

Guardianship and Administration Board Act 1986

No. 58 of 1986

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Victoria

No. 58 of 1986

Guardianship and Administration Board Act 1986

[Assented to 3 June 1986]

The Parliament of Victoria enacts as follows:

PART I—PRELIMINARY

Purpose.

1. The purpose of this Act is to enable persons with a disability to have a guardian or administrator appointed when they need a guardian or administrator.

Commencement.

2. This Act comes into operation on a day or days to be proclaimed.

Definitions.

3. (1) In this Act—

“Administration order” means—

- (a) an order of the Board appointing a person as an administrator of the estate of a person under section 46; or
- (b) a temporary order of the Board under section 60.

“Administrative Appeals Tribunal” means the Administrative Appeals Tribunal established under the *Administrative Appeals Tribunal Act 1984*.

“Administrator” means the Public Trustee or any other person named as administrator in an administration order.

“Board” means the Guardianship and Administration Board.

“Determination” in relation to the Board, includes order, direction, consent, advice and approval.

“Disability” in relation to a person, means intellectual impairment, mental illness, brain damage, physical disability or senility.

“Division” means a division of the Board.

“Executive officer” means the executive officer of the Board.

“Guardian” means the Public Advocate, person or body named as a plenary guardian or limited guardian in a guardianship order or a person who becomes a guardian under section 35.

“Guardianship order” means—

- (a) an order of the Board appointing a person as plenary guardian or limited guardian under section 22; or
- (b) an order of the Board appointing a person as an alternative guardian under section 34; or
- (c) a temporary order of the Board made under section 33.

“Major medical procedure” means a procedure specified to be a major medical procedure in guidelines made under section 37 (3).

“Member” means a member of the Board and includes the President.

“Nearest relative” in relation to a person means the spouse of that person or, where that person does not have a spouse, the relative of that person first listed in the following paragraphs who has attained the age of 18 years, the elder or eldest of two or more relatives described in any paragraph being preferred to either or any of those relatives regardless of sex—

- (a) son or daughter;
- (b) father or mother;
- (c) brother or sister;
- (d) grandfather or grandmother;
- (e) grandson or granddaughter;
- (f) uncle or aunt;
- (g) nephew or niece.

“**Prescribed**” means prescribed by the regulations.

“**President**” means President of the Board.

“**Primary carer**” means any person who is primarily responsible for providing support or care to a person.

“**Public Advocate**” means the person appointed as the Public Advocate under Part 3.

“**Public Trustee**” means the Public Trustee appointed under the *Public Trustee Act 1958*.

“**Regulations**” means regulations made under this Act.

“**Represented person**” means any person in respect of whom—

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

(2) In the definition of “**Nearest relative**”—

- (a) a reference to a person’s brother or sister is a reference to a brother or sister whether of the whole blood or the half-blood and includes a reference to a person who was adopted by one or both of the parents of the first-mentioned person; and
- (b) a reference to the spouse of a person includes a reference to a person who is not legally married to the first-mentioned person but who lives with that person on a *bona fide* domestic basis.

Objects of Act.

4. (1) The objects of this Act are—

- (a) to establish a Guardianship and Administration Board; and
- (b) to provide for the appointment of a Public Advocate; and
- (c) to enable the making of guardianship orders and administration orders; and
- (d) to ensure that persons with a disability and represented persons are informed of and make use of the provisions of this Act.

(2) It is the intention of Parliament that the provisions of this Act be interpreted and that every function, power, authority, discretion, jurisdiction and duty conferred or imposed by this Act is to be exercised or 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 are promoted; and
- (c) the wishes of a person with a disability are wherever possible given effect to.

**PART 2—ESTABLISHMENT, CONSTITUTION AND PROCEDURE
OF THE BOARD**

The Guardianship and Administration Board.

5. (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 is to be a duly qualified legal practitioner who has been admitted to practice for at least five years; and
- (b) such other members as are necessary from time to time for the proper functioning of the Board.

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

Staff of the Board.

6. (1) Subject to the *Public Service Act* 1974, there is to be appointed an executive officer of the Board and such other officers and employees as are necessary for the proper functioning of the Board.

(2) The executive officer is subject to the general control and direction of the President, to perform the functions and exercise the powers conferred on the executive officer by or under this Act.

Proceedings of the Board to be held in public.

7. (1) Unless sub-section (2) applies, all proceedings before the Board are to be open to 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) Upon a request under sub-section (2) the Board must direct that any persons—

- (a) who in its opinion are not directly interested in the proceedings; or
- (b) who have not been authorized by the Board to be present at the proceedings—

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

Reports of proceedings.

8. (1) Unless the Board otherwise determines in a particular case a person must not publish or broadcast or cause to be published or broadcast any report of the proceedings of the Board.

(2) Where the Board considers it would be in the public interest to do so the Board may determine that a person may publish or broadcast or cause to be published or broadcast a report of any proceedings of the Board provided that—

- (a) the report does not contain any particulars calculated to lead to the identification of any person in respect of whom the proceedings have been brought or any other person concerned in the proceedings; and
- (b) pictures are not taken of any person in respect of whom proceedings have been brought or any other person concerned in the proceedings.

(3) Any person who contravenes this section is guilty of an offence against this Act and liable to a penalty of not more than 20 penalty units.

Secrecy provision.

9. (1) Unless sub-section (2) or section 8 applies, a person who—

- (a) is or has at any time been a member of the Board; or
- (b) is or has been present at any proceedings of the Board—

must not, except to the extent necessary to perform any official duties or to perform or exercise any function or power under this Act, either directly or indirectly, make a record of, or divulge or communicate to any person, any information that is or was acquired by the person by reason of being or having been so appointed, engaged, authorized or present or make use of any such information, for any purpose other than the performance of official duties or the performance or exercise of that function or power.

Penalty: 10 penalty units.

(2) Sub-section (1) does not preclude a person from—

- (a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under this Act; or
- (b) divulging or communicating to a court in the course of any proceedings referred to in paragraph (a) any matter or thing coming under the notice of the person in the performance of official duties or in the performance of a function or the exercise of a power referred to in that sub-section; or
- (c) producing a document or divulging or communicating information that is required or permitted by any Act to be produced, divulged or communicated, as the case may be

if, where the document or information relates to the personal affairs of another person, that other person has given consent in writing.

Procedure of the Board.

10. (1) 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 any proceedings in a formal manner.

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

(3) 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.

(4) 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 upon affirmation, or declaration instead of an oath where permitted by law.

(5) A member of the Board may administer an oath or take an affirmation or declaration for the purposes of this Act.

(6) Evidence given before the Board cannot be used in any civil or criminal proceedings other than proceedings for an offence against this Act or for perjury.

(7) The Board may of its own motion or on the application of any party to the proceedings before it direct the executive officer to serve upon any person a summons to appear before the Board to give evidence or to produce the documents specified in the summons.

(8) The Board may make an order for the manner of service, including substituted service, of a summons under sub-section (7).

(9) A person who without lawful excuse disobeys a summons of the Board is guilty of an offence.

Penalty: 5 penalty units.

Appointment of persons to assist the Board.

11. (1) The Board may appoint a duly qualified legal practitioner, an interpreter approved by the Board, a medical practitioner or any other person with appropriate expertise to assist the Board in any proceedings before the Board.

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

Appearance at any hearing of the Board.

12. (1) At any hearing of the Board the applicant and the represented person or the person in respect of whom the application is made may appear before the Board in person and be heard or may be represented before the Board by—

- (a) a duly qualified legal practitioner; or
- (b) any other person authorized to that effect by the applicant, the represented person or the person in respect of whom the application is made as the case may be.

(2) At any hearing of the Board—

- (a) any person not being a person to whom sub-section (1) applies who is given notice of the hearing may appear before the Board in person and be heard or, by leave of the Board, that person may be represented before the Board by—
 - (i) a duly qualified legal practitioner; or
 - (ii) any other 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 represented person or the person in respect of whom the application is made is not represented before the Board, the Board may appoint a person to represent that person.

Statement of reasons.

13. (1) Where the Board makes a determination, a person aggrieved by the determination may, by notice in writing given to the Board within 28 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 14 days after receiving a request under sub-section (1) prepare and give a statement of reasons to that person.

PART 3—THE PUBLIC ADVOCATE

The Public Advocate.

14. (1) There is to be appointed a Public Advocate.

(2) Schedule 3 has effect with respect to the Public Advocate.

Functions of the Public Advocate.**15. The functions of the Public Advocate are—**

- (a) to promote, facilitate and encourage the provision, development and co-ordination of services and facilities provided by government, community and voluntary organizations for persons with a disability with a view to—
 - (i) promoting the development of the ability and capacity of persons with a disability to act independently; and
 - (ii) minimizing the restrictions on the rights of persons with a disability; and
 - (iii) ensuring the maximum utilization by persons with a disability of those services and facilities; and
 - (iv) encouraging the involvement of voluntary organizations and relatives, guardians and friends in the provision and management of those services and facilities; and
- (b) to co-ordinate and support the establishment of organizations involved with persons with a disability, relatives, guardians and friends for the purpose of—
 - (i) instituting citizen advocacy programs and other advocacy programs; and
 - (ii) undertaking community education projects; and
 - (iii) promoting family and community responsibility for guardianship; and
- (c) to arrange, co-ordinate and promote informed public awareness and understanding by the dissemination of information with respect to—
 - (i) the provisions of this Act and any other legislation dealing with or affecting persons with a disability; and
 - (ii) the role of the Board and the Public Advocate; and
 - (iii) the duties, powers and functions of guardians and administrators under this Act; and
 - (iv) the protection of persons with a disability from abuse and exploitation and the protection of their rights; and
- (d) to investigate, report and make recommendations to the Minister on any aspect of the operation of this Act referred to the Public Advocate by the Minister.

Powers and duties of the Public Advocate.**16. (1) The Public Advocate may—**

- (a) where appointed by the Board be—
 - (i) a guardian (whether plenary or limited); or
 - (ii) an alternative guardian (whether plenary or limited);
or
 - (iii) an administrator; and

- (b) make an application to the Board for the appointment of a guardian or an administrator or the review of a guardianship order or an administration order; and
- (c) intervene in any proceedings before the Board; and
- (d) submit a report to the Board on any matter referred to the Public Advocate for a report by the Board; and
- (e) seek assistance in the best interests of any person with a disability from any government department, institution, welfare organization or service provider; and
- (f) make representations on behalf of or act for a person with a disability; and
- (g) give advice to any person as to the provisions of this Act and in respect of applications for guardianship or administration; and
- (h) investigate any complaint or allegation that a person is under inappropriate guardianship or is being exploited or abused or in need of guardianship; and
- (i) provide information for persons who are or propose to be guardians; and
- (j) report and make recommendations to the Equal Opportunity Board for and on behalf of persons with a disability.

(2) Where the Public Advocate is appointed as the guardian of a represented person or as the administrator of the estate of a represented person—

- (a) the person for the time being holding the office or performing the functions of the Public Advocate is the guardian of that represented person or the administrator of the estate of that represented person as the case may be; and
- (b) the Public Advocate must use his or her best endeavours to find an appropriate person to be appointed as the guardian or administrator.

Staff of office of the Public Advocate.

17. (1) Subject to the *Public Service Act 1974* there may be appointed such officers and employees as are necessary to enable the functions of the Public Advocate to be properly carried out.

(2) The Public Advocate may with the approval of the President, make use of the services of any officers or employees of the Board.

Delegation.

18. (1) The Public Advocate may by an instrument of delegation delegate to an officer or employee employed in the office of the Public Advocate under section 17 any power, duty or function of the Public Advocate other than—

- (a) this power of delegation; and
- (b) except as provided in sub-section (2), the powers and duties of the Public Advocate as guardian or administrator.

(2) The Public Advocate may with the approval of the Board by instrument of delegation delegate any or all of the Public Advocate's powers and duties as guardian to an individual or organization specified in the instrument of delegation.

PART 4—GUARDIANSHIP ORDERS

Division 1—Application for Guardianship Order

Application for guardianship order.

19. (1) Any person may apply to the Board for an order appointing—

- (a) a plenary guardian; or
- (b) a limited guardian—

in respect of a person with a disability who has attained the age of 18 years or to take effect upon the person attaining the age of 18 years.

(2) An application to the Board under sub-section (1) must be in the prescribed form and lodged with the executive officer.

(3) The applicant must provide with the application the written consent of the person proposed as guardian (if any) to the effect that the person proposed as guardian is willing to act as plenary or limited guardian (as the case may be) of the person in respect of whom the application is made.

Persons entitled to notice of hearing.

20. (1) The executive officer must, at least 14 days before the day on which the application is to be heard, cause notice of the hearing to be given to—

- (a) the applicant; and
- (b) the person in respect of whom the application is made; and
- (c) the nearest relative available of the person in respect of whom the application is made not being a person referred to in paragraph (a), (e) or (g); and
- (d) the primary carer; and
- (e) the person proposed as the guardian of the person in respect of whom the application is made; and
- (f) the Public Advocate; and
- (g) any administrator of the estate of the person in respect of whom the application is made; and
- (h) any other person that the Board directs be given notice.

(2) A notice under sub-section (1) must contain information with respect to—

- (a) the time and place of the hearing; and
- (b) the nature of the proceedings; and
- (c) in the case of a notice given under sub-section (1)(a) or (1)(b)—
 - (i) the entitlement of that person to representation before the Board; and
 - (ii) the kinds of orders which may be made by the Board under Division 2.

(3) The Board, may dispense with the requirement for notice to be given to all or any of the persons referred to in sub-section (1) other than the person in respect of whom the application is made and the Public Advocate.

Date for hearing.

21. The Board must commence to hear an application under section 19 within 30 days after the day on which the application is received by the Board.

Division 2—Appointment of Guardian

Guardianship order.

22. (1) If the Board 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 judgments in respect of all or any of the matters relating to her or his person or circumstances; and
- (c) is in need of a guardian—

the Board may make an order appointing a plenary guardian or a limited guardian in respect of that person.

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

(3) The Board cannot make an order under sub-section (1) unless it is satisfied that the order would be in the best interests of the person in respect of whom the application is made.

(4) The Board cannot make an order appointing a plenary guardian unless it is satisfied that a limited guardianship order would be insufficient to meet the needs of the person in respect of whom the application is made.

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

Persons eligible as guardians.

23. (1) The Board may appoint as a plenary guardian or limited guardian any person who has attained 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 the guardian of the proposed represented person.

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

- (a) the wishes of the proposed represented person; 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 the proposed represented person's 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.

(3) Where a parent or nearest relative of a proposed represented person is proposed as the guardian that person is not by virtue only of the fact that that person is a parent or nearest relative to be taken to be in a position where the person's interests conflict or may conflict with those of the proposed represented person.

(4) Where it appears to the Board that—

- (a) the person in respect of whom the application is made is a person in respect of whom an order could be made under section 22; and
- (b) no other person fulfils the requirements of sub-section (1) for appointment as the guardian of that person—

the Board may appoint the Public Advocate as the plenary guardian or limited guardian of that person.

(5) This section does not prevent the Board from appointing persons (including the Public Advocate and any other person) as joint plenary guardians or joint limited guardians of the proposed represented person if—

- (a) each person fulfils the requirements of sub-section (1); and
- (b) the Board considers it appropriate to do so.

Division 3—Powers and Duties of Guardian

Authority of plenary guardian.

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

(2) Without limiting sub-section (1) an order appointing a plenary guardian confers on the person named as plenary 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) for whom the represented person is to work; and
 - (iii) matters related thereto; and
- (d) except as otherwise provided in Division 6, to consent to any health care that is in the best interests of the represented person.

(3) In making an order appointing a plenary guardian the Board may make its order subject to such conditions or restrictions as it considers necessary.

(4) Where a decision is made, action taken, consent given or thing done by a plenary guardian under an order made under Division 2 the decision, action, consent or thing 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.

Authority of limited guardian.

25. (1) If the Board makes an order under Division 2 appointing a limited guardian, the guardianship order confers on the person named as limited guardian such one or more of the powers and duties in respect of the represented person that are conferred on a plenary guardian under this Act as the Board may specify in the order.

(2) In making an order appointing a limited guardian the Board may make its order subject to such conditions or restrictions as it considers necessary.

(3) Where a decision is made, action taken, consent given or thing done by a limited guardian under an order of the Board under Division 2, the decision, action, consent or thing 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.

Power to enforce guardianship order.

26. (1) Without limiting section 24 or 25, if the Board makes an order under Division 2 appointing a plenary guardian or a limited guardian, the Board may where it considers it appropriate to do so having regard to the circumstances of the case, specify in the order that the person named as plenary guardian 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 sub-section (1) takes any measure or action specified in the order in the belief that—

- (a) the measure or action is in the best interests of the represented person; and
- (b) it is reasonable 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.

Special powers in respect of persons with a disability.

27. (1) If the Board has received information on oath that a person with a disability in respect of whom an application has been made under section 19—

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

the Board may by order empower the Public Advocate or some other person specified in the order to visit the person with a disability in the company of a member of the police force for the purpose of preparing a report for the Board.

(2) If after receiving a report under sub-section (1) the Board is satisfied that sub-section (1) (a) or (1) (b) applies 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 the application under section 19 is heard.

(3) A member of the police force acting under an order made under sub-section (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.

(4) Any person who contravenes an order under this section or delays or obstructs any person acting under an order under this section is guilty of an offence against this Act and liable to a penalty of not more than 20 penalty units.

Exercise of authority by guardian.

28. (1) A guardian must act in the best interests of the represented person.

(2) Without limiting sub-section (1), a guardian acts in the best interests of a represented person if the guardian acts as far as possible—

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

Ancillary powers of guardian.

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

Guardian may seek advice.

30. (1) A guardian may apply for the advice of the Board upon 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 sub-section (1) to be served on any person that the Board directs.

(3) The Board may—

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

(4) An action does not lie against a guardian on account of an act or thing done or omitted by the guardian under any order or on the advice of the Board made or given under this section unless in

representing the facts to the Board the guardian has been guilty of fraud, wilful concealment or misrepresentation.

Notice of death of represented person.

31. Where a represented person in respect of whom a guardian has been appointed dies, the guardian must report the death to the Board without delay.

Division 4—Temporary Orders

Application for temporary order.

32. (1) Any person may apply to the Board for a temporary order appointing the Public Advocate as the guardian of a person in respect of whom an application could be made under section 19.

(2) An application may be made under sub-section (1) whether or not an application has been made to the Board under section 19.

(3) If the Board considers that the circumstances of the person in respect of whom the application is made are such that a hearing should be held without unreasonable delay, the Board must hold a hearing under this Division.

(4) The Board when hearing an application for a temporary order may be constituted by the President sitting alone.

Temporary order.

33. (1) If the Board is satisfied that the person in respect of whom an application has been made under section 32—

(a) is a person with a disability; and

(b) is unable to make reasonable judgments in respect of all or any of the matters relating to her or his person or circumstances; and

(c) is in need of a guardian—

the Board may make a temporary order appointing the Public Advocate as the plenary guardian or limited guardian of that person.

(2) A temporary order remains in effect for such period not exceeding 21 days as is specified in the order.

(3) The Board must hold a hearing to determine whether a guardianship order should be made under section 22 before the expiry of the temporary order.

(4) Section 20 applies with such modifications as are necessary in respect of the hearing.

Division 5—Appointment of Alternative Guardian**Appointment of alternative guardian.**

34. (1) The Board at the time of making or reviewing a guardianship order may by order appoint an alternative guardian if—

- (a) the person proposed as alternative guardian has consented to act as guardian of the represented person in the event of the death, absence or incapacity of the original guardian; and
- (b) the Board is satisfied that the persons to whom notice of the hearing of a guardianship order is given under section 20 have had sufficient notice of the willingness of the person proposed as alternative guardian to act as alternative guardian.

(2) Section 23 (other than sub-section (5)) applies to and in relation to the person proposed as alternative guardian as if that person were the proposed guardian.

Authority of alternative guardian.

35. (1) If an alternative guardian is appointed, the alternative guardian takes over the office of plenary guardian or limited guardian (as the case may be) without further proceedings immediately upon the death or during the period of absence or incapacity of the original guardian.

(2) The alternative guardian must notify the Board in writing of the death, absence or incapacity of the original guardian and send to the Board evidence of the death, absence or incapacity of the original guardian.

(3) Where an alternative guardian takes over the office of a guardian, the alternative guardian has the same powers and duties with respect to the represented person as the guardian had immediately before the guardian's death, absence or incapacity.

Division 6—Powers of Board with Respect to Medical Procedures**Purpose of Division.**

36. (1) The purpose of this Division is to protect the best interests of represented persons by ensuring that they are not subjected unnecessarily to certain medical procedures.

(2) This Division applies to a represented person in respect of whom there is in force—

- (a) an order appointing a plenary guardian; or
- (b) an order appointing a limited guardian with the power to consent to any health care that is in the best interests of the represented person.

(3) This Division does not apply in respect of any medical procedure carried out on any person in an emergency where the medical procedure is necessary to save the life of that person.

Consent of Board required for certain medical procedures.

37. (1) A medical practitioner must not carry out any procedure which is a major medical procedure on a represented person unless the consent of the guardian and the Board has been obtained.

(2) A medical practitioner who contravenes sub-section (1) is guilty of professional misconduct.

(3) The Board may issue guidelines specifying major medical procedures for the purposes of this section.

Guardian not to consent to certain medical procedures unless the Board also consents.

38. (1) A guardian must not consent to a procedure referred to in section 37 unless the consent of the Board has been first obtained.

(2) The guardian of a represented person or a represented person may apply to the Board for its consent to the carrying out of a procedure referred to in section 37.

Notice and date of hearing.

39. (1) The executive officer must, at least 7 days before the day on which the application is to be heard, cause notice of the hearing to be given to—

- (a) the represented person; and
- (b) the guardian of the represented person; and
- (c) the Public Advocate; and
- (d) any other person that the Board directs.

(2) A notice under sub-section (1) must contain information with respect to—

- (a) the time and place of the hearing; and
- (b) the nature of the proceedings; and
- (c) in the case of a notice given under sub-section (1) (a) or (1) (b)—
 - (i) the entitlement of that person to representation before the Board; and
 - (ii) the kinds of orders which may be made by the Board under this Division.

(3) The Board may, where it considers appropriate to do so—

- (a) shorten the time for giving notice to all or any of the persons referred to in sub-section (1); and

- (b) dispense with the requirements for notice to be given to all or any of the persons referred to in sub-section (1) other than the represented person and the Public Advocate.

Date for hearing.

40. The Board must commence to hear an application under section 38 within 14 days after the day on which the application is received by the Board.

Wishes of the represented person to be ascertained.

41. (1) After receiving an application under section 38 the Board must ascertain the wishes of the represented person as far as is reasonably possible.

(2) If the Board is satisfied that the represented person understands the nature of the proposed major medical procedure and is capable of giving or refusing consent to that procedure the Board must give effect to the represented person's wishes.

Consent of the Board.

42. If the Board is satisfied on hearing an application under section 38 that it would be in the best interests of the represented person it may by order consent to the major medical procedure.

PART 5—ADMINISTRATION ORDERS

Division 1—Application for Administration Order

Application for administration order.

43. (1) Any person may apply to the Board for an order appointing an administrator in respect of the estate of a person with a disability who has attained the age of 18 years or to take effect upon the person attaining the age of 18 years.

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

(3) An application to the Board must be in the prescribed form and lodged with the executive officer.

(4) The applicant must provide with the application the written consent of the person proposed as administrator (if any) to the effect that that person is willing to act as administrator of the estate of the person in respect of whom the application is made.

Persons entitled to notice of the hearing.

44. (1) The executive officer must, at least 21 days before the date the application is to be heard, cause notice of the hearing to be given to—

- (a) the applicant; and
 - (b) the person in respect of whom the application is made; and
 - (c) the nearest relative available of the person in respect of whom the application is made; and
 - (d) the person proposed as the administrator of the estate of the person in respect of whom the application is made; and
 - (e) the Public Trustee; and
 - (f) any guardian of the person in respect of whom the application is made; and
 - (g) any person who has advised the Board of an interest in the person or in the estate of the person in respect of whom the application is made; and
 - (h) the Public Advocate; and
 - (i) any other person that the Board directs.
- (2) A notice under sub-section (1) must state—
- (a) the time and place of the hearing; and
 - (b) the nature of the proceedings; and
 - (c) in the case of a notice given under sub-section (1) (a) or (1) (b)—
 - (i) the entitlement of that person to representation before the Board; and
 - (ii) the kinds of orders which may be made by the Board under Division 2.

(3) Where the Board considers it appropriate to do so, it may dispense with the requirement for notice to be given to all or any of the persons referred to in sub-section (1) except the person in respect of whom the application is made and the Public Trustee.

Date for hearing.

45. The Board must commence to hear an application under section 43 within 30 days after the day on which the application is received by the Board.

Division 2—Appointment of Administrator**Appointment of administrator.**

46. (1) If the Board is satisfied that—
- (a) the person in respect of whom an application for an order appointing an administrator is made—

- (i) is a person with a disability; and
 - (ii) is unable to make reasonable judgments in respect of the matters relating to all or any part of her or his estate by reason of the disability; and
 - (iii) is in need of an administrator of her or his estate; and
- (b) in the case of an application in respect of a person who does not reside in Victoria, the Public Trustee has not been authorized under section 43 of the *Public Trustee Act 1958* to collect, manage, sell or otherwise dispose of or administer any property in Victoria which forms part of the estate of the person in respect of whom the application is made—

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 her or his estate, the Board must consider whether the needs of the person in respect of whom the application is made could be met by other means less restrictive of the person's freedom of decision and action.

(3) The Board cannot make an order under sub-section (1) unless it is satisfied that the order would be in the best interests of the person in respect of whom the application is made.

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

Persons eligible as administrators.

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

- (a) the Public Trustee; or
- (b) the Public Advocate; or
- (c) any other 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 the person's 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 or there is a special relationship or other special reason why that person should be appointed as administrator.

(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; and
- (b) the compatibility of the person proposed as administrator with the proposed represented person and with the guardian (if any) of the proposed represented person.

(3) Where a parent or nearest relative of the proposed represented person is proposed as the administrator, that person is not by virtue only of the fact that that person is a parent or nearest relative to be taken to be in a position where the person's interests conflict or may conflict with those of the proposed represented person.

(4) Where the Board proposes—

- (a) to appoint the Public Trustee as administrator of the estate of a proposed represented person; and
- (b) to specify in the order that the administrator is to have powers and duties which are more limited than those conferred on the Public Trustee by the *Public Trustee Act 1958*—

the Board must give notice of its proposals to the Public Trustee who may decline to act as administrator of that estate.

(5) An administrator other than the Public Trustee is not entitled to receive any fee, remuneration or other reward for acting as administrator unless the Board otherwise specifies in the administration order.

Division 3—Powers and Duties of Administrator

Powers of administrator.

48. (1) An administrator has the powers and duties conferred by this Division and such of the powers and duties conferred on the Public Trustee by the *Public Trustee Act 1958* as the Board may specify in the order.

(2) In making an order appointing an administrator the Board may make its order subject to such conditions or restrictions as it considers necessary.

(3) Where a decision is made, action taken, consent given or thing done by an administrator under an order made by the Board the decision, action, consent or thing 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) Upon the death of a represented person any order appointing an administrator of that person's estate under this Act lapses and the law relating to the administration of a deceased person's estate applies accordingly.

Exercise of power by administrator.

49. (1) An administrator must act in the best interests of the represented person.

(2) Without limiting sub-section (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 the estate; and
- (b) in consultation with the represented person, taking into account as far as possible the wishes of the represented person.

Ancillary powers of administrator.

50. (1) An administrator may on behalf of a represented person sign and do all such things as are necessary to give effect to any power or duty vested in the administrator.

(2) This Act does not confer on an administrator the power to execute a will in the name of a represented person.

Powers of investment.

51. (1) Except as provided in section 53 or any order of the Board, an administrator other than the Public Trustee in respect of any part of the estate of the represented person of which the administrator is the administrator—

- (a) may for such period as the administrator thinks fit allow any part of the estate to remain invested in the manner in which it has been invested by the represented person; and
- (b) may in the case of money deposited in a bank re-deposit it after it becomes payable; and
- (c) has and may exercise in relation to any part of the estate the same powers as the administrator would have if the administrator were a trustee of that part of the estate under Part I. of the *Trustee Act 1958*.

(2) In addition to any other power of investment the administrator may, with the consent of the Board, invest any money coming into the administrator's hands in respect of the estate of a represented person—

- (a) in any security not being a security in which a trustee is authorized by an Act to invest trust funds; or
- (b) in the purchase of land—

if the investment or purchase appears to the Board desirable for the benefit of the represented person and the estate or for the benefit of the spouse, children or other dependants of the represented person.

(3) The Board may require the administrator to cause notice of an application for the consent of the Board to be given to such persons as the Board may direct.

Restriction on powers of represented person to enter into contracts, &c.

52. (1) Where the Board has made an administration order the represented person whilst a represented person or until the Board revokes that order is, to the extent that the represented person's estate is under the control of the administrator, deemed incapable of dealing with, transferring, alienating or charging her or his money or property or any part thereof or becoming liable under any contract without the order of the Board or the written consent of the administrator.

(2) Every dealing, transfer, alienation or charge by any represented person in respect of any part of the estate which is under the control of the administrator is void and of no effect, and the money or property the subject of the dealing, transfer, alienation or charge is recoverable by the administrator in any court of competent jurisdiction.

(3) This section does not render invalid any dealing, transfer, alienation or charge by any represented person made for adequate consideration with or to or in favour of any other person who proves that she or he acted in good faith and did not know or could not reasonably have known that the person was a represented person.

(4) For the purpose of this section the acceptance of payment of the whole or any part of a debt is deemed to be a dealing with property.

Interest of represented person in property not to be altered by sale or other disposition of property.

53. (1) A represented person and her or his heirs, executors, administrators, next of kin, devisees, legatees and assigns have the same interest in any money or other property arising from or received in respect of any sale, mortgage, exchange, partition or other disposition under the powers given to an administrator by an order of the Board which have not been applied under those powers as she, he or they would have had in the property the subject of the sale, mortgage, exchange, partition or disposition if no sale, mortgage, exchange, partition or disposition had been made.

(2) For the purposes of this section money arising from the compulsory acquisition or purchase under any Act of property of a represented person is deemed to be money arising from the sale of that property under the powers given to an administrator by an order of the Board.

(3) An administrator who receives money or other property under this section must keep a separate account and record of the money or other property.

(4) Money received by an administrator under this section may be invested in any manner in which trust funds may be invested under section 4 (1) of the *Trustee Act 1958*.

(5) In this section and section 56 "next of kin" in relation to a represented person means any person who would be entitled to the property of the represented person or to any share thereof under any law for the distribution of the property of intestates if the represented person had died intestate.

Board may open will.

54. The Board may either before or after the death of a represented person open and read any paper or writing which is purported or alleged to be the will of the represented person.

Administrator may seek advice.

55. (1) An administrator may apply for the advice of the Board upon any matter relating to the scope of the administration order or the exercise of any power by the administrator under the administration order.

(2) Without limiting sub-section (1), the jurisdiction of the Board includes jurisdiction in the case of an administration by the Public Trustee to approve, order or advise the commencement of proceedings by the Public Trustee acting in one capacity or on behalf of one represented person against the Public Trustee acting in another capacity or on behalf of another represented person.

(3) The Board may require notice of an application under sub-section (1) to be served on any person that the Board directs.

(4) 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) make any order it considers necessary;

(5) An action does not lie against an administrator on account of an act or thing done or omitted by the administrator under any order or on the advice of the Board made or given under this section unless in representing the facts to the Board the administrator has been guilty of fraud, wilful concealment or misrepresentation.

Application to the Board by a creditor, &c.

56. (1) Any person interested as a creditor, beneficiary, next of kin, guardian, nearest relative, primary carer or the Public Advocate or otherwise in any estate administered by an administrator may apply to the Board upon any matter arising out of the administration of the estate by the administrator.

(2) At least seven days' notice of an application must be given to the administrator.

(3) The Board may make such order in relation to the application as the circumstances of the case may require.

Power to administrator to act until the administrator receives notice of discharge, &c.

57. (1) Where the Board knows that a person has ceased to be a represented person, the Board must without delay give notice of that fact to the administrator.

(2) Until the administrator learns that a person has ceased to be a represented person or has died an administrator may exercise all or any of the powers given to the administrator by order of the Board with respect to the estate of the represented person.

(3) Upon notice being given under sub-section (1) the represented person or the represented person's legal personal 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 the represented person had the legal capacity to do so.

Accounts.

58. (1) Unless otherwise directed by the Board, an administrator (other than the Public Trustee) must lodge with the Public Trustee at least once in every year full and true accounts of the administration of the estate showing the assets and liabilities of the represented person and all receipts and disbursements in respect of the estate.

(2) The Public Trustee must examine the accounts and may make a report to the Board recommending the disallowance of any item in the accounts.

(3) Where the Board receives a report under sub-section (2) the Board cannot make an order disallowing an item if the Board is satisfied that the administrator acted in good faith and with reasonable care in the exercise of powers conferred on the administrator.

(4) Where any item is disallowed by the Board the administrator is liable for the amount of the item disallowed and for the costs incurred by the Public Trustee in connection with the Public Trustee's report to the Board.

(5) An administrator must pay to the Public Trustee for payment into the Consolidated Fund in respect of each estate administered by an administrator other than the Public Trustee an amount certified by the Public Trustee as being the cost of examining the accounts.

(6) The Board may upon an application by the administrator and with the consent of the Public Trustee waive the payment of the whole or part of the amount required to be paid under sub-section (5).

(7) There is to be paid into the Guardianship and Administration Board Fund (which is hereby established) the following amounts:

- (a) An amount to be determined by the Minister having regard to the value of estates administered by the Public Trustee under this Act which is to be paid out of the Interest Suspense Account under section 57 of the *Public Trustee Act 1958*;
- (b) An amount to be determined by the Minister having regard to the value of the estate administered by each administrator (other than the Public Trustee) which is to be paid by each such administrator.

(8) The amount paid into the Guardianship and Administration Board Fund under sub-section (7) is to be determined by the Minister after the Minister has obtained the joint advice of the Public Trustee, the Public Advocate and the President as to the proportion of the cost of the administration of this Act which relates to the estate administration functions of the Board and the Public Advocate.

(9) The amount paid into the Guardianship and Administration Board Fund under sub-section (7) must not exceed the amount specified in the joint advice obtained under sub-section (8).

(10) Separate accounts for the Guardianship and Administration Board Fund must be included in the annual report prepared under section 76.

Division 4—Temporary Orders

Application for temporary order.

59. (1) Any person may apply to the Board for a temporary order appointing the Public Trustee as the administrator of the estate of a person in respect of whom an application could be made under section 43.

(2) An application may be made under sub-section (1) whether or not an application has been made to the Board under section 43.

(3) If the Board considers that the circumstances of the person in respect of whom the application is made are such that a hearing should be held with respect to the application without unreasonable delay, the Board must hold a hearing under this Division.

(4) The Board when hearing an application for a temporary order may be constituted by the President sitting alone.

Temporary order.

60. (1) If the Board is satisfied that—

- (a) the person in respect of whom an application has been made under section 59—
 - (i) is a person with a disability; and
 - (ii) is unable to make reasonable judgments in respect of the matters relating to all or any part of her or his estate by reason of the disability; and
 - (iii) is in need of an administrator of her or his estate; and
- (b) in the case of an application in respect of a person who does not reside in Victoria, the Public Trustee has not been authorized under section 43 of the *Public Trustee Act 1958* to collect, manage, sell or otherwise dispose of or administer any property in Victoria which forms part of the estate of the person in respect of whom the application is made—

the Board may make an order appointing the Public Trustee as an administrator of that person's estate.

(2) A temporary order remains in effect for such period not exceeding 21 days as is specified in the order.

(3) The Board must hold a hearing to determine whether an administrator should be appointed under section 46 before the expiry of the temporary order.

(4) Section 44 applies with such modifications as are necessary in respect of the hearing.

PART 6—REVIEWS OF ORDERS**Reviews.**

61. (1) The Board may within 12 months after the making of a guardianship order or administration order hold a hearing to review the order unless it otherwise orders.

(2) The Board must within 3 years of the making of a guardianship order or administration order hold a hearing to review the order.

(3) The Board may at any time—

- (a) of its own motion; or
- (b) on the application of the represented person or a person on behalf of the represented person; or
- (c) on the application of any other person—

hold a hearing to review any guardianship order or administration order.

Notice of review hearing.

62. (1) The executive officer must, at least 14 days before the hearing of a review is to be held, cause notice of the hearing to be given to—

- (a) in the case of every review—
 - (i) the applicant (if any); and
 - (ii) the represented person; and
 - (iii) the nearest relative available of the represented person; and
 - (iv) the primary carer (if any); and
 - (v) any other person that the Board directs; and
- (b) in the case of a review of a guardianship order—
 - (i) the guardian of the represented person; and
 - (ii) the Public Advocate; and
 - (iii) any administrator of the estate of the represented person; and
- (c) in the case of a review of an administration order—
 - (i) the administrator of the estate of the represented person; and
 - (ii) any guardian of the represented person.

(2) A notice under sub-section (1) must contain information with respect to—

- (a) the time and place of the hearing; and
- (b) the nature of the proceedings; and
- (c) in the case of a notice given under sub-section (1) (a) (i) or (1) (a) (ii)—
 - (i) the entitlement of that person to representation before the Board; and
 - (ii) the kinds of orders which may be made by the Board under this Part.

(3) The Board may, where it considers it appropriate to do so, dispense with the requirement for notice to be given to all or any of the persons referred to in sub-section (1) except the represented person and the Public Advocate or the Public Trustee (as the case may be).

Order after review.

63. (1) Upon completing a review the Board may by order amend, vary, continue or replace the order subject to any conditions or requirements it considers necessary or revoke the order.

(2) The Board may make such further orders as it considers necessary in consequence of an order made under sub-section (1).

PART 7—GENERAL PROVISIONS

Board may state special case for the opinion of the Supreme Court.

64. (1) Where a question of law arises in proceedings before the Board, the Board, of its own motion or on the application of any person who is a party to the proceedings, may reserve the question in the form of a special case stated for the opinion of the Supreme Court.

(2) Where a question of law has been reserved for the opinion of the Supreme Court under sub-section (1), the Board cannot—

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

Rules.

65. Subject to the *Supreme Court Act 1958*, the Judges of the Supreme Court may make rules for or with respect to special cases stated for the opinion of the Supreme Court under section 64.

Matters before a Court.

66. (1) If in any civil 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 section 19 or 43.

(3) If in any civil proceedings before a Court it is adjudged or ordered that money be paid to a person with a disability (whether or not that person is a party to a cause or matter) the money—

- (a) is to be paid into court; and
 - (b) unless the Court otherwise orders is to be paid out to the administrator (if any) of the estate of that person or the Public Trustee.
- (4) If any money—
- (a) is paid into court before or after the commencement of this section; and
 - (b) the money is being held in court on behalf of a person with a disability—

the Court may by order direct that the money be paid out to the administrator (if any) of the estate of that person or the Public Trustee.

(5) Where the Court adjudges or orders that property (whether real or personal) be delivered up or transferred to a person with a disability (whether or not that person is a party to a cause or matter), the Court—

- (a) may order that the property be delivered up or transferred to the administrator (if any) of the estate of that person or the Public Trustee; and
- (b) may give any directions for the service of the order on that administrator or the Public Trustee as it thinks fit.

(6) If an order under sub-section (5) is served on an administrator or the Public Trustee, the administrator or the Public Trustee must accept delivery or transfer of the property to which the order relates and the acceptance of the property is a sufficient discharge to the person delivering or transferring the property.

(7) A copy of any order made under this section must be given by the administrator or the Public Trustee (as the case may be) to the Board and the Public Advocate.

(8) An order of the Court under this section that money be paid out to an administrator (if any) of the estate of a person or the Public Trustee has effect as if it were an administration order.

(9) In this section “Court” means—

- (a) the Supreme Court; or
- (b) the County Court.

(10) The *Supreme Court Act* 1958 is amended as follows:

- (a) Section 79B is repealed;
- (b) In section 189 (1) after “(1)” insert “Subject to section 66 of the *Guardianship and Administration Board Act* 1986.”

(11) Section 54B of the *County Court Act* 1958 is repealed.

Review of decisions of the Board.

67. A person aggrieved by a decision of the Board may apply to the Administrative Appeals Tribunal for a review of the decision.

Register.

68. The executive officer must keep a register containing particulars of—

- (a) applications lodged with the executive officer; and
- (b) all determinations of the Board; and
- (c) the reasons for each determination.

Contempt of the Board.

69. A person must not—

- (a) insult a member of the Board in or in relation to the exercise of the powers or functions as a member; or
- (b) repeatedly interrupt the proceedings of the Board; or
- (c) create a disturbance or take part in creating or continuing a disturbance in or near a place where the Board is sitting; or
- (d) do any other act or thing that would if the Board were a Court of Record constitute a contempt of that Court.

Penalty: 10 penalty units.

Immunity from suit.

70. (1) No matter or thing done by any member of the Board, the executive officer or any other person acting under the direction of the Board in good faith in the exercise or purported exercise of any power or duty conferred or imposed upon the Board or upon any member of the Board, the executive officer or any other person by or under this Act, subjects the Crown, the Minister, any member of the Board, the executive officer, or any other person personally to any action, liability, claim or demand.

(2) A person is not entitled to receive compensation from the Crown, the Treasurer of Victoria or the Minister in respect of any damage, loss or injury sustained by that person by reason of an act or omission of a guardian or an administrator under this Act.

(3) This section does not affect section 64 of the *Public Trustee Act* 1958.

Giving of notice.

71. (1) Where a notice is required to be given to a person in respect of whom an application has been made or to a represented person, the notice must be given personally to that person in accordance with this section.

(2) The contents of any notice referred to in sub-section (1) must be explained by the person serving the notice to the maximum extent possible to the person in the language, mode of communication and terms which that person is most likely to understand.

(3) An explanation given under sub-section (2) must where possible be given both orally and in writing.

(4) Where a notice is required to be given to a person other than a person referred to in sub-section (1) the notice may be given to that person by sending the notice by pre-paid post to that person at the person's usual or last known place of residence or business.

(5) Unless the contrary is proved, a notice sent by pre-paid post is deemed to have been given to that person at the time at which the notice would be delivered in the ordinary course of post.

(6) Where except for this sub-section notice would be required to be given to a person in more than one capacity it is sufficient compliance with this Act if notice is given to that person in one of those capacities.

Hearing not to be invalidated by failure to give notice.

72. A hearing or determination of the Board is not invalidated or affected by reason only of a failure to give notice to a person other than a proposed represented person or a represented person.

Judicial notice.

73. All courts and persons acting judicially must take judicial notice of—

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

Costs.

74. 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 as the Board thinks just.

Accounts and records of the Board.

75. (1) The Board must ensure that there are kept proper accounts and records of the transactions and affairs of the Board and such other records as will sufficiently explain the financial operations and financial position of the Board.

- (2) The Board must do all things necessary to—
 - (a) ensure that all money payable to the Board is properly collected; and
 - (b) ensure that all money expended by the Board is correctly expended and properly authorized; and
 - (c) ensure that adequate control is maintained over assets owned by or in the custody of the Board; and
 - (d) ensure that all liabilities incurred by the Board are properly authorized; and

- (e) ensure efficiency and economy of operations and the avoidance of waste and extravagance; and
- (f) develop and maintain an adequate budgeting and accounting system; and
- (g) develop and maintain an adequate internal audit system.

Annual report of the Board.

76. (1) The Board must in respect of each financial year prepare an annual report containing—

- (a) a report of its operations during the financial year; and
- (b) financial statements for the financial year—

to be submitted to the Minister not later than the following 30 September.

(2) The report of operations referred to in sub-section (1) (a) must—

- (a) be prepared in a form and contain information determined by the Board to be appropriate; and
- (b) contain any further information required by the Minister.

(3) The financial statements referred to in sub-section (1) (b) must—

- (a) contain information determined by the Treasurer to be appropriate; and
- (b) be prepared in a manner and form approved by the Treasurer; and
- (c) present fairly the results of the financial transactions of the Board during the financial year to which they relate and the financial position as at the end of that year; and
- (d) be signed by the principal accounting officer (by whatever name called) of the Board and by the President and another member of the Board who must—
 - (i) state whether in their opinion the financial statements present fairly the results of the financial transactions of the Board during the financial year to which they relate and whether they sufficiently explain the financial position of the Board as at the end of the financial year; and
 - (ii) state whether at the date of signing the financial statements they were aware of any circumstances that would render any particulars included in the statements misleading or inaccurate and, if so, particulars of the circumstances; and

(e) be audited as required by section 79 (1).

(4) The Minister must cause any annual report submitted to the Minister under this section to be laid before the Legislative Council and the Legislative Assembly before the expiration of the fourteenth sitting day of the Legislative Council or the Legislative Assembly as

the case may be after the annual report has been received by the Minister.

(5) If the Board fails to submit an annual report to the Minister by 30 September in any year the Minister must report or cause to be reported that failure and the reasons therefor to each House of Parliament.

(6) In the event that audited financial statements are not available by 30 September in any year the Board must submit to the Minister unaudited financial statements together with the report of operations not later than 14 October.

Accounts and records of the Public Advocate.

77. (1) The Public Advocate must ensure that there are kept proper accounts and records of the transactions and affairs of the Office of the Public Advocate and such other records as will sufficiently explain the financial operations and financial position of the Office of the Public Advocate.

- (2) The Public Advocate must do all things necessary to—
- (a) ensure that all money payable to the Public Advocate is properly collected; and
 - (b) ensure that all money expended by the Public Advocate is correctly expended and properly authorized; and
 - (c) ensure that adequate control is maintained over assets owned by or in the custody of the Public Advocate; and
 - (d) ensure that all liabilities incurred by the Public Advocate are properly authorized; and
 - (e) ensure efficiency and economy of operations and the avoidance of waste and extravagance; and
 - (f) develop and maintain an adequate budgeting and accounting system; and
 - (g) develop and maintain an adequate internal audit system.

Annual report of the Public Advocate.

78. (1) The Public Advocate must in respect of each financial year prepare an annual report containing—

- (a) a report of the Public Advocate's operations during the financial year; and
- (b) financial statements for the financial year—

to be submitted to the Minister not later than the following 30 September.

- (2) The report of operations referred to in sub-section (1) (a) must—
- (a) be prepared in a form and contain information determined by the Public Advocate to be appropriate; and

(b) contain any further information required by the Minister.

(3) The financial statements referred to in sub-section (1) (b) must—

(a) contain information determined by the Treasurer to be appropriate; and

(b) be prepared in a manner and form approved by the Treasurer; and

(c) present fairly the results of the financial transactions of the Public Advocate during the financial year to which they relate and the financial position as at the end of that year; and

(d) be signed by the principal accounting officer (by whatever name called) of the Office of the Public Advocate and the Public Advocate who must—

(i) state whether in their opinion the financial statements present fairly the results of the financial transactions of the Public Advocate during the financial year to which they relate and whether they sufficiently explain the financial position of the Public Advocate as at the end of the financial year; and

(ii) state whether at the date of signing the financial statements they were aware of any circumstances that would render any particulars included in the statements misleading or inaccurate and, if so, particulars of the circumstances; and

(e) be audited as required by section 79 (1).

(4) The Minister must cause any annual report submitted to the Minister under this section to be laid before the Legislative Council and the Legislative Assembly before the expiration of the fourteenth sitting day of the Legislative Council or the Legislative Assembly as the case may be after the annual report has been received by the Minister.

(5) If the Public Advocate fails to submit an annual report to the Minister by 30 September in any year the Minister must report or cause to be reported that failure and the reasons therefor to each House of Parliament.

(6) In the event that audited financial statements are not available by 30 September in any year the Public Advocate must submit to the Minister unaudited financial statements together with the report of operations not later than 14 October.

Audit.

79. (1) The financial statements referred to in sections 76 and 78 must be audited by the Auditor-General.

(2) The Auditor-General has in respect of the audit of the financial statements all the powers conferred on the Auditor-General by any law relating to the audit of the public accounts.

(3) Without limiting the generality of sub-section (2) the Auditor-General and the officers of the Auditor-General—

- (a) have right of access at all times to the books, accounts and vouchers of the Board and the office of the Public Advocate; and
- (b) may require from an officer or employee of the Board and the office of the Public Advocate any information, assistance and explanations necessary for the performance of the duties of the Auditor-General in relation to the audit.

(4) The Board and the Public Advocate must pay to the Consolidated Fund an amount to be determined by the Auditor-General to defray the costs and expenses of any audit by the Auditor-General under this section.

(5) The Board or the Public Advocate may engage a registered company auditor to carry out any inspections and audits that the Board or the Public Advocate considers to be necessary.

General penalty.

80. A person who contravenes any provision of this Act or an order of the Board is guilty of an offence against this Act and liable if no penalty is expressly provided to a penalty of not more than 20 penalty units.

Offences by bodies corporate.

81. (1) Where a person charged with an offence against this Act is a body corporate, any person who is concerned or takes part in the management of that body corporate may be charged with a like offence.

(2) Where a body corporate is convicted of an offence against this Act a person charged pursuant to this section with the like offence may also be convicted of that offence and is liable to the penalty for that offence unless that person proves that the act or omission constituting the offence took place without that person's knowledge or consent.

Regulations.

82. (1) The Governor in Council may make regulations for or with respect to—

- (a) the practice and procedure of divisions of the Board; and
- (b) prescribing the form of the register to be kept by the executive officer under this Act; and
- (c) prescribing forms to be used for the purposes of this Act; and
- (d) any matter or thing authorized or required to be prescribed or necessary to be prescribed for carrying this Act into effect.

(2) Regulations under this Act—

- (a) may be of general or of specially limited application; and
- (b) may differ according to differences in time, place or circumstance; and
- (c) may impose a penalty not exceeding 10 penalty units for any contravention of the regulations.

PART 8—AMENDMENTS TO THE *PUBLIC TRUSTEE ACT 1958***Principal Act.**

83. In this Part the *Public Trustee Act 1958* is referred to as the Principal Act.

Amendments.

84. (1) The Principal Act is amended as follows:

- (a) In section 1 the Table of Parts and Divisions is repealed;
- (b) In section 3 (1) the definitions of “**Infirm person**”, “**Institution**”, “**Lunatic so found**”, “**Next of kin**”, “**Patient**”, “**Private committee**”, “**Private mental home**”, “**Protected person**” and “**Psychiatric hospital**” are repealed;
- (c) In section 3 (1) after the definition of “**Administration**” insert:

“**Board**” means the Guardianship and Administration Board established under the *Guardianship and Administration Board Act 1986*.”;
- (d) In section 3 (1) after the definition of “**Public Trustee**” insert:

“**Publicly represented person**” means a person in respect of whose estate an order made under the *Guardianship and Administration Board Act 1986* appointing the Public Trustee as administrator is in effect.”;
- (e) Sections 3 (3), 28 to 41, 45 to 48, 48A, 50A, 51, 53, 54A, 54D, 54F, 54H, 54I, 54j, 54K, 54L, 54M, 55 (4) (a) and 66 (2A) are repealed;
- (f) In the heading to Division 2 of Part II. for “**PROTECTED**” substitute “**PUBLICLY REPRESENTED**”.

(2) For sections 42 and 43 of the Principal Act substitute:

Definition.

“41A. In sections 42 and 43 “**relevant officer**” means an officer of a State (other than Victoria) or Territory of the Commonwealth, or of New Zealand or the United Kingdom who is or may be charged by or under the laws of that State, Territory or country with the management of the property and estate of persons who, however described under

those laws, are incapable of managing their estates by reason of intellectual impairment, mental illness, brain damage, physical disability or senility.

Public Trustee may authorize administration of property outside Victoria.

“42. (1) Where the Public Trustee believes that a publicly represented person has an interest in property in any State (other than Victoria) or Territory of the Commonwealth or New Zealand or the United Kingdom, the Public Trustee may by instrument in writing under the Public Trustee’s hand and seal and directed to the relevant officer of that State, Territory or country—

- (a) certify that the Public Trustee has the administration of the property and estate of the publicly represented person named in the instrument; and
- (b) authorize the relevant officer to collect, manage, sell or otherwise administer any property in that State, Territory or country in which the publicly represented person has an interest.

(2) The Public Trustee may give a discharge to the relevant officer on the payment or delivery to the Public Trustee of the balance of money or other property of the publicly represented person which remains after the deduction of—

- (a) all costs, charges and expenses incurred by the relevant officer in the exercise of the authority given to that officer under sub-section (1); and
- (b) any amount which is payable in the State, Territory or country (as the case may be) in satisfaction of the debts or other liabilities of the publicly represented person.

(3) The Public Trustee may revoke or vary any authority given under sub-section (1).”

Relevant officer outside Victoria may authorize Public Trustee to administer property.

“43. (1) Where a relevant officer, by instrument in writing under that officer’s hand or seal—

- (a) certifies to the Public Trustee that that officer has the general care, protection and management of the property and estate of the person named in the instrument; and
- (b) authorizes the Public Trustee to collect, manage, sell or otherwise dispose of or administer any property in Victoria in which the person named in the instrument has an interest—

this Act applies with respect to the property and the powers of the Public Trustee over the property as if the person were resident in Victoria and a publicly represented person.

(2) The Public Trustee may pay or deliver to that relevant officer the balance of money or other property of the person named in the instrument which remains after the deduction of—

- (a) all costs, charges and expenses incurred by the Public Trustee in the exercise of the authority given to the Public Trustee under sub-section (1); and
- (b) any amount which is payable to any person resident in Victoria in satisfaction of any debts or other liabilities, of which the Public Trustee has notice, of the person named in the instrument referred to in sub-section (1).

(3) The Public Trustee must account to the relevant officer for any payment made by the Public Trustee out of the property of a person named in the instrument, but is not bound to see the application of any such payment.

(4) Where a decision is made, action taken, consent given or thing done by the Public Trustee under an authority conferred on the Public Trustee under sub-section (1), the decision, action, consent or thing has effect as if it had been made, taken, given or done by the person named in the instrument and that person had the legal capacity to do so.

(5) The Public Trustee may exercise the powers under an authority conferred under sub-section (1) until the Public Trustee receives notice from the relevant officer of—

- (a) the revocation of that authority; or
- (b) the death of the person in respect of whom the authority was given.”.

(3) For sections 49 and 50 of the Principal Act substitute:

Powers and duties of the Public Trustee.

“49. (1) Subject to and in accordance with this Act, the regulations and the *Guardianship and Administration Board Act 1986* and the administration order appointing the Public Trustee as administrator in each case—

- (a) the Public Trustee has the general care and management of the estates of publicly represented persons; and
- (b) it is the duty of the Public Trustee to take possession and care of, recover, collect, preserve and administer the property and estates of publicly represented persons and generally to manage their affairs and to exercise all rights statutory or otherwise which they might themselves exercise if they had legal capacity; and
- (c) the Public Trustee in the name and on behalf of the publicly represented person may generally do all acts and exercise all powers with respect to the estate as effectually and in the same manner as the publicly represented person could have

done if the publicly represented person were not under a legal disability.

(2) Without limiting sub-section (1) the Public Trustee may in the name and on behalf of a publicly represented person—

- (a) collect, receive and recover income of and money due or which becomes due to and any compensation or damages for injury to the estate or person of the publicly represented person; and
- (b) invest any money in any security in which trustees may by law invest; and
- (c) demise land at such rent and on such conditions as the Public Trustee thinks fit for any term not exceeding five years or, with the consent of the Board, for any longer term; and
- (d) exercise to such extent and in such manner as the Public Trustee thinks proper any power of leasing vested in the publicly represented person; and
- (e) surrender any lease, accept any lease, accept the surrender of any lease or renew any lease; and
- (f) bring land under the provisions of the *Transfer of Land Act 1958*; and
- (g) sell, exchange, partition or convert into money any property; and
- (h) mortgage or charge any property; 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
- (j) carry on so far as appears desirable any trade, profession or business which the publicly represented person carried on; and
- (k) agree to any alteration of the conditions of any partnership into which any publicly represented person has entered or to a dissolution and distribution of the assets thereof; and
- (l) bring and defend actions and other legal proceedings in the name of the publicly represented person; and
- (m) execute and sign deeds, instruments and other documents; and
- (n) complete any contract for the performance of which the publicly represented person was liable, or enter into any agreement terminating liability; and
- (o) pay any sum for the maintenance of the publicly represented person (and, in the event of his or her death, for funeral expenses) and for the maintenance of his or her spouse or any child, parent or other person dependent upon him or her and for the maintenance and education of his or her

children as to the Public Trustee seems expedient and reasonable; and

- (p) do all matters necessary or incidental to the performance of any of the above-mentioned matters and apply any money from the estate which it is necessary to apply for the purposes of this Act.

(3) The Public Trustee may if it seems to be expedient and reasonable—

- (a) pay or cause to be paid to the publicly represented person for the personal use of that person an amount or amounts of money standing to the credit of that person with the Public Trustee; and
- (b) give or cause to be given to the publicly represented person for the personal use of that person any personal property which belongs to that person and is under the control of the Public Trustee.”

(4) For section 52 of the Principal Act substitute:

Exercise of certain powers.

“52. (1) If—

- (a) a power is vested in a publicly represented person for that person's own benefit or the consent of a publicly represented person is necessary to the exercise of a power; and
- (b) such power or consent is in the nature of a beneficial interest in the publicly represented person; and
- (c) it appears to the Public Trustee to be for the benefit of the publicly represented person that the power should be exercised or the consent given—

the Public Trustee may on behalf and in the name of the publicly represented person exercise the power or give the consent in such manner as the Public Trustee thinks fit.

(2) If—

- (a) a power is vested in a publicly represented person in the character of a trustee or guardian, or the consent of a publicly represented person to the exercise of a power is necessary in the character of a trustee or guardian or as a check upon the undue exercise of the power; and
- (b) it appears to the Public Trustee to be fit and expedient that the power should be exercised or the consent given—

the Public Trustee may on behalf and in the name of the publicly represented person exercise the power or give the consent in such manner as the Public Trustee thinks fit.

(3) The exercise by the Public Trustee, under sub-section (1) or (2) either before or after the commencement of section 10 of the *Public*

Trustee (Amendment) Act 1981, of a power vested in a publicly represented person to appoint a new trustee is deemed to be, or to have been (as the case may be), an appointment of a new trustee within the meaning of section 45 of the *Trustee Act 1958*."

(5) For section 54 of the Principal Act substitute:

Investment in other securities.

"54. (1) In addition to any other power of investment the Public Trustee may, with the consent of the Board, invest any money coming into the Public Trustee's hands in respect of the estate of a publicly represented person—

- (a) in any security not being a security in which a trustee is authorized by an Act to invest trust funds; or
- (b) in the purchase of land—

if the investment or purchase appears to the Board desirable for the benefit of the publicly represented person and the estate or for the benefit of the spouse, children or other dependants of the publicly represented person.

(2) The Public Trustee may—

- (a) for such period as the Public Trustee thinks fit allow any part of the estate of a publicly represented person to remain invested in a manner in which it has been invested by the publicly represented person; and
- (b) in the case of money deposited in a bank re-deposit it after it becomes payable; and
- (c) exercise in relation to any part of the estate of a publicly represented person the same powers as the Public Trustee would have if the Public Trustee were a trustee of that part of the estate under Part I. of the *Trustee Act 1958*."

(6) For section 54B of the Principal Act substitute:

Action upon a person ceasing to be a publicly represented person.

"54B. (1) Where the Public Trustee has received notice from the Board that a publicly represented person has ceased to be a represented person or has died, the Public Trustee must—

- (a) pay or cause to be paid to that person or to that person's personal representative (as the case requires) all money standing to his or her credit with the Public Trustee; and
- (b) deliver to that person or that person's personal representative (as the case requires) all property forming part of his or her estate and any documents relating to the estate.

(2) Any payment made under sub-section (1) is subject to the satisfaction of any amount due to the Public Trustee and all costs,

expenses and liabilities incurred by the Public Trustee in respect of the administration of that person's estate.

(3) The receipt of the formerly publicly represented person or of that person's personal representative is an absolute discharge to the Public Trustee, despite any informality in the discharge or certification."

(7) In section 54C of the Principal Act for "protected person and the legal personal representatives of any deceased protected person" substitute "publicly represented person or the personal representative of any publicly represented person who has died".

(8) In sections 54E and 54G of the Principal Act for "protected" wherever occurring substitute "publicly represented".

(9) In section 60 (5) of the Principal Act for "*Mental Health Act 1959*" substitute "*Mental Health Act 1986*".

(10) After section 65A of the Principal Act insert:

Public Trustee's certificate.

"65B. A certificate under the hand of the Public Trustee which—

(a) is sealed with the common seal of the Public Trustee and certifies—

(i) that an order under the *Guardianship and Administration Board Act 1986* appointing the Public Trustee administrator of the estate of any person is in force; or

(ii) that the Public Trustee is authorized under this Act to administer the property and estate of any person; and

(b) states the date at which the Public Trustee was so appointed or became so authorized—

is, until the contrary is proved, for all purposes sufficient evidence of the facts so certified and stated."

(11) In section 66 (1) of the Principal Act after "managed by him" insert "under Division 1 of Part II."

(12) In section 66 (2) of the Principal Act after "estate or property" insert "under Division 1 of Part II."

(13) In section 67 (1) of the Principal Act after "such estate by the Public Trustee" insert "under Division 1 of Part II."

(14) In section 69 (2) (d) of the Principal Act for "affairs of a patient or infirm" substitute "estate of a publicly represented".

(15) The Second, Third, Fourth and Fifth Schedules of the Principal Act are repealed.

(16) Section 10 of the *Public Trustee (Amendment) Act 1981* is repealed.

Existing protected persons.

85. (1) In this section—

“Principal Act” means the Principal Act as in force immediately before the commencement of section 84.

“Protected person” means a protected person within the meaning of the Principal Act or a person in respect of whom an order has been made under section 54L of the Principal Act.

(2) The Principal Act continues to apply to and in respect of a protected person—

- (a) who was an infirm person within the meaning of the Principal Act, until the Public Trustee signs and seals a certificate in or to the effect of the Fifth Schedule of the Principal Act to the effect that the person is not or has ceased to be an infirm person; or
- (b) who was a patient within the meaning of the Principal Act, until the person ceases to be an involuntary patient within the meaning of the *Mental Health Act 1986*; or
- (c) in respect of whom an order is in force under section 54L of the Principal Act, until the Board has made a determination under this section; or
- (d) who was a voluntary patient who had authorized the Public Trustee in accordance with section 48A of the Principal Act to administer his or her estate, until the person revokes the authority.

(3) The Board must hold a hearing in respect of every protected person to determine whether a guardianship order or an administration order should be made in respect of that protected person or the estate of that protected person under this Act.

(4) A protected person may apply to the Board to hold a hearing to determine whether a guardianship order or an administration order should be made in respect of that person or his or her estate.

(5) The Public Trustee must provide such information and assistance to the Board in relation to protected persons as is reasonably necessary to enable the Board to carry out its function under this section.

(6) Notwithstanding anything to the contrary in the *Public Trustee Act 1958* or in any order made under that Act, upon the coming into effect of a determination of the Board under this section in relation to a protected person, that person ceases to be a protected person.

(7) The Board must notify the Public Trustee of a determination under this section without delay.

(8) A determination of the Board under this section does not take effect until the Public Trustee has received notification of the determination.

Miscellaneous amendments.

86. (1) In section 8 (1) of the Principal Act after "guardian," insert "next friend,".

(2) In section 26 (1) of the Principal Act omit "who claims to be a creditor".

(3) After section 55 (3) of the Principal Act insert:

"(3A) The payment into an account under this section of an amount of money coming into the hands of the Public Trustee which is an unidentified remittance does not give rise to any liability or implication at law or in equity on the part of the Public Trustee."

(4) After section 62 of the Principal Act insert:

Accounts and records of the Public Trustee.

"62A. (1) The Public Trustee must ensure that there are kept proper accounts and records of the transactions and affairs of the Office of the Public Trustee and such other records as will sufficiently explain the financial operations and financial position of the Office of the Public Trustee.

(2) The Public Trustee must do all things necessary to—

- (a) ensure that all money payable to the Public Trustee is properly collected; and
- (b) ensure that all money expended by the Public Trustee is correctly expended and properly authorized; and
- (c) ensure that adequate control is maintained over assets owned by or in the custody of the Public Trustee; and
- (d) ensure that all liabilities incurred by the Public Trustee are properly authorized; and
- (e) ensure efficiency and economy of operations and the avoidance of waste and extravagance; and
- (f) develop and maintain an adequate budgeting and accounting system; and
- (g) develop and maintain an adequate internal audit system."

Annual report of the Public Trustee.

"62B. (1) The Public Trustee must in respect of each financial year prepare an annual report containing—

- (a) a report of the Public Trustee's operations during the financial year; and

(b) financial statements for the financial year—
to be submitted to the Minister not later than the following 30 September.

- (2) The report of operations referred to in sub-section (1) (a) must—
- (a) be prepared in a form and contain information determined by the Public Trustee to be appropriate; and
 - (b) contain any further information required by the Minister.
- (3) The financial statements referred to in sub-section (1) (b) must—
- (a) contain information determined by the Treasurer to be appropriate; and
 - (b) be prepared in a manner and form approved by the Treasurer; and
 - (c) present fairly the results of the financial transactions of the Public Trustee during the financial year to which they relate and the financial position as at the end of that year; and
 - (d) be signed by the principal accounting officer (by whatever name called) of the Office of the Public Trustee and the Public Trustee who must—
 - (i) state whether in their opinion the financial statements present fairly the results of the financial transactions of the Public Trustee during the financial year to which they relate and whether they sufficiently explain the financial position of the Public Trustee as at the end of the financial year; and
 - (ii) state whether at the date of signing the financial statements they were aware of any circumstances that would render any particulars in the statements misleading or inaccurate and, if so, particulars of the circumstances; and
 - (e) be audited as required by section 62C (1).

(4) The Minister must cause any annual report submitted to the Minister under this section to be laid before the Legislative Council and the Legislative Assembly before the expiration of the fourteenth sitting day of the Legislative Council or the Legislative Assembly as the case may be after the annual report has been received by the Minister.

(5) If the Public Trustee fails to submit an annual report to the Minister by 30 September in any year the Minister must report or cause to be reported that failure and the reasons therefor to each House of Parliament.

(6) In the event that audited financial statements are not available by 30 September in any year the Public Trustee must submit to the Minister unaudited financial statements together with the report of operations not later than 14 October.”

Audit.

“62c. (1) The financial statements referred to in section 62b must be audited by the Auditor-General.

(2) The Auditor-General has in respect of the audit of the financial statements all the powers conferred on the Auditor-General by any law relating to the audit of the public accounts.

(3) Without limiting the generality of sub-section (2) the Auditor-General and the officers of the Auditor-General—

(a) have right of access at all times to the books, accounts and vouchers of the Office of the Public Trustee; and

(b) may require from an officer or employee of the Office of the Public Trustee any information, assistance and explanations necessary for the performance of the duties of the Auditor-General in relation to the audit.

(4) The Public Trustee must pay to the Consolidated Fund an amount to be determined by the Auditor-General to defray the costs and expenses of any audit by the Auditor-General under this section.

(5) The Public Trustee may engage a registered company auditor to carry out any inspections and audits that the Public Trustee considers to be necessary.”.

PART 9—AMENDMENTS TO THE INSTRUMENTS ACT 1958**Enduring power of attorney.**

87. The *Instruments Act 1958* is amended as follows:

(a) After section 117 (2) insert—

“(3) An enduring power of attorney is not revoked upon a person becoming a represented person within the meaning of the *Guardianship and Administration Board Act 1986*.

(4) Until such time as a guardian or administrator appointed under the *Guardianship and Administration Board Act 1986* has notice of an enduring power of attorney any action taken by the guardian or administrator under the *Guardianship and Administration Board Act 1986* is valid and effectual.”;

(b) In section 118 for “Public Trustee” substitute “Public Advocate”;

(c) In section 118 for “the Court” substitute “the Guardianship and Administration Board”;

(d) In section 118 for “Supreme Court” substitute “Guardianship and Administration Board”.

SCHEDULE I

PROVISIONS WITH RESPECT TO MEMBERS OF THE BOARD

The President.

1. The President—
 - (a) is to be appointed by the Governor in Council; and
 - (b) holds office for a period of 5 years or until the President attains the age of 70 years (whichever first occurs); and
 - (c) is eligible for re-appointment at the end of the term of office; and
 - (d) is entitled to be paid—
 - (i) such remuneration as is from time to time fixed by the Governor in Council; and
 - (ii) such travelling and other allowances as are from time to time fixed by the Governor in Council; and
 - (e) is not in respect of the office of President subject to the provisions of the *Public Service Act 1974*.

Ordinary members.

2. (1) Each member of the Board other than the President—
 - (a) is to be appointed by the Governor in Council on the nomination of the Minister; and
 - (b) holds office for a period of 3 years; and
 - (c) is eligible for re-appointment at the end of the term of office; and
 - (d) is entitled to be paid—
 - (i) such remuneration as is from time to time fixed by the Governor in Council; and
 - (ii) such travelling and other allowances as are from time to time fixed by the Governor in Council; and
 - (e) is not in respect of the office of member subject to the provisions of the *Public Service Act 1974*.

(2) In nominating persons for appointment to the Board, the Minister must have regard to the matters which the Board has jurisdiction to hear and determine and to the need for the Board to be comprised of both males and females so qualified by knowledge and experience that the Board is capable of exercising the jurisdiction conferred on it.

(3) In the case only of the first appointment of the members of the Board—

 - (a) as nearly as possible to half the number of members so appointed hold office for a term of 2 years from their respective appointments; and
 - (b) the remainder of the members first appointed hold office for a term of 3 years from their respective appointments—

but thereafter all appointments must be for a term of 3 years.

Acting members.

3. (1) Where a member is unable, whether on account of illness or otherwise, to perform the duties of office, the Governor in Council may appoint an eligible person to act as that member during the period of inability.
- (2) Where a person has been appointed to act as a member during the period of inability of a member and that member ceases to hold office without having resumed the performance of the duties of office, the period of appointment of the person so appointed is deemed to continue until the appointment is terminated by the Governor in Council or until the expiration of the period of 12 months after the date on which the member ceases to hold office, whichever first occurs.
- (3) A person appointed to act as a member while so acting—
 - (a) has all the powers and may perform all the duties of the member for whom that person is acting; and
 - (b) is entitled to be paid—

SCHEDULE 1—*continued*

- (i) such remuneration as is from time to time fixed by the Governor in Council; and
- (ii) such travelling and other allowances as are from time to time fixed by the Governor in Council.

(4) Where a person has been appointed to act as a member and the appointment to act as such expires (whether by reason of the effluxion of time or of the fact that the member for whom that person is acting has resumed the performance of the duties of office or the relevant vacancy has been filled) 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 deemed to continue until that matter has been finally determined by the Board.

Removal of President from office.

4. (1) The Governor in Council may suspend or remove the President from office.

(2) If the President engages in Victoria or elsewhere in paid employment outside the duties of the office of President without the approval of the Governor in Council the office of President becomes vacant.

General provisions as to members.

5. (1) The Governor in Council may, in the instrument of appointment of a person as a member, specify terms and conditions of appointment.

(2) The Governor in Council may, on the recommendation of the Minister made after consultation with the President, remove or suspend any member other than the President from office.

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

(4) A person who has attained the age of 70 years is not capable of being appointed or re-appointed as a member.

(5) If any member—

- (a) becomes bankrupt; or
- (b) is convicted of an indictable offence or of an offence which, if committed in Victoria, 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) attains the age of 70 years; or
- (f) dies—

the office of that member becomes vacant.

(6) If the appointment of any member expires (whether by reason of effluxion of time or the attaining of the age of 70 years) at a time when that member is engaged in the hearing of any matter by the Board the period of appointment of that person is deemed to continue until that matter has been finally determined by the Board.

SCHEDULE 2

PROVISIONS WITH RESPECT TO THE PROCEDURE OF THE BOARD**Board to sit in divisions.**

1. (1) The jurisdiction, powers and duties conferred or imposed upon the Board may be exercised by divisions of the Board.

(2) A division may consist of 3 or 5 members with the size of a division in any particular case being determined by the President.

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

- (a) the nature of the matter to be considered by that division; and

SCHEDULE 2—*continued*

(b) the need for the members of that division to have appropriate knowledge and experience.

(4) The President must select a member—

(a) who is, or is eligible to be, admitted as a barrister and solicitor of the Supreme Court; or

(b) who has obtained a degree in law from a university or a legal qualification of similar standing—

to act as the chairperson of a division.

Procedure of divisions.

2. (1) Except as provided in clause 3, 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 or, in the case of a person appointed to act as a member under clause 3 of Schedule 1, on the ground that the occasion for so acting had not arisen or had ceased.

(3) Subject to this Act and the regulations, the procedure of a division is in its discretion.

Determination of questions of law by divisions.

3. If a question of law arises in proceedings before a division the chairperson of that division must determine that question.

Directions as to arrangement of business and procedure.

4. The President after consultation with the other members of the Board may give directions as to—

(a) the arrangement of the business of the Board; and

(b) the procedure of the Board.

Places at which the Board to sit.

5. The Board is to sit at such places in Victoria and at such times as the President determines.

Determinations of the Board.

6. (1) A determination of the Board must 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 is or 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.

SCHEDULE 2—continued

Power to amend determinations.

7. 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) any 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.

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

SCHEDULE 3

PROVISIONS WITH RESPECT TO THE PUBLIC ADVOCATE

The Public Advocate.

1. (1) The Public Advocate—
 - (a) is to be appointed by the Governor in Council; and
 - (b) holds office for a period of 7 years or until the Public Advocate attains the age of 70 years (whichever first occurs); and
 - (c) is entitled to be paid—
 - (i) such remuneration as is from time to time fixed by the Governor in Council; and
 - (ii) such travelling and other allowances as are from time to time fixed by the Governor in Council; and
 - (d) is not in respect of the office of Public Advocate subject to the provisions of the *Public Service Act 1974*.
- (2) The Public Advocate ceases to hold office—
 - (a) if the Public Advocate resigns in writing signed by the Public Advocate and the resignation is accepted by the Governor in Council; or
 - (b) if the Public Advocate engages in any paid employment outside the duties of the office without the approval of the Governor in Council; or
 - (c) if the Public Advocate is removed from office under sub-clause (5).
- (3) The Governor in Council may suspend or remove the Public Advocate from office.
 - (4) The Minister must cause to be laid before each House of Parliament, a full statement of the grounds of suspension of the Public Advocate within 7 sitting days after the suspension if that House is then sitting or, if that House is not then sitting, within 7 sitting days after the next meeting of that House.
 - (5) The Public Advocate may be removed from office by the Governor in Council if each House of Parliament, within 7 sitting days after the day when the statement is laid before it, declares by resolution that the Public Advocate ought to be removed from office and, unless each House within that period so declares, the Governor in Council must remove the suspension and restore the Public Advocate to office.
- (6) If the Public Advocate—
 - (a) becomes bankrupt; or
 - (b) is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence; or

SCHEDULE 3—*continued*

- (c) becomes incapable of performing the duties of the office of Public Advocate; or
- (d) is removed from office under sub-clause (5) or resigns under sub-clause (2) (a); or
- (e) attains the age of 70 years; or
- (f) dies—

the office of the Public Advocate becomes vacant.

The Acting Public Advocate.

2. (1) The Governor in Council may appoint an Acting Public Advocate during the temporary absence or the suspension of the Public Advocate and may at any time revoke the appointment.

(2) The Acting Public Advocate while so acting—

- (a) has all the powers and duties and may exercise any of the functions of the Public Advocate; and
- (b) is entitled to be paid—
 - (i) such remuneration as is fixed from time to time by the Governor in Council; and
 - (ii) such travelling and other allowances as are from time to time fixed by the Governor in Council; and
- (c) is not in respect of the office of Acting Public Advocate subject to the provisions of the *Public Service Act 1974*.

Oath or affirmation.

3. The Public Advocate and any Acting Public Advocate must before taking office take an oath or make an affirmation to be administered by the Speaker of the Legislative Assembly that—

- (a) she or he will faithfully and impartially perform the duties of office; and
- (b) she or he will not except in accordance with this Act divulge information received or obtained under this Act.

NOTES

1. *Minister's second reading speech—*

Legislative Assembly: 28 November 1985.

Legislative Council: 22 April 1986

2. The long title for the Bill for this Act was "A Bill to provide for the establishment of a Guardianship and Administration Board, to provide for the appointment of a Public Advocate, to amend the *Public Trustee Act 1958* and for other purposes."