



TASMANIA

**GUARDIANSHIP AND ADMINISTRATION
(MISCELLANEOUS AMENDMENTS) ACT
1996**

No. 33 of 1996

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SCHEDULE 1 – AMENDMENT OF CERTAIN ACTS



**GUARDIANSHIP AND ADMINISTRATION
(MISCELLANEOUS AMENDMENTS) ACT
1996**

No. 33 of 1996

An Act to amend certain Acts in consequence of the enactment of the *Guardianship and Administration Act 1995*

[Royal Assent 12 November 1996]

Be 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 (Miscellaneous Amendments) Act 1996*.

Commencement

2. (1) This Part and Part 2 commence on the day after the day on which this Act receives the Royal Assent.

**PART 2 – AMENDMENTS OF GUARDIANSHIP AND
ADMINISTRATION ACT 1995****Principal Act**

3. In this Part, the *Guardianship and Administration Act 1995** is referred to as the Principal Act.

Section 2 amended (Commencement)

4. Section 2 of the Principal Act is amended by omitting "or days".

Section 53 amended (Administration order to prevail over enduring power of attorney)

5. Section 53 of the Principal Act is amended by adding the following subsection:

(3) Notwithstanding subsection (1), any action taken by a person purporting to act under an administration order before he or she has notice of an enduring power of attorney is valid and effectual.

Section 90A inserted

6. After section 90 of the Principal Act, the following section is inserted:

* No. 44 of 1995.

Savings and transitional provisions

90A. The savings and transitional provisions specified in Schedule 4 have effect.

Schedule 4 inserted

7. After Schedule 3 to the Principal Act, the following Schedule is inserted:

**SCHEDULE 4 - SAVINGS AND
TRANSITIONAL PROVISIONS**

Section 90A

1. In this Schedule –

"commencement date" means the date on which this Act commences;

"former Board" means the Guardianship Board established under the *Mental Health Act 1963*;

"initial period" means the period of 6 months commencing on the commencement date.

2. Where a guardianship application was received by the former Board under section 23 of the *Mental Health Act 1963* and in force immediately before the commencement date, the application is taken to be an application for a guardianship order under this Act.

3. A guardianship order made under the *Mental Health Act 1963* and in force immediately before the commencement date is taken to be a guardianship order made under this Act.

4. Where an appointment of the former Board as guardian of a person was in force immediately before the commencement date, the Guardianship and Administration Board has the functions of a guardian for the initial period as if it had been appointed as a full guardian of that person as mentioned in section 25.

5. Where the Public Trustee has been appointed as a committee on the filing of a certificate of disability under the *Mental Health Act 1963* and the appointment was in force immediately before the commencement date –

- (a) the certificate of disability is taken to be an administration order made under this Act; and
- (b) the Public Trustee is taken to be administrator of the estate of the person to whom the order relates without limitation of his or her powers.

6. Where an order for the appointment of a committee made under the *Mental Health Act 1963* was in force immediately before the commencement date –

- (a) the order has effect as if it were an administration order made under this Act; and
- (b) the person appointed as a committee is taken to be the administrator of the estate of the person to whom the order relates on the same terms and conditions, if any, as are specified in the order.

**PART 3 - AMENDMENTS OF MENTAL HEALTH
ACT 1963****Principal Act**

8. In this Part, the *Mental Health Act 1963** is referred to as the Principal Act.

Section 3 amended (Interpretation)

9. Section 3 of the Principal Act is amended as follows:

- (a) by omitting "or a guardianship application" from the definition of "application" in subsection (1);
- (b) by omitting the definitions of "Board", "guardianship application", "guardianship order" and "nominated medical attendant" from subsection (1);
- (c) by omitting paragraph (b) from the definition of "responsible medical officer" in subsection (1);
- (d) by omitting subsection (3);
- (e) by omitting "or subject to guardianship" and "or a guardianship application" from subsection (4).

* No. 63 of 1963. For this Act, as amended to 1 September 1979, see the continuing Reprint of Statutes. Subsequently amended by No. 84 of 1981, Nos. 16 and 29 of 1984, Nos. 5 and 51 of 1985, No. 8 of 1989, No. 5 of 1990, Nos. 4, 43 and 46 of 1991, No. 7 of 1993, No. 68 of 1994 and Nos. 20 and 71 of 1995.

Section 3A inserted

10. After section 3 of the Principal Act, the following section is inserted:

Application of Guardianship and Administration Act 1995

3A. Where a provision of this Act is inconsistent with a provision of the *Guardianship and Administration Act 1995*, the latter provision prevails to the extent of the inconsistency.

Section 8 repealed

11. Section 8 of the Principal Act is repealed.

Section 14 amended (Admission applications)

12. Section 14 of the Principal Act is amended by omitting subsection (3).

Sections 22 and 23 repealed

13. Sections 22 and 23 of the Principal Act are repealed.

Section 24 amended (Rectification of applications and recommendations)

14. Section 24 of the Principal Act is amended as follows:

- (a) by omitting subsection (2);

- (b) by omitting "or subsection (2)" from subsection (3).

Section 25 amended (Re-classification of patients)

15. Section 25 of the Principal Act is amended as follows:

- (a) by omitting "or is subject to guardianship", "or a guardianship application" and "or to a guardian, as the case may be," from subsection (1);
- (b) by omitting subsection (4).

Section 26 substituted and section 27 repealed

16. Sections 26 and 27 of the Principal Act are repealed and the following section is substituted:

Transfer of patients

26. (1) In such circumstances and subject to such conditions as may be prescribed, a patient who is for the time being liable to be detained in a hospital, by virtue of an application, may be transferred to another hospital.

(2) Where a patient is transferred under subsection (1) and he or she is liable to be detained in a hospital by virtue of an admission application and is transferred to another hospital, this Part applies to him or her as if –

- (a) the application were an application for admission to that other hospital; and

- (b) the patient had been admitted to that other hospital at the time when he or she was originally admitted to a hospital under the application.

(3) Regulations made for the purposes of this section may make provision with respect to the conveyance to their destination of patients authorised to be transferred under the regulations.

Section 29 amended (Return and re-admission of patients absent without leave)

17. Section 29 of the Principal Act is amended by omitting subsections (2) and (3) and substituting the following subsection:

(2) A patient is not to be taken into custody under this section after the expiration of a period of 28 days beginning with the first day of his or her absence without leave and a patient who has not returned or been taken into custody under this section within that period ceases to be liable to be detained at the expiration of that period.

Section 30 repealed

18. Section 30 of the Principal Act is repealed.

Section 32 amended (Duration of authority)

19. Section 32 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) "treatment, and a patient subject to guardianship in

pursuance of a guardianship application," and substituting "treatment";

- (b) by omitting from subsection (1) "or kept subject to that guardianship, as the case may be,";
- (c) by omitting from subsection (1) "admitted, or the day on which the guardianship application was accepted, as the case may be," and substituting "admitted";
- (d) by omitting from subsection (2) "or guardianship";
- (e) by omitting subsection (4);
- (f) by omitting from subsection (5) "or subsection (4)" and "or guardianship";
- (g) by omitting "or guardianship" from subsection (6).

Section 33 amended (Special provisions as to psychopathic and subnormal patients)

20. Section 33 of the Principal Act is amended by omitting subsections (5) and (6).

Section 34 amended (Special provisions as to patients absent without leave)

21. Section 34(3) of the Principal Act is amended by omitting "or guardianship".

Section 35 amended (Special provisions as to patients sentenced to imprisonment, &c.)

22. Section 35 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) "or is subject to guardianship";
- (b) by omitting from subsection (3) "or to be subject to guardianship".

Section 36 amended (Discharge of patients)

23. Section 36(2) of the Principal Act is amended as follows:

- (a) by omitting "patient; and" from paragraph (b) and substituting "patient.";
- (b) by omitting paragraph (c).

Section 44 amended (Wards of court)

24. Section 44 of the Principal Act is amended by omitting subsection (3).

Section 48 amended (Powers of Supreme Court to make hospital orders)

25. Section 48 of the Principal Act is amended by omitting subsection (1A) and substituting the following subsection:

(1A) A hospital order is an order authorising the detention of the person to whom it relates in an institution.

Section 51 amended (General provisions as to making of hospital orders)

26. Section 51 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) "or guardianship order";
- (b) by omitting from subsection (1)(a)(ii) ", or his reception into guardianship (as the case may be)";
- (c) by omitting from subsection (1)(b) "or a guardianship order";
- (d) by omitting subsection (4);
- (e) by omitting from subsection (6) "order, guardianship order," and substituting "order".

Section 55 amended (Effect of hospital orders on sentences of imprisonment)

27. Section 55 of the Principal Act is amended by omitting subsection (5).

Section 57 amended (Effect of hospital orders on certain recognizances)

28. Section 57 of the Principal Act is amended by omitting subsections (3) and (4).

Section 58 amended (Effect of hospital orders and guardianship orders on supervision orders)

29. Section 58 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) "or a guardianship order in which the Board is named as guardian of the child";
- (b) by omitting subsection (2).

Section 64 amended (Interpretation of Division 4)

30. Section 64(1) of the Principal Act is amended as follows:

- (a) by omitting "or guardianship";
- (b) by omitting "order, a guardianship order," and substituting "order".

Section 65 amended (General effect of hospital orders)

31. Section 65 of the Principal Act is amended by omitting subsections (2) and (4).

Section 66 amended (Application of certain provisions of Part III to patients whose discharge is not subject to restriction)

32. Section 66 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) "or placed under guardianship by a guardianship order," ", or placed" and "or a guardianship application, as the case may be,";
- (b) by omitting from subsection (4) ", or his placing under the guardianship of the Board or

the other person into whose guardianship he is transferred, as the case may be,";

- (c) by omitting subsection (5);
- (d) by omitting from subsection (6) "or the day on which a guardianship application was accepted".

Section 67 amended (Application of certain provisions of Part III to patients whose discharge is subject to restriction)

33. Section 67 of the Principal Act is amended by omitting from subsection (2) "be transferred to the guardianship of the Board or any other person, nor shall he,".

Section 73 amended (Effect of orders on previous applications, &c.)

34. Section 73(1) of the Principal Act is amended by omitting "or placed under guardianship by a guardianship order," and "or subject to guardianship".

Section 74 amended (Orders, &c., having effect as applications, &c.)

35. Section 74 of the Principal Act is amended by omitting subsection (2).

Section 76 amended (Powers of Tribunal)

36. Section 76 of the Principal Act is amended by omitting subsection (2).

Section 79 amended (Supplementary provisions as to appeal)

37. Section 79(a) of the Principal Act is amended by omitting ", or the person to whose guardianship the patient is subject,".

Part VI repealed

38. Part VI of the Principal Act is repealed.

Section 106 amended (Ill-treatment of patients)

39. Section 106(3) of the Principal Act is amended by omitting "subject to his guardianship or otherwise".

Section 109 amended (Correspondence of patients)

40. Section 109 of the Principal Act is amended by omitting subsection (8).

Miscellaneous amendments of Principal Act

41. (1) The following sections of the Principal Act are amended by omitting "or guardian":

Sections 5(2) and 25(3).

(2) The following sections of the Principal Act are amended by omitting "or subject to guardianship":

Sections 31(1), 34(1) and (2), 36(1), 41(7), 42(7)(a) and (b), 43, 73(2), 104(1)(b) and (2) and 105(1)(a).

(3) The following sections of the Principal Act are amended by omitting "or a guardianship application":

Sections 16(3), 37(3), 41(4)(c), 66(3) and 111(1)(a).

(4) The following sections of the Principal Act are amended by omitting "or a guardianship order":

Sections 48(1), 49(3) and (5), 50(1) and (2) and 57(2).

(5) The following sections of the Principal Act are amended by omitting "or guardianship order":

Sections 49(1) and (2), 51(5), 61(8)(c) and 73(2).

Schedule 3 repealed

42. Schedule 3 to the Principal Act is repealed.

PART 4 - AMENDMENT OF CERTAIN ACTS

Amendment of certain Acts

43. The Acts specified in column 1 of Schedule 1 are, in the provisions specified in column 2 of that Schedule, amended as specified in column 3 of that Schedule.

SCHEDULE 1 - AMENDMENT OF CERTAIN ACTS

Section 43

COLUMN 1 Acts	COLUMN 2 Provisions amended	COLUMN 3 Amendment
<i>Alcohol and Drug Dependency Act 1968</i>	Section 39(2)	Omit paragraph (c) and substitute the following paragraph: (c) the making of a hospital order under the <i>Mental Health Act 1963</i> or a guardianship order under the <i>Guardianship and Administration Act 1995</i> ; or
<i>Friendly Societies Act 1888</i>	Section 15(g)	Omit "committee of his estate has been appointed under Part VI of the <i>Mental Health Act 1963</i> ," and substitute "administrator of his estate has been appointed under the <i>Guardianship and Administration Act 1995</i> ,".
<i>Land Acquisition Act 1993</i>	Section 63(2)	Omit paragraph (c) and substitute the following paragraph:

	<p>(c) an administrator appointed under the <i>Guardianship and Administration Act 1995</i>; and</p>
Section 64	<p>Omit subsections (3) and (4) and substitute the following subsections:</p> <p>(3) Subject to subsection (4), the powers conferred by section 63 on an administrator referred to in section 63(2)(c) –</p> <p>(a) are not to be exercised without the authority of the Guardianship and Administration Board given under section 56 of the <i>Guardianship and Administration Act 1995</i>; and</p> <p>(b) are to be exercised subject to any conditions or restrictions made by the Board under that section.</p>

		<p>(4) The <i>Public Trustee Act 1930</i> has effect for the purposes of the <i>Guardianship and Administration Act 1995</i> as if the powers conferred by section 63 on an administrator referred to in subsection (2)(c) of that section were included in the powers specified in section 32(1)(a) of the <i>Public Trustee Act 1930</i>.</p>
	Section 65(2)	<p>Omit "a committee has been appointed under Part VI of the <i>Mental Health Act 1963</i>" and "committee", secondly and lastly occurring, and substitute "an administrator has been appointed under the <i>Guardianship and Administration Act 1995</i>" and "administrator", respectively.</p>
<i>Land Titles Act 1980</i>	Section 11(1)(d)	<p>Omit "committee of the estate of a patient appointed under Part VI of the <i>Mental Health Act 1963</i>" and substitute "administrator of the estate of a person under the <i>Guardianship and Administration Act 1995</i>".</p>

	Section 133(5)(g)	Omit "committee appointed under Part VI of the <i>Mental Health Act 1963</i> " and substitute "administrator of the estate of a person under the <i>Guardianship and Administration Act 1995</i> ".
<i>Limitation Act 1974</i>	Section 2(3)	Omit paragraphs (a), (b) and (c) and substitute the following paragraphs: <ul style="list-style-type: none"> (a) while he is liable to be detained under the <i>Mental Health Act 1963</i>; or (b) while a guardianship order or an administration order in respect of his estate is in force under the <i>Guardianship and Administration Act 1995</i>.
	Section 27(2)	Omit "Part VI of the <i>Mental Health Act 1963</i> " and substitute "the <i>Guardianship and Administration Act 1995</i> ".

<i>Local Govern- ment Act 1993</i>	Section 254(2)	Omit paragraph (d) and substitute the following paragraph: (d) is not subject to an order under the <i>Mental Health Act 1963</i> or the <i>Guardianship and Administration Act 1995</i> .
	Section 255(3)(c)	Omit subparagraph (iii) and substitute the following subparagraph: (iii) is subject to an order under the <i>Mental Health Act 1963</i> or the <i>Guardianship and Administration Act 1995</i> .
	Section 270(1)	Omit paragraph (g) and substitute the following paragraph: (g) is not subject to an order under the <i>Mental Health Act 1963</i> or the <i>Guardianship and Administration Act 1995</i> ; and
<i>Powers of Attorney Act 1934</i>	Section 11D	Repeal section 11D.

<i>Public Trustee Act 1930</i>	Section 50A(4)(a)	Omit "committed under the <i>Mental Health Act 1963</i> " and substitute "administrator under the <i>Guardianship and Administration Act 1995</i> ".
<i>Trustee Companies Act 1953</i>	Section 7(1)	Omit paragraph (c) and substitute the following paragraph: (c) an administrator of a person's estate under the <i>Guardianship and Administration Act 1995</i> ;
	Section 15(1)	Omit "committee of the estate of a patient within the meaning of Part VI of the <i>Mental Health Act 1963</i> ," and substitute "administrator of the estate of a person under the <i>Guardianship and Administration Act 1995</i> ,".
<i>War Service Land Settlement Act 1950</i>	Section 22(4)(b)	Omit "the tenant becomes a patient within the meaning of Part VI of the <i>Mental Health Act 1963</i> during the currency of the condition" and substitute "during the currency of the condition a guardianship order or an administration order under the <i>Guardianship and Administration Act 1995</i> is in force,".

Section 22(4)(c)	Omit "such a patient" and "committee of the estate of the patient" and substitute "subject to an order mentioned in paragraph (b)" and "administrator of the estate of the tenant", respectively.
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*[Second reading presentation speech made in:-
House of Assembly on 1 October 1996
Legislative Council on 23 October 1996]*

