrument appointing an enduring guardian of a kind contemplated by section 6 or 12(1) of this Act will be taken to be void and of no effect.
- (3) An advance care directive contemplated by this clause—
  - (a) will be taken to have been given by the person who appointed the enduring guardian; and
  - (b) will be taken to appoint each enduring guardian appointed by the instrument as a substitute decision-maker under the advance care directive; and
  - (c) will be taken to contain such provisions as may be necessary to enable each substitute decision-maker to make any decision he or she could have made as the person's enduring guardian (but no other provision).
- (4) Any condition or limitation contained in the instrument appointing the enduring guardian will be taken to apply to an advance care directive contemplated by this section.
- (5) The instrument by which the enduring guardian was appointed will, for all purposes, be taken to be an advance care directive form.
- (6) A reference in any instrument or document to an enduring guardian appointed under section 25 of the *Guardianship and Administration Act 1993* (however described) will be taken to be a reference to the advance care directive contemplated by this clause.

### 36—Only 1 advance care directive to be created

- (1) If 2 or more of clauses 32, 33, 34 or 35 apply in respect of a particular person, the person will, for the purposes of this or any other Act, be taken to have given 1 advance care directive containing, or subject to, the relevant provisions (in addition to any other applicable provisions under this Act).
- (2) In this clause—

*relevant provisions* means—

  - (a) if clause 32 applies in respect of the person—clause 32(2), (3) and (4); and
  - (b) if clause 33 applies in respect of the person—clause 33(2), (3) and (4); and
  - (c) if clause 34 applies in respect of the person—clause 34(2), (3) and (4); and
  - (d) if clause 35 applies in respect of the person—clause 35(2), (3) and (4).

### 37—Disputes

A dispute arising out of the operation of this Schedule will be taken to be a matter to which Part 7 of this Act applies.

### *Statutes Amendment (SACAT) Act 2014*

### 98—Transitional provisions

- (1) In this section—

*Guardianship Board* means the Guardianship Board under the principal Act;  
*principal Act* means the *Guardianship and Administration Act 1993*;  
*relevant day* means the day on which this Part comes into operation;  
*Tribunal* means the South Australian Civil and Administrative Tribunal.
- (2) A direction of the Guardianship Board under section 28(1) of the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a direction of the Tribunal (with a report of any investigation completed on or after the relevant day being furnished to the Tribunal rather than the Guardianship Board).
- (3) An order of the Guardianship Board under Part 3 Division 2 or Division 3 of the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be an order of the Tribunal.
- (4) A direction or determination of the Guardianship Board under the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a direction or determination of the Tribunal.
- (5) A right to make any application or referral, or to seek a review, with respect to any matter in existence before the relevant day, with the effect that the relevant proceedings would have been commenced before the Guardianship Board, will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced instead before the Tribunal.

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- (6) Any proceedings before the Guardianship Board under the principal Act immediately before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been commenced before that Tribunal.
- (7) The Tribunal may—
- (a) receive in evidence any transcript of evidence in proceedings before the Guardianship Board, and draw any conclusions of fact from that evidence that appear proper; and
  - (b) adopt any findings or determinations of the Guardianship Board that may be relevant to proceedings before the Tribunal; and
  - (c) adopt or make any decision (including a decision in the nature of a determination), direction or order in relation to proceedings before the Guardianship Board before the relevant day (including so as to make a decision or determination, or a direction or order, in relation to proceedings fully heard before the relevant day); and
  - (d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.
- (8) Nothing in this section affects a right to appeal to the Administrative and Disciplinary Division of the District Court (as constituted in the manner contemplated by the principal Act before its amendment by this Act) against a decision, direction or order of the Guardianship Board made or given before the relevant day.
- (9) The Guardianship Board is dissolved by force of this subsection.
- (10) A member of the Guardianship Board holding office when subsection (9) comes into operation will cease to hold office at that time and any contract of employment, agreement or arrangement relating to the office held by that member is terminated by force of this subsection at the same time (but any such termination will not affect any right of action that a person may have against a Minister or the State on account of that termination).

## Historical versions

Reprint No 1—21.4.1994

Reprint No 2—30.11.1995

Reprint No 3—18.12.1997

Reprint No 4—17.12.1998

Reprint No 5—23.12.1999

Reprint No 6—1.6.2000

Reprint No 7—6.7.2000

Reprint No 8—25.11.2001

15.12.2005

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1.6.2007

1.2.2010

20.12.2010

1.7.2014

## **Guardianship and Administration Act 1993—1.3.2018**

Legislative history

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29.3.2015

14.12.2017