

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.

Contents

Part 1—Preliminary

- 1 Short title
- 3 Interpretation
- 4 Interaction of this Act with other Acts
- 5 Principles to be observed

Part 2—Administration

Division 1—The Guardianship Board

- 6 Establishment and constitution of Board
- 7 President and Deputy Presidents
- 8 Panels
- 9 Vacancies in office of President or Deputy President or on panels
- 10 Allowances and expenses
- 11 Validity of acts of the Board
- 12 Decisions of Board
- 13 Board may appoint assistants
- 14 Powers and procedures of Board
- 15 Board may require reports
- 15A Mediation
- 16 Annual report by Board

Division 2—Officers of the Board

- 17 The Registrar
- 17A Executive Officer

Division 3—The Public Advocate

- 18 The Public Advocate
- 19 Appointment of Public Advocate
- 20 Term of office of Public Advocate etc
- 21 General functions of Public Advocate
- 22 Public Advocate may raise matters with the Minister and the Attorney-General
- 23 Delegation by Public Advocate
- 24 Annual report

Part 4—Orders for guardianship or administration

Division 1—Investigations

- 28 Investigations by Public Advocate

Division 2—Guardianship orders

- 29 Guardianship orders
30 Variation or revocation of guardianship order
31 Powers of guardian
31A Guardian to give effect to advance care directive
32 Special powers to place and detain certain persons
33 Applications under this Division
34 Reciprocal guardianship arrangements

Division 3—Administration orders

- 35 Administration orders
36 Variation or revocation of administration order
37 Applications under this Division
38 Copy of order must be forwarded to Public Trustee
39 Powers and duties of administrator
40 Administrator's access to wills and other records
41 Power of administrator to continue to act after death etc of protected person
42 Power of administrator to avoid dispositions and contracts of protected person
43 Where administration has disturbed entitlements of beneficiaries, the Supreme Court has power to intervene
44 Reporting requirements for private administrators
45 Reporting by Public Trustee
46 Remuneration of professional administrators
47 Registration of administration orders
48 Reciprocal administration powers with certain states

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

- 49 Withdrawal of applications
50 Criteria for determining suitability for appointment
51 Consent to appointment
52 Joint appointments
53 Commencement of orders
54 Termination of appointment
55 Board must give statement of appeal rights
56 Restriction of testamentary capacity of protected person
57 Review of Board's orders

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

- 61 Prescribed treatment not to be carried out without Board's consent
63 Board's consent must be in writing

Part 6—Appeals and references of questions of law

Division 1—Review of Registrar's decisions and references of questions of law

- 64 Decisions of the Registrar are subject to review
 65 Question of law may be referred to Supreme Court

Division 2—Appeals to the Administrative and Disciplinary Division of the District Court

- 66 Constitution of ADD
 67 Appeal from decisions of Board

Division 3—Appeals to the Supreme Court

- 70 Appeals from decisions of ADD
 71 Method of conducting appeal

Division 4—General provisions

- 72 Operation of orders pending appeal
 73 Representation on appeals

Part 7—Miscellaneous

- 74 Board may give advice, direction or approval
 75 Administrators and guardians to keep each other informed
 76 Illtreatment or neglect of person with mental incapacity
 77 Offences in relation to certain certificates and reports
 78 Medical practitioner, psychologist or other health professional cannot act under this Act in respect of a relative
 80 Duty to maintain confidentiality
 81 Prohibition of publication of reports of proceedings
 82 Service of notices
 84 Evidentiary provisions
 85 Regulations

Legislative history

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;

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;

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 Board 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 Board as a person who is qualified to act as an advocate in proceedings before the Board 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;

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 Board 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 Board 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 Board 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 Board 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 Board 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 1—The Guardianship Board

6—Establishment and constitution of Board

- (1) The *Guardianship Board* is established.
- (2) Subject to this section, the Board will be constituted in relation to the hearing of any proceedings or the conduct of any other business of the following members:
 - (a) the President or a Deputy President; and
 - (b) a member of the panel constituted under section 8(1) and selected by the President or a Deputy President to be a member of the Board for the purpose of the hearing of those proceedings or the conduct of that business; and
 - (c) a member of the panel constituted under section 8(2) and selected by the President or a Deputy President to be a member of the Board for the purpose of those proceedings or that business.
- (3) Members who constitute the Board for the purpose of hearing appeals from decisions or orders under the *Mental Health Act 1993* will sit exclusively in that jurisdiction.
- (4) In selecting members from the panel constituted under section 8(1) for the purposes of an appeal or other proceedings under the *Mental Health Act 1993*, the President or Deputy President must select a psychiatrist.
- (5) The regulations may provide that, in relation to the exercise of specified functions or matters of a specified class, the Board may be constituted of—
 - (a) the President, a Deputy President, or a member of a panel, sitting alone; or
 - (b) any 2 members sitting together as follows:
 - (i) the President, or a Deputy President, and a member of a panel;
 - (ii) 2 members of the same panel;
 - (iii) 1 member from each panel.
- (5a) If—
 - (a) the President, a Deputy President, or a member of a panel sitting alone purported, before the commencement of this subsection, to exercise powers of the Board by making a guardianship order or an administration order; and
 - (b) the Board, if constituted in accordance with subsection (2), could have validly made the order,the purported order is (and is taken always to have been) a valid order of the Board.
- (6) A member of a panel who has a personal interest or a direct or indirect pecuniary interest in a matter before the Board is disqualified from participating in the hearing of the matter.

- (7) If a member of a panel on the Board dies or is for any other reason unable to continue with any proceedings before the Board, the Board constituted of the President or Deputy President who is presiding over the proceedings and the other panel member may, if the President or Deputy President so determines, continue and complete the proceedings.
- (8) The Board, separately constituted in accordance with this section, may sit simultaneously for the purpose of hearing and determining separate proceedings or conducting separate business of the Board.

7—President and Deputy Presidents

- (1) There will be—
 - (a) a President of the Board; and
 - (b) such number of Deputy Presidents of the Board as the Minister thinks necessary or desirable for the purpose of the Board performing its functions properly and expeditiously.
- (2) The President and Deputy Presidents will be appointed by the Governor on terms and conditions fixed by the Governor.
- (3) The President and Deputy Presidents will be appointed for a term of office of five years and, on expiry of any such term, will be eligible for reappointment.
- (4) A person is not eligible for appointment as the President or a Deputy President unless he or she is—
 - (a) a magistrate; or
 - (b) a legal practitioner of not less than five years' standing (which may include legal practice in another State or Territory); or
 - (c) a person who has retired from judicial or magisterial office held in this State or any other State or Territory.
- (5) If the President is absent or unable to act, a Deputy President nominated by the Minister may act in the office of President.

8—Panels

- (1) The Governor may establish a panel consisting of persons from such professions as the Governor thinks relevant.
- (2) The Governor may establish a panel consisting of persons with expertise in representing or promoting the interests of mentally incapacitated persons or with expertise in such other fields as the Governor thinks relevant.
- (3) A member of a panel will be appointed for a term of office, not exceeding three years, specified in the instrument of appointment and will be eligible for reappointment on the expiry of any such term.
- (5) The Governor may make appointments from time to time for the purpose of maintaining or increasing the membership of panels established under this section.

9—Vacancies in office of President or Deputy President or on panels

- (1) The Governor may remove the President, a Deputy President or a member of a panel from office for—
 - (a) mental or physical incapacity to carry out official duties satisfactorily; or
 - (b) neglect of duty; or
 - (c) dishonourable conduct.
- (2) A person ceases to be the President, a Deputy President or a member of a panel if the person—
 - (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by notice in writing addressed to the Minister; or
 - (d) is removed from office under subsection (1).

10—Allowances and expenses

A member of the Board or a panel is entitled to such allowances and expenses as the Governor may from time to time determine.

11—Validity of acts of the Board

An act or proceeding of the Board is not invalid only by virtue of a vacancy in the membership of, or a defect in the appointment of a person to, the Board or a panel from which members of the Board are drawn.

12—Decisions of Board

- (1) In proceedings before the Board under this Act or any other Act—
 - (a) if the Board is constituted of 2 or more members (1 of whom is the President or a Deputy President)—
 - (i) the President or Deputy President will preside; and
 - (ii) any question of law or procedure will be determined by the President or Deputy President; and
 - (iii) any other question will be determined by unanimous or majority decision of the members;
 - (b) if the Board is constituted of 2 or more panel members—
 - (i) the President or a Deputy President will nominate 1 of the members to preside; and
 - (ii) any question of law that arises must be referred to the President or a Deputy President for decision (and a decision made on the reference is a decision of the Board); and
 - (iii) any other question will be determined by unanimous or majority decision of the members;

- (c) if the Board is constituted of a panel member sitting alone—any question of law that arises must be referred to the President or a Deputy President for decision (and a decision made on the reference is a decision of the Board).
- (2) If the Board when constituted of 2 or more members is unable to reach a decision on a question (other than a question of law or procedure) before the Board, the decision of the presiding member will prevail as the decision of the Board.
- (3) The Board must act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms and is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.

13—Board may appoint assistants

The Board may, for the purpose of any particular proceedings, appoint such person or persons to assist it in conducting (but not determining) those proceedings as the Board thinks fit.

14—Powers and procedures of Board

- (1) The Board may, for the purposes of proceedings before the Board (whether under this Act or any other Act)—
 - (a) by summons signed on behalf of the Board by a member of the Board or the Registrar, require the attendance of a person before the Board; or
 - (b) by summons signed on behalf of the Board by a member of the Board or the Registrar, require the production to the Board of any relevant books, papers or documents; or
 - (c) inspect any books, papers or documents so produced and retain them for such reasonable period as it thinks fit and makes copies of any of them or any of their contents; or
 - (d) require any person to make an oath or affirmation to answer truthfully all questions put by a member of the Board, or a person assisting or appearing before the Board, relating to a matter before the Board; or
 - (e) require any person appearing before the Board to answer any relevant questions put by a member of the Board or by a person assisting or appearing before the Board.
- (2) Subject to subsection (3), a person who—
 - (a) has been served with a summons to appear before the Board and fails, without reasonable excuse, to attend in obedience to the summons; or
 - (b) has been served with a summons to produce books, papers or documents and fails, without reasonable excuse, to comply with the summons; or
 - (c) wilfully insults the Board, any member of the Board or a person assisting the Board, or disrupts the proceedings of the Board; or
 - (d) refuses to be sworn or to affirm, or to answer any relevant question when required to do so by the Board,

is guilty of an offence.

Maximum penalty: \$10 000.

- (3) A person who appears as a witness before the Board or produces books, papers or documents to the Board has the same protection as a witness in proceedings before the District Court.
- (4) Subject to subsection (5), the Board must give the following persons reasonable notice of the time and place of the hearing of the proceedings:
- (a) the applicant; and
 - (b) the person to whom the proceedings relate; and
 - (c) the Public Advocate; and
 - (d) such other persons as the Board believes have a proper interest in the matter.
- (5) The Board is not obliged to give notice of proceedings to a person whose whereabouts cannot, after reasonable enquiries, be ascertained.
- (6) The Board—
- (a) must give the applicant and the person to whom the proceedings relate a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions to the Board; and
 - (b) must give any other person—
 - (i) to whom notice of the proceedings was given; or
 - (ii) who satisfies the Board that he or she has a proper interest in the matter,a reasonable opportunity to make submissions to the Board.
- (7) Despite subsections (4) and (6), the Board may, if satisfied that urgent action is required in proceedings before the Board, make an order as a matter of urgency without complying with those subsections, with effect as follows:
- (a) if it is an order under section 32(1)—for a period not exceeding 14 days as directed by the Board;
 - (b) in the case of any other order—for a period not exceeding 21 days as directed by the Board.
- (9) A person is entitled to appear before the Board—
- (a) personally or by counsel; or
 - (b) if he or she is the person the subject of the proceedings—
 - (i) by the Public Advocate; or
 - (ii) except where the proceedings are appeal proceedings—by a recognised advocate; or
 - (c) with the permission of the Board, by any other representative.
- (10) Subject to subsection (11), hearings before the Board are open hearings.
- (11) In any proceedings before the Board, the Board has an absolute discretion—
- (a) to direct that no person other than—
 - (i) the person to whom the proceedings relate and any person representing him or her in the proceedings; and

- (ii) witnesses or persons making submissions (while giving evidence or making those submissions); and
 - (iii) officers of the Board or persons assisting the Board,
 - be present in the room while the proceedings are being heard; or
 - (b) to direct that a particular person (other than a person referred to in paragraph (a)) not be present in the room while the proceedings are being heard.
- (12) The Board may make a determination in any proceedings in the absence of a party to the proceedings if satisfied that the party was given reasonable opportunity to appear but failed to do so.
- (12a) The Board may, if satisfied that there is reason to adjourn proceedings before the Board, adjourn the proceedings and make such other orders as are necessary or appropriate in the circumstances.
- (13) The Registrar must, on the request of a person who has a right of appeal against a decision of the Board, or who satisfies the Registrar that he or she has a proper interest in the matter, furnish the person with a written statement of the Board's reasons for that decision, but only if the request is made within three months of the date of the decision.

15—Board may require reports

- (1) The Board may require the person the subject of proceedings before the Board to submit to the Board 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 Board for examination and assessment, the cost of which will be borne by the Board.
- (3) The powers under subsection (2) cannot be exercised except on the authority of a warrant issued by the President of the Board or a Deputy President of the Board.
- (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.

15A—Mediation

- (1) The Registrar may, on his or her own initiative, provide preliminary assistance in resolving any proceedings before the Board, including—
 - (a) ensuring that the parties to the proceedings are fully aware of their rights and obligations; and
 - (b) identifying the issues (if any) that are in dispute between any of the parties to the proceedings; and
 - (c) canvassing options that may obviate the need to continue the proceedings; and
 - (d) where appropriate, facilitating full and open communication between the parties to the proceedings.
- (2) Before or during the hearing of any proceedings before the Board, the Board, the President or a Deputy President may, with or without the consent of the parties to the proceedings, refer the proceedings or any issues arising in the proceedings to the Registrar for mediation.
- (3) The Registrar has, for the purposes of a mediation under subsection (2), the privileges and immunities of a member of the Board and such of the powers of the Board as the Board may delegate.
- (4) The Board may itself endeavour to achieve a negotiated settlement of any proceedings or resolution of issues arising in any proceedings.
- (5) A member of the Board involved in an attempt to settle proceedings or to resolve any issues arising in proceedings is not disqualified from taking further part in the proceedings.
- (6) Evidence of anything said or done in an attempt under this section to settle proceedings or resolve any issues arising in proceedings is not subsequently admissible in the proceedings or in related proceedings except by consent of all parties to the proceedings.
- (7) Where a matter is settled under this section, the Board may embody the terms of the settlement in an order.

16—Annual report by Board

- (1) The Board must, not later than 30 September in each year, furnish the Minister with a report on the performance by the Board of its functions during the year ending on the previous 30 June.
- (2) A report furnished under this section must include prescribed particulars of all warrants issued under this Act by the President or Deputy Presidents 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.

Division 2—Officers of the Board

17—The Registrar

- (1) There will be a Registrar of the Board.

- (2) The Registrar will be a Public Service employee.
- (3) The Registrar—
 - (a) has the powers and functions conferred or assigned by this Act or any other Act; and
 - (b) may, with the approval of the President of the Board, exercise the jurisdiction of the Board in relation to matters of a prescribed class.
- (4) Where the Registrar exercises the jurisdiction of the Board in respect of a matter, the Registrar may, and must if the President so directs, refer the matter to the Board for determination by the Board.

17A—Executive Officer

- (1) There will be an Executive Officer of the Board.
- (2) The Executive Officer will be a Public Service employee.
- (3) The Executive Officer is responsible for managing the day-to-day business of the Board.

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 Board 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 Board under the *Advance Care Directives Act 2013*.
- (2) On completing an investigation carried out at the direction of the Board, the Public Advocate must furnish the Board with a copy of the report of the investigation.
- (3) The Board 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 Board 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 Board 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 Board 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 Board specifies the particular aspects of the protected person's care or welfare that are to be the responsibility of the appointed guardian or guardians.
- (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 Board 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 Board 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 Board 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 Board'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 Board 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.

32—Special powers to place and detain certain 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 Board, 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,according to the terms of the Board'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
 - (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 Board 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.

- (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 Board 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.
- (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
 - (ca) a person responsible for the person; or
 - (d) an administrator of the person's estate; or

- (e) any other person who satisfies the Board that he or she has a proper interest in the welfare of the person.
- (2) Applications under this Division must be made in the manner and form determined by the Board.

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 Board 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 Board 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 Board 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 Board 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 Board thinks necessary or desirable for the proper administration of the estate and specifies in the order.

36—Variation or revocation of administration order

The Board 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
 - (ca) a person responsible for the person; or
 - (d) an administrator of the person's estate; or
 - (e) any other person who satisfies the Board that he or she has a proper interest in the welfare of the person.
- (2) Applications under this Division must be made in the manner and form determined by the Board.

38—Copy of order must be forwarded to Public Trustee

The Board 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
 - (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 Board.
- (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 Board.
- (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 Board, 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 Board 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 Board 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 Board may, by order, exempt a disposition of property or contract from the operation of this section if the Board 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 provide the Board and the Public Trustee, at such times as the Board determines, 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 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 Board or the Public Trustee may require.
- (4) The Public Trustee must examine and report to the Board 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 Board 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 Board.

- (5) The Board, after considering a recommendation for the disallowance of an item of expenditure and hearing the administrator and any other person the Board 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 Board 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 Board.
- (7) The Board must allow the protected person or, if the protected person does not, in the opinion of the Board, have the mental capacity to comprehend the contents, such other person or persons as the Board thinks appropriate, to have access to and to take a copy of—
- (a) a statement of accounts furnished by an administrator under this section; and
 - (b) if those accounts are audited, the accounts as so audited; and
 - (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 Board, furnish the Board 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 Board may require.
- (2) The Board may, by notice in writing addressed to the Public Trustee, disallow any item of expenditure shown in the statement of accounts if the Board 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 Board 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 Board must allow the protected person or, if the protected person does not, in the opinion of the Board, have the mental capacity to comprehend the contents, such other person or persons as the Board 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 Board so determines.

- (2) The rate of remuneration will be the prescribed rate unless the Board 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 Board 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 Board.

50—Criteria for determining suitability for appointment

- (1) In determining the suitability of a person for appointment as a guardian or administrator, the Board 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 Board 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.

53—Commencement of orders

An order of the Board is operative on and from the day on which it is made unless the Board specifies in the order that it is to operate from some future specified date.

54—Termination of appointment

- (1) The appointment of a person as a guardian or administrator terminates if—
 - (a) the person dies; or
 - (b) the Board revokes the guardianship or administration order on an application under Division 2 or 3; or

- (c) the Board revokes his or her appointment on an application under Division 2 or 3.
- (2) The Board 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 Board 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—Board must give statement of appeal rights

- (1) On making any decision or order under this Act in relation to a person, the Board 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 Board 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 Board may direct that any testamentary provisions by a protected person be made only after compliance with such precautions as the Board thinks fit to direct.
- (2) If, after the Board 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 Board's orders

- (1) The Board 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 Board—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 Board may conduct a review in such manner as it thinks fit.
- (3) The Board must, on completion of a review, revoke the order or orders to which the protected person is subject unless the Board is satisfied that there are proper grounds for the order or orders remaining in force.
- (4) If the Board is satisfied that there are proper grounds for an order remaining in force, the Board may, by order, vary the terms of the order.

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

61—Prescribed treatment not to be carried out without Board'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 Board's consent; and
- (b) otherwise than in accordance with the regulations.

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

- (2) The Board 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 Board 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 Board 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 Board 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 Board on the matter, but the Board 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 Board 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—Board's consent must be in writing

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

Part 6—Appeals and references of questions of law

Division 1—Review of Registrar's decisions and references of questions of law

64—Decisions of the Registrar are subject to review

- (1) Where the Registrar makes a decision or order in exercising the jurisdiction of the Board, a party to the proceedings may, within one month of the date of the decision or order, apply to the Board for a review of the decision or order.
- (2) Subject to subsection (3), a decision or order of the Registrar continues to operate notwithstanding the right to have it reviewed or the institution of a review.
- (3) The operation of a decision or order of the Registrar against which a review has been instituted may, on application, be suspended by the Registrar or the Board, if either thinks special reason exists for doing so.
- (4) The Board, on reviewing a decision or order under this section, may, by order, confirm, vary or set aside the decision or order.

65—Question of law may be referred to Supreme Court

The Board may refer any question of law for the opinion of the Supreme Court.

Division 2—Appeals to the Administrative and Disciplinary Division of the District Court

66—Constitution of ADD

- (1) The Administrative and Disciplinary Division of the District Court (the *ADD*) will, in exercising its jurisdiction under this Act, sit with assessors selected under this section.
- (1a) However, if the ADD is of the opinion that the delay likely to be consequent on convening assessors in any particular case would prejudice the proper administration of justice in the matter, the ADD may hear and determine the appeal without assessors.
- (2) The Governor will establish a panel of persons to act as assessors, being persons whose expertise is, in the opinion of the Governor, appropriate to the jurisdiction of the ADD under this Act.
- (3) The Governor will establish a panel of persons to act as assessors, being persons with expertise in representing or promoting the interests of mentally incapacitated persons or with expertise in such other fields as the Governor thinks relevant.
- (4) A person appointed to a panel under this section—
 - (a) will be appointed to office for such term, not exceeding three years, as is specified in the instrument of appointment; and
 - (b) will hold office on such other terms and conditions as the Governor may determine; and
 - (c) is, on the expiration of a term of office, eligible for reappointment.
- (6) Subject to subsection (7), where proceedings are brought before the ADD under this Act, a Judge of the District Court will select a member from each of the panels to sit with the ADD as assessors in the proceedings.
- (7) A member of a panel who has a personal interest or a direct or indirect pecuniary interest in a matter before the ADD is disqualified from participating in the hearing of the matter.
- (8) In selecting a member from the panel established under subsection (2) for the purposes of an appeal against a decision or order of the Board under the *Mental Health Act 1993*, the Judge must select a psychiatrist.
- (9) If an assessor dies or is for any other reason unable to continue with any proceedings under this Act, the ADD constituted of the Judge who is presiding at those proceedings and the other assessor may, if the Judge so determines, continue and complete the proceedings.

67—Appeal from decisions of Board

- (1) If—
 - (a) the applicant in proceedings before the Board (whether under this Act, the *Mental Health Act 1993* or any other Act); or

- (b) the person to whom those proceedings relate; or
- (c) the Public Advocate; or
- (d) any person who gave evidence before or made submissions to the Board in those proceedings; or
- (e) any other person who satisfies the Board or the ADD that he or she has a proper interest in the matter,

is dissatisfied with a decision, direction or order of the Board made in those proceedings, he or she may—

- (f) in the case of a decision or order for or affirming the detention of a person or relating to the giving of consent to a sterilisation or a termination of pregnancy—appeal to the ADD against the decision or order;
 - (g) in any other case—with the permission of the Board or the ADD, appeal to the ADD against the decision, direction or order.
- (2) Notwithstanding subsection (1), a right of appeal does not lie against—
- (a) a decision of the Board not to authorise publication of a report of proceedings before the Board; or
 - (b) a decision or order made by the Registrar in exercising the jurisdiction of the Board.
- (3) An application for permission to appeal under this section must be instituted—
- (a) within 28 days of the making of the decision, direction or order the subject of the application; or
 - (b) within 28 days of being furnished, pursuant to a request made within seven days of the making of the decision, direction or order, with the reasons for the decision, direction or order; or
 - (c) within seven days of permission to appeal being refused by the Board,
- whichever is the later.
- (4) An appeal against an order of the Board for or affirming the detention of a person or relating to the giving of consent to a sterilisation must be instituted—
- (a) within 28 days of the making of the order; or
 - (b) within 28 days of being furnished, pursuant to a request made within seven days of the making of the order, with the reasons for the order,
- whichever is the later.
- (5) An appeal against a decision or order of the Board made on an application for the Board's consent to a termination of pregnancy must be instituted within two working days of the decision or order being made.
- (7) The ADD must notify the Board of the lodging of an application for permission to appeal or of the institution of an appeal to the ADD and the Board must then furnish the ADD with—
- (a) such records or transcripts of evidence given in the original proceedings as the Board may have; and

- (b) copies of any written submissions made to the Board or reports furnished to the Board in the proceedings; and
 - (c) a copy of the Board's reasons for the decision, direction or order appealed against.
- (8) The ADD must hear and determine proceedings under this section as expeditiously as is reasonably practicable and must give priority to hearing and determining appeals against decisions or orders relating to an application for consent to a termination of pregnancy or relating to the detention of any person.
- (9) The person to whom the proceedings relate is (if he or she is not the appellant) a party to the proceedings.
- (10) Subject to subsection (11), the ADD must give the parties to proceedings reasonable notice of the time and place of the hearing of the proceedings.
- (11) The ADD is not obliged to give notice of proceedings to a party whose whereabouts cannot, after reasonable enquiry, be ascertained.
- (12) A party is entitled to appear before the ADD—
 - (a) personally or by counsel; or
 - (b) with the permission of the ADD, by any other representative.
- (13) Subject to subsection (14), hearings before the ADD are open hearings.
- (14) In any proceedings before the ADD, the ADD has an absolute discretion—
 - (a) to direct that no person other than—
 - (i) the parties to the proceedings and any person representing them in the proceedings; and
 - (ii) witnesses (while giving evidence); and
 - (iii) officers of the ADD,be present in the room while the proceedings are being heard; and
 - (b) to direct that a particular person (not being a person referred to in paragraph (a)) not be present in the room while the proceedings are being heard.
- (15) The ADD may make a determination in any proceedings in the absence of a party to the proceedings if satisfied that the party was given reasonable opportunity to appear but failed to do so.
- (15a) The ADD may make an order for costs against a party in accordance with a prescribed scale, but only if the ADD 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.
- (16) On the conclusion of proceedings the ADD must furnish the parties and the Board with a written statement of the reasons for its decision.

Division 3—Appeals to the Supreme Court

70—Appeals from decisions of ADD

- (1) Subject to subsection (2), a party to proceedings before the ADD who is dissatisfied with a decision, direction or order of the ADD in those proceedings may, with the permission of the ADD or the Supreme Court, appeal to the Supreme Court against the decision, direction or order.
- (2) The following decisions or orders are not appealable to the Supreme Court:
 - (a) a decision to refuse permission to appeal to the ADD;
 - (b) a decision or order made in relation to an application for consent to a termination of pregnancy;
 - (c) a decision not to authorise publication of a report of proceedings before the ADD;
 - (d) a decision or order made on an appeal against a decision of the Board in the exercise of its appellate jurisdiction under the *Mental Health Act 1993*.
- (3) An appeal under this section must be instituted within the prescribed period—
 - (a) of the making of the decision, direction or order appealed against; or
 - (b) of being furnished with the reasons for the decision, direction or order,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 so instituted.
- (4) The Supreme Court may, on the hearing of the appeal, exercise one or more of the following powers, according to the nature of the case:
 - (a) dismiss the appeal; or
 - (b) affirm, vary or quash the decision, direction or order appealed against; or
 - (c) substitute, or make in addition, any decision, direction or order that could be made by the Board; or
 - (d) remit the subject matter of the appeal to the Board for further hearing or for rehearing; or
 - (e) make any further or other order as to costs, or any other matter, that the case requires.
- (5) No order for costs can be made against an appellant if he or she is the person to whom the order or decision appealed against relates.

71—Method of conducting appeal

An appeal to the Supreme Court is to be conducted as a review of the decision, direction or order appealed against on the evidence that was reviewed by or presented to the ADD and on such further evidence as may, with the permission of the Supreme Court, be presented to it.

Division 4—General provisions

72—Operation of orders pending appeal

- (1) Subject to subsection (2), a decision, direction or order of the ADD against which a right of appeal lies continues to operate notwithstanding that right of appeal or the institution of an appeal.
- (2) The operation of a decision, direction or order against which an appeal has been instituted may, on the application of the appellant, be suspended by the body that made it or by the appellate court pending determination of the appeal, if the body or court thinks special reason exists for doing so.

73—Representation on appeals

- (1) In every appeal or application for permission to appeal to the ADD or Supreme Court under this Part, 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 7—Miscellaneous

74—Board may give advice, direction or approval

- (1) A guardian or administrator appointed under this Act may apply to the Board 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 Board is required.
- (2) An application under this section—
 - (a) need not be served on any person; and
 - (b) may be determined by the Board in the absence of any person who may be affected by the Board's decision,unless the Board directs otherwise.

-
- (3) A direction given by the Board 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.

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 given personally or by post or facsimile transmission addressed to the person at his or her last known principal place of residence or business.

84—Evidentiary provisions

In any legal proceedings, a document purporting to be signed by the Registrar and to be a copy of an order of the Board made under this Act or any other Act will, in the absence of proof to the contrary, be taken to be evidence of the order.

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

- Amendments of this version that are uncommenced are not incorporated into the text.
- 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.

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>)

Guardianship and Administration Act 1993—1.7.2014 to 28.3.2015

Legislative history

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>)
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>)

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		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	15.12.2005
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>	23.12.1999
	<i>deleted by 12/2013 Sch 1 cl 16(2)</i>	1.7.2014
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>	1.7.2014
<i>guardian appointed under this Act</i>	<i>deleted by 12/2013 Sch 1 cl 16(4)</i>	1.7.2014
<i>the Health Commission</i>	<i>deleted by 34/2000 Sch 1 cl 8(a)</i>	6.7.2000
health professional	inserted by 72/1999 s 3(b)	23.12.1999
	substituted by 73/2005 s 4(2)	15.12.2005
<i>medical agent</i>	<i>inserted by 26/1995 Sch 3 cl 3(a)</i>	30.11.1995
	<i>deleted by 12/2013 Sch 1 cl 16(5)</i>	1.7.2014
medical practitioner	substituted by 73/2005 s 4(3)	15.12.2005
	substituted by 12/2013 Sch 1 cl 16(6)	1.7.2014
medical treatment	amended by 72/1999 s 3(c)	23.12.1999
	substituted by 12/2013 Sch 1 cl 16(7)	1.7.2014
person responsible	inserted by 12/2013 Sch 1 cl 16(8)	1.7.2014
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>	1.6.2007
<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

trustee company	inserted by 12/2010 Sch 1 cl 4	20.12.2010
s 3(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
Pt 2		
Pt 2 Div 1		
s 6		
s 6(5)	substituted by 73/2005 s 5	15.12.2005
s 6(5a)	inserted by 74/1998 s 2	17.12.1998
s 8		
s 8(3)	amended by 73/2005 s 6(1)	15.12.2005
s 8(4)	<i>deleted by 73/2005 s 6(2)</i>	<i>15.12.2005</i>
s 12		
s 12(1) and (2)	substituted by 73/2005 s 7	15.12.2005
s 12(3)	amended by 72/1999 s 4	23.12.1999
s 14		
s 14(2)	amended by 72/1999 s 19 (Sch)	23.12.1999
s 14(7)	substituted by 73/2005 s 8(1)	15.12.2005
s 14(8)	<i>deleted by 73/2005 s 8(1)</i>	<i>15.12.2005</i>
s 14(9)	amended by 17/2006 s 131	4.9.2006
s 14(12a)	inserted by 73/2005 s 8(2)	15.12.2005
s 15		
s 15(6)	amended by 72/1999 s 19 (Sch)	23.12.1999
s 15A	inserted by 72/1999 s 5	25.11.2001
Pt 2 Div 2	heading amended by 72/1999 s 6	25.11.2001
s 17		
s 17(2)	amended by 34/2000 Sch 1 cl 8(b)	6.7.2000
s 17(3)	amended by 72/1999 s 7(b)	25.11.2001
s 17A	inserted by 72/1999 s 8	25.11.2001
Pt 2 Div 3		
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>	<i>15.12.2005</i>
s 25(5)	<i>substituted by 72/1999 s 11</i>	<i>23.12.1999</i>
Pt 3	<i>deleted by 12/2013 Sch 1 cl 18</i>	<i>1.7.2014</i>
Pt 4		
s 28		
s 28(1)	amended by 12/2013 Sch 1 cl 19	1.7.2014

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
s 29(7)	inserted by 12/2013 Sch 1 cl 20(3)	1.7.2014
s 31	amended by 72/1999 s 12	23.12.1999
s 31A	inserted by 12/2013 Sch 1 cl 21	1.7.2014
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
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
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(4)	amended by 12/2013 Sch 1 cl 22(9), (10)	1.7.2014
s 32(7)	amended by 72/1999 s 19 (Sch)	23.12.1999
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
s 35		
s 35(2)	amended by 12/2010 Sch 1 cl 5	20.12.2010
s 37		
s 37(1)	amended by 12/2013 Sch 1 cl 24(1), (2)	1.7.2014
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 40		
s 40(2) and (3)	amended by 72/1999 s 19 (Sch)	23.12.1999
s 44		
s 44(2)	amended by 72/1999 s 19 (Sch)	23.12.1999
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
	deleted by 12/2013 Sch 1 cl 26	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	deleted by 12/2013 Sch 1 cl 26	1.7.2014
s 60	<i>amended by 72/1999 ss 16, 19 (Sch)</i>	23.12.1999
	deleted by 12/2013 Sch 1 cl 26	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
s 61(5)	amended by 12/2013 Sch 1 cl 27(2)	1.7.2014
s 62	<i>deleted by 26/1995 Sch 3 cl 3(d)</i>	30.11.1995
Pt 6		
heading	substituted by 17/2006 s 133	4.9.2006
Pt 6 Div 1		
heading	substituted by 17/2006 s 134	4.9.2006
s 65	amended by 4/2000 s 9(1) (Sch 1 cl 17(a))	1.6.2000
	amended by 17/2006 s 135	4.9.2006
Pt 6 Div 2	heading amended by 4/2000 s 9(1) (Sch 1 cl 17(b))	1.6.2000
s 66		
s 66(1)	amended by 4/2000 s 9(1) (Sch 1 cl 17(c))	1.6.2000
s 66(1a)	inserted by 4/2000 s 9(1) (Sch 1 cl 17(d))	1.6.2000
s 66(2)	amended by 4/2000 s 9(1) (Sch 1 cl 17(e))	1.6.2000
s 66(4)	amended by 73/2005 s 11(1)	15.12.2005
s 66(5)	<i>deleted by 73/2005 s 11(2)</i>	15.12.2005
s 66(6)	substituted by 4/2000 s 9(1) (Sch 1 cl 17(f))	1.6.2000
s 66(7)	amended by 4/2000 s 9(1) (Sch 1 cl 17(g))	1.6.2000
s 66(8)	amended by 4/2000 s 9(1) (Sch 1 cl 17(h))	1.6.2000
s 66(9)	amended by 4/2000 s 9(1) (Sch 1 cl 17(i))	1.6.2000
s 67		
s 67(1)	amended by 4/2000 s 9(1) (Sch 1 cl 17(j))	1.6.2000
	amended by 17/2006 s 136(1)	4.9.2006
s 67(3)	amended by 17/2006 s 136(2)	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)	amended by 4/2000 s 9(1) (Sch 1 cl 17(j))	1.6.2000
	amended by 17/2006 s 136(3)	4.9.2006
s 67(8)	amended by 4/2000 s 9(1) (Sch 1 cl 17(j))	1.6.2000
s 67(10) and (11)	amended by 4/2000 s 9(1) (Sch 1 cl 17(j))	1.6.2000
s 67(12)	amended by 4/2000 s 9(1) (Sch 1 cl 17(j))	1.6.2000
	amended by 17/2006 s 136(4)	4.9.2006
s 67(13)—(15)	amended by 4/2000 s 9(1) (Sch 1 cl 17(j))	1.6.2000
s 67(15a)	inserted by 4/2000 s 9(1) (Sch 1 cl 17(l))	1.6.2000
s 67(16)	amended by 4/2000 s 9(1) (Sch 1 cl 17(j))	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)	amended by 4/2000 s 9(1) (Sch 1 cl 17(o), (p))	1.6.2000
	amended by 17/2006 s 137(2)	4.9.2006

s 70(2)	amended by 4/2000 s 9(1) (Sch 1 cl 17(o), (q))	1.6.2000
	amended by 17/2006 s 137(2)	4.9.2006
s 71	amended by 4/2000 s 9(1) (Sch 1 cl 17(r))	1.6.2000
	amended by 17/2006 s 138	4.9.2006
s 72		
s 72(1)	amended by 4/2000 s 9(1) (Sch 1 cl 17(s))	1.6.2000
s 73		
s 73(1)	amended by 4/2000 s 9(1) (Sch 1 cl 17(t))	1.6.2000
	amended by 17/2006 s 139	4.9.2006
s 73(3)	amended by 34/2000 Sch 1 cl 8(d)	6.7.2000
Pt 7		
s 74		
s 74(2)	amended by 17/2006 s 140	4.9.2006
s 76	amended by 72/1999 s 19 (Sch)	23.12.1999
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>	<i>23.12.1999</i>
s 79	<i>deleted by 12/2013 Sch 1 cl 28</i>	<i>1.7.2014</i>
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 83	<i>deleted by 84/2009 s 173</i>	<i>1.2.2010</i>
s 86	<i>amended by 75/1997 s 2</i>	<i>18.12.1997</i>
	<i>amended by 74/1998 s 3</i>	<i>17.12.1998</i>
	<i>deleted by 72/1999 s 17</i>	<i>23.12.1999</i>
<i>Sch</i>	<i>substituted by 72/1999 s 18</i>	<i>23.12.1999</i>
	<i>deleted by 12/2013 Sch 1 cl 29</i>	<i>1.7.2014</i>

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.

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

4.9.2006

1.6.2007

1.2.2010

20.12.2010