



**GUARDIANSHIP AND ADMINISTRATION (MISCELLANEOUS)
AMENDMENT ACT 1999**

No. 72 of 1999

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ELIZABETHAE II REGINAE

A.D. 1999

No. 72 of 1999

An Act to amend the Guardianship and Administration Act 1993.

[Assented to 25 November 1999]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Guardianship and Administration (Miscellaneous) Amendment Act 1999*.

(2) The *Guardianship and Administration Act 1993* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of s. 3—Interpretation

3. Section 3 of the principal Act is amended—

(a) by striking out the definition of "authorised witness" from subsection (1) and substituting the following definition:

"authorised witness" means—

- (a) a justice of the peace for this State or any other State or Territory of the Commonwealth; or
- (b) a commissioner for taking affidavits in the Supreme Court; or
- (c) a notary public;

(b) by inserting in subsection (1) after the definition of "the Health Commission" the following definition:

"health professional" means—

- (a) a physiotherapist registered under the *Physiotherapists Act 1991*; or
- (b) a chiropractor registered under the *Chiropractors Act 1991*; or
- (c) a chiropodist registered under the *Chiropodists Act 1950*;

(c) by striking out from the definition of "medical treatment" in subsection (1) "in the course of medical or surgical practice" and substituting "or other health professional in the course of professional practice".

Amendment of s. 12—Decisions of the Board

4. Section 12 of the principal Act is amended by inserting in subsection (3) ", good conscience" after "equity".

Insertion of s. 15A

5. The following section is inserted after section 15 of the principal Act:

Mediation

15A. (1) The Registrar may, on his or her own initiative, provide preliminary assistance in resolving any proceedings before the Board, including—

- (a) ensuring that the parties to the proceedings are fully aware of their rights and obligations; and
- (b) identifying the issues (if any) that are in dispute between any of the parties to the proceedings; and
- (c) canvassing options that may obviate the need to continue the proceedings; and
- (d) where appropriate, facilitating full and open communication between the parties to the proceedings.

(2) Before or during the hearing of any proceedings before the Board, the Board, the President or a Deputy President may, with or without the consent of the parties to the proceedings, refer the proceedings or any issues arising in the proceedings to the Registrar for mediation.

(3) The Registrar has, for the purposes of a mediation under subsection (2), the privileges and immunities of a member of the Board and such of the powers of the Board as the Board may delegate.

(4) The Board may itself endeavour to achieve a negotiated settlement of any proceedings or resolution of issues arising in any proceedings.

(5) A member of the Board involved in an attempt to settle proceedings or to resolve any issues arising in proceedings is not disqualified from taking further part in the proceedings.

(6) Evidence of anything said or done in an attempt under this section to settle proceedings or resolve any issues arising in proceedings is not subsequently admissible in the proceedings or in related proceedings except by consent of all parties to the proceedings.

(7) Where a matter is settled under this section, the Board may embody the terms of the settlement in an order.

Amendment of heading

6. The heading of Division 2 of Part 2 of the principal Act is amended by striking out "THE REGISTRAR" and substituting "OFFICERS OF THE BOARD".

Amendment of s. 17—The Registrar

7. Section 17 of the principal Act is amended—

(a) by striking out from subsection (2) "or a Health Commission employee";

(b) by striking out from subsection (3) "is the executive officer of the Board and".

Insertion of s. 17A

8. The following section is inserted in Division 2 of Part 2 of the principal Act after section 17:

Executive Officer

17A. (1) There will be an Executive Officer of the Board.

(2) The Executive Officer will be a Public Service employee.

(3) The Executive Officer is responsible for managing the day-to-day business of the Board.

Amendment of s. 21—General functions of Public Advocate

9. Section 21 of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) The Public Advocate may establish committees for the purpose of providing him or her with advice in relation to the performance of any of his or her functions.

Amendment of s. 23—Delegation by Public Advocate

10. Section 23 of the principal Act is amended by inserting in subsection (1) "or, with the approval of the Minister, to any other person" after "his or her functions".

Amendment of s. 25—Appointment of enduring guardian

11. Section 25 of the principal Act is amended by striking out subsection (5) and substituting the following subsection:

(5) Subject to this Act and the conditions, limitations or exclusions (if any) stated in the instrument, an instrument appointing an enduring guardian authorises the appointee or, if there is more than one appointee, the appointees jointly or severally (as the case may be)—

(a) to exercise the powers at law or in equity of a guardian if the person who makes the appointment subsequently becomes mentally incapacitated; and

- (b) in that event, to consent or refuse consent to the medical or dental treatment of the person, except where the person has a medical agent available and willing to act in the matter.

Amendment of s. 31—Powers of guardian

12. Section 31 of the principal Act is amended by inserting "this Act and" after "subject to".

Amendment of s. 32—Special powers to place and detain, etc., protected persons

13. Section 32 of the principal Act is amended—

- (a) by striking out from subsection (1) "a guardian at the time of his or her appointment under this Part, or at any subsequent time" and substituting "the guardian of a protected person";

- (b) by inserting after subsection (1) the following subsection:

(1a) An application made by a person under this section may be heard at the same time as his or her application for appointment as guardian.

Amendment of s. 58—Application of this Part

14. Section 58 of the principal Act is amended by striking out from paragraph (b) "reasonably".

Amendment of s. 59—Consent of certain persons is effective

15. Section 59 of the principal Act is amended—

- (a) by striking out from subsection (2)(a) "reasonably";

- (b) by striking out from subsection (2)(b)(i)(B) "or dentist" and substituting ", dentist or other health professional";

- (c) by striking out from subsection (3) "or dentist" wherever it occurs and substituting, in each case, ", dentist or other health professional".

Amendment of s. 60—Person must not give consent unless authorised to do so under this Part

16. Section 60 of the principal Act is amended by striking out from paragraph (b) "or dentist" and substituting ", dentist or other health professional".

Repeal of s. 86

17. Section 86 of the principal Act is repealed.

Substitution of Schedule

18. The Schedule of the principal Act is repealed and the following schedule is substituted:

SCHEDULE

Instrument Appointing Enduring Guardian

1. I [*insert name, address and occupation*] appoint [*insert names(s), address(es) and occupation(s) of guardian(s)*] jointly or jointly and severally to be my guardian(s).

2. I authorise my guardian(s), in the event that I become mentally incapacitated—

- (a) to exercise the powers at law or in equity of a guardian; and

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(b) to consent or refuse consent to my medical or dental treatment (unless I have a medical agent who is available and willing to act in the matter),

subject to the *Guardianship and Administration Act 1993* and to clause 3 of this instrument.

3. The authority of my enduring guardian(s) is subject to the following conditions, limitations or exclusions:

4. This is an appointment of an enduring guardian made under the *Guardianship and Administration Act 1993*.

DATED the(day) (month).(year)

SIGNED
[appointor]

WITNESS'S CERTIFICATE

I [insert name, address and qualification by virtue of which the witness is an authorised witness under the Act] certify that the above appointor signed this instrument freely and voluntarily in my presence and appeared to understand its effect.

SIGNED
[witness]

ACCEPTANCE OF APPOINTMENT [a separate acceptance and witness certificate must be signed in respect of each guardian if more than one is appointed]

I [insert name, address and occupation] accept appointment as a guardian under this instrument and undertake to exercise the powers conferred by it honestly and in accordance with the instrument and the principles set out in the *Guardianship and Administration Act 1993*.

SIGNED
[guardian]

WITNESS'S CERTIFICATE

I [insert name, address and qualification by virtue of which the witness is an authorised witness under the Act] certify that the above guardian signed this instrument freely and voluntarily in my presence and appeared to understand its effect.

SIGNED
[witness]

Further amendment of principal Act

19. The principal Act is further amended in the manner indicated in the Schedule.

Transitional provision

20. (1) The person who, immediately before the commencement of this section, held office as the Registrar under the principal Act, will, on that commencement, be taken to have vacated that office and to have been appointed as Executive Officer of the Board under the Act.

(2) The transfer effected by subsection (1) does not affect the person's salary or any other benefits or accrued or accruing rights in respect of employment.

SCHEDULE
Amendment of Penalties

Provision Amended	How Amended
Section 14(2)	Strike out the penalty provision and substitute the following: Maximum penalty: \$10 000.
Section 15(6)	Strike out the penalty provision and substitute the following: Maximum penalty: \$10 000.
Section 32(7)	Strike out the penalty provision and substitute the following: Maximum penalty: \$10 000.
Section 40(2)	Striking out the penalty provision and substitute the following: Maximum penalty: \$2 500.
Section 40(3)	Striking out the penalty provision and substitute the following: Maximum penalty: \$5 000.
Section 44(2)	Striking out the penalty provision and substitute the following: Maximum penalty: \$5 000.
Section 60	Strike out the penalty provision and substitute the following: Maximum penalty: \$10 000 or imprisonment for 2 years.
Section 61(1)	Strike out the penalty provision and substitute the following: Maximum penalty: \$10 000 or imprisonment for 2 years.
Section 76	Strike out the penalty provision and substitute the following: Maximum penalty: \$10 000 or imprisonment for 2 years.
Section 77(1)	Strike out the penalty provision and substitute the following: Maximum penalty: \$20 000.
Section 77(2)	Strike out the penalty provision and substitute the following: Maximum penalty: \$10 000 or imprisonment for 2 years.
Section 77(3)	Strike out the penalty provision and substitute the following: Maximum penalty: \$10 000 or imprisonment for 2 years.
Section 77(4)	Strike out the penalty provision and substitute the following: Maximum penalty: \$10 000 or imprisonment for 2 years.
Section 79(1)	Strike out the penalty provision and substitute the following: Maximum penalty: Imprisonment for 10 years.
Section 80(1)	Strike out the penalty provision and substitute the following: Maximum penalty: \$10 000.
Section 81(1)	Strike out the penalty provision and substitute the following: Maximum penalty: \$10 000.

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SCHEDULE

Provision Amended	How Amended
Section 81(3)	Strike out the penalty provision and substitute the following: Maximum penalty: \$10 000.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor