



AUSTRALIAN CAPITAL TERRITORY

# Guardianship and Management of Property Act 1991

No. 62 of 1991

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AUSTRALIAN CAPITAL TERRITORY

# Guardianship and Management of Property Act 1991

No. 62 of 1991

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## An Act to provide for guardianship, and management of the property, of certain persons and for related purposes

*[Notified in ACT Gazette S119: 31 October 1991]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

### PART I—PRELIMINARY

#### Short title

1. This Act may be cited as the *Guardianship and Management of Property Act 1991*.

#### Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions of this Act commence on a day fixed by the Minister by notice in the *Gazette*.

(3) If the remaining provisions of this Act have not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, those provisions, by force of this subsection, commence on the first day after the end of that period.

### **Principles to be observed**

3. (1) Where, because of a physical, mental, psychological or intellectual condition, a person—

- (a) needs assistance or protection from abuse, exploitation or neglect; or
- (b) is legally incompetent or unable to enter into particular transactions;

a person who exercises a power, or performs a duty or function, under or in relation to this Act in relation to the first-mentioned person shall observe the principles set out in subsection (2).

(2) The principles to be observed in accordance with subsection (1) are the following:

- (a) that the person's views and wishes, so far as they can be ascertained, should receive paramount consideration;
- (b) that the decisions made about the person should be, as nearly as possible, the decisions that he or she would have made if not affected by the condition concerned;
- (c) that the person's welfare and interests should be appropriately protected;
- (d) that the person's life should not be interfered with except to the least extent necessary;
- (e) that the person should be encouraged to look after himself or herself;
- (f) that, as far as possible, the person should live in the general community and join in community activities.

(3) The Tribunal shall apply the principle that, unless the contrary is proved, persons suffering from physical, mental, psychological or

intellectual conditions are legally competent and their decisions are reasonable.

(4) This Act shall be construed in accordance with subsections (1), (2) and (3).

### **Interpretation**

4. In this Act, unless the contrary intention appears—

“Crimes Act” means the Crimes Act, 1900 of the State of New South Wales in its application in the Territory;

“doctor” means a person registered as a medical practitioner under the *Medical Practitioners Registration Act 1930*;

“guardian” means a person who is, or is to be taken to be, a guardian under section 7, 12 or 32;

“inquiry” means an inquiry under Part III;

“judicial officer” means a Judge of the Supreme Court or a Magistrate;

“lawyer” means a barrister or solicitor whose name is on the Roll of Barristers and Solicitors kept under the *Legal Practitioners Act 1970*;

“manager” means a person who is, or is to be taken to be, a manager under section 8, 12 or 32;

“member” means a member of the Tribunal;

“non-regenerative tissue” has the meaning it has under the *Transplantation and Anatomy Act 1978*;

“prescribed medical procedure” means—

- (a) an abortion;
- (b) reproductive sterilisation;
- (c) a hysterectomy;
- (d) a medical procedure concerned with contraception;
- (e) removal of non-regenerative tissue for transplantation to the body of another living person; or

- (f) any other medical or surgical procedure prescribed for the purposes of this definition;

“President” means the President of the Tribunal;

“property” includes—

- (a) money or a right to money;
- (b) an estate or interest in real or personal property; and
- (c) things in action;

“spouse”, in relation to a person, includes a person of the opposite sex to the person who is not legally married to the person but who lives with the person on a *bona fide* domestic basis;

“Tribunal” means the Guardianship and Management of Property Tribunal established by section 57;

“trustee company” has the meaning it has under the *Trustee Companies Act 1947*.

### **Limits on findings of disability**

5. A person shall not be taken to have a physical, mental, psychological or intellectual condition relevant to section 7 or 8 merely because the person—

- (a) is eccentric;
- (b) does or does not express a particular political or religious opinion;
- (c) is of a particular sexual orientation or expresses a particular sexual preference;
- (d) engages or has engaged in illegal or immoral conduct; or
- (e) takes or has taken drugs, including alcohol (but any effects of a drug may be taken into account).

### **Jurisdiction of the Supreme Court not affected**

6. Nothing in this Act limits the jurisdiction of the Supreme Court with respect to the guardianship of persons or the management of the property of persons.

## **PART II—GUARDIANS AND MANAGERS**

### ***Division 1—Appointment and powers***

#### **Appointment and powers of guardians**

- 7. (1)** If, on application, the Tribunal is satisfied that—
- (a) a person who resides in the Territory is unable, because of a physical, mental, psychological or intellectual condition—
    - (i) to make reasonable judgments about matters relating to his or her health or welfare; or
    - (ii) to do anything necessary for his or her health or welfare; and
  - (b) as a result, the person's health or welfare is, or is likely to be, substantially at risk;

the Tribunal may, by order, appoint a guardian for the person, with such powers as are necessary to ensure that the person's health or welfare are adequately protected.

**(2)** The powers that may be conferred on a person's guardian include the following powers:

- (a) to decide where and with whom the person is to live;
- (b) to decide what education or training the person is to receive;
- (c) to decide whether the person is to be allowed to work;
- (d) if the person is to be allowed to work—to decide the nature of the work, the place of employment and the employer;
- (e) to give for the person a consent required for a medical procedure or other treatment (other than a prescribed medical procedure);
- (f) to institute or maintain legal proceedings for or in the name of the person.

**(3)** The powers that may be conferred on a person's guardian do not include the power to chastise the person or the power to do any of the following things for the person:

- (a) vote in an election;
- (b) make a will or other testamentary instrument;

- (c) consent to the adoption of a child;
- (d) give a consent in relation to a marriage;
- (e) give for the person a consent required for a prescribed medical procedure.

(4) A guardianship order may be made for a person below the age of 18 years, but it does not take effect until the person attains that age.

### **Appointment and powers of managers**

**8. (1)** If, on application, the Tribunal is satisfied that—

- (a) a person is, because of a physical, mental, psychological or intellectual condition, legally incompetent to enter into a transaction relating to the person's property; and
- (b) either—
  - (i) it is likely that the question whether the person should enter into the transaction will arise; or
  - (ii) it is in the person's interests to preserve the person's property by preventing a purported disposition of the property;

the Tribunal may, by order, appoint a person to manage all or a specified part of the property, with such powers as are necessary to allow the manager to enter into the transaction for the person or to prevent the disposition.

(2) The powers that may be conferred on a manager of a person's property are those that the person would have if he or she were legally competent to exercise them.

(3) The Tribunal shall not, under subsection (1), appoint a manager for property in the Territory of a person who resides outside the Territory unless—

- (a) it is satisfied that it is impracticable for a manager for the property to be appointed in the place where the person resides; or
- (b) an order appointing a manager for the property under the law of that place cannot be registered under section 12.

(4) A management order may be made for a person below the age of 18 years, but it does not take effect until the person attains that age.

### **Who may be appointed**

**9. (1)** The Community Advocate or a natural person may be appointed as a guardian.

**(2)** The Community Advocate, the Public Trustee, a trustee company or a natural person may be appointed as a manager.

**(3)** A person may be appointed both guardian and manager, and persons may be appointed jointly as guardians or managers, or both.

**(4)** The Community Advocate shall not be appointed as a person's guardian if a natural person who is otherwise suitable has consented to be appointed.

**(5)** The Community Advocate, the Public Trustee or a trustee company shall not be appointed as a manager of a person's property if a natural person who is otherwise suitable has consented to be appointed.

### **Considerations affecting appointment**

**10. (1)** A person shall not be appointed as a guardian or manager unless the person consents in writing to the appointment.

**(2)** A person (except the Community Advocate, the Public Trustee or a trustee company) shall not be appointed as a guardian or manager unless the person has attained the age of 18 years and has informed the Tribunal on oath or affirmation whether the person—

- (a)** has been convicted or found guilty of an offence involving violence, fraud or dishonesty;
- (b)** has been, either in the Territory or elsewhere, refused appointment as a guardian or manager, or removed from office as a guardian or manager; or
- (c)** is bankrupt or has applied to take the benefit of a law for the relief of bankrupt or insolvent debtors or has compounded with creditors or made an assignment of income for their benefit (and if so, has given particulars to the Tribunal).

**(3)** A person (except the Community Advocate or the Public Trustee) shall not be appointed as a guardian or manager unless the Tribunal is satisfied that the person will observe the principles set out in section 3 and is suitable for appointment.

(4) For the purposes of subsection (3), the matters that the Tribunal shall take into account include—

- (a) the views and wishes of the person for whom a guardian or manager is to be appointed;
- (b) the desirability of preserving existing family relationships;
- (c) whether the 2 persons are compatible;
- (d) whether the proposed guardian or manager resides in the Territory;
- (e) whether the proposed guardian or manager will be available and accessible to the other person;
- (f) the nature of the duties and functions to be performed, and the powers to be exercised, under the order and whether the proposed guardian or manager is competent to perform and exercise them; and
- (g) whether the interests and duties of the proposed guardian or manager are likely to conflict with the other person's interests to the detriment of the person's interests.

(5) The interests and duties of the spouse or a relative of a person shall not be taken to be likely to conflict with the interests of the person merely because of the fact of being the spouse or relative.

#### **Powers to be least restrictive**

11. The powers conferred on a person's guardian or on a manager of a person's property are to be no more restrictive of the person's freedom of decision and action than is necessary to achieve the purpose of the order.

#### **Recognition of interstate etc. guardians and managers**

12. (1) The Tribunal shall, upon application, register the appointment of a person who is, under a corresponding law—

- (a) a guardian for another person who resides outside the Territory; or
- (b) a manager of property of another person who resides outside the Territory.

(2) Upon registration, the person shall be taken to be a guardian, or manager of the property, of the other person, as the case requires, as if the appointment had been made by the Tribunal.

(3) The Tribunal shall not register an appointment unless the instrument of appointment, or a copy of it, has been lodged with the Tribunal.

(4) In subsection (1)—

“corresponding law” means a law of a State or of another Territory, or a law of a prescribed country, that substantially corresponds to this Act.

### **Authority of guardian or manager**

13. An act or omission of a guardian or manager under this Act has effect as if it were an act or omission of the represented person and that person had the legal capacity for that act or omission.

### **Obligations**

14. (1) In exercising his or her powers as guardian for a person, or as manager of a person’s property, the guardian or manager is to act, so far as is proper, as the person would have acted in the circumstances if he or she were not affected by the condition concerned.

(2) In exercising those powers, the matters that the guardian or manager shall take into account include—

- (a) the need to ensure, so far as possible, that the person does not become destitute; and
- (b) the desirability of maintaining, so far as is proper, the style of life of the person as it would have been if the person were not affected by the condition concerned.

(3) If, in a particular case, it is not possible to determine how the person would have acted, the guardian or manager shall act in the best interests of the person.

(4) Unless the Tribunal, on application, by order, permits—

- (a) a manager of a person’s property shall not enter into a transaction in relation to the property if the interests of the manager are in conflict, or may conflict, with the interests of the person; and
- (b) a manager of a person’s property shall keep the manager’s property separate from the person’s property, but this does not apply to property jointly owned by the manager and the person.

**Fees and expenses**

**15. (1)** A person who acts as a guardian or manager—

- (a) is entitled to be paid fees fixed by or in accordance with a determination under section 75; and
- (b) is entitled to reimbursement of the reasonable expenses incurred in acting as guardian or manager.

**(2)** Amounts payable under this section are payable out of, and are a charge on, the relevant person's property or, if the manager concerned is manager of part only of the relevant person's property, that part.

***Division 2—Supervision*****Directions by Tribunal**

**16. (1)** The Tribunal may, on application, give a direction to a guardian or manager about the exercise of his or her powers or the performance of his or her duties or functions.

**(2)** A guardian or manager who, without reasonable excuse, contravenes a direction is guilty of an offence punishable, on conviction, by a fine not exceeding \$5,000 or by imprisonment for a period not exceeding 6 months, or both.

**Restrictions on Tribunal's power to give directions**

**17.** Where an order of a court affects a person for whom there is a guardian under this Act, or in respect of whom a manager is appointed under this Act, the Tribunal shall not give a direction that is inconsistent with that order.

**Advice by Tribunal**

**18. (1)** The Tribunal may, on application by a guardian or manager, give an opinion or advice about the exercise of powers, or the performance of functions or duties, by the guardian or manager.

**(2)** A guardian or manager who acts in accordance with such an opinion or advice shall be taken to have acted properly and in accordance with this Act unless, in obtaining the opinion or advice, he or she acted fraudulently or wilfully misrepresented or concealed a material fact.

**Regular review etc.**

**19. (1)** The Tribunal may, at any time and whether on application or on its own motion, hold an inquiry into whether—

- (a) an order appointing a guardian or manager should be—
  - (i) varied; or
  - (ii) revoked on the ground that the need for guardianship or management no longer exists; or
- (b) a guardian or manager should be removed under section 31.

**(2)** The Tribunal shall hold such an inquiry in respect of each order appointing a guardian or manager at least once every 3 years.

**(3)** If—

- (a) a guardian or manager dies; and
- (b) under the order of appointment, some other person thereupon becomes a replacement guardian or manager;

the Tribunal shall hold an inquiry into the suitability of the replacement guardian or manager as soon as practicable.

**(4)** A reference in this section to an order shall, in relation to an order registered under section 12, be read as a reference to the registration of that order.

***Division 3—Matters relating to management***

**Access to records**

**20.** Unless the Tribunal otherwise orders, a manager of a person's property is entitled to inspect a will or other testamentary instrument made by the person and to any other document relating to the property.

**Payments for maintenance etc.**

**21. (1)** The manager of a person's property may, out of the property, pay reasonable amounts for the maintenance, advancement or education, or otherwise for the benefit, of the person and of the person's dependants (if any).

**(2)** The payments may be made to or on behalf of the person and, if the person has a guardian, to the guardian.

(3) The payments may be made out of income or capital.

(4) In determining whether to make a payment, the matters that the manager shall take into account include—

- (a) the person's views and wishes;
- (b) the amount and nature of the property;
- (c) the amount and nature of any other of the person's property; and
- (d) the present and likely future needs of the person and any dependants.

### **Receipt of money**

**22. (1)** Unless the Tribunal otherwise orders, if a manager of a person's property receives money—

- (a) as interest or income in respect of the property; or
- (b) as the proceeds of the realisation of the property;

the manager becomes manager of the money.

(2) Unless the Tribunal otherwise orders, if there is an accretion to property in respect of which a manager has been appointed, the manager becomes manager of the extra property.

### **Execution of instruments**

**23.** An instrument executed by a manager of a person's property acting as manager has the same effect as if it had been executed by the person.

### **Investments**

**24. (1)** A manager, except the Public Trustee, shall not invest money held in his or her capacity as manager except—

- (a) in investments in which trust money may, in accordance with the Trustee Act, be invested; or
- (b) as the Tribunal, by order, permits.

(2) In paragraph (1) (a)—

“Trustee Act” means the Trustee Act, 1925 of the State of New South Wales in its application in the Territory.

### **Real estate**

**25.** If the property for which a manager is appointed includes land held under the *Real Property Act 1925*, the manager shall—

- (a) within 14 days after being appointed, lodge a copy of the order of appointment; or
- (b) within 14 days after being registered as manager under section 12, lodge a copy of the relevant order of appointment together with evidence of the registration;

with the Registrar of Titles.

### **Accounts**

**26. (1)** A manager other than the Public Trustee shall, in accordance with the regulations, file with the Public Trustee such accounts and other documents relating to the management of the relevant property as are prescribed.

**(2)** A person who, without reasonable excuse, contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000.

**(3)** The Tribunal may, upon application, by order—

- (a) give a manager directions in relation to the filing of the prescribed accounts and documents; and
- (b) direct a manager to have the accounts and documents audited by a specified auditor.

**(4)** A manager who, without reasonable excuse, contravenes a direction is guilty of an offence punishable on conviction by a fine not exceeding \$1,000.

### **Examination of accounts**

**27. (1)** The Public Trustee shall examine the accounts and documents referred to in subsection 26 (1) and may apply to the Tribunal for the disallowance of any item in the accounts.

**(2)** The Tribunal shall not make an order disallowing an item if the Tribunal is satisfied that the manager acted in good faith and with reasonable care in the exercise of powers conferred on the manager.

(3) Where an item is disallowed by the Tribunal, the manager concerned—

- (a) is not entitled to payment under section 15 of the amount of the item disallowed; and
- (b) shall pay to the Territory the amount of the costs reasonably incurred by the Public Trustee in making the application to the Tribunal.

(4) Where the Public Trustee examines the accounts and other documents in respect of the management of property by a manager, the manager shall pay to the Territory a fee fixed by or in accordance with a determination under section 75 in respect of the examination.

(5) An amount payable to the Territory under paragraph (3) (b) or subsection (4) is due for payment on the twenty-eighth day after notice in writing specifying the amount of the debt is given to the debtor by the Public Trustee.

(6) The Tribunal may, upon an application by the manager and with the consent of the Public Trustee, waive the payment of the whole or part of an amount payable to the Territory under paragraph (3) (b) or subsection (4).

#### ***Division 4—Cessation of guardianship or management***

##### **Resignation**

28. A guardian or manager may resign by writing given to the President.

##### **Death of represented person**

29. Subject to section 30, a person's guardian, or a manager of a person's property, ceases to be guardian or manager when the person dies.

##### **Manager may act until notified of discharge etc.**

30. An order appointing a guardian or manager continues in force, so far as an act or thing done under it in good faith is concerned, until the guardian or manager receives notice of the death of the represented person, notice of the revocation of the order or notice of his or her removal from office under section 31.

### **Removal by Tribunal**

**31.** The Tribunal may, by order, remove a person appointed as a guardian or manager if it is satisfied that—

- (a) the person is no longer suitable to be a guardian or manager;
- (b) the person is no longer competent to perform the duties and functions, or exercise the powers, of a guardian or manager;
- (c) the person has neglected or failed to perform the duties and functions, or exercise the powers, of a guardian or manager; or
- (d) the person has contravened a provision of this Act.

### **Surviving or substitute guardians etc.**

**32. (1)** Where a person ceases to be a joint guardian (whether by death or otherwise)—

- (a) the surviving guardian becomes the sole guardian; or
- (b) if there are 2 or more surviving guardians—the survivors become joint guardians.

**(2)** Where a person ceases to be a joint manager of property (whether by death or otherwise)—

- (a) the surviving manager becomes the sole manager of the property; or
- (b) if there are 2 or more surviving managers—the survivors become joint managers of the property.

**(3)** Where the Community Advocate becomes aware that there is no longer a guardian for a person, but not because of—

- (a) the revocation by the Tribunal of the order appointing the person as guardian; or
- (b) the removal by the Tribunal of the person as guardian;

the Community Advocate shall give the Tribunal written notice of that fact.

**(4)** If the notice indicates that the Community Advocate or a person specified by the Community Advocate will act as guardian, the notice shall be taken to be an application for the appointment of the Advocate or that person, as the case may be, as the guardian.

(5) Where the Community Advocate becomes aware that there is no longer a manager of a person's property, but not because of—

- (a) the revocation by the Tribunal of the order appointing the person as manager; or
- (b) the removal by the Tribunal of the person as manager;

the Community Advocate shall give the Tribunal written notice of that fact.

(6) If the notice indicates that the Community Advocate or a person specified by the Community Advocate has consented to act as manager, the notice shall be taken to be an application for the appointment of the Advocate or that person, as the case may be, as the manager.

### **PART III—INQUIRIES BY TRIBUNAL**

#### *Division 1—Procedure*

##### **Need for inquiry**

33. The Tribunal shall not make an order unless it has held an inquiry into the relevant matter.

##### **Sittings**

34. (1) Subject to subsection (2), the Tribunal shall sit at such times and in such places in the Territory as the President determines.

(2) The Tribunal shall not sit in premises customarily used by a court, unless the President is satisfied that no other suitable premises are available or appropriate in the circumstances.

##### **Notice of inquiry**

35. (1) At least 7 days before the Tribunal holds an inquiry into a matter concerning a person, the President shall, so far as practicable, give written notice of the inquiry to—

- (a) the person;
- (b) the person's spouse, parents, brothers and sisters;
- (c) each child of the person;
- (d) if the person has a guardian—the guardian;
- (e) if there is a manager of the person's property—the manager;

- (f) the Community Advocate; and
- (g) if the matter relates to property—the Public Trustee.

(2) Subsection (1) shall not be taken to limit the person to whom notice of the inquiry may be given.

### **Appearance and representation**

**36. (1)** Each person referred to in section 35 who has been given notice of an inquiry under that section is entitled to appear and give evidence at the inquiry.

(2) Other persons may appear and give evidence at an inquiry only by leave of the Tribunal.

(3) A person appearing at an inquiry may be represented by an agent or a lawyer.

(4) The Tribunal may appoint a person to represent a person who is not otherwise represented.

### **Conduct of inquiry**

**37. (1)** An inquiry shall be held in public unless the Tribunal orders otherwise.

(2) An inquiry shall be conducted informally and with as little regard to legal technicalities as is just.

(3) The Tribunal is bound by the rules of natural justice.

### **Evidence**

**38. (1)** The Tribunal is not bound by the rules of evidence but may inform itself on any matter relevant to an inquiry in such manner as it thinks fit.

(2) Evidence in an inquiry may be given orally or in writing.

(3) For the purposes of an inquiry, the Tribunal may take evidence on oath or on affirmation and for that purpose the President may—

- (a) require a person appearing before the Tribunal to take an oath or make an affirmation; and
- (b) may administer an oath or affirmation to such a person.

(4) For the purposes of an inquiry, the President may require a person appearing before the Tribunal—

- (a) to answer a question relevant to the inquiry; or
- (b) to produce a document relevant to the inquiry.

#### **Authority for medical or other examinations**

39. (1) The President may, for the purposes of an inquiry, authorise a medical or other examination of the person who is the subject of the inquiry.

(2) An authority has effect as a valid consent for anything done in the course of the examination.

#### **Assistance for Tribunal**

40. The Tribunal may appoint a lawyer or doctor or any other person with appropriate expertise to assist it in relation to an inquiry.

#### **Power to obtain information and documents**

41. (1) Where the President is satisfied that a person is capable of providing information or producing a document relevant to an inquiry, the President may, by written notice given to the person, require the person—

- (a) to give the information to the President in writing signed by the person or, in the case of a body corporate, by an officer of the body corporate; or
- (b) to produce the document to the President.

(2) The notice shall state—

- (a) the place at which the information or document is to be given or produced to the President; and
- (b) the time at which, or the period within which, the information or document is to be so given or produced.

(3) Where the President is satisfied that a person has information relevant to an inquiry, the President may, by written notice given to the person, require the person to attend before the Tribunal at a time and place specified in the notice to answer questions relevant to the inquiry.

### **Retention of documents**

**42.** Where a document is produced to the President in accordance with a requirement under subsection 38 (4) or 41 (1), the President—

- (a) may take possession of, and may make a copy of, or take extracts from, the document;
- (b) may retain possession of the document for such period as is necessary for the purposes of the inquiry; and
- (c) during that period shall permit a person who would be entitled to inspect the document, if it was not in the possession of the President, to inspect the document at any reasonable time.

### **Form of orders**

**43. (1)** Orders of the Tribunal shall be in writing signed by the member or members constituting the Tribunal in the matter to which the order relates.

**(2)** An order appointing a guardian or manager—

- (a) shall specify the powers conferred on the guardian or manager; and
- (b) is subject to such conditions, or limitations as to time, as are specified therein.

**(3)** If an order relates to property, it shall specify the property.

### **Proof of orders**

**44.** A copy of an order signed in accordance with subsection 43 (1) is admissible as evidence in proceedings that such an order was made.

### **Obtaining reasons for decisions**

**45. (1)** In this section—

“decision” includes a direction and an order.

**(2)** Where—

- (a) the Tribunal makes a decision; and
- (b) a person who is entitled to appeal to the Supreme Court against the decision requests the President, in accordance with subsection (3), for a statement of reasons in respect of the decision;

the President shall give a statement in writing of those reasons to the person as soon as practicable but, in any case, within 28 days after the day on which the request was received by the President.

(3) A request for a statement of reasons shall be in writing given to the President within 28 days after the day on which the decision was made.

(4) A statement of reasons shall—

- (a) set out the Tribunal's findings on material questions of fact;
- (b) refer to the evidence or other material on which the finding was made; and
- (c) give the Tribunal's reasons for the decision.

### **Withdrawal of applications**

46. The Tribunal may allow an application for an order to be withdrawn at any time before it is determined.

### **Costs**

47. (1) Where the Tribunal is satisfied that—

- (a) an application is frivolous, vexatious or has not been made in good faith; and
- (b) a person other than the applicant has reasonably incurred expenses in relation to the inquiry concerning the application;

the Tribunal may order the applicant to pay a specified amount to the person by way of compensation.

(2) The amount to which the order relates is a debt due to the person by the applicant.

## ***Division 2—Miscellaneous***

### **Removal of persons disrupting inquiries**

48. (1) Where the President is satisfied that a person is substantially disrupting the conduct of an inquiry, the President may order the person to leave the place where the inquiry is being held.

(2) A person who, without reasonable excuse, contravenes an order is guilty of an offence punishable on conviction by a fine not exceeding \$5,000 or by imprisonment for a period not exceeding 6 months, or both.

(3) If the person does not obey the order, the President may authorise a police officer to remove the person and the police officer may, using such force and assistance as is necessary and reasonable, remove the person.

### **Prohibited publications**

49. (1) A person shall not, without the written authority of the President—

- (a) publish to the public, or to a section of the public, a report of an inquiry before the Tribunal; or
- (b) broadcast or play to the public, or to a section of the public, a sound recording of an inquiry;

that would enable a person to be identified as a person for whom a guardian had been or was to be appointed, or of whose property a manager had been or was to be appointed.

(2) A person shall not, without the written authority of the President, publish to the public, or to a section of the public, a photograph taken at, or of any proceedings in, an inquiry.

(3) In subsection (2)—

“photograph” includes negative, film, videotape and any other record of visual images.

(4) A person who contravenes subsection (1) or (2) without reasonable excuse is guilty of an offence punishable on conviction by a fine not exceeding \$5,000 or by imprisonment for a period not exceeding 6 months, or both.

### **Failure to answer questions etc.**

50. (1) A person shall not, without reasonable excuse, fail to—

- (a) answer a question or produce a document when required to do so under subsection 38 (4); or
- (b) give information or produce a document when required to do so under subsection 41 (1).

Penalty: \$5,000 or imprisonment for 6 months, or both.

(2) It is not a reasonable excuse for the purposes of subsection (1) for a person to fail to comply with a requirement under subsection 38 (4) or 41 (1) on the ground that the answer to the question, the production of the

document or the giving of the information might tend to incriminate the person but—

- (a) any answer or information given or document produced; and
- (b) any information, document or thing obtained as a direct or indirect consequence of the giving of the answer or information, or the production of the document;

is not admissible in evidence against the person in any civil or criminal proceedings, other than proceedings for—

- (c) an offence against section 53 or 54;
- (d) any other offence in respect of the falsity of the answer, document or information; or
- (e) an offence under or by virtue of Part VIII of the Crimes Act that relates to an alleged offence referred to in paragraph (c) or (d);

#### **Failure to attend before Tribunal**

**51.** A person who has been given notice under section 41 to appear before the Tribunal shall not, without reasonable excuse—

- (a) fail to attend as required by the notice; or
- (b) fail to attend and report daily unless excused, or released from further attendance, by the President.

Penalty: \$5,000 or imprisonment for 6 months, or both.

#### **Refusing to be sworn etc.**

**52.** A person shall not, without reasonable excuse, fail to take an oath or make an affirmation when required to do so under section 38.

Penalty: \$5,000 or imprisonment for 6 months, or both.

#### **False information etc.**

**53. (1)** A person shall not, with intent to mislead the Tribunal, file or lodge with the Tribunal a document knowing it to be false or misleading in a material particular.

Penalty: \$5,000 or imprisonment for 6 months, or both.

**(2)** A person who knowingly gives false evidence to the Tribunal in an inquiry is guilty of an offence punishable, on conviction, by a fine not

exceeding \$5,000 or by imprisonment for a period not exceeding 6 months, or both.

**Influencing participants in inquiry**

**54.** A person shall not improperly influence a person in relation to the person's participation in an inquiry (whether as a member of the Tribunal or as a person giving evidence to the Tribunal) to act otherwise than in the course of the person's duty in relation to the inquiry.

Penalty: \$5,000 or imprisonment for 6 months, or both.

**Obstructing Tribunal**

**55.** A person shall not, without reasonable excuse—

- (a) obstruct the Tribunal or a member of the Tribunal in the performance of a function or duty or the exercise of a power under this Act; or
- (b) disrupt proceedings before the Tribunal.

Penalty: \$5,000 or imprisonment for 6 months, or both.

***Division 3—Appeals***

**Appeals**

**56. (1)** An appeal to the Supreme Court from an order, direction or decision of the Tribunal may be brought by a person—

- (a) who appeared, or was entitled under subsection 36 (1) to appear, before the Tribunal in the relevant inquiry;
- (b) who, with leave of the Tribunal, would have been entitled to appear before the Tribunal in the relevant inquiry; or
- (c) in respect of whom the order, direction or decision was made.

**(2)** An appeal may be brought—

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

**(3)** An appeal shall be instituted in accordance with the Rules of the Supreme Court of the Australian Capital Territory—

- (a) within 28 days after the day on which the order, direction or decision was made;

- (b) if the appellant requested a statement of reasons under section 45 in respect of the order, direction or decision—within 28 days after the day on which the appellant receives the statement; or
- (c) within such further time as the Supreme Court (whether before or after the expiration of that period) allows.

(4) The Supreme Court shall hear and determine the appeal and may make such order as is just, including an order confirming the order, direction or other decision, setting it aside and remitting the matter to the Tribunal with directions or substituting its own order, direction or decision.

#### **PART IV—GUARDIANSHIP AND MANAGEMENT OF PROPERTY TRIBUNAL**

##### **Establishment**

57. There is hereby established a Tribunal by the name of the Guardianship and Management of Property Tribunal.

##### **Membership**

58. (1) The Tribunal shall consist of—

- (a) a President; and
- (b) 2 other members;

appointed by the Executive.

(2) The President shall be—

- (a) a Magistrate; or
- (b) a person who is enrolled as a barrister, solicitor, barrister and solicitor or legal practitioner of the High Court, any federal court or the Supreme Court of a State or Territory and has been so enrolled for at least 5 years.

(3) The President holds office for the period (not exceeding 5 years) specified in the instrument of appointment but is eligible for reappointment.

(4) The members, other than the President, shall be persons who have, in the opinion of the Executive, appropriate expertise, training or experience in relation to, and are otherwise suitable to deal with, the needs of persons who, because of a physical, mental, psychological or intellectual condition, need assistance or protection from abuse, exploitation or neglect.

(5) A member, other than the President, holds office for the period (not exceeding 3 years) specified in the instrument of appointment but is eligible for reappointment.

(6) A member may be appointed as a full-time member or a part-time member.

(7) Subject to this Part, a member of the Tribunal holds office on the terms and conditions (including terms and conditions relating to remuneration and allowances) specified in the instrument of appointment.

### **Constitution for exercise of powers**

**59. (1)** Subject to subsection (2), for the purpose of exercising its powers, the Tribunal shall be constituted by—

- (a) the President and the 2 other members; or
- (b) the President alone;

as determined by the President.

(2) Where, before the completion of an inquiry, a member of the Tribunal other than the President ceases to be available for the purposes of the inquiry, the President and the remaining member shall complete the inquiry if the President considers it desirable to do so.

### **Determination of questions**

**60. (1)** A question of law arising before the Tribunal shall be decided in accordance with the opinion of the President.

(2) Subject to subsection (1)—

- (a) where the Tribunal is constituted by the President and the 2 other members and there is a division of opinion in relation to a question, the question shall be decided according to the opinion of the majority; and
- (b) where the Tribunal is constituted in accordance with subsection 59 (2) and there is a division of opinion in relation to a question, the question shall be decided according to the opinion of the President.

**Expenses**

**61.** The Territory shall reimburse a member referred to in paragraph 58 (1) (b) for expenses reasonably incurred in the performance of the member's duties or functions.

**Resignation**

**62.** A member of the Tribunal may resign by writing given to the Executive.

**Acting members**

**63. (1)** The Executive may appoint a person to act as a member of the Tribunal—

- (a) during a vacancy in the office of the member, whether or not an appointment has previously been made to the office; or
- (b) during any period or during all periods when the member is absent from duty or from the Territory or is, for any reason, unable to perform the duties of the office;

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

**(2)** A person appointed to act as the President shall be a person referred to in paragraph 58 (2) (a) or (b).

**(3)** A person appointed to act as a member other than the President shall be a person who is qualified in accordance with subsection 58 (4) to act as such a member.

**(4)** Anything done by or in relation to a person purporting to act under subsection (1) is not invalid on the ground that—

- (a) the occasion for the person's appointment had not arisen;
- (b) there was a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

### **Staff**

**64. (1)** The staff required to assist the Tribunal in the performance of its functions shall be public servants made available by the Head of Administration.

**(2)** A Member of the staff of the Tribunal is subject to the directions of the President in the exercise of a power or the performance of a duty or function under or in relation to this Act.

### **Protection of members etc.**

**65.** No action, suit or proceeding lies against a person who is or has been—

- (a) a member of the Tribunal;
- (b) a member of the staff of the Tribunal;
- (c) acting under the direction or authority of the Tribunal; or
- (d) participating in proceedings;

in relation to an act done or omitted to be done in good faith in the exercise or purported exercise of a power or the performance of a duty or function under or in relation to this Act.

### **Secrecy**

**66. (1)** In this section—

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“person to whom this section applies” means a person who is, or has been—

- (a) a member of the Tribunal;
- (b) a member of the staff of the Tribunal; or
- (c) authorised to exercise a power or perform a duty or function under or in relation to this Act;

“produce” includes permit access to;

“protected information” means information that—

- (a) concerns a person; and

- (b) is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a power or the performance of a duty or function by the person under or in relation to this Act.

(2) Subject to subsection (3), a person to whom this section applies shall not—

- (a) make a record of protected information; or
- (b) directly or indirectly, divulge or communicate to a person protected information concerning another person;

unless the record is made or the information divulged or communicated in relation to the exercise of a power, or the performance of a duty or function, as a person to whom this section applies, under or in relation to this Act or another Act.

Penalty: \$5, 000 or imprisonment for 6 months, or both.

(3) Subsection (2) does not prevent a person to whom this section applies from divulging or communicating protected information to a person about another person with the consent of that other person.

(4) A person to whom this section applies is not required—

- (a) to divulge or communicate protected information to a court; or
- (b) to produce a document containing protected information to a court;

except where it is necessary to do so for the purposes of this Act or another Act.

## **PART V—MISCELLANEOUS**

### **Emergency appointments**

**67. (1)** The Tribunal may—

- (a) under section 7, appoint the Community Advocate to be the guardian for a person; or
- (b) under section 8, appoint the Community Advocate or the Public Trustee to be a manager of a person's property;

without holding an inquiry under Part III if the Tribunal is satisfied that there are special circumstances of urgency that make it proper to do so.

(2) The order of appointment has effect for such period, not exceeding 10 days, as is specified in the order.

### **Emergency removal of disabled persons**

**68. (1)** If—

- (a) the President or a judicial officer is satisfied that—
  - (i) a guardian has been appointed for a person; or
  - (ii) grounds exist for the appointment of a guardian for a person; and
- (b) the person is—
  - (i) because of a physical, mental, psychological or intellectual condition, likely to suffer serious damage to his or her physical, mental or emotional health if not removed from a particular place; or
  - (ii) being unlawfully detained in a particular place;

the President or judicial officer may, on application by the Community Advocate, issue a warrant authorising the Community Advocate, with such police officers as may be required, and using such force as is necessary and reasonable, to enter that place and remove that person.

(2) A warrant shall specify—

- (a) the purpose for which it is issued;
- (b) the person whose removal it authorises;
- (c) the place from which that removal is authorised;
- (d) particular hours during which the removal is authorised or that removal is authorised at any time of the day or night; and
- (e) the date on which it ceases to have effect, being a date no later than 14 days after the issue of the warrant.

(3) Subject to subsection (5), the application shall be in writing accompanied by a statement setting out the information in support of the application.

(4) All information, whether oral or in writing, given in support of the application shall be given on oath or affirmation.

(5) If it is impracticable to apply in accordance with subsection (3), an application may be made by telephone or other appropriate means.

(6) Where subsection (5) applies—

- (a) the President or the judicial officer shall prepare and sign the warrant and tell the Community Advocate its terms;
- (b) the Community Advocate shall prepare an instrument in the same terms as the warrant and write on it—
  - (i) the time at which and the date on which the warrant was signed; and
  - (ii) the name of the person who signed the warrant;
- (c) the Community Advocate shall give the person who signed the warrant, not later than 24 hours after it was signed, the statement mentioned in subsection (3) and the instrument mentioned in paragraph (b);
- (d) while the warrant remains in force, the instrument may be used instead of the warrant; and
- (e) a court shall not find that the premises were entered in accordance with the warrant unless the warrant signed by the President or judicial officer is admitted in evidence.

(7) As soon as practicable after the person is removed, the Tribunal shall hold an inquiry and if there is no guardian available the Community Advocate shall apply to be appointed as the person's guardian.

### **Capacity to consent to medical etc. procedures**

**69. (1)** If—

- (a) the guardian for a person has the power to give for the person a consent required for a medical procedure or other treatment; or
- (b) a declaration that a person is not competent to give a consent required for a prescribed medical procedure is in force under subsection (2);

the person is not competent to give such a consent for the procedure or treatment.

(2) If a guardian is appointed for a person, the Tribunal may, by order, declare that the person is not competent to give a consent required for a prescribed medical procedure.

(3) Where a person, who is not competent to do so, purports to consent to the performance of a medical procedure or the provision of other treatment for the person by a doctor, no action or proceeding, civil or criminal, lies against the doctor by reason only of the performance of that procedure or the provision of that treatment without the person's consent if—

- (a) the doctor did not know, or could not reasonably be expected to know, that the person was not competent to give the consent required; and
- (b) the doctor otherwise acted in good faith in performing that procedure or providing that treatment.

**Tribunal may consent to prescribed medical procedures**

**70. (1)** If the Tribunal has made an order under subsection 69 (2) in respect of a person, it may, on application, by order, consent to a prescribed medical procedure for the person if it is satisfied that—

- (a) the procedure is otherwise lawful;
- (b) the person is not competent to give consent and is not likely to become competent in the foreseeable future;
- (c) the procedure would be in the person's best interests; and
- (d) the person, the guardian and any other person whom the Tribunal considers should have notice of the proposed procedure are aware of the application for consent.

(2) The Tribunal shall appoint the person's guardian, or the Community Advocate or some other independent person to represent the person in connection with the inquiry relating to the consent.

(3) In determining whether a particular procedure would be in the person's best interests, the matters that the Tribunal shall take into account include—

- (a) the wishes of the person, so far as they can be ascertained;
- (b) what would happen if it were not carried out;
- (c) what alternative treatments are available;

- (d) whether it can be postponed because better treatments may become available; and
- (e) in the case of a transplantation of tissue—the relationship between the 2 people.

(4) The Tribunal shall not consent to the removal of non-regenerative tissue for transplantation to the body of another living person unless, in addition to the matters specified in paragraphs (1) (a) to (d) (inclusive), it is satisfied that—

- (a) the risk to the person from whom the tissue is to be taken is small;
- (b) the risk of failure of the transplant is low;
- (c) the life of the person to whose body the tissue is to be transplanted would be in danger if the transplant were not made; and
- (d) it is highly likely that transplanting such tissue from someone else would be unsuccessful.

(5) In an order by which the Tribunal consents to the removal of non-regenerative tissue for transplantation to the body of another living person, the Tribunal shall specify the time and date on which the order is made.

### **Power to adjust transactions**

71. (1) Where a person for whose property a manager is appointed purports to enter into a transaction concerning the property, the transaction is, subject to subsection (2), not void on the ground that the person was not legally competent to enter into the transaction.

(2) The Tribunal, the Supreme Court or the Magistrates Court may, on an application made within 90 days after the date of the transaction by the guardian, the manager or some other person concerned in the transaction, by order—

- (a) confirm the transaction;
- (b) declare the transaction void; or
- (c) adjust the rights of the parties to the transaction;

as is just.

(3) The Tribunal, the Supreme Court or the Magistrates Court may order an application made to it to be transferred to another of the Tribunal, the Supreme Court or the Magistrates Court.

(4) A transferred application shall be dealt with as if it had been commenced in the Tribunal or the relevant Court and the Tribunal or Court may make any proper order for the further steps to be taken before it.

(5) An order under this section has effect according to its tenor.

### **Injunctions to restrain dealings**

72. (1) The Tribunal may, on application, by order, restrain a person from entering into, completing or registering or otherwise giving effect to a transaction with another person concerning the property of the other person if the Tribunal is satisfied that there are grounds for the appointment of a manager for the property.

(2) An order remains in force for such period not exceeding 3 days as is specified in the order but if, within that period, an application for the appointment of a manager is made to the Tribunal, the Tribunal may, by order, continue the first order until the application is determined.

(3) A person who has notice of an order under this section and, without reasonable excuse, acts contrarily to it is guilty of an offence punishable, on conviction, by a fine not exceeding \$5,000 or 6 months imprisonment, or both.

### **Conduct of directors, servants and agents**

73. (1) Where, for the purposes of this Act, it is necessary to establish the state of mind of a body corporate or a natural person in relation to particular conduct, it is sufficient to show—

- (a) that a director, servant or agent of the body, or a servant or agent of the person, had that state of mind; and
- (b) that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

(2) A reference in subsection (1) to the state of mind of a body or person is to be read as including a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the body or person; and
- (b) the body's or person's reasons for the intention, opinion, belief or purpose.

(3) Any conduct engaged in on behalf of a body corporate or a natural person by a director, servant or agent of the body, or a servant or agent of

the person, within the scope of his or her actual or apparent authority is to be taken, for the purposes of this Act, to have been engaged in also by the body or person unless the body or person establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct.

(4) Where—

- (a) a natural person is convicted of an offence against this Act or an offence referred to in paragraph 50 (2) (d) or (e); and
- (b) the person would not have been convicted of the offence if subsections (1) and (3) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(5) A reference in this section to a director of a body corporate is to be read as including a reference to a member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory.

(6) A reference in this section to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct.

#### **Corporations—penalties**

**74.** Where a body corporate is convicted of an offence against this Act or an offence against the Regulations, the penalty that the court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the court could impose as a pecuniary penalty for that offence.

#### **Determination of fees**

**75. (1)** The Minister may, by notice published in the *Gazette*, determine—

- (a) the amounts of fees that are payable under section 15 to guardians or managers;
- (b) the amounts of fees payable under subsection 27 (4) by managers for the examination of accounts and documents by the Public Trustee; or
- (c) the rate at which, or the method by which, fees referred to in paragraph (a) or (b) are to be calculated.

(2) A determination is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

### **Annual report**

**76. (1)** The Tribunal shall furnish to the Minister for presentation to the Legislative Assembly a report relating to the activities of the Tribunal during each financial year.

(2) A report under this section is a periodic report for the purposes of section 30A of the *Interpretation Act 1967*.

### **Regulations**

**77. (1)** The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the regulations may make provision in relation to—

- (a) the making of applications to the Tribunal;
- (b) the imposition and remission of fees in relation to the making of applications and the provision of copies of the records of proceedings before the Tribunal; and
- (c) prescribing penalties not exceeding \$1,000 for offences against the regulations.

*[Presentation speech made in Assembly on 12 September 1991]*