



Australian Capital Territory

# **Guardianship and Management of Property Act 1991 No 62**

**Republication No 8**

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Last amendment made by Act 2002 No 51

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Guardianship and Management of Property Act 1991* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 January 2003. It also includes any amendment, repeal or expiry affecting the republished law to 1 January 2003.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Guardianship and Management of Property Act 1991

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Australian Capital Territory

# Guardianship and Management of Property Act 1991

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

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Guardianship and Management of Property Act 1991*.

### 2 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act or in other legislation.

For example, the signpost definition '*trustee company*—see the *Trustee Companies Act 1947*, section 3 (Interpretation).' means that the expression 'trustee company' is defined in that section and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

### 3 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

## Part 1A                      Important concepts and principles

### 4        What are a person's *interests*?

A person's *interests* include the following:

- (a) protection of the person from physical or mental harm;
- (b) prevention of the physical or mental deterioration of the person;
- (c) the ability of the person to—
  - (i) look after himself or herself; and
  - (ii) live in the general community; and
  - (iii) take part in community activities; and
  - (iv) maintain the person's preferred lifestyle (other than any part of the person's preferred lifestyle that is harmful to the person);
- (d) promotion of the person's financial security;
- (e) prevention of the wasting of the person's financial resources or the person becoming destitute.

### 5        Principles to be followed by decision-makers

- (1) This section applies to the exercise by a person (the *decision-maker*) of a function under this Act in relation to a person with impaired decision-making ability (the *protected person*).
- (2) The *decision-making principles* to be followed by the decision-maker are the following:
  - (a) the protected person's wishes, as far as they can be worked out, must be given effect to, unless making the decision in

accordance with the wishes is likely to significantly adversely affect the protected person's interests;

- (b) if giving effect to the protected person's wishes is likely to significantly adversely affect the person's interests—the decision-maker must give effect to the protected person's wishes as far as possible without significantly adversely affecting the protected person's interests;
  - (c) if the protected person's wishes cannot be given effect to at all—the interests of the protected person must be promoted;
  - (d) the protected person's life (including the person's lifestyle) must be interfered with to the smallest extent necessary;
  - (e) the protected person must be encouraged to look after himself or herself as far as possible;
  - (f) the protected person must be encouraged to live in the general community, and take part in community activities, as far as possible.
- (3) Before making a decision, the decision-maker must consult with the primary carer of the protected person, unless doing so would, in the decision-maker's opinion, adversely affect the protected person's interests.
- (4) Subsection (3) does not limit the consultation that the decision-maker may carry out.

## **6 When does someone have impaired decision-making ability?**

For this Act, a person has *impaired decision-making ability* if the person's decision-making ability is impaired because of a physical, mental, psychological or intellectual condition or state, whether or not the condition or state is a diagnosable illness.

## **Part 2                      Guardians and managers**

### **Division 2.1              Appointment and powers**

#### **6A      Limits on finding impaired decision-making ability**

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; or
- (b) does or does not express a particular political or religious opinion; or
- (c) is of a particular sexual orientation or expresses a particular sexual preference; or
- (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).

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

- (1) This section applies if the tribunal is satisfied that—
  - (a) someone has impaired decision-making ability in relation to a matter relating to the person's health or welfare; and
  - (b) while the person has the impaired decision-making ability—
    - (i) there is, or is likely to be, a need for a decision in relation to the matter; or
    - (ii) the person is likely to do something in relation to the matter that involves, or is likely to involve, unreasonable risk to the person's health, welfare or property; and
  - (c) if a guardian is not appointed—

- (i) the person's needs will not be met; or
- (ii) the person's interests will be significantly adversely affected.

*Note* See s 8B in relation to appointment of a guardian for a child.

- (2) The tribunal may, by order, appoint a guardian for the person, with the powers that the tribunal is satisfied are necessary or desirable to make decisions for the person in accordance with the decision-making principles.

*Note* The powers that may be given to a guardian are restricted under s 7B.

- (3) The powers that may be given to 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 bring or continue legal proceedings for or in the name of the person.

## **7A Appointment of guardians under direction**

If the Supreme Court gives a direction under the *Crimes Act 1900*, section 316 (Nature and conduct of a special hearing), the tribunal must appoint a guardian for the accused with power to make an election mentioned in that section.

## **7B Restriction on powers of guardians**

The powers that may be given to a person's guardian do not include the power to discipline 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 to a marriage;
- (e) give a consent required for a prescribed medical procedure for the person.

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

- (1) This section applies if the tribunal is satisfied that—
  - (a) someone has impaired decision-making ability in relation to the person's financial matters or a matter affecting the person's property; and
  - (b) while the person has the impaired decision-making ability—
    - (i) there is, or is likely to be, a need for a decision in relation to the matter; or
    - (ii) the person is likely to do something in relation to the matter that involves, or is likely to involve, unreasonable risk to the person's health, welfare or property; and
  - (c) if a manager is not appointed—
    - (i) the person's needs will not be met; or
    - (ii) the person's interests will be significantly adversely affected.
- (2) The tribunal may, by order, appoint a manager to manage all, or a stated part of, the person's property, with the powers that the

tribunal is satisfied are necessary or desirable to allow the manager to make decisions in relation to the property, in accordance with the decision-making principles.

*Note*      The tribunal's power to appoint a manager is restricted under s 8A.

- (3) The powers that may be given to a person's manager are the powers that the person would have if the person were legally competent to exercise powers in relation to the person's property.

### **8A    Restriction on power to appoint manager outside ACT**

- (1) The tribunal may appoint a manager for property in the ACT of someone (the *protected person*) who lives outside the ACT only if—
  - (a) the tribunal is satisfied that it is impracticable for a manager for the property to be appointed in the jurisdiction (the *other jurisdiction*) where the protected person lives; or
  - (b) an order appointing a manager for the property under the law of the other jurisdiction cannot be registered under section 12 (Recognition of interstate etc guardians and managers).

- (2) For this section:

*jurisdiction* means a State, another Territory or a foreign country.

### **8B    May a guardian or manager be appointed for a child?**

- (1) The tribunal may appoint a guardian or manager for a person who is a child.
- (2) However, the order appointing the guardian or manager does not take effect until the person becomes an adult.

## **9    Who may be appointed**

- (1) The community advocate or an individual may be appointed as a guardian.



- (2) The community advocate, the public trustee, a trustee company or an individual 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 an individual 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 an individual who is otherwise suitable has consented to be appointed.

## **10 Considerations affecting appointment**

- (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; or
  - (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) Someone (other than the community advocate or public trustee) may be appointed as a guardian or manager only if the tribunal is satisfied that the person will follow the decision-making principles and is otherwise 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; and
  - (b) the desirability of preserving existing family relationships; and
  - (c) whether the 2 persons are compatible; and
  - (d) whether the proposed guardian or manager lives in the Territory; and
  - (e) whether the proposed guardian or manager will be available and accessible to the other person; and
  - (f) the nature of the functions and powers to be exercised under the order and whether the proposed guardian or manager is competent to 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.

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

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.

*Note* Also, the guardian or manager should exercise the powers in accordance with the decision-making principles (see s 5).

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

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

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

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.

## **14 Restrictions on manager about property**

- (1) Unless the tribunal, on application, orders otherwise—
  - (a) a manager of a person's property must 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 must keep the manager's property separate from the person's property.

- (2) Subsection (1) (b) does not apply to property owned jointly by the manager and person.

## **15 Fees and expenses**

- (1) A person who acts as a guardian or manager—
- (a) is entitled to be paid the fees determined under section 75 (Determination of fees); 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 2.2 Supervision**

### **16 Directions by tribunal**

- (1) The tribunal may, on application, give a direction to a guardian or manager about the exercise of his or her functions or powers.
- (2) A guardian or manager must not, without reasonable excuse, contravene a direction.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **17 Restrictions on tribunal's power to give directions**

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.

## 18 Advice by tribunal

- (1) The tribunal may, on application by a guardian or manager, give an opinion or advice about the exercise of functions or powers 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.

## 19 Regular review etc

- (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 2.3                      Matters relating to management**

### **20            Access to records**

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.

### **21            Payments for maintenance etc**

- (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; and
  - (b) the amount and nature of the property; and
  - (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.

### **22            Receipt of money**

- (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.

### **23 Execution of instruments**

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.

### **24 Investments**

- (1) A manager 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 1925*, be invested; or
  - (b) as the tribunal, by order, permits.
- (2) Subsection (1) has effect notwithstanding the *Public Trustee Act 1985*.

### **25 Real estate**

If the property for which a manager is appointed includes land held under the *Land Titles 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-general.

## **26 Accounts**

- (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 must not, without reasonable excuse, contravene subsection (1).

Maximum penalty: 20 penalty units.

- (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 must not, without reasonable excuse, contravene a direction.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## **27 Examination of accounts**

- (1) The public trustee shall examine the accounts and documents referred to in section 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) If the public trustee examines the accounts and other documents in relation to the management of property by the manager, the manager must pay to the Territory the fee determined under section 75 (Determination of fees) for the examination.
- (5) An amount payable to the Territory under subsection (3) (b) or (4) is due for payment on the 28th 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 subsection (3) (b) or subsection (4).

## **Division 2.4                      Cessation of guardianship or management**

### **28      Resignation**

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

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

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.

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

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.

### **31 Removal by tribunal**

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

### **32 Surviving or substitute guardians etc**

- (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 3                      Inquiries by tribunal**

### **Division 3.1                Procedure**

#### **33      Need for inquiry**

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

#### **34      Sittings**

- (1) Subject to subsection (2), the tribunal is to sit in such places, including places outside the Territory, as the president decides.
- (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.

#### **35      Notice of inquiry**

- (1) At least 7 days before the tribunal holds an inquiry into a matter concerning a person, the presidential member shall, so far as practicable, give written notice of the inquiry to—
  - (a) the person; and
  - (b) the person's spouse, parents, brothers and sisters; and
  - (c) each child of the person; and
  - (d) if the person has a guardian—the guardian; and
  - (e) if there is a manager of the person's property—the manager; and
  - (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.

### **36 Appearance and representation**

- (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.

### **36A Appearance by audiovisual or audio links**

- (1) This section applies where, in relation to an inquiry or a part of an inquiry (a *relevant inquiry*), the tribunal has given a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 18 (1) or 30 (1).
- (2) Where this section applies a person who, in a relevant inquiry—
- (a) is entitled to appear; or
  - (b) is entitled to appear for another person;
- may appear in that inquiry and participate and, if so required, give evidence in accordance with the direction.
- (3) A person who appears in a relevant inquiry in accordance with this section shall be taken to be before the tribunal.

### **37 Conduct of inquiry**

- (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.

### **38 Evidence**

- (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 presidential member 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 presidential member 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.

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

- (1) The presidential member 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.

### **40 Assistance for tribunal**

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

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

- (1) Where the presidential member is satisfied that a person is capable of providing information or producing a document relevant to an inquiry, the presidential member may, by written notice given to the person, require the person—
  - (a) to give the information to the presidential member 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 presidential member.
- (2) The notice shall state—
  - (a) the place at which the information or document is to be given or produced to the presidential member; 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 presidential member is satisfied that a person has information relevant to an inquiry, the presidential member 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.

#### **42 Retention of documents**

Where a document is produced to the presidential member in accordance with a requirement under section 38 (4) or 41 (1), the presidential member —

- (a) may take possession of, and may make a copy of, or take extracts from, the document; and
- (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

presidential member, to inspect the document at any reasonable time.

#### **43 Form of orders**

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

#### **44 Proof of orders**

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

#### **45 Obtaining reasons for decisions**

- (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 presidential member, in accordance with subsection (3), for a statement of reasons in respect of the decision;

the presidential member 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 presidential member.

- (3) A request for a statement of reasons shall be in writing given to the presidential member 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; and
  - (b) refer to the evidence or other material on which the finding was made; and
  - (c) give the tribunal's reasons for the decision.

#### **46 Withdrawal of applications**

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

#### **47 Costs**

- (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 3.2                      Miscellaneous**

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

- (1) Where the presidential member is satisfied that a person is substantially disrupting the conduct of an inquiry, the presidential member may order the person to leave the place where the inquiry is being held.
- (2) A person must not, without reasonable excuse, contravene an order.  
Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (3) If the person does not obey the order, the presidential member 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.

### **49      Prohibited publications**

- (1) A person shall not, without the written authority of the presidential member —
  - (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 presidential member, 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 must not contravene subsection (1) or (2).

Maximum penalty (subsection (4)): 50 penalty units, imprisonment for 6 months or both.

## **50 Failure to answer questions etc**

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

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

Maximum penalty: 50 penalty units, 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 section 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; or

- (d) any other offence in relation to the falsity of the answer, document or information.

*Note* A reference to an offence against a Territory law includes a reference to a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

### **51 Failure to attend before tribunal**

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 presidential member.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **52 Refusing to be sworn etc**

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

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **53 False information etc**

- (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.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person must not knowingly give false evidence to the tribunal in an inquiry.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**54 Influencing participants in inquiry**

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.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**55 Obstructing tribunal**

A person shall not, without reasonable excuse—

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

Maximum penalty: 50 penalty units, imprisonment for 6 months both.

**Division 3.3 Appeals**

**56 Appeals**

- (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 section 36 (1) to appear, before the tribunal in the relevant inquiry; or
  - (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 *Supreme Court Rules*—
  - (a) within 28 days after the day on which the order, direction or decision was made; or
  - (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 4**                      **Guardianship and management of property tribunal**

### **Division 4.1**            **Establishment, functions and powers**

#### **57**    **Establishment**

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

#### **58**    **Functions and powers**

The tribunal has the functions and powers given to it under this Act.

*Note*    The power to exercise a function also includes the powers necessary and convenient to exercise the function (see *Legislation Act 2001*, s 196).

### **Division 4.2**            **Tribunal members**

#### **59**    **Membership of tribunal**

- (1) The tribunal consists of—
  - (a) the president; and
  - (b) the deputy presidents; and
  - (b) the non-presidential members.
- (2) The members of the tribunal are to be appointed by the Executive.

#### **60**    **Presidential members**

- (1) A person is eligible to be appointed president only if the person is a magistrate.

- (2) A person is eligible to be appointed deputy president only if the person is a magistrate or a lawyer of at least 5 years standing.

### **61 Non-presidential members**

The Executive must appoint as non-presidential members people who, in its opinion, have appropriate expertise, training or experience in relation to, and are otherwise suitable to deal with, the needs of people who, because of a physical, mental, psychological or intellectual condition, need assistance or protection from abuse, exploitation or neglect.

### **62 Terms of appointment generally**

- (1) A member may be appointed as a full-time or part-time member.
- (2) A member holds office on the terms not provided by this Act that are decided by the Executive.
- (3) This section does not apply to a member who is a magistrate.

### **63 Matters to be included in instrument of appointment etc**

The instrument appointing, or evidencing the appointment of, a member must state—

- (a) whether the member is the president, a deputy president or a non-presidential member; and
- (b) the period for which the member is appointed; and
- (c) if the member is not a magistrate—whether the member is appointed as a full-time or part-time member.

### **64 Duration of appointment**

- (1) A member is to be appointed for a term of not longer than 5 years.
- (2) The Executive may end the appointment of a member who is not a magistrate—



- (a) for misbehaviour or physical or mental incapacity; or
  - (b) if the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of creditors.
- (3) The Executive must end the appointment of—
- (a) a presidential member who is a magistrate if the member ceases to be a magistrate; or
  - (b) a deputy president who is not a magistrate if the member ceases to be eligible for appointment; or
  - (c) a non-presidential member if the Executive is satisfied that the person is no longer a suitable person to deal with the needs of people who, because of a physical, mental, psychological or intellectual condition, need assistance or protection from abuse, exploitation or neglect; or
  - (d) a member who is not a magistrate if the member is convicted in Australia or elsewhere of an offence punishable by imprisonment for 1 year or longer.

## **Division 4.3 Registrar and deputy registrars**

### **65 Registrar and deputy registrars of tribunal**

- (1) The registrar of the Magistrates Court is the registrar of the tribunal.
- (2) Each deputy registrar of the Magistrates Court is a deputy registrar of the tribunal.
- (3) Subject to any direction of the registrar, a deputy registrar of the tribunal may exercise the powers of the registrar of the tribunal.
- (4) The registrar may, in writing, delegate to a public servant all or any of his or her powers under this Act.

## **Division 4.4 Other provisions**

### **66 Constitution of tribunal**

- (1) The tribunal may exercise its powers only if constituted by—
  - (a) a presidential member; or
  - (b) a presidential member and 2 non-presidential members.
- (2) However, if—
  - (a) the tribunal is constituted for an inquiry by a presidential member and 2 non-presidential members; and
  - (b) a non-presidential member ceases to be a member, or to be available for the inquiry, before the completion of the inquiry;the presidential member and any remaining non-presidential member may finish the inquiry if the presidential member considers it desirable to do so.

### **66A Role of president**

- (1) The president is responsible for ensuring the orderly and prompt discharge of the tribunal's business.
- (2) Without limiting subsection (1), the president may give directions about—
  - (a) how the tribunal is to be constituted for a particular matter; and
  - (b) the members who are to constitute the tribunal for a particular matter.

### **66B Deciding questions**

- (1) The presidential member is to decide a question of law arising in a matter.
- (2) If there is a division of opinion about another question arising in a matter, the question is decided—

- (a) according to the opinion of the majority of members constituting the tribunal; or
- (b) if there is no majority on the question—according to the opinion of the presidential member.

### **66C Protection of members etc**

- (1) This section applies to a person who is or has been—
  - (a) a member of the tribunal; or
  - (b) the registrar or a deputy registrar of the tribunal; or
  - (c) a person acting under the tribunal’s direction or authority; or
  - (d) a participant in a matter before the tribunal.
- (2) An action or proceeding does not lie against a person to whom this section applies in relation to an act done, or omitted to be done, in good faith in that capacity.

### **66D Secrecy**

- (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; or
- (b) the registrar or a deputy registrar of the tribunal; or
- (c) authorised to exercise a function or power under this Act in relation to the tribunal.

*produce* includes permit access to.

*protected information* means information about a person that is disclosed to, or obtained by, a person to whom this section applies

because of the exercise of a function or power under this Act in relation to the tribunal.

- (2) A person to whom this section applies must not—
- (a) make a record of protected information; or
  - (b) directly or indirectly, divulge or communicate to a person protected information about someone else;

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

Maximum penalty: 50 penalty units, 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 the 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;

unless it is necessary to do so for this Act or another Act.

## Part 5                      Miscellaneous

### 67      Emergency appointments

- (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 3 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.

### 68      Emergency removal of disabled persons

- (1) If—
  - (a) the presidential member 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 presidential member 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; and
  - (b) the person whose removal it authorises; and
  - (c) the place from which that removal is authorised; and
  - (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 presidential member or the judicial officer shall prepare and sign the warrant and tell the community advocate its terms; and
  - (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; and
  - (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); and
  - (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 presidential member 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.

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

- (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.

## **70 Tribunal may consent to prescribed medical procedures**

- (1) If the tribunal has made an order under section 69 (2) in respect of a person, it may, on application, by order, consent to a prescribed medical procedure (other than treatment for psychiatric illness, convulsive therapy or psychiatric surgery) for the person if it is satisfied that—
  - (a) the procedure is otherwise lawful; and
  - (b) the person is not competent to give consent and is not likely to become competent in the foreseeable future; and
  - (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; and
  - (b) what would happen if it were not carried out; and



- (c) what alternative treatments are available; and
  - (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 subsection (1) (a) to (d), it is satisfied that—
- (a) the risk to the person from whom the tissue is to be taken is small; and
  - (b) the risk of failure of the transplant is low; and
  - (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.

## **71 Power to adjust transactions**

- (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; or
  - (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.

## **72 Injunctions to restrain dealings**

- (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 must not act contrary to the order.

Maximum penalty (subsection (3)): 50 penalty units, imprisonment for 6 months or both.

**73 Acts and omissions of representatives**

- (1) For this section:

*representative* means—

- (a) for a corporation—an executive officer, employee or agent of the corporation; or
- (b) for an individual—an employee or agent of the individual.

*state of mind*, of a person, includes—

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

- (2) This section applies to a prosecution for any offence against this Act.

- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—

- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
- (b) the representative had the state of mind.

- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

- (5) An individual who is convicted of an offence cannot be punished by imprisonment for the offence if the individual would not have been convicted of the offence without subsection (3) or (4).

**74 Criminal liability of officers of corporation**

- (1) If a corporation commits an offence against this Act, an executive officer of the corporation—
  - (a) commits the offence; and
  - (b) is liable, on conviction, to a penalty not exceeding the maximum penalty that may be imposed for the commission of the offence by an individual.
- (2) It is a defence to a prosecution for an offence against subsection (1) that—
  - (a) the defendant exercised due diligence to prevent the corporation from doing the act or making the omission alleged to constitute the offence or an element of the offence committed by the corporation; or
  - (b) an officer or employee of the corporation occupying the defendant's position could not reasonably have been expected to know of the contravention; or
  - (c) the corporation would not have been found guilty of the offence because of its being able to establish a defence available to it under this Act.
- (3) An executive officer may, under subsection (1), be prosecuted for and convicted of an offence whether or not the corporation has been prosecuted for or convicted of the offence.

**75 Determination of fees**

- (1) The Minister may, in writing, determine fees for this Act, including—
  - (a) fees payable under section 15 to guardians or managers; and

- (b) fees payable under section 27 (4) by managers for the examination of accounts and documents by the public trustee.

*Note* The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## **77 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may make provision in relation to the making of applications to the tribunal.

- (3) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

## Dictionary

(see s 2)

*Note 1* The *Legislation Act 2001* contains definitions and other provisions relevant to this Act.

*Note 2* In particular, the *Legislation Act 2001*, dict, pt 1, defines the following terms:

- appoint
- exercise
- function
- Magistrates Court.

***convulsive therapy*** means a procedure for the induction of an epileptiform convulsion in a person.

***decision-making principles***—see section 5 (Principles to be followed by decision-makers).

***deputy president*** means a deputy president of the tribunal.

***executive officer***, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

***guardian*** means someone who is a guardian under any of the following sections:

- section 7 (Appointment and powers of guardians);
- section 7A (Appointment of guardians under direction);
- section 12 (Recognition of interstate etc guardians and managers);
- section 32 (Surviving or substitute guardians etc).

***impaired decision-making ability***, for a person—see section 6.

***inquiry*** means an inquiry under part 3.

***judicial officer*** means a judge of the Supreme Court or a magistrate.

***manager*** means a person who is a manager under any of the following sections:

- section 8 (Appointment and powers of managers);
- section 12 (Recognition of interstate etc guardians and managers);
- section 32 (Surviving or substitute guardians etc).

***member***, of the tribunal, means the president, a deputy president or a non-presidential member.

***neurosurgery*** means surgery on the brain of a person for the purpose of treating a pathological condition of the physical structure of the brain.

***non-presidential member*** means a member of the tribunal who is not a presidential member.

***non-regenerative tissue***—see the *Transplantation and Anatomy Act 1978*, section 4 (1) (Interpretation).

***prescribed medical procedure*** means—

- (a) an abortion; or
- (b) reproductive sterilisation; or
- (c) a hysterectomy; or
- (d) a medical procedure concerned with contraception; or
- (e) removal of non-regenerative tissue for transplantation to the body of another living person; or
- (f) treatment for psychiatric illness, convulsive therapy or psychiatric surgery; or
- (g) any other medical or surgical procedure prescribed for the purposes of this definition.

***president*** means the president of the tribunal.

**presidential member** means the president or a deputy president of the tribunal.

**primary carer** includes a family member or friend who is primarily responsible for providing support or care to a person other than completely or substantially on a commercial basis.

*Note* Property is defined in the *Legislation Act 2001*, dict, pt 1.

**psychiatric illness** means a condition that seriously impairs (either temporarily or permanently) the mental functioning of a person and is characterised by the presence in the person of any of the following symptoms:

- (a) delusions;
- (b) hallucinations;
- (c) serious disorder of thought form;
- (d) a severe disturbance of mood;
- (e) sustained or repeated irrational behaviour indicating the presence of the symptoms referred to in paragraph (a), (b), (c) or (d).

**psychiatric surgery** means surgery on the brain of a person, other than neurosurgery.

**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**—see the *Trustee Companies Act 1947*, section 3 (Interpretation).



## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	RI = reissue
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

#### **Guardianship and Management of Property Act 1991 No 62**

notified 31 October 1991 (Gaz 1991 No S119)  
s 1, s 2 commenced 31 October 1991 (s 2 (1))  
remainder commenced 7 January 1992 (s 2 (2) and Gaz 1991  
No S147)

as amended by

#### **Registrar-General (Consequential Provisions) Act 1993 No 64 sch 1**

notified 6 September 1993 (Gaz 1993 No S172)  
s 1, s 2 commenced 6 September 1993 (s 2 (1))  
sch 1 commenced 1 October 1993 (s 2 (2) and Gaz 1993 No S207)

#### **Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38 sch 1**

notified 30 June 1994 (Gaz 1994 No S121)  
s 1, s 2 commenced 30 June 1994 (s 2 (1))  
sch 1 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

#### **Mental Health (Consequential Provisions) Act 1994 No 45 s 34**

notified 7 September 1994 (Gaz 1994 No S177)  
s 1, s 2 commenced 7 September 1994 (s 2 (1))  
s 34 commenced 6 February 1995 (s 2 (2) and Gaz 1995 No S33)

#### **Annual Reports (Government Agencies) (Consequential Provisions) Act 1995 No 25 sch**

notified 5 September 1995 (Gaz 1995 No S212)  
commenced 5 September 1995 (s 2)

#### **Guardianship and Management of Property (Amendment) Act 1995 No 36**

notified 31 October 1995 (Gaz 1995 No S266)  
commenced 31 October 1995 (s 2)

#### **Land Titles (Consequential Amendments) Act 1995 No 54 sch**

notified 20 December 1995 (Gaz 1995 No S313)  
commenced 20 June 1996 (s 2)

**Legal Practitioners (Consequential Amendments) Act 1997 No 96 sch 1**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch 1 commenced 1 June 1998 (s 2 (2))

**Statute Law Revision (Penalties) Act 1998 No 54 sch**

notified 27 November 1998 (Gaz 1998 No S207)  
s 1, s 2 commenced 27 November 1998 (s 2 (1))  
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

**Courts and Tribunals (Audio Visual and Audio Linking) Act 1999 No 22 pt 7**

notified 14 April 1999 (Gaz 1999 No S16)  
s 1, s 2 commenced 14 April 1999 (s 2 (1))  
pt 7 commenced 1 September 1999 (s 2 (2) and Gaz 1999 No 35)

**Crimes (Amendment) Act 1999 No 32 s 32**

notified 25 June 1999 (Gaz 1999 No S34)  
ss 1-4 commenced 25 June 1999 (s 2 (1))  
s 32 commenced 1 October 1999 (s 2 (2))

**Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3**

notified 10 November 1999 (Gaz 1999 No 45)  
commenced 10 November 1999 (s 2)

**Justice and Community Safety Legislation Amendment Act 2000 (No 2) No 2 sch**

notified 9 March 2000 (Gaz 2000 No 10)  
commenced 9 March 2000 (s 2)

**Justice and Community Safety Legislation Amendment Act 2000 (No 3) No 17 sch 1**

notified 1 June 2000 (Gaz 2000 No 22)  
commenced 1 June 2000 (s 2)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 171**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 171 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

## Endnotes

4 Amendment history

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### **Guardianship and Management of Property Amendment Act 2001 No 78**

notified LR 24 September 2001  
commenced 24 September 2001 (s 2)

### **Legislation Amendment Act 2002 No 11 pt 2.25**

notified LR 27 May 2002  
s 1, s 2 commenced 27 May 2002 (LA s 75)  
pt 2.25 commenced 28 May 2002 (s 2 (1))

### **Statute Law Amendment Act 2002 No 30 pt 3.35**

notified LR 16 September 2002  
s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))  
pt 3.35 commenced 17 September 2002

### **Criminal Code 2002 No 51 pt 1.11**

notified LR 20 December 2002  
s 1, s 2 commenced 20 December 2002 (LA s 75 (1))  
pt 1.11 commenced 1 January 2003 (s 2 (1))

## 4 Amendment history

### **Name of Act**

s 1 sub 2001 No 78 amdt 1.1

### **Dictionary**

s 2 orig s 2 om 2001 No 44 amdt 1.992  
(prev 2A) ins 2001 No 78 amdt 1.2  
sub 2002 No 30 amdt 3.398

### **Notes**

s 3 orig s 3 am 2000 No 2 sch  
(prev s 6) also renum as s 3 2001 No 78 amdt 1.9  
both s 3 om 2002 No 30 amdt 3.399  
ins 2002 No 30 amdt 3.400

### **Important concepts and principles**

pt 1A hdg ins 2001 No 78 s 4

### **What are a person's *interests*?**

s 4 defs reloc to dict 2001 No 78 amdt 1.5  
def **Crimes Act** sub 2000 No 2 sch  
om 2001 No 78 amdt 1.4  
def **doctor** om 2001 No 78 amdt 1.4  
def **guardian** om 2001 No 78 amdt 1.4  
def **lawyer** om 1997 No 96 sch 1

def **manager** om 2001 No 78 amdt 1.4  
def **member** (1st definition) om 2001 No 78 amdt 1.4  
def **non-regenerative tissue** om 2001 No 78 amdt 1.4  
def **property** om 2001 No 78 amdt 1.4  
def **trustee company** om 2001 No 78 amdt 1.4  
om 2001 No 78 amdt 1.6  
ins 2001 No 78 s 4

**Principles to be followed by decision-maker**

s 5 prev s 5 renum and reloc as s 6A  
ins 2001 No 78 s 4

**When does someone have impaired decision-making ability?**

s 6 prev s 6 renum as s 3  
ins 2001 No 78 s 4

**Appointment and powers**

div 2.1 hdg (prev pt 2 div 1 hdg) renum R6 LA

**Limits on finding impaired decision-making ability**

s 6A hdg (prev s 5 hdg) sub 2001 No 78 amdt 1.7  
s 6A (prev s 5) renum and reloc 2001 No 78 amdt 1.8

**Appointment and powers of guardians**

s 7 am 1999 No 32 s 32  
sub 2001 No 78 s 5

**Appointment of guardians under direction**

s 7A ins 2001 No 78 s 5

**Restriction on powers of guardians**

s 7B ins 2001 No 78 s 5

**Appointment and powers of managers**

s 8 sub 2001 No 78 s 5

**Restriction on power to appoint manager outside ACT**

s 8A ins 2001 No 78 s 5

**May a guardian or manager be appointed for a child?**

s 8B ins 2001 No 78 s 5

**Who may be appointed**

s 9 am 2001 No 78 amdt 1.10

**Considerations affecting appointment**

s 10 am 2000 No 2 sch; 2001 No 78 s 6, amdt 1.11

**Powers to be least restrictive**

s 11 am 2001 No 78 s 7

**Recognition of interstate etc guardians and managers**

s 12 am 2001 No 78 amdt 1.11

## Endnotes

4 Amendment history

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### **Restrictions on manager about property**

s 14 sub 2001 No 78 s 8

### **Fees and expenses**

s 15 am 2001 No 44 amdt 1.1993

### **Supervision**

div 2.2 hdg (prev pt 2 div 2 hdg) renum R6 LA

### **Directions by tribunal**

s 16 am 1998 No 54 sch; 2000 No 2 sch; 2001 No 78 amdt 1.12

### **Advice by tribunal**

s 18 am 2000 No 2 sch

### **Matters relating to management**

div 2.3 hdg (prev pt 2 div 3 hdg) renum R6 LA

### **Investments**

s 24 am 1995 No 36 s 4; 2000 No 2 sch; 2001 No 78 amdt 1.13

### **Real estate**

s 25 am 1993 No 64 sch 1; 1995 No 54 sch

### **Accounts**

s 26 am 1998 No 54 sch; 2001 No 78 amdt 1.14, amdt 1.15

### **Examination of accounts**

s 27 am 2001 No 44 amdt 1.1994

### **Cessation of guardianship or management**

div 2.4 hdg (prev pt 2 div 4 hdg) renum R6 LA

### **Removal by tribunal**

s 31 am 2000 No 2 sch

### **Procedure**

div 3.1 hdg (prev pt 3 div 1 hdg) renum R6 LA

### **Sittings**

s 34 am 2000 No 2 sch

### **Notice of inquiry**

s 35 am 1999 No 66 sch 3

### **Appearance and representation**

s 36 am 1997 No 96 sch 1; 2001 No 78 amdt 1.16

### **Appearance by audiovisual or audio links**

s 36A ins 1999 No 22 s 14  
am 2000 No 17 sch 1; 2001 No 78 amdt 1.17

### **Evidence**

s 38 am 1999 No 66 sch 3

**Authority for medical or other examinations**

s 39 am 1999 No 66 sch 3

**Assistance for tribunal**

s 40 am 1997 No 96 sch 1; 2001 No 78 amdt 1.18

**Power to obtain information and documents**

s 41 am 1999 No 66 sch 3

**Retention of documents**

s 42 am 1999 No 66 sch 3

**Form of orders**

s 43 am 2001 No 78 amdt 1.19

**Obtaining reasons for decisions**

s 45 am 1999 No 66 sch 3

**Miscellaneous**

div 3.2 hdg (prev pt 3 div 2 hdg) renum R6 LA

**Removal of persons disrupting inquiries**

s 48 am 1998 No 54 sch; 1999 No 66 sch 3; 2001 No 78 amdt 1.20

**Prohibited publications**

s 49 am 1998 No 54 sch; 1999 No 66 sch 3; 2001 No 78 amdt 1.21

**Failure to answer questions etc**

s 50 am 1998 No 54 sch; 2001 No 78 amdt 1.22; 2002 No 11  
amdt 2.49; 2002 No 51 amdt 1.22

**Failure to attend before tribunal**

s 51 am 1998 No 54 sch; 1999 No 66 sch 3

**Refusing to be sworn etc**

s 52 am 1998 No 54 sch

**False information etc**

s 53 am 1998 No 54 sch; 2001 No 78 amdt 1.23

**Influencing participants in inquiry**

s 54 am 1998 No 54 sch

**Obstructing tribunal**

s 55 am 1998 No 54 sch; 2000 No 2 sch

**Appeals**

div 3.3 hdg (prev pt 3 div 3 hdg) renum R6 LA

**Establishment, functions and powers**

div 4.1 hdg (prev pt 4 div 1 hdg) ins 2000 No 2 sch  
renum R6 LA

## Endnotes

4 Amendment history

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### Functions and powers

s 58 sub 1999 No 66 sch 3; 2000 No 2 sch  
am 2001 No 78 amdts 1.24-1.26

### Tribunal members

div 4.2 hdg (prev pt 4 div 2 hdg) ins 2000 No 2 sch  
renum R6 LA

### Membership of tribunal

s 59 sub 1999 No 66 sch 3; 2000 No 2 sch

### Presidential members

s 60 am 1999 No 66 sch 3  
sub 2000 No 2 sch

### Non-presidential members

s 61 sub 2000 No 2 sch

### Terms of appointment generally

s 62 sub 2000 No 2 sch

### Matters to be included in instrument of appointment etc

s 63 am 1999 No 66 sch 3  
sub 2000 No 2 sch

### Duration of appointment

s 64 am 1994 No 38 sch 1  
sub 2000 No 2 sch

### Registrar and deputy registrars

div 4.3 hdg (prev pt 4 div 3 hdg) ins 2000 No 2 sch  
renum R6 LA

### Registrar and deputy registrars of tribunal

s 65 sub 2000 No 2 sch

### Other provisions

div 4.4 hdg (prev pt 4 div 4 hdg) ins 2000 No 2 sch  
renum R6 LA

### Constitution of tribunal

s 66 am 1998 No 54 sch  
sub 2000 No 2 sch

### Role of president

s 66A ins 2000 No 2 sch

### Deciding questions

s 66B ins 2000 No 2 sch

### Protection of members etc

s 66C ins 2000 No 2 sch



**Secrecy**

s 66D ins 2000 No 2 sch

**Emergency removal of disabled persons**

s 68 am 1999 No 66 sch 3

**Tribunal may consent to prescribed medical procedures**

s 70 am 1994 No 45 s 34

**Injunctions to restrain dealings**

s 72 am 1998 No 54 sch; 2001 No 78 amdt 1.27

**Acts and omissions of representatives**

s 73 sub 2001 No 78 amdt 1.28

**Criminal liability of officers of corporation**s 74 om 1998 No 54 sch  
ins 2001 No 78 amdt 1.28**Determination of fees**

s 75 sub 2001 No 44 amdt 1.1995

**Annual report**

s 76 om 1995 No 25 sch

**Regulation-making power**s 77 am 1998 No 54 sch  
sub 2000 No 2 sch  
am 2001 No 44 amdt 1.1996, amdt 1.1997**Transitional provisions about tribunal members**s 78 ins 2000 No 2 sch  
exp 9 June 2000 (s 78 (4))**Dictionary**dict ins 2001 No 78 amdt 1.29  
am 2002 No 30 amdt 3.401  
def **convulsive therapy** ins 1994 No 45 s 34  
reloc from s 4 2001 No 78 amdt 1.5  
def **decision-making principles** ins 2001 No 78 amdt 1.29  
def **deputy president** ins 1999 No 66 sch 3  
reloc from s 4 2001 No 78 amdt 1.5  
def **executive officer** ins 2001 No 78 amdt 1.29  
def **guardian** ins 2001 No 78 amdt 1.29  
def **impaired decision-making ability** ins 2001 No 78  
amdt 1.29  
def **inquiry** reloc from s 4 2001 No 78 amdt 1.5  
def **judicial officer** reloc from s 4 2001 No 78 amdt 1.5  
def **manager** ins 2001 No 78 amdt 1.29  
def **member** ins 2000 No 2 sch  
reloc from s 4 2001 No 78 amdt 1.5

## Endnotes

### 5 Earlier republications

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- def **neurosurgery** ins 1994 No 45 s 34  
reloc from s 4 2001 No 78 amdt 1.5
- def **non-presidential member** ins 1999 No 66 sch 3  
reloc from s 4 2001 No 78 amdt 1.5
- def **non-regenerative tissue** ins 2001 No 78 amdt 1.29
- def **prescribed medical procedure** am 1994 No 45 s 34; pars  
renum R6 LA (see 2001 No 78 amdt 1.3)  
reloc from s 4 2001 No 78 amdt 1.5
- def **president** reloc from s 4 2001 No 78 amdt 1.5
- def **presidential member** ins 1999 No 66 sch 3  
reloc from s 4 2001 No 78 amdt 1.5
- def **primary carer** ins 2001 No 78 amdt 1.29
- def **psychiatric illness** ins 1994 No 45 s 34  
reloc from s 4 2001 No 78 amdt 1.5
- def **psychiatric surgery** ins 1994 No 45 s 34  
reloc from s 4 2001 No 78 amdt 1.5
- def **spouse** reloc from s 4 2001 No 78 amdt 1.5
- def **tribunal** reloc from s 4 2001 No 78 amdt 1.5
- def **trustee company** ins 2001 No 78 amdt 1.29

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1993 No 64	31 January 1994
2	Act 1994 No 45	28 February 1995
3	Act 1997 No 96	1 June 1998
4	Act 2000 No 2	31 March 2000
5	Act 2001 No 78	24 September 2001
6	Act 2002 No 11	28 May 2002
7	Act 2002 No 30	10 October 2002

Authorised when accessed at [www.legislation.act.gov.au](http://www.legislation.act.gov.au) or in authorised printed form

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