



TASMANIA

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**GUARDIANSHIP AND ADMINISTRATION ACT 1995**

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**No. 44 of 1995**

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**GUARDIANSHIP AND ADMINISTRATION ACT 1995**

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**No. 44 of 1995**

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**AN ACT to enable persons with a disability to be represented by a guardian or administrator and to provide for medical and dental treatment for persons with a disability**

**[Royal Assent 22 September 1995]**

**B**E it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

**PART 1****PRELIMINARY****Short title**

**1**—This Act may be cited as the *Guardianship and Administration Act 1995*.

**Commencement**

2—This Act commences on a day or days to be proclaimed.

**Interpretation**

- 3—(1) In this Act, unless the contrary intention appears—
- “**administration order**” means an order of the Board appointing a person as an administrator of the estate of a represented person;
  - “**administrator**” means any person appointed as administrator in an administration order;
  - “**Board**” means the Guardianship and Administration Board established under section 7;
  - “**contravene**” includes failure to comply with;
  - “**Court**” means the Supreme Court;
  - “**determination**” includes decision and order;
  - “**disability**” means any restriction or lack (resulting from any absence, loss or abnormality of mental, psychological, physiological or anatomical structure or function) of ability to perform an activity in a normal manner;
  - “**enduring guardian**” means a person appointed as an enduring guardian under Part 5;
  - “**function**” includes duty;
  - “**guardian**” means a person named as a guardian in a guardianship order or as an enduring guardian in an instrument of appointment as such;
  - “**guardianship order**” means an order of the Board appointing a person as guardian;
  - “**information**” means information however stored or transmitted;
  - “**medical or dental treatment**” or “**treatment**” means—
    - (a) medical treatment (including any medical or surgical procedure, operation or examination and any prophylactic, palliative or rehabilitative care) normally carried out by, or under, the supervision of a medical practitioner; or



- (b) dental treatment (including any dental procedure, operation or examination) normally carried out by or under the supervision of a dentist; or
- (c) any other act declared by the regulations to be medical or dental treatment for the purposes of this Act—

but does not include—

- (d) any non-intrusive examination made for diagnostic purposes (including a visual examination of the mouth, throat, nasal cavity, eyes or ears); or
- (e) first-aid medical or dental treatment; or
- (f) the administration of a pharmaceutical drug for the purpose, and in accordance with the dosage level, recommended in the manufacturer's instructions (if the drug is one for which a prescription is not required and which is normally self-administered); or
- (g) any other kind of treatment that is declared by the regulations not to be medical or dental treatment for the purposes of this Act;

“**non-regenerative tissue**” means tissue that, after injury or removal, is not replaced in the body of a living person by natural processes of growth or repair;

“**parent**” includes a guardian and a person acting *in loco parentis*;

“**person responsible**” has the meaning given by section 4;

“**police officer**” has the same meaning as in the *Police Regulation Act 1898*;

“**President**” means the person appointed as President of the Board under section 7 (2) (a);

“**Public Guardian**” means the person appointed as the Public Guardian under section 14;

“**registered practitioner**” means a person who is registered in Tasmania either as a medical practitioner or a dental practitioner;

“**registrar**” means a person appointed as registrar of the Board under section 9 (1);

“**regulations**” means regulations made and in force under this Act;

“**represented person**” means a person in respect of whom—

- (a) a guardianship order is in force; or
- (b) an administration order is in force; or
- (c) both a guardianship order and an administration order are in force;

“**special treatment**” means—

- (a) any treatment that is intended, or is reasonably likely, to have the effect of rendering permanently infertile the person on whom it is carried out; or
- (b) termination of pregnancy; or
- (c) any removal of non-regenerative tissue for the purposes of transplantation; or
- (d) any other medical or dental treatment that is declared by the regulations to be special treatment for the purposes of Part 6;

“**spouse**” includes a person who is cohabiting with another person of the opposite sex as the spouse of that other person, although not legally married to him or her;

“**tissue**” includes an organ or part of a human body or substance extracted from, or from a part of, the human body.

(2) Where 2 or more guardians of a person have been appointed under section 20 (6), references to a guardian in this Act are taken as references to the guardian exercising the relevant function.

### Meaning of “**person responsible**”

4—(1) In this Act, “**person responsible**” for another person means—

- (a) where the other person is under the age of 18 years and has a spouse, the spouse; or
- (b) where the other person is under the age of 18 years and has no spouse, his or her parent; or
- (c) where the other person is of or over the age of 18 years, one of the following persons, in order of priority:—
  - (i) his or her guardian;

- (ii) his or her spouse;
- (iii) the person having the care of the other person;
- (iv) a close friend or relative of the other person.

(2) If a person is a ward of the State, the Director for Community Welfare is, notwithstanding subsection (1), taken to be the person responsible for him or her.

(3) The circumstances in which a person is to be regarded as having the care of another person include, but are not limited to, the case where the person, otherwise than for remuneration (whether from the other person or any other source), regularly—

- (a) provides domestic services and support to the other person; or
- (b) arranges for the other person to be provided with domestic services and support.

(4) A person who resides in a hospital, nursing home, group home, boarding-house or hostel or any other similar facility at which he or she is cared for by some other person is not, by reason only of that fact, taken to be in the care of that other person and is taken to remain in the care of the person in whose care he or she was immediately before residing in the facility.

(5) For the purposes of this section—

- (a) a reference to a spouse is to be read as a reference to a spouse who is not under guardianship and with whom the relevant person has a close and continuing relationship; and
- (b) a person is taken to be a close friend or relative of another person if the person maintains both a close personal relationship with the other person through frequent personal contact and a personal interest in the other person's welfare; and
- (c) a person is taken not to be a close friend or relative if the person is receiving remuneration (whether from the person or some other source) for any services that he or she performs for the other person in relation to the person's care; and
- (d) a reference to remuneration is to be read as not including a reference to a carer's pension; and

- (e) the President may issue guidelines, not inconsistent with this section, specifying the circumstances in which a person is to be regarded as a close friend or relative of another person.

### **Objects of Act**

**5**—The objects of this Act are—

- (a) to establish a Guardianship and Administration Board; and
- (b) to enable the making of guardianship orders and administration orders; and
- (c) to make better provision for the authorization and approval of medical and dental treatment for persons with a disability who are incapable of giving informed consent to any such treatment; and
- (d) to ensure that persons with a disability and their families are informed of, and make use of, the provisions of this Act.

### **Principles to be observed**

**6**—A function or power conferred, or duty imposed, by this Act is to be performed so that—

- (a) the means which is the least restrictive of a person's freedom of decision and action as is possible in the circumstances is adopted; and
  - (b) the best interests of a person with a disability or in respect of whom an application is made under this Act are promoted; and
  - (c) the wishes of a person with a disability or in respect of whom an application is made under this Act are, if possible, carried into effect.
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**PART 2****ESTABLISHMENT, CONSTITUTION AND PROCEDURE OF BOARD****Guardianship and Administration Board**

7—(1) There is established a Board to be known as the Guardianship and Administration Board.

(2) The Board is constituted by—

- (a) a President, who must be a qualified legal practitioner of not less than 7 years' standing; and
- (b) at least 5 other members as may be necessary for the proper functioning of the Board, of whom one is to be Deputy President.

(3) Schedule 1 has effect with respect to members of the Board.

**Functions of Board**

8—The functions of the Board are—

- (a) to perform such functions and exercise such powers as are conferred on the Board by this or any other Act; and
- (b) to perform such other functions as the Minister may determine.

**Staff of Board**

9—(1) Subject to and in accordance with the *Tasmanian State Service Act 1984*, there are to be appointed a registrar of the Board and such other officers as are necessary for the proper functioning of the Board and the registrar and other officers may hold office in conjunction with a position under that Act.

(2) The registrar and any other officers so appointed are subject to the general control and direction of the President.

### Appointment of persons to assist Board

10—The Board may appoint a duly qualified legal or medical practitioner or any other person with appropriate expertise to assist the Board in any proceedings before it.

### Procedure of Board

11—(1) In this section—

“**government department**” means a government department within the meaning of the *Tasmanian State Service Act 1984*;

“**State authority**” means a body or authority, whether incorporated or not, which is established or constituted by or under an Act or under the Royal Prerogative, where the body or authority or its governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister or another such body or authority.

(2) The Board—

- (a) must, in hearing any matter, act according to equity and good conscience without regard to technicalities or legal forms; and
- (b) is bound by the rules of natural justice; and
- (c) is not required to conduct its proceedings in a formal manner.

(3) Schedule 2 has effect with respect to the procedure of the Board.

(4) The Board is not bound by rules or practice as to evidence but may inform itself in relation to any matter in such manner as it thinks fit.

(5) Evidence before the Board—

- (a) may be given orally or in writing or partly orally and partly in writing; and
- (b) may be given on oath or by statutory declaration.

(6) A member of the Board may administer an oath for the purposes of this Act.

(7) Evidence given before the Board is not to be used in any civil or criminal proceedings other than proceedings for an offence against this Act or an offence committed at, or arising out of, a hearing before the Board.

(8) The Board may, of its own motion or on the application of any party to the proceedings before it, direct the registrar to serve on any person a summons to appear before the Board to give evidence or to produce any books, papers or other documents specified in the summons.

(9) The Board may make an order for the manner of service, including substituted service, of a summons under subsection (8).

(10) A person who appears as a witness before the Board has the same protection as a witness in proceedings before the Court.

(11) The Board may, for the purposes of any proceedings require any government department or State authority, the Public Guardian or a service provider, guardian or administrator to provide a report or information on any matter relating to the proceedings of the Board.

(12) Notwithstanding section 96 (2) of the *Evidence Act 1910*, a medical practitioner may, when reporting to the Board, divulge information without the consent of the person to whom the information relates.

### **Proceedings of Board to be held in public**

**12—(1)** Subject to subsection (3), all proceedings before the Board are open to members of the public.

(2) A person who is directly interested in any proceedings before the Board may request the Board to have the proceedings or part of the proceedings closed to the public.

(3) On a request under subsection (2), the Board may direct that any person—

(a) who in its opinion is not directly interested in the proceedings; or

(b) who has not been authorized by the Board to be present at the proceedings—

is to be excluded from the place where the proceedings are being, or are to be, heard.

### Reports of proceedings

13—(1) Except as provided by subsection (2), a person must not publish—

- (a) any particulars calculated to lead to the identification of any person in respect of whom any proceedings of the Board have been brought or any other person concerned in the proceedings; and
- (b) pictures of any person in respect of whom proceedings have been brought or any other person concerned in the proceedings.

(2) Where the Board considers that it is in the public interest to do so, the Board may determine that a person may publish, or cause to be published in accordance with its determination, a report of any proceedings of the Board.

(3) A person who fails to comply with this section is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units or imprisonment for a period not exceeding 6 months or both.

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## PART 3

### THE PUBLIC GUARDIAN

#### Public Guardian and Deputy Public Guardian

14—Subject to and in accordance with the *Tasmanian State Service Act 1984*, persons are to be appointed as the Public Guardian and the Deputy Public Guardian and those persons may hold those offices in conjunction with a position under that Act.

#### Functions and powers of Public Guardian

15—(1) The Public Guardian has the following functions:—

- (a) to foster the provision of services and facilities for persons with a disability;



- (b) to support the establishment of organizations which support any such persons;
- (c) to encourage the development of programmes that support any such persons (including advocacy programmes, educational programmes and programmes to encourage persons to act as guardians and administrators);
- (d) to promote, speak for and protect the rights and interests of any such persons;
- (e) to deal, on behalf of any such persons, with persons or bodies providing services;
- (f) to represent any such persons before the Board;
- (g) to investigate, report and make recommendations to the Minister on any matter relating to the operation of this Act;
- (h) to act as a guardian or administrator when so appointed by the Board;
- (i) to disseminate information concerning—
  - (i) the functions of the Public Guardian; and
  - (ii) the functions of the Board; and
  - (iii) the operation of this Act;
- (j) to give advice on the powers that may be exercised under this Act relating to persons with a disability as to the operation of this Act generally and on appropriate alternatives to taking action under this Act;
- (k) any other function assigned to the Public Guardian by any other Act or law.

(2) The Public Guardian has power to do all things necessary or convenient to be done in connection with the performance of his or her functions.

(3) During any illness or absence of the Public Guardian or during any vacancy in the office of the Public Guardian, the Deputy Public Guardian has the functions of the Public Guardian.

(4) Any function exercised by the Deputy Public Guardian while acting under subsection (3) is taken to have been exercised by the Public Guardian.

(5) The Deputy Public Guardian in exercising the functions of the Public Guardian is taken to have sufficient authority to do so.

(6) In the performance of his or her functions under this Act neither the Public Guardian nor the Deputy Public Guardian is subject to the control or direction of the Minister.

### **Staff of Public Guardian**

**16**—Subject to and in accordance with the *Tasmanian State Service Act 1984*, there are to be appointed such officers as are necessary to assist the Public Guardian and the Deputy Public Guardian in the performance of their functions under this Act and those officers may hold office in conjunction with a position under that Act.

### **Investigations**

**17**—(1) The Public Guardian may investigate complaints and allegations concerning the actions of a guardian or administrator or a person acting or purporting to act under an enduring power of attorney.

(2) If requested to do so by the Board, the Public Guardian must investigate and report to the Board in relation to a matter the subject of an inquiry before the Board.

### **Delegation**

**18**—(1) The Public Guardian may in writing—

- (a) delegate to a person appointed under section 16 any of the functions or powers of the Public Guardian, other than this power of delegation; and
- (b) revoke wholly or partly a delegation.

(2) A delegation—

- (a) may be made either generally or as otherwise provided by the instrument of delegation; and
- (b) does not prevent the performance or exercise of a function or power by the Public Guardian.

(3) A function or power performed or exercised by a delegate has the same effect as if performed or exercised by the Public Guardian.

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## PART 4

### GUARDIANSHIP ORDERS

#### *Division 1—Application for guardianship order*

##### **Application for guardianship order**

**19—(1)** A person may apply to the Board for an order appointing a full or limited guardian in respect of a person with a disability who is of or over the age of 18 years.

(2) The application—

- (a) is to be lodged with the registrar; and
- (b) is to contain the prescribed information; and
- (c) is to specify the grounds on which it is alleged that the proposed represented person needs a guardian.

#### *Division 2—Appointment of guardian*

##### **Guardianship order**

**20—(1)** If the Board, after a hearing, is satisfied that the person in respect of whom an application for an order appointing a guardian is made—

- (a) is a person with a disability; and
- (b) is unable by reason of the disability to make reasonable judgements in respect of all or any matters relating to his or her person or circumstances; and
- (c) is in need of a guardian—

the Board may make an order appointing a full or limited guardian in respect of that person and any such order may be subject to such conditions or restrictions as the Board considers necessary.

(2) In determining whether or not a person is in need of a guardian, the Board must consider whether the needs of the proposed represented person could be met by other means less restrictive of that person's freedom of decision and action.

(3) The Board must not make an order under subsection (1) unless it is satisfied that the order would be in the best interests of the proposed represented person.

(4) The Board must not make an order appointing a full guardian unless it is satisfied that an order for limited guardianship would be insufficient to meet the needs of the proposed represented person.

(5) Where the Board makes an order appointing a limited guardian in respect of a person the order to be made is that which is least restrictive of that person's freedom of decision and action as is possible in the circumstances.

(6) Two or more guardians of a person, each with different functions, may be appointed under one or more limited guardianship orders.

### **Persons eligible as guardians**

**21—(1)** The Board may appoint as a full guardian or limited guardian any person who is of or over the age of 18 years and consents to act as guardian if the Board is satisfied that that person—

- (a) will act in the best interests of the proposed represented person; and
- (b) is not in a position where the person's interests conflict or may conflict with the interests of the proposed represented person; and
- (c) is a suitable person to act as guardian of the proposed represented person.

(2) In determining whether a person is suitable to act as a guardian of a represented person, the Board must take into account—

- (a) the wishes of the proposed represented person so far as they can be ascertained; and
- (b) the desirability of preserving existing family relationships; and

- (c) the compatibility of the person proposed as guardian with the proposed represented person and with the administrator (if any) of his or her estate; and
- (d) whether the person proposed as guardian will be available and accessible to the proposed represented person so as to fulfil the requirements of guardianship of that person.

### **Alternative guardians**

22—(1) A guardianship order, other than an order appointing the Public Guardian as a guardian, may appoint a person to be an alternative guardian of the represented person.

(2) During the absence or incapacity of the guardian of a represented person, the alternative guardian of that person has the functions of his or her guardian.

### **Orders to be forwarded to Public Guardian**

23—If the Board makes a guardianship order appointing a person other than the Public Guardian as a guardian, the Board must cause a copy of the order to be forwarded to the Public Guardian.

### **Expiration of guardianship orders**

24—A guardianship order lapses on the expiration of 3 years after the date on which it is made unless it is continued under section 68.

## ***Division 3—Powers and duties of guardian***

### **Authority of full guardian**

25—(1) A guardianship order appointing a full guardian confers on the full guardian in respect of the represented person all the powers and duties which the full guardian would have in Tasmania if he or she was a parent and the represented person his or her child.

(2) Without limiting subsection (1), an order appointing a full guardian confers on the person named as full guardian the power—

- (a) to decide where the represented person is to live, whether permanently or temporarily; and
- (b) to decide with whom the represented person is to live; and
- (c) to decide whether the represented person should or should not be permitted to work and if so—
  - (i) the nature or type of work; and
  - (ii) the person for whom the represented person is to work; and
  - (iii) any related matters; and
- (d) to restrict visits to a represented person to such extent as may be necessary in his or her best interests and to prohibit visits by any person if the guardian reasonably believes that they would have an adverse effect on the represented person;
- (e) except as provided in Part 6, to consent to any health care that is in the best interests of the represented person.

(3) Where a decision is made, action taken, consent given or act done by a full guardian, the decision, action, consent or act has effect as if it had been made, taken, given or done by the represented person and the represented person had the legal capacity to do so.

(4) A full guardian may, on behalf of a represented person, sign documents and do all such things as are necessary to give effect to any power or duty vested in the guardian.

### **Authority of limited guardian**

**26—(1)** A guardianship order appointing a limited guardian confers on the limited guardian such one or more of the powers and duties in respect of the represented person which are conferred on a full guardian under this Act as the Board may specify in the order.

(2) Where a decision is made, action taken, consent given or act done by a limited guardian, the decision, action, consent or act has effect as if it had been made, taken, given or done by the represented person and the represented person had the legal capacity to do so.

(3) A limited guardian may, on behalf of a represented person, sign documents and do all such things as are necessary to give effect to any power or duty vested in the guardian.

### **Exercise of authority by guardian**

27—(1) A guardian must act at all times in the best interests of the person under guardianship.

(2) Without limiting subsection (1), a guardian acts in the best interests of a person under guardianship if the guardian acts as far as possible—

- (a) in consultation with that person, taking into account, as far as possible, his or her wishes; and
- (b) as an advocate for that person; and
- (c) in such a way as to encourage that person to participate as much as possible in the life of the community; and
- (d) in such a way as to encourage and assist that person to become capable of caring for himself or herself and of making reasonable judgements relating to his or her person; and
- (e) in such a way as to protect that person from neglect, abuse or exploitation.

### **Power to enforce guardianship order**

28—(1) Without limiting section 25 or 26, if the Board makes a guardianship order appointing a full or limited guardian, the Board may specify in the order that the person named as full or limited guardian or some other specified person is empowered to take such measures or actions as are specified in the order to ensure that the represented person complies with any decision of the guardian in the exercise of the powers and duties conferred by the order.

(2) Where a guardian or other person specified in the order under subsection (1) takes any measure or action specified in the order in the reasonable belief that—

- (a) the measure or action is in the best interests of the represented person; and
- (b) it is necessary or desirable to take that measure or action in the circumstances—

the guardian or other person is not liable to any action for false imprisonment or assault or any other action, liability, claim or demand arising out of the taking of that measure or action.

### **Urgent powers in case of unlawful detention of persons with a disability**

**29—(1)** If the Board has received information that a person with a disability—

- (a) is being unlawfully detained against his or her will; or
- (b) is likely to suffer damage to his or her physical, emotional or mental health or well-being unless immediate action is taken—

and the Board considers it necessary to do so in order to secure access to that person, the Board may empower the Public Guardian or some other person specified in the order to visit the person with a disability in the company of a police officer for the purpose of preparing a report for the Board.

(2) If, after receiving a report under subsection (1), the Board is satisfied that the information referred to in subsection (1) (a) or (b) is correct, the Board may make an order enabling the person with a disability to be taken to, and cared for at, a place specified in the order until an application under section 19 is heard.

(3) A police officer acting under an order made under subsection (1) may, with such assistance as is necessary, use such force as is reasonably necessary to enter the premises where the person with a disability is found.

(4) Any person who delays or obstructs any person acting under an order under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.



**Removal of persons to place of safety**

**30—(1)** If it appears to a police officer that there is reasonable cause to suspect that a person with a disability who appears to be in need of a guardian—

- (a) has been, or is being, ill-treated, neglected or unlawfully detained against his or her will; or
- (b) is likely to suffer serious damage to his or her physical, emotional or mental health or well-being unless immediate action is taken—

the police officer may enter, if necessary by force, any premises in which that person is believed to be, and, if thought fit, remove that person from those premises.

(2) A police officer, in removing a person under subsection (1), is to be accompanied by a person nominated by the Public Guardian.

(3) A person nominated by the Public Guardian must, as soon as practicable—

- (a) convey the person to a place of safety; and
- (b) ensure that an application for guardianship or other appropriate arrangements are made; and
- (c) provide the Board with a written report giving details of the action that he or she has taken under this section.

**Advice or directions as to guardianship orders**

**31—(1)** A guardian may apply for advice or direction by the Board on any matter relating to the scope of the guardianship order or the exercise of any power by the guardian under the guardianship order.

(2) The Board may require notice of an application under subsection (1) to be given to any person that the Board directs and may exercise its powers under this section without a hearing.

(3) The Board may—

- (a) approve or disapprove of any act proposed to be done by the guardian; and
- (b) give such advice or direction as it considers appropriate; and

- (c) vary the guardianship order or make any other order that it could have made on the original application.
- (4) The Board of its own motion may direct, or offer advice to, a guardian in respect of any matter.
- (5) A guardian who contravenes a direction given to him or her under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.
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## PART 5

### APPOINTMENT OF ENDURING GUARDIAN

#### **Appointment of enduring guardian**

32—(1) A person who is of or over the age of 18 years may, by instrument in writing, appoint a person as his or her enduring guardian.

(2) An instrument is not effective to appoint an enduring guardian unless—

- (a) it is in accordance with Form 1 in Schedule 3 or in a form to similar effect; and
- (b) there is endorsed on it an acceptance in the form or to the effect of the acceptance specified in Form 1 signed by the person appointed as the enduring guardian; and
- (c) there are at least 2 attesting witnesses to the instrument neither of whom is a party to it nor a relative of a party to it and who have witnessed the instrument in the presence of the appointor and each other; and
- (d) it is registered with the Board.

(3) A person is not eligible to be appointed as an enduring guardian unless he or she is of or over the age of 18 years.

(4) A person is not eligible to be appointed as an enduring guardian if he or she is, in a professional or administrative capacity, directly or indirectly responsible for, or involved in, the medical care or treatment of the appointor and, if a person who is validly appointed as an enduring guardian becomes so responsible or involved, the appointment lapses.

(5) Subject to any conditions specified in the instrument, an instrument appointing an enduring guardian authorizes the appointee to exercise the powers of a guardian under section 25 if the appointor subsequently becomes unable by reason of a disability to make reasonable judgements in respect of matters relating to his or her personal circumstances.

(6) The powers conferred by an instrument appointing an enduring guardian are, unless the Board otherwise directs, to be exercised in accordance with any lawful directions specified in the instrument.

### **Revocation of appointment by appointor**

**33—(1)** The appointor of an enduring guardian may, by instrument in writing, revoke the appointment.

(2) An instrument is not effective to revoke an appointment as enduring guardian unless—

- (a) it is in accordance with Form 2 in Schedule 3; and
- (b) there are at least 2 attesting witnesses to the instrument, neither of whom is a party to it nor a relative of a party to it and who have witnessed the instrument in the presence of the appointor and each other; and
- (c) it is registered with the Board.

### **Revocation of appointment by Board**

**34—(1)** The Board may, on an application under this section and after a hearing, revoke the appointment of an enduring guardian if—

- (a) the enduring guardian seeks revocation of the appointment; or

- (b) the Board is satisfied that the enduring guardian—
  - (i) is not willing or able to act in that capacity; or
  - (ii) has, in that capacity, not acted in the best interests of the appointor or has acted in an incompetent or negligent manner or contrary to the provisions of this Act.
- (2) The application—
  - (a) is to be in writing; and
  - (b) is to be lodged with the registrar; and
  - (c) is to contain the prescribed information.
- (3) The application may be made by—
  - (a) the Public Guardian; or
  - (b) the enduring guardian; or
  - (c) the appointor of the enduring guardian; or
  - (d) the administrator of the appointor's estate; or
  - (e) any other person who the Board is satisfied has a proper interest in the matter.

### **Advice or directions as to instruments of appointment**

**35—(1)** An enduring guardian may apply for advice or direction by the Board on any matter relating to the scope of his or her appointment as such or the exercise of any power by the guardian under the instrument of appointment.

(2) The Board may require notice of an application under subsection (1) to be given to any person that the Board directs and may exercise its powers under this section without a hearing.

- (3) The Board may—
  - (a) approve or disapprove of any act proposed to be done by the enduring guardian; and
  - (b) give such advice or direction as it considers appropriate; and
  - (c) vary the effect of the instrument of appointment or make any other order that it could have made on an application for a guardianship order.

(4) The Board of its own motion may direct, or offer advice to, an enduring guardian in respect of any matter.

(5) An enduring guardian who contravenes a direction given to him or her under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.

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## PART 6

### CONSENT TO MEDICAL AND DENTAL TREATMENT

#### *Division 1—Preliminary*

#### **Application of Part 6**

**36—(1)** This Part applies to a person with a disability who is incapable of giving consent to the carrying out of medical or dental treatment, whether or not the person is a represented person.

(2) For the purposes of subsection (1), a person is incapable of giving consent to the carrying out of medical or dental treatment if the person—

- (a) is incapable of understanding the general nature and effect of the proposed treatment; or
- (b) is incapable of indicating whether or not he or she consents or does not consent to the carrying out of the treatment.

#### **Part 6 to prevail over *Criminal Code***

**37—**This Part has effect notwithstanding section 51 of the *Criminal Code*.

***Division 2—Medical and dental treatment*****Unlawful medical or dental treatment**

**38—(1)** A person must not carry out medical or dental treatment on a person to whom this Part applies unless—

- (a) consent for the treatment has been given in accordance with this Part; or
- (b) the carrying out of the treatment is authorized by this Part without any such consent.

(2) A person who contravenes subsection (1) by carrying out special treatment is guilty of a crime and is liable to punishment on indictment under the Criminal Code accordingly.

(3) A person who contravenes subsection (1) by carrying out any treatment other than special treatment is guilty of an offence and is liable on summary conviction to imprisonment for a period not exceeding one year or to a fine not exceeding 10 penalty units, or both.

**Persons authorized to consent to medical or dental treatment**

**39—(1)** Consent to the carrying out of medical or dental treatment on a person to whom this Part applies may be given by the Board or, if the medical treatment or dental treatment is not special treatment, by the person responsible for that person.

(2) The guardian of a person to whom this Part applies may also consent to the carrying out of, or continuing, special treatment if the Board has previously given consent to the carrying out of, or continuing, that treatment and has authorized the guardian to give consent to the continuation of that treatment or to further treatment of a similar nature.

(3) Where a consent to medical or dental treatment has been given by a person who is not authorized to give that consent under this section, the consent may be taken as valid if the person providing the medical or dental treatment did not know that the person giving the consent was not authorized to do so or reasonably believed that the person giving the consent was authorized to do so.

### Urgent medical or dental treatment

**40**—Medical or dental treatment may be carried out on a person to whom this Part applies without consent given in accordance with this Division if the medical practitioner or dentist carrying out or supervising the treatment considers the treatment is necessary, as a matter of urgency—

- (a) to save the person's life; or
- (b) to prevent serious damage to the person's health; or
- (c) except in the case of special treatment, to prevent the person from suffering or continuing to suffer significant pain or distress.

### Medical or dental treatment without consent

**41**—(1) Where—

- (a) it is proposed to carry out any medical or dental treatment which is not special treatment on a person to whom this Part applies; and
- (b) there is no person responsible for that person; and
- (c) the treatment is necessary and is the form of treatment that will most successfully promote that person's health and wellbeing; and
- (d) that person does not object to the carrying out of the treatment—

it is lawful, subject to subsection (2), for the medical or dental treatment to be carried out on that person without consent under this Division.

(2) The regulations may provide that in such cases as are specified in the regulations medical or dental treatment may not be carried out on a person to whom this Part applies without consent under this Division.

(3) A medical practitioner or dentist who carries out or supervises any medical or dental treatment under subsection (1) without the consent of the relevant person must certify in the clinical records relating to the treatment that—

- (a) the treatment is necessary and is the form of treatment that will most successfully promote that person's health and wellbeing; and
- (b) the person does not object to the carrying out of the treatment.

**Unlawful consent to medical or dental treatment**

**42**—A person who is not authorized to give consent to medical or dental treatment for a person to whom this Part applies but purports to give any such consent, or represents to a registered practitioner that he or she has the power to consent, is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.

**Consent by persons responsible**

**43**—(1) A person responsible for a person to whom this Part applies may consent to the carrying out of medical or dental treatment which is not special treatment if he or she is satisfied that—

- (a) the relevant person is incapable of giving consent; and
- (b) the medical or dental treatment would be in the best interests of that person.

(2) For the purposes of determining whether any medical or dental treatment would be in the best interests of a person to whom this Part applies, matters to be taken into account by the person responsible include—

- (a) the wishes of that person, so far as they can be ascertained; and
- (b) the consequences to that person if the proposed treatment is not carried out; and
- (c) any alternative treatment available to that person; and
- (d) the nature and degree of any significant risks associated with the proposed treatment or any alternative treatment; and
- (e) that the treatment is to be carried out only to promote and maintain the health and wellbeing of that person; and
- (f) any other matters prescribed by the regulations.



## **Applications for consent of Board**

**44—(1)** An application for the consent of the Board to the carrying out of any medical or dental treatment on a person to whom this Part applies may be made by any person who the Board is satisfied has a proper interest in the matter.

(2) The application—

- (a) is to be in writing; and
- (b) is to be lodged with the registrar; and
- (c) is to contain the prescribed information.

(3) The Board may issue and make available to members of the public guidelines specifying situations in which applications under subsection (1) should be made to the Board for its consent to medical or dental treatment.

(4) Where the application is made for consent to the carrying out of medical or dental treatment and the treatment cannot be carried out without that consent, the Board may, by order—

- (a) direct the person who is to carry out the treatment not to start the treatment; or
- (b) if the treatment has already started, direct the person who is carrying out the treatment to discontinue it—

until the Board has determined the application.

(5) A person who, without lawful excuse, fails to comply with an order under subsection (4) is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units or to imprisonment for a term not exceeding 1 year, or both.

## **Consent of Board**

**45—(1)** On hearing an application for its consent to the carrying out of medical or dental treatment the Board may consent to the carrying out of the medical or dental treatment if it is satisfied that—

- (a) the medical or dental treatment is otherwise lawful; and
- (b) that person is incapable of giving consent; and
- (c) the medical or dental treatment would be in the best interests of that person.

(2) For the purposes of determining whether any medical or dental treatment would be in the best interests of a person to whom this Part applies, matters to be taken into account by the Board include—

- (a) the wishes of that person, so far as they can be ascertained; and
- (b) the consequences to that person if the proposed treatment is not carried out; and
- (c) any alternative treatment available to that person; and
- (d) whether the proposed treatment can be postponed on the ground that better treatment may become available and whether that person is likely to become capable of consenting to the treatment; and
- (e) in the case of transplantation of tissue, the relationship between the 2 persons concerned; and
- (f) any other matters prescribed by the regulations.

(3) A decision of the Board to give its consent to medical or dental treatment has no effect until the period of appeal under section 76 has expired or, if an appeal has been instituted, it is set aside, withdrawn or dismissed.

#### **Consent to continuing or further special treatment by guardian with authority of Board**

**46—(1)** The Board may, in giving consent to the carrying out of special treatment on a person to whom this Part applies, confer on the guardian of the person authority to consent—

- (a) to the continuation of the treatment; or
- (b) to the carrying out on the person of further special treatment of a similar nature.

(2) The Board may confer the authority only at the request, or with the consent, of the guardian.

(3) The Board may—

- (a) impose conditions or give directions as to the exercise of the authority; or
- (b) revoke the authority.

(4) If the guardian has authority under this section, a person may request his or her consent to the carrying out of the relevant treatment.

*Division 3—General***Effect of consent**

**47**—A consent given under this Part in respect of the carrying out of medical or dental treatment on a person to whom this Part applies has effect as if—

- (a) that person had been capable of giving consent to the carrying out of the treatment; and
- (b) the treatment had been carried out with that person's consent.

**Preservation of liability**

**48**—Nothing in this Part relieves a person from liability in respect of the carrying out of medical or dental treatment on a person to whom this Part applies, where that person would have been subject to that liability if—

- (a) that person had been capable of giving consent to the carrying out of the treatment; and
- (b) the treatment had been carried out with that person's consent.

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**PART 7****ADMINISTRATION ORDERS***Division 1—Objects of Part 7***Objects of Part 7**

**49**—The objects of this Part are to provide for the administration, by virtue of administration orders, of the estates of persons who are of or over the age of 18 years.

***Division 2—Administration orders*****Application for administration order**

**50—(1)** A person may apply to the Board for an administration order in favour of himself, herself or any other person in respect of the estate of a person with a disability.

(2) Where a person with a disability who is of or over the age of 18 years does not reside in Tasmania but has an estate the whole or part of which is in Tasmania, any person may apply to the Board for an administration order in respect of so much of the estate as is in Tasmania.

(3) An application under this section—

(a) is to be lodged with the registrar; and

(b) is to contain the prescribed information; and

(c) is to be accompanied by the written consent of the person proposed as administrator, if any, to act as administrator.

**Administration orders**

**51—(1)** If, after a hearing, the Board is satisfied that the person in respect of whom an application for an order appointing an administrator is made—

(a) is a person with a disability; and

(b) is unable by reason of the disability to make reasonable judgements in respect of matters relating to all or any part of his or her estate; and

(c) is in need of an administrator of his or her estate—  
the Board may make an order appointing an administrator of that person's estate.

(2) In determining whether or not a person is in need of an administrator of his or her estate, the Board must consider whether the needs of the proposed represented person could be met by other means less restrictive of the person's freedom of decision and action.

(3) The Board must not make an order under subsection (1) unless it is satisfied that the order would be in the best interests of the proposed represented person.

(4) Where the Board makes an order appointing an administrator of a person's estate, the order is to be that which is the least restrictive of that person's freedom of decision and action as is possible in the circumstances.

(5) An order made under subsection (1) may be expressed to take effect when the represented person is of or over the age of 18 years.

### **Expiration of administration orders**

**52**—An administration order lapses on the expiration of 3 years after the date on which it is made unless it is continued under section 68.

### **Enduring power of attorney to prevail over administration order**

**53**—(1) Where a proposed represented person has granted an enduring power of attorney under section 11A of the *Powers of Attorney Act 1934*, it is not competent for the Board to make an administration order in respect of his or her estate so long as the enduring power of attorney is in force.

(2) If any such enduring power of attorney relates to part only of the estate of the proposed represented person, the Board may make an administration order relating to any part of the represented person's estate that is not subject to the enduring power of attorney.

### **Persons eligible as administrators**

**54**—(1) The Board may appoint as an administrator of the estate of a proposed represented person—

- (a) The Public Trustee; or
- (b) the Public Guardian; or
- (c) a trustee company within the meaning of the *Trustee Companies Act 1953*; or

- (d) any other person, including the guardian of the proposed represented person, who consents to act as administrator if the Board is satisfied that—
- (i) the person will act in the best interests of the proposed represented person; and
  - (ii) the person is not in a position where his or her interests conflict or may conflict with the interests of the proposed represented person; and
  - (iii) the person is a suitable person to act as the administrator of the estate of the proposed represented person; and
  - (iv) the person has sufficient expertise to administer the estate.

(2) In determining whether a person is suitable to act as the administrator of the estate of a proposed represented person, the Board must take into account—

- (a) the wishes of the proposed represented person, so far as they can be ascertained; and
- (b) the compatibility of the person proposed as administrator with the proposed represented person and with his or her guardian, if any.

### **Remuneration of professional administrators**

**55—(1)** An administrator who carries on a business of, or including, the administration of estates, whether under this Act or otherwise, is, if the Board so determines, entitled to remuneration out of the estate of the represented person for the work involved in administering that estate, whether the work was or is performed before or after the commencement of this section.

(2) This section does not affect the right of The Public Trustee or a trustee company to recover charges and expenses under any other law.

*Division 4—Powers and duties of administrator***Powers and duties of administrator**

**56—**(1) Subject to and in accordance with this Act and the relevant administration order appointing him or her, an administrator—

- (a) has the general care and management of the estate of the represented person; and
- (b) has the duty to take possession and care of, recover, collect and administer the property and estate of the represented person and generally to manage his or her affairs with the exercise of all rights, statutory or otherwise, in respect of the estate; and
- (c) in the name of, and on behalf of, the represented person may generally do all acts and exercise all powers that he or she is authorized to do with respect to the estate with the same effect and in the same manner as the represented person could have done if that person were not under a legal disability.

(2) Without limiting subsection (1), an administrator may, in the name and on behalf of the represented person and so far as may be specified in the administration order—

- (a) collect, receive and recover any income or property to which the represented person is entitled; and
- (b) invest money in any manner in which trustees may by law invest; and
- (c) take a lease of real estate at such rent and on such conditions as he or she thinks fit, but not for a term exceeding 5 years without the consent of the Board; and
- (d) exercise any power of leasing vested in the represented person; and
- (e) surrender any lease, accept any lease, accept the surrender of any lease or renew any lease; and
- (f) sell, exchange, partition or convert into money any property other than real estate; and
- (g) sell, exchange, partition, convert into money or grant any interest in any real estate; and
- (h) mortgage, purchase, acquire, lease or charge any property or sever any joint tenancy; and

- (i) pay any debts and settle, adjust or compromise any demand made by or against the estate, and discharge any encumbrance on the estate, and reimburse (whether legally obliged to make such reimbursement or not) any person who has expended money for the benefit of the represented person; and
- (j) carry on, so far as appears desirable, any trade, profession or business which the represented person carried on; and
- (k) agree to any alteration of the conditions of any partnership into which any represented person has entered or to a dissolution and distribution of the assets of the partnership; and
- (l) bring and defend actions and other legal proceedings in the name of the represented person; and
- (m) execute and sign deeds, instruments and other documents; and
- (n) complete any contract for the performance of which the represented person was liable or enter into any agreement terminating liability; and
- (o) pay any sum for the maintenance of the represented person (and, in the event of his or her death, for funeral expenses) for the maintenance of his or her spouse or any child, parent or other person dependent on him or her and for the maintenance and education of his or her children as may be expedient and reasonable; and
- (p) expend money in the repair, maintenance, renovation, reconstruction or preservation of any property; and
- (q) pay or cause to be paid to the represented person for the personal use of that person an amount of money standing to the credit of that person; and
- (r) give or cause to be given to the represented person for the personal use of that person any personal property which belongs to that person; and
- (s) do all matters necessary or incidental to the performance of any of the matters specified in this subsection and apply any money which it is necessary to apply for the purposes of this Act; and
- (t) exercise any power, including a power to consent, vested in the represented person, whether beneficially, or as a trustee, or otherwise.



(3) The Board may, by order, limit the exercise of any power as it thinks fit or direct that the represented person may continue to be responsible for any part of his or her property or estate.

(4) The Board may, subject to such conditions or restrictions as it considers necessary, authorize an administrator to do any act not specified in this section.

(5) Where a decision, action, consent or act is made, taken, given or done by an administrator under an order made by the Board or under any power or authority given by this Act, the decision, action, consent or act has effect as if it had been made, taken, given or done by the represented person and the represented person had the legal capacity to do so.

(6) On the death of a represented person, an order appointing an administrator of that person's estate under this Act ceases to have effect except so far as it authorizes payment of funeral expenses.

### **Exercise of power by administrator**

57—(1) An administrator must act at all times in the best interests of the represented person.

(2) Without limiting subsection (1), an administrator acts in the best interests of the represented person if the administrator acts as far as possible—

- (a) in such a way as to encourage and assist the represented person to become capable of administering his or her estate; and
- (b) in consultation with the represented person, taking into account as far as possible the wishes of the represented person.

### **Settlements and gifts**

58—The Board on the application of an administrator or of its own motion after conducting a hearing may authorize the settlement of any property of a represented person, or the gift of any property of a represented person for—

- (a) the maintenance or other benefit of members of the represented person's family; or

- (b) making provision for other persons for whom, or purposes for which the represented person might be expected to provide if he or she were not a person with a disability; or
- (c) otherwise administering the represented person's affairs.

### **Powers of investment**

**59**—An administrator may, with the consent of the Board and notwithstanding the *Trustee Act 1898*—

- (a) retain any investment, whether or not it is a trustee investment; and
- (b) invest in any investment specified by the Board, whether or not it is a trustee investment.

### **Preservation of interests in represented person's property**

**60**—(1) Where—

- (a) any property of a represented person is disposed of under an administration order; and
- (b) under the will or intestacy of the represented person, or by any gift perfected or appointment taking effect on his or her death, any other person would, but for that disposal, have taken an interest in the property—

the other person is to take the same interest, so far as the circumstances may allow, in any property forming part of the represented person's estate that represents the property disposed of.

(2) If the property disposed of was real property, any property representing it, so long as it remains part of the represented person's estate, is to be treated as if it were real property.

(3) The Board may give such directions as may be necessary or expedient for the purpose of facilitating the operation of subsections (1) and (2), including the carrying of money to a separate account and the transfer of property other than money.

(4) Where—

- (a) any property of a represented person is disposed of under an administration order; or

- (b) the Board or the administrator has ordered, directed or authorized that any such property be so disposed of—

and the disposal would, but for this section, result in the conversion of personal property into real property, the Board may direct that the property representing the property disposed of, so long as it remains the represented person's property or forms part of his or her estate, is to be treated as if it were personal property.

(5) References in this section to the disposal of property are taken to include references to—

- (a) the sale, exchange, charging or other dealing with property other than money; and  
 (b) the removal of property from one place to another; and  
 (c) the application of money in acquiring property; and  
 (d) the transfer of money from one account to another—

and any such references to property representing property disposed of are to be construed accordingly and as including the result of successive disposals.

(6) Where—

- (a) any money is paid under an administration order; or  
 (b) the Board or the administrator has ordered, directed or authorized that any such money be paid—

for carrying out permanent improvements on, or otherwise for the benefit of, a represented person's property, the Board may—

- (c) give directions as to accounting for the payment of that money; or  
 (d) order that the whole or any part of the money so paid, or to be paid, is to be a charge on the property, whether without interest or with interest at a specified rate.

(7) A charge under subsection (6) may be made in favour of any person as the Board may determine and, in particular, where the money charged is paid out of the represented person's estate, may be made in favour of a person as trustee for the represented person.

(8) An order under subsection (6) may provide for excluding or restricting the operation of subsections (1) and (2).

(9) A charge under subsection (6) does not confer any right of sale or foreclosure during the life of the represented person.

### **Application by administrator for advice, &c.**

**61—(1)** An administrator may apply to the Board for advice or directions on any matter relating to the scope of an administration order or the exercise of any power by the administrator under it.

(2) The Board may require notice of the application under subsection (1) to be given to any person that the Board directs and may exercise its powers under this section without a hearing.

(3) The Board may—

- (a) approve or disapprove of any act proposed to be done by the administrator; and
- (b) give such advice as it considers appropriate; and
- (c) vary the administration order or make any other order that it could have made on the original application relating to the administration of the estate that it considers necessary.

(4) The Board of its own motion may direct, or offer advice to, an administrator in respect of any matter.

(5) An administrator who contravenes a direction given to him or her under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.

### **Power of administrator to act until notice of discharge**

**62—(1)** Where the Board has received information otherwise than from the administrator that a represented person has died or has ceased to be a represented person, the Board must forthwith give notice of that fact to the administrator.

(2) Unless the administrator knows that a person has ceased to be a represented person or has died, he or she may exercise all or any of the powers given to him or her by the Board with respect to the estate of the represented person.

(3) On notice being given under subsection (1), the represented person or his or her legal representative, as the case may be, is bound by and may take advantage of any act done on behalf of the represented person by the administrator within the powers conferred on the administrator by the Board as if it had been done by the represented person and he or she had legal capacity to do so.

### Reporting requirements for administrators

**63**—(1) An administrator of a represented person's estate must furnish the Board, at such times as the Board determines, with a statement of the accounts of the estate, specifying—

- (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) A statement under this section—

- (a) is to be in a form approved by the Board; and
- (b) is to be verified by statutory declaration signed by the administrator and supported by such other evidence, if any, as the Board may require.

(3) Where a represented person dies—

- (a) the administrator of his or her estate must, within 7 days after notification of the death, inform the Board in writing of the date of death; and
- (b) the administrator must, within 28 days after that notification, provide the Board with a statement of the accounts of the estate—

and the cost of auditing the accounts may be paid from the estate notwithstanding that the administration order has ceased to have effect.

(4) The Board must examine a statement of accounts and may—

- (a) cause the accounts to be audited by The Public Trustee or another person determined by the Board at the cost of the represented person's estate; and
- (b) if of opinion that the administrator, in making any expenditure in the exercise, or purported exercise, of his or her powers as such, did not act in good faith or with reasonable care, disallow that item of expenditure.

(5) The Board must not disallow an item of expenditure unless it first gives the administrator and any other person the Board thinks fit the opportunity to appear before the Board and be heard on the matter.

(6) Where the Board disallows an item of expenditure under subsection (4) (b), the administrator is personally liable to the represented person for the amount of the expenditure and to the Board for its costs and expenses incurred in relation to the disallowance.

(7) An administrator who, without reasonable excuse, contravenes this section is guilty of an offence and is liable on summary conviction to a penalty not exceeding 20 penalty units.

### **Delegation of Board's functions as to reporting**

**64—(1)** The Board may in writing—

- (a) delegate to such person as the Board may approve any of the functions or powers of the Board under section 63; and
  - (b) revoke wholly or partly a delegation.
- (2) A delegation—
- (a) may be made either generally or as otherwise provided by the instrument of delegation; and
  - (b) does not prevent the performance or exercise of a function or power by the Board.

(3) A function performed, or power exercised, by a delegate has the same effect as if performed or exercised by the Board.

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## PART 8

### EMERGENCY ORDERS

#### Emergency orders

**65**—(1) Where the Board considers it proper to do so by reason of urgency, the Board may in respect of a represented person make any order or give any direction considered appropriate in the circumstances.

(2) Where the Board considers it proper to do so, by reason of urgency, the Board may, in respect of a person who is not a represented person but in respect of whom the Board considers that there may be grounds for making a guardianship order or an administration order make an order appointing—

- (a) the Public Guardian as his or her guardian; or
- (b) The Public Trustee as administrator of his or her estate—

and in either case the Board may make any order or give any direction considered appropriate in the circumstances.

(3) The Board may make an order under this section of its own motion or on request by any person whom the Board considers to have a proper interest in the matter.

(4) In the exercise of its powers under this section—

- (a) the Board is not required to give notice to any person or to hold a hearing before making an order but the Board must make such inquiries or investigations as the Board may think appropriate; and
- (b) the Board may act on a request made, or information received, by telephone or any other means that the Board considers appropriate in the circumstances.

(5) An order under this section—

- (a) remains in effect for such period as the Board determines but not exceeding 28 days; and
  - (b) may be renewed but only once for a further period not exceeding 28 days.
- 

## PART 9

### ANNUAL REPORTS AND REVIEW OF ORDERS

#### Annual reports in respect of represented persons

**66**—(1) The Board must at least once in each period of 12 months obtain and consider a written report on the circumstances of each person who is subject to a guardianship order or administration order, including such details as the Board may require as to the guardianship or administration from—

- (a) the administrator or guardian or both; and
- (b) such other person as the Board may determine.

(2) An administrator, guardian or other person referred to in subsection (1) must, within 14 days after receiving a notice requiring him or her to do so or within such further period as the Board may allow, furnish the Board with a written report on the circumstances of a person who is subject to a guardianship order or administration order giving such particulars in respect of that person as the Board may require.

(3) An administrator, guardian or other person who contravenes subsection (2) is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

#### Review of orders

**67**—The Board may at any time—

- (a) of its own motion; or
- (b) on application by, or on behalf of, a represented person; or



(c) on the application of any other person—  
hold a hearing to review a guardianship order or administration order.

### **Order after review**

**68**—(1) On a review under section 67, the Board may vary or continue a guardianship order or administration order subject to any conditions or requirements it considers necessary or the Board may revoke the order.

(2) The Board may make such further orders as it considers necessary in order to give effect to an order made under subsection (1).

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## **PART 10**

### **MISCELLANEOUS AND SUPPLEMENTAL**

#### ***Division 1—Hearings by Board***

### **Notice of hearing**

**69**—(1) The Board must, as soon as practicable after receipt of an application under this Act and in any case not less than 10 days before a hearing by the Board, give notice of the hearing to—

- (a) the applicant; and
- (b) the person in respect of whom the hearing is to be held; and
- (c) the Public Guardian; and
- (d) if the person has a guardian, the guardian; and
- (e) if the person has an administrator in respect of his or her estate, the administrator; and
- (f) if the matter relates to the provision of medical or dental treatment, the registered practitioner proposing to carry out the treatment; and
- (g) any other person who the Board is satisfied has a proper interest in the matter.

(2) A notice under subsection (1) is to be accompanied by a copy of the relevant application and is to specify—

- (a) the time and place of the hearing; and
- (b) the nature of the proceedings; and
- (c) the kinds of orders that may be made by the Board; and
- (d) in the case of a notice given under subsection (1) (a) or (b), the entitlement of that person to representation before the Board.

(3) The Board is not obliged to give notice of a hearing to a person whose whereabouts cannot after reasonable inquiries be ascertained.

### **Giving of notice**

**70**—Where a notice is required to be given to a person under this Act, the notice may be given to that person by sending the notice by post to that person at the person's usual or last known place of residence or business or by such other method as the Board considers appropriate.

### **Hearing not to be invalidated by failure to give notice, &c.**

**71**—A hearing or determination of the Board is not invalidated or affected by reason only of—

- (a) the fact that it was not held or made within the time required by this Act; or
- (b) a failure to give notice to a person other than the person in respect of whom the hearing was held.

### **Date for hearing**

**72**—The Board must commence the hearing of an application under this Act—

- (a) in the case of medical or dental treatment, within 14 days; or

(b) in any other case, within 45 days—  
after the day on which the application is received by the Board.

### Appearance at hearing of Board

73—(1) At a hearing of the Board the applicant, the Public Guardian and the person in respect of whom the hearing is held may—

- (a) appear before the Board in person and be heard; or
- (b) may be represented before the Board by any person authorized to that effect by the applicant, the Public Guardian or the person in respect of whom the hearing is held.

(2) At a hearing of the Board—

- (a) a person not referred to in subsection (1) who is given notice of the hearing may—
  - (i) appear before the Board in person and be heard; or
  - (ii) by leave of the Board, be represented before the Board by any person authorized to that effect by the first-mentioned person; and
- (b) any other person who wishes to be heard and whom the Board agrees to hear may appear before the Board in person and be heard.

(3) Where in any proceedings the person in respect of whom the hearing is held is not represented before the Board, the Board may appoint a person to represent that person.

### Statement of reasons

74—(1) A person aggrieved by a determination of the Board may, by notice in writing given to the Board within 21 days after the making of the determination, request the Board to give to that person a statement in writing of reasons for the determination.

(2) The Board must, as soon as practicable but in any case within 21 days after receiving a request under subsection (1), prepare and give a statement of reasons to that person.

*Division 2—Special case and appeals***Special case for the opinion of Court**

75—(1) Where a question of law arises in a hearing before the Board, the Board, of its own motion or on the application of any person to whom notice of the hearing has been given, may reserve the question in the form of a special case stated for the opinion of the Court.

(2) Where a question of law has been reserved for the opinion of the Court under subsection (1), the Board must not—

- (a) determine the matter until the opinion of the Court has been given; or
- (b) proceed in a manner or make a determination that is inconsistent with the opinion of the Court on the question of law.

**Appeals against decisions of Board**

76—(1) An appeal to the Court from a determination of the Board may be brought by a person—

- (a) who appeared, or was entitled under section 73 to appear, before the Board at the relevant hearing; or
- (b) who, with leave of the Board, would have been entitled to appear before the Board at the relevant hearing; or
- (c) in respect of whom the determination was made.

(2) An appeal may be brought—

- (a) on a question of law, as of right; or
- (b) on any other question, only with the leave of the Court.

(3) An appeal is to be instituted in accordance with the rules in force under the *Supreme Court Civil Procedure Act 1932*—

- (a) within 28 days after the day on which the determination was made; or

- (b) if the appeal is against a determination made in respect of an application for consent to the carrying out of a termination of pregnancy, within 2 days after the making of the determination; or
- (c) if the appellant has requested a statement of reasons under section 74 in respect of the determination, within 28 days after the day on which the appellant received the statement; or
- (d) within such further time as the Court may allow, whether before or after the expiration of the period referred to in paragraph (a) or (c).

(4) The Court must hear and determine the appeal and may make an order confirming the determination, setting aside the determination and remitting the matter to the Board with directions or substituting its own determination.

### *Division 3—Powers of courts*

#### **Powers of courts**

77—(1) If, in any proceedings before a court, the court considers that a party may need to have a guardian or administrator or both appointed under this Act, the court may refer the issue to the Board for its determination.

(2) A referral under this section has effect as if an application had been made to the Board under this Act.

### *Division 4—Legal provisions*

#### **Protection from liability**

78—(1) A member of the Board, the registrar and any other person acting under the direction of the Board do not incur any personal liability in respect of any act done or omitted to be done in good faith in the performance or exercise, or purported performance or exercise, of any function or power of the Board or in the administration or execution, or purported administration or execution, of this Act.

(2) Subsection (1) does not preclude the Crown or the Board from incurring liability that a member of the Board, the registrar or other person mentioned in subsection (1) would, but for that subsection, incur.

(3) This section does not affect the operation of section 72 of the *Public Trust Office Act 1930*.

### **Evidentiary**

**79—(1)** All courts and persons acting judicially must take judicial notice of—

- (a) the signature of any person who is or has been the President, registrar or a member of the Board and of the fact that that person is or was the President, registrar or a member, as the case may be; and
- (b) the signature of any person who is or has been the Public Guardian or Deputy Public Guardian and of the fact that that person is or was the Public Guardian or Deputy Public Guardian, as the case may be.

(2) In any legal proceeding a document purporting to be signed by the President and to be a copy of an order made by the Board under this Act is evidence of the order.

### **Costs and expenses**

**80—**Where the Board is of opinion in a particular case that there are circumstances which justify it in doing so, the Board may make such orders as to costs and expenses as the Board thinks just.

### **Recognition of orders made in other States, &c.**

**81—(1)** Where it appears to the Minister that a law in force in another State, a Territory or another country has substantially the same effect as this Act, the Minister may, by notice published in the Gazette, declare that that law is a corresponding law for the purposes of this section.

(2) Where—

- (a) the Board is satisfied that a person has under a corresponding law been appointed guardian of another person or the administrator of the estate of another person; and
- (b) the applicant furnishes the Board with the original instrument of his or her appointment, a certified copy of that instrument or other evidence satisfactory to the Board of that appointment—

the Board must register the instrument.

(3) On registration of the instrument the applicant is taken to be—

- (a) the guardian of that person; or
- (b) the administrator of the estate of that person—

as the case may be, as if the applicant had been appointed as such by the Board for the purposes of this Act.

(4) On registration of the instrument the Board must notify the appropriate authority in the relevant State, Territory or country of—

- (a) that registration; and
- (b) any subsequent revocation of the appointment; and
- (c) any other action taken by the Board relating to the appointment.

### *Division 5—Accounts and reports*

#### **Accounts and records of Board and Public Guardian**

**82**—The Board and the Public Guardian must keep proper accounts and records of all matters relating to the administration of this Act by the Board or the Public Guardian and such other records as will present fairly the financial transactions and financial position of the Board or the Public Guardian, as the case may require.

#### **Audit of accounts of Board and Public Guardian**

**83**—The accounts of the Board and of the Public Guardian are subject to Part 3 of the *Financial Management and Audit Act 1990*.

**Annual report of Board and Public Guardian**

**84—(1)** The Board and the Public Guardian must, in respect of each financial year prepare an annual report specifying—

- (a) a report of the administration of this Act during the financial year; and
- (b) financial statements for the financial year—

and must furnish the Minister with the report and statements before the following 30 September.

(2) The Minister must cause the report and statements received under subsection (1) to be laid before each House of Parliament within 14 sitting days of that House after that receipt.

**Protection relating to reports and information**

**85—(1)** A person who makes a report or gives information to the Board—

- (a) for the purpose of an application under this Act, to assist in deciding whether an application should be made under this Act; or
- (b) when requested so to do by the Board, the Public Guardian or an officer of the Board—

is not subject to any liability for making the report or giving the information so long as he or she acts in good faith and has reasonable and probable grounds for believing the report or information to be true.

(2) A person who makes a report or gives information as mentioned in subsection (1) that is malicious or false in any material particular is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.

***Division 6—Offences and supplemental*****Confidentiality of information**

**86—(1)** A person must not disclose any information obtained by the Board or the Public Guardian under this Act that deals with the personal history or records of a represented person, proposed represented person or a person to whom Part 6 applies except—

- (a) at a hearing under this Act; or



- (b) where in the opinion of the Board or the Public Guardian it is in the best interests of the represented person to disclose the information; or
- (c) where the disclosure of the information is made by a person authorized in writing either generally or in a particular case by the President.

(2) Subsection (1) does not prevent the disclosure of information as required or permitted by any law if, in the case of information relating to the personal affairs of another person, that other person has given consent in writing.

(3) Nothing in this section prohibits the Board from publishing notices of hearings or other notices that may be necessary in the interests of justice or for the proper administration of this Act.

(4) A person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units or imprisonment for a period not exceeding 12 months or both.

## **Offences**

**87—A person who—**

- (a) has been served with a summons to appear before the Board and fails, without reasonable excuse, to attend as required by the summons; or
- (b) has been served with a summons to produce books, papers or other documents and fails, without reasonable excuse, to comply with a summons; or
- (c) misbehaves before the Board, insults the Board, any member of the Board or person assisting the Board or interrupts the proceedings of the Board; or
- (d) refuses to be sworn or to answer any relevant question when required to do so by the Board—

is guilty of an offence and is liable on summary conviction to a penalty not exceeding a fine of 40 penalty units or imprisonment for a period of 2 years or both.

### Power to open wills

**88**—(1) The Board, The Public Trustee or a trustee company, within the meaning of the *Trustee Companies Act 1953*, may, before or after the death of a represented person, open and read any paper or writing which purports to be, or is alleged to be, the will of the represented person.

(2) An administrator other than The Public Trustee or a trustee company may, with the approval of the Board, open and read any paper or writing which purports to be the will of a represented person, but must not disclose its contents to any other person without the further approval of the Board.

### Duty to keep register

**89**—(1) The Board must keep a register containing particulars of—

- (a) applications lodged with the registrar; and
- (b) any determinations of the Board; and
- (c) any instruments of appointment as an enduring guardian under Part 5; and
- (e) any instruments registered under section 81 (2).

(2) The register is open for inspection during normal business hours by members of the public.

### Regulations

**90**—(1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the Governor may make regulations as to—

- (a) fees to be paid to the Board in respect of any matters arising under this Act; and
- (b) prescribing information to be supplied in support of an application under this Act.

(3) The regulations may—

- (a) provide that a contravention of any of the regulations is an offence; and

(b) in respect of any such offence, provide for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding 2 penalty units for each day during which the offence continues.

(4) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

### **Administration of Act**

**91**—Until an order is made under section 4 of the *Administrative Arrangements Act 1990*—

- (a) this Act is administered by the Minister for Justice; and
  - (b) the Department responsible to the Minister for Justice in relation to the administration of this Act is the Department of Justice.
-

## SCHEDULE 1

Section 7 (3)

## MEMBERS OF BOARD

**Appointment of members**

1—(1) Each member of the Board—

- (a) is to be appointed by the Governor on the nomination of the Minister; and
- (b) is entitled to be paid—
  - (i) such remuneration as is from time to time fixed by the Governor; and
  - (ii) such travelling and other allowances as are from time to time fixed by the Governor; and
- (c) is not, in respect of the office of member, subject to the *Tasmanian State Service Act 1984*.

(2) The President and Deputy President hold office for a period of 5 years and each other member holds office for such period not exceeding 3 years as is specified in the instrument of his or her appointment and all members hold office on such terms and conditions as may be so specified.

(3) Each member of the Board is eligible for reappointment on the expiration of his or her term of office.

**Qualifications for members**

2—In nominating a person for appointment as a member of the Board, the Minister must have regard to the matters which the Board has power to hear and determine and to the need for the Board to be comprised of persons so qualified by knowledge and experience that the Board is capable of exercising the powers conferred on it.

**Deputy President**

3—(1) The Deputy President of the Board may exercise the President's functions if—

- (a) the President—
  - (i) delegates those functions to the Deputy President under clause 4; or

- (ii) is absent from Tasmania; or
- (iii) is prevented by illness or other incapacity from exercising those functions; or

(b) there is no person holding the office of President.

(2) While the Deputy President is authorized to exercise the President's functions, a reference in this Act to the President is taken to be a reference to the Deputy President.

(3) While the Deputy President exercises the President's functions, the Deputy President is taken to be the President.

(4) The Deputy President in exercising the functions of the President is taken to have sufficient authority to do so.

### **Delegation by President**

4—The President may delegate to the Deputy President of the Board the exercise of any of the President's functions, other than this power of delegation.

### **General provisions as to members**

5—(1) The Governor may suspend or remove a member from office if the Governor is satisfied that the member is unable to perform adequately the duties of his or her office.

(2) A member may resign from the office of member by writing signed by the member and delivered to the Governor.

(3) A person who is of or over the age of 70 years is not eligible to be appointed or re-appointed as a member.

(4) If a member—

(a) becomes bankrupt; or

(b) is convicted of an indictable offence or of an offence which, if committed in Tasmania, would be an indictable offence; or

(c) becomes incapable of performing the duties of the office of member; or

(d) is removed from office or resigns from office; or

(e) is of or over the age of 70 years; or

(f) dies—

the office of that member becomes vacant.

(5) If the appointment of any member expires at a time when the member is engaged in the hearing of any matter by the Board, the term of appointment of the member is taken to continue until that matter has been finally determined by the Board.

#### **Term of office of acting members**

6—Where an eligible person, within the meaning of section 21A of the *Acts Interpretation Act 1931*, has been appointed to act as a member and the appointment to act as such expires, whether by effluxion of time or because the member for whom that person is acting has resumed the performance of the duties of his or her office, at a time when the acting member is engaged in the hearing of any matter by the Board, the period of appointment of that person is taken to continue until that matter has been finally determined by the Board.

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**SCHEDULE 2**

Section 11 (2)

**PROCEDURE OF BOARD****PART 1****HEARINGS****Board to sit in divisions**

1—(1) For the purposes of hearing applications under this Act, the jurisdiction, powers and duties conferred or imposed on the Board may be exercised by divisions of the Board.

(2) A division may consist of one or 3 members as may be determined in a particular case by the President.

(3) The members who are to constitute a division are to be appointed by the President who, in so doing, must have regard to—

- (a) the nature of the matter to be considered by that division; and
- (b) the need for the members of that division to have appropriate knowledge and experience; and
- (c) the need for an appropriate member, to be appointed by the President, to act as chairperson of a division.

(4) Subclause (3) does not prevent the President from appointing himself or herself as chairperson of a division.

**Procedure of divisions**

2—(1) A matter arising for determination by a division is to be determined by a majority of votes of the members of the division.

(2) An act or decision of a division is not invalidated by reason only of a defect or irregularity in the appointment of a member or in the selection of that person as a member of a division.

(3) Subject to this Act, the procedure of a division is to be such as the division determines.

(4) A quorum of a division is to be a simple majority of its members.

**Places at which the Board to sit**

4—The Board is to sit at such places in Tasmania and at such times as the President determines.

**Determinations of the Board**

5—(1) A determination of the Board is to be in writing and signed by the members of the Board who constituted the division that made the determination.

(2) If one or more of the members who constituted a division are unavailable for the purpose of signing a determination made by that division, any other member or members of that division may sign the determination and that determination has the same force and effect as if it had been signed by all the members who constituted the division that made the determination.

(3) The production in any proceedings of a document purporting to be a copy of a determination made by the Board and purporting to be signed by a member or members of the Board is conclusive evidence of the due making and existence of the determination.

**Power to amend determinations**

6—The Board may at any time of its own motion or on the application of any person, make a determination correcting a determination made by the Board where there is in the determination—

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

**Withdrawal of application**

7—The Board may allow a person to withdraw an application at any time before it is determined.



**PART 2****ADMINISTRATIVE PROCEDURES****Power of President to convene meetings**

1—The President may, and at the request of 2 other members of the Board must, convene a meeting of the members of the Board.

**Procedure at meetings, &c.**

2—The procedure for the calling of, and for the conduct of, meetings of the Board is to be, except for any procedure specified in this Schedule, as determined by the Board.

**Committees of the Board**

3—The Board may establish committees for the purpose of assisting the President in the exercise of the powers and performance of the functions conferred on the President under this Act.

**Committees may include employees of the Board, &c.**

4—A committee established under this Part is to be constituted by such persons as the Board considers appropriate and may include, in addition to or in place of members of the Board, employees of the Board and any other persons.

**Policies and procedures of the Board**

5—The Board may, with the approval of the President, adopt policies and procedures to be followed by the Board for members or employees of the Board in the administration of this Act.

**Power of President to give directions**

6—Where there is no policy or procedure adopted by the Board, the President may give such directions as he or she considers appropriate in respect of any matters arising in the administration of this Act by the Board.

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SCHEDULE 3

Section 32 (2) (a) and (b)

INSTRUMENTS RELATING TO ENDURING GUARDIANS

FORM 1

APPOINTMENT OF ENDURING GUARDIAN

1—I (insert name, address and occupation of appointor), appoint (insert name, address and occupation of proposed guardian) to be my guardian.

2—I authorize my guardian, in the event that I become unable by reason of a disability to make reasonable judgments in respect of matters relating to my personal circumstances, to exercise the powers of a guardian under section 25 of the Guardianship and Administration Act 1995.

3—I require my guardian to observe the following conditions in exercising, or in relation to the exercise of, the powers conferred by this instrument:—

(State any conditions to which the powers are subject)

4—This is an appointment of an enduring guardian made under Part 5 of the Guardianship and Administration Act 1995.

.....  
(Signature of appointor)

ACCEPTANCE OF APPOINTMENT

I, (insert name, address and occupation of proposed guardian) accept appointment as a guardian under this instrument and undertake to exercise the powers conferred honestly and in accordance with the provisions of the Guardianship and Administration Act 1995.

.....  
(Signature of proposed guardian)

**CERTIFICATE OF WITNESSES**

We (*insert names, addresses and occupations of at least 2 witnesses*) certify—

- (a) that both the appointor and the proposed guardian have signed this instrument freely and voluntarily in our presence; and
- (b) that both the appointor and the proposed guardian appeared to understand the effect of this instrument.

.....  
 .....  
 (Signature of at least 2 witnesses)

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**FORM 2**

**REVOCATION OF APPOINTMENT OF ENDURING GUARDIAN**

1—I (*insert name, address and occupation of appointor*), revoke the appointment of (*insert name, address and occupation of proposed guardian*) as my guardian.

2—This revocation of appointment as an enduring guardian is made under Part 5 of the *Guardianship and Administration Act 1995*.

.....  
 (Signature of appointor)

**CERTIFICATE OF WITNESSES**

We (*insert names, addresses and occupations of at least 2 witnesses*) certify—

- (a) that the appointor has signed this instrument freely and voluntarily in our presence; and
- (b) that the appointor appeared to understand the effect of this instrument.

.....  
 .....  
 (Signature of at least 2 witnesses)

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*[Second reading presentation speech made in:—  
House of Assembly on 6 April 1995  
Legislative Council on 17 August 1995]*

