

Authorised Version No. 010
Guardianship and Administration Act 2019

No. 13 of 2019

Authorised Version incorporating amendments as at
15 April 2026

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Guardianship and Administration Act 2019

No. 13 of 2019

Authorised Version incorporating amendments as at
15 April 2026

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The purposes of this Act are—

- (a) to re-enact with amendments the law relating to guardianship and administration; and
- (b) to repeal the **Guardianship and Administration Act 1986**; and
- (c) to make consequential amendments to various other Acts.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 March 2020, it comes into operation on that day.

3 Definitions

- (1) In this Act—

administration (missing person) order means an order made under section 105 that appoints a person as an administrator;

administration order means an order made under section 30 that appoints a person as an administrator;

administrator means the person appointed as an administrator in relation to one or more specified financial matters—

- (a) in an administration order; or
- (b) in an administration (missing person) order;

close friend of a person means another person who has a close personal relationship with the first person and a personal interest in the first person's welfare;

determination, in relation to VCAT, includes an order, direction, consent, advice and approval;

disability, in relation to a person, means neurological impairment, intellectual impairment, mental disorder, brain injury, physical disability or dementia;

domestic partner of a person means—

- (a) a person who is in a registered relationship with the person; or
- (b) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—
 - (i) for fee or reward; or

- (ii) on behalf of another person or an organisation (including a government, a government agency, a body corporate or a charitable or benevolent organisation);

financial matter, in relation to a person, means any matter relating to the person's financial or property affairs and includes any legal matter that relates to the financial or property affairs of the person;

Examples

The following are examples of financial matters—

- (a) making money available to the person for the person's personal expenditure;
- (b) paying expenses for the person and any dependants of the person relating to the maintenance and accommodation of the person and any dependants, including purchasing an interest in, or making a contribution to, a property to accommodate the person or any dependants of the person or otherwise making payments in relation to such property;
- (c) paying any debts of the person, including any fees and expenses to which an administrator is legally entitled;
- (d) receiving and recovering money payable to the person;
- (e) carrying on any trade or business of the person;
- (f) performing any contracts entered into by the person;
- (g) discharging any mortgage over the person's property;
- (h) paying rates, taxes and insurance premiums or other outgoings for the person's property;
- (i) insuring the person or the person's property;

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Part 1—Preliminary

- (j) otherwise preserving or improving the person's property;
- (k) making investments for the person;
- (l) continuing investments of the person, including taking up rights to issues of new shares or options for new shares to which the person becomes entitled by the person's existing shareholding;
- (m) undertaking any real estate transaction for the person;
- (n) dealing with land for the person;
- (o) undertaking a beneficial transaction for the person involving the use of the person's property as security for an obligation, including taking out a loan on behalf of the person or giving a guarantee on behalf of the person;
- (p) withdrawing money from or depositing money into an account of the person with a financial institution.

guardian (except in section 50(2)(a)) means a person appointed in a guardianship order as a guardian in relation to one or more specified personal matters;

guardianship order means an order made under section 30 that appoints a person as a guardian;

income includes rents and profits;

legal matter in relation to a person means—

- (a) the use of legal services for the person's benefit; or
- (b) bringing or defending a legal proceeding or hearing in a court, tribunal or other body on behalf of the person, including settling a claim before or after a legal proceeding or hearing starts;

Examples

The following are examples of legal matters—

- (a) the use of legal services to obtain information about the person's legal rights;
- (b) the use of legal services to make a transaction.

medical treatment decision has the same meaning as in the **Medical Treatment Planning and Decisions Act 2016**;

missing person means a person determined to be a missing person under section 105(3);

nearest relative means the relative first listed in the definition of ***relative*** who is of or over 18 years of age, the elder or eldest of 2 or more relatives described in any paragraph being preferred to any other so described;

personal matter, in relation to a person, means any matter relating to the person's personal or lifestyle affairs, and includes any legal matter that relates to the person's personal or lifestyle affairs;

Examples

The following are examples of personal matters—

- (a) where and with whom the person lives;
- (b) other persons with whom the person associates;
- (c) whether the person works and, if so, the kind and place of work and employer;
- (d) whether the person undertakes education or training and if so, the kind of education or training and the place where it takes place;
- (e) daily living issues such as diet and dress;
- (f) medical treatment decisions, excluding decisions about matters provided for in Part 6.

police officer has the same meaning as in the **Victoria Police Act 2013**;

primary carer has the same meaning as in the **Medical Treatment Planning and Decisions Act 2016**;

principal registrar means the principal registrar of VCAT;

proposed represented person means a person in relation to whom an application is made under section 22 or 23;

proposed supported person means a person in relation to whom VCAT considers making a supportive guardianship order or supportive administration order under section 87;

Public Advocate means the person appointed as the Public Advocate, being the office continued in existence by section 10;

Public Advocate employee means a person referred to in section 18 and employed to enable the Public Advocate to exercise the Public Advocate's powers, carry out the Public Advocate's functions or perform the Public Advocate's duties;

regulations means regulations made under this Act;

relative means any of the following—

- (a) a spouse or domestic partner;
- (b) a child;
- (c) a parent;
- (d) a step-parent;
- (e) a sibling;
- (f) a step-sibling;
- (g) a grandparent;
- (h) a grandchild;

- (i) an uncle or aunt;
- (j) a nephew or niece;

represented person means—

- (a) a person in relation to whom a guardianship order has effect; or
- (b) a person in relation to whom an administration order has effect;

spouse of a person means a person to whom the person is married;

State Trustees has the same meaning as in the **State Trustees (State Owned Company) Act 1994**;

supported decision means—

- (a) in the case of a supportive guardianship order, a decision about a personal matter that is specified in the order; and
- (b) in the case of a supportive administration order, a decision about a financial matter that is specified in the order;

supported person means a person in relation to whom a supportive guardianship order or a supportive administration order has effect;

supportive administration order means an order made under section 87 that appoints a person as supportive administrator;

supportive administrator means a person appointed in a supportive administration order as supportive administrator in relation to one or more specified financial matters;

supportive guardian means a person appointed in a supportive guardianship order as supportive guardian in relation to one or more specified personal matters;

supportive guardianship order means an order made under section 87 that appoints a person as supportive guardian;

VCAT Act means the **Victorian Civil and Administrative Tribunal Act 1998**.

(2) For the purposes of the definition of ***domestic partner*** in subsection (1)—

- (a) ***registered relationship*** has the same meaning as in the **Relationships Act 2008**; and
- (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and
- (c) a person is not a domestic partner of another person only because they are co-tenants.

(3) A reference in the definition of ***relative*** in subsection (1) to a person's sibling includes a reference to a person who was adopted by one or both of the person's parents.

4 Meaning of *promote the personal and social wellbeing of a person*

For the purposes of this Act, and without limiting the ways in which this may occur, the ***personal and social wellbeing of a person is promoted*** by—

- (a) recognising the inherent dignity of the person; and
- (b) respecting the person's individuality; and
- (c) having regard to the person's existing supportive relationships, religion, values and cultural and linguistic environment; and
- (d) respecting the confidentiality of confidential information relating to the person; and
- (e) recognising the importance to the person of any companion animal the person has and having regard to the benefits that may be obtained from the person having any companion animal.

5 Meaning of *decision-making capacity*

- (1) For the purposes of this Act, a person has capacity to make a decision in relation to a matter (*decision-making capacity*) if the person is able—
 - (a) to understand the information relevant to the decision and the effect of the decision; and
 - (b) to retain that information to the extent necessary to make the decision; and
 - (c) to use or weigh that information as part of the process of making the decision; and
 - (d) to communicate the decision and the person's views and needs as to the decision in some way, including by speech, gesture or other means.
- (2) For the purposes of subsection (1), a person is presumed to have decision-making capacity unless there is evidence to the contrary.
- (3) For the purposes of subsection (1)(a), a person is taken to understand the information relevant to a decision if the person understands an explanation of the information given to the person in a way

that is appropriate to the person's circumstances, whether by using modified language, visual aids or any other means.

- (4) In determining whether a person has decision-making capacity, regard must be had to the following—
- (a) a person may have decision-making capacity in relation to some matters and not others;
 - (b) if a person does not have decision-making capacity in relation to a matter, it may be temporary;
 - (c) it should not be assumed that a person does not have decision-making capacity in relation to a matter on the basis of the person's appearance;
 - (d) it should not be assumed that a person does not have decision-making capacity in relation to a matter merely because the person makes a decision that, in the opinion of others, is unwise;
 - (e) a person has decision-making capacity in relation to a matter if it is possible for the person to make the decision with practicable and appropriate support.

Examples

The following are examples of practicable and appropriate support—

- (a) using information or formats tailored to the particular needs of a person;
- (b) communicating or assisting a person to communicate the person's decision;
- (c) giving a person additional time and discussing the matter with the person;
- (d) using technology that alleviates the effects of a person's disability.

6 Assessing decision-making capacity

For the purposes of this Act, a person who is assessing whether a person has decision-making capacity in relation to a matter must take reasonable steps to conduct the assessment at a time at which, and in an environment in which, the person's decision-making capacity can be assessed most accurately.

7 Primary object

- (1) The primary object of this Act is to protect and promote the human rights and dignity of persons with a disability by—
 - (a) having regard to the Convention on the Rights of Persons with Disabilities, recognising the need to support persons with a disability to make, participate in and implement decisions that affect their lives; and
 - (b) if a guardianship order or administration order is made for such persons—
 - (i) enabling VCAT to set safeguards and appropriate limitations on the powers of guardians and administrators when making such orders; and
 - (ii) requiring VCAT to review regularly such orders; and
 - (iii) providing guidance for guardians and administrators when making decisions for represented persons, as the case requires.
- (2) In this section, the *Convention on the Rights of Persons with Disabilities* means the United Nations Convention on the Rights of Persons with Disabilities, done at New York on 13 December 2006, as in force for Australia.

8 General principles

- (1) A person exercising a power, carrying out a function or performing a duty under this Act must have regard to the following principles—
 - (a) a person with a disability who requires support to make decisions should be provided with practicable and appropriate support to enable the person, as far as practicable in the circumstances—
 - (i) to make and participate in decisions affecting the person; and
 - (ii) to express the person's will and preferences; and
 - (iii) to develop the person's decision-making capacity;
 - (b) the will and preferences of a person with a disability should direct, as far as practicable, decisions made for that person;
 - (c) powers, functions and duties under this Act should be exercised, carried out and performed in a way which is the least restrictive of the ability of a person with a disability to decide and act as is possible in the circumstances.
- (2) In subsection (1), the reference to a person exercising a power, carrying out a function or performing a duty under this Act includes VCAT.

9 Decision-making principles

- (1) A person making a decision for a represented person must have regard to the following principles—

- (a) the person should give all practicable and appropriate effect to the represented person's will and preferences, if known;
 - (b) if the person is not able to determine the represented person's will and preferences, the person should give effect as far as practicable in the circumstances to what the person believes the represented person's will and preferences are likely to be, based on all the information available, including information obtained by consulting the represented person's relatives, close friends and carers;
 - (c) if the person is not able to determine the represented person's likely will and preferences, the person should act in a manner which promotes the represented person's personal and social wellbeing;
 - (d) if the represented person has a companion animal, the person should act in a manner that recognises the importance of the companion animal to the represented person and any benefits the represented person obtains from the companion animal;
 - (e) the represented person's will and preferences should only be overridden if it is necessary to do so to prevent serious harm to the represented person.
- (2) In this section, *represented person*—
- (a) has the meaning given in section 3(1); and
 - (b) includes a missing person for whom an administration (missing person) order has effect.

Part 2—The Public Advocate

10 Public Advocate

- (1) The office of Public Advocate established under section 14 of the **Guardianship and Administration Act 1986** as in force immediately before the commencement of this Act continues in existence.
- (2) The Governor in Council, on the recommendation of the Minister, may appoint a person as Public Advocate.

11 Terms and conditions of appointment

- (1) The Public Advocate—
 - (a) holds office for 7 years; and
 - (b) is eligible for reappointment.
- (2) The Public Advocate is entitled to be paid the remuneration and allowances as are fixed by the Governor in Council from time to time.
- (3) The Public Advocate is not, in relation to the office of Public Advocate, subject to the **Public Administration Act 2004** (other than Part 5 of that Act).

12 Resignation and vacancy

- (1) The Public Advocate ceases to hold office if the Public Advocate—
 - (a) resigns by writing delivered to the Governor in Council; or
 - (b) becomes insolvent under administration; or
 - (c) is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence; or

- (d) nominates for election for, or is elected to—
 - (i) the Parliament of Victoria; or
 - (ii) the Parliament of the Commonwealth or of another State or a Territory of the Commonwealth; or
 - (iii) a Council, within the meaning of the **Local Government Act 2020**; or
 - (e) is removed from office under subsection (4).
- (2) The Governor in Council, on the recommendation of the Minister, may suspend the Public Advocate from office on any of the following grounds—
- (a) the Public Advocate has engaged in paid employment outside the duties of the office without the approval of the Governor in Council;
 - (b) the Public Advocate is unable to perform, or has neglected, the duties of the office of Public Advocate;
 - (c) the Public Advocate has engaged in misconduct;
 - (d) the Public Advocate has failed to disclose a material conflict of interest.
- (3) The Minister must cause to be laid before each House of the Parliament a full statement of the grounds of suspension of the Public Advocate within 7 sitting days after the suspension.
- (4) The Governor in Council must remove the Public Advocate from office if each House of the Parliament, within 7 sitting days after the day when the statement of the grounds of suspension is laid before it, declares by resolution that the Public Advocate ought to be removed from office.

S. 12(1)(d)(iii)
amended by
No. 9/2020
s. 390(Sch. 1
item 46).

- (5) If both Houses of the Parliament do not within the period referred to in subsection (4) declare by resolution that the Public Advocate ought to be removed from office, the Governor in Council must remove the suspension and restore the Public Advocate to office.

13 Acting Public Advocate

S. 13(1)
substituted by
No. 14/2026
s. 63(1).

- (1) The Governor in Council, on the recommendation of the Minister, may appoint an Acting Public Advocate during—
- (a) the temporary absence or the suspension of the Public Advocate; or
 - (b) any period when the office of the Public Advocate is vacant.

S. 13(1A)
inserted by
No. 14/2026
s. 63(1).

- (1A) The Governor in Council may at any time revoke an appointment under subsection (1).

S. 13(2)
substituted by
No. 14/2026
s. 63(2).

- (2) Subject to subsection (2A), the Minister may appoint an Acting Public Advocate during—
- (a) the temporary absence or the suspension of the Public Advocate; or
 - (b) any period when the office of the Public Advocate is vacant.

S. 13(2A)
inserted by
No. 14/2026
s. 63(2).

- (2A) The Minister may appoint a person as Acting Public Advocate under subsection (2) if the person—
- (a) has previously been appointed as Acting Public Advocate under subsection (1); and
 - (b) has taken an oath or made an affirmation under section 14.
- (3) A person appointed under subsection (2) is not required to take another oath or make another affirmation under section 14.

- (4) The Minister may at any time revoke an appointment under subsection (2).
- (4A) An appointment under subsection (1) or (2) must be for a period not exceeding 12 months.
- (5) The Acting Public Advocate—
 - (a) has all the powers and duties and may carry out any of the functions of the Public Advocate; and
 - (b) is entitled to be paid the remuneration and allowances as are fixed by the Governor in Council from time to time; and
 - (c) is not, in relation to the office of Acting Public Advocate, subject to the **Public Administration Act 2004** (other than Part 5 of that Act).

S. 13(4A)
inserted by
No. 14/2026
s. 63(3).

14 Oath or affirmation

Before taking office, the Public Advocate and any Acting Public Advocate must take an oath or make an affirmation to be administered by the Speaker of the Legislative Assembly that the Public Advocate or the Acting Public Advocate (as the case requires) will faithfully and impartially perform the duties of office.

15 Functions of the Public Advocate

The functions of the Public Advocate are—

- (a) to promote the human rights of persons with a disability and the development of the ability of such persons to act independently; and
- (b) to protect persons with a disability from abuse, neglect and exploitation; and

- (c) to undertake advocacy for persons with a disability on a systemic or individual basis; and
- (d) to manage and coordinate programs that promote the human rights of persons with a disability; and
- (e) to encourage the development and operation of programs, services and facilities for persons with a disability that—
 - (i) involve and engage persons with a disability in the provision of these services; and
 - (ii) develop the ability of persons with a disability to act independently; and
 - (iii) promote accessibility of services for persons with a disability; and
 - (iv) minimise restrictions on the human rights of persons with a disability; and
- (f) to promote and facilitate informed public awareness and understanding by disseminating information about—
 - (i) the provisions of this Act and other legislation dealing with or affecting persons with a disability or persons who may not have decision-making capacity; and
 - (ii) the role of VCAT and the Public Advocate; and
 - (iii) services provided to persons with a disability; and
- (g) to investigate, report and make recommendations to the Minister in relation to—

- (i) any aspect of the operation of the **Guardianship and Administration Act 2019**; and
- (ii) any function conferred on the Public Advocate by or under this or any other Act; and
- (h) any other function conferred on the Public Advocate by or under this or any other Act.

16 Powers and duties of the Public Advocate

(1) The Public Advocate—

- (a) if appointed by VCAT, may be a guardian; and
- (b) may make an application to VCAT for—
 - (i) the appointment of a guardian, a supportive guardian, an administrator or a supportive administrator; or
 - (ii) the rehearing or reassessment of a guardianship order, a supportive guardianship order, an administration order or a supportive administration order; and
- (c) may advocate for the human rights and interests of a person with a disability (irrespective of the person's age) by—
 - (i) seeking assistance from a government department, institution, welfare organisation or service provider for the purpose of promoting the personal and social wellbeing of the person; and
 - (ii) making representations on behalf of, or acting for, the person; and

- (iii) involving members of the community in the provision of programs and services for persons with a disability; and
- (iv) reporting and making recommendations to VCAT on behalf of the person in any proceeding under the **Equal Opportunity Act 2010**; and
- (v) with the leave of a court or VCAT—
 - (A) joining as a party to proceedings in the court or VCAT that involve the rights and interests of the person; and
 - (B) assisting the court or VCAT as amicus curiae in proceedings in the court or VCAT that involve the rights and interests of the person; and

Note

Clause 33 of Schedule 1 to the VCAT Act provides that the Public Advocate in a proceeding under this Act may intervene at any time and is entitled to be joined as a party.

- (d) may give advice to any person about the provisions of this Act, including an application for a guardianship order, a supportive guardianship order, an administration order, a supportive administration order or an administration (missing person) order; and
 - (e) may provide information for persons who are, or are proposed to be, guardians, supportive guardians, administrators, supportive administrators or supportive attorneys (within the meaning of the **Powers of Attorney Act 2014**); and
-

- (f) may provide information for persons who are, or are proposed to be, support persons or medical treatment decision makers (both within the meaning of the **Medical Treatment Planning and Decisions Act 2016**); and
- (g) may investigate any complaint or allegation that a person is under inappropriate guardianship, is being exploited or abused or is in need of guardianship; and
- (h) may engage a registered company auditor to carry out an inspection or an audit if required for the purposes of—
 - (i) an investigation under paragraph (g); or
 - (ii) the provision of a report under clause 35 or 51AH of Schedule 1 to the VCAT Act; and
- (i) subject to subsection (2), may require a person, government department, public authority, service provider, institution or welfare organisation to provide information for the purposes of—
 - (i) an investigation under paragraph (g); or
 - (ii) the provision of a report under clause 35, 48 or 51AH of Schedule 1 to the VCAT Act; and
- (j) may submit a report to VCAT on any matter referred by VCAT to the Public Advocate for a report; and
- (k) may perform any other function and exercise any other power conferred on the Public Advocate by this or any other Act.

- (2) It is a reasonable excuse for a person to refuse or fail to provide information that the person would otherwise be required to provide under subsection (1)(i) if providing the information would tend to incriminate the person.
- (3) If the Public Advocate is appointed as the guardian for a represented person—
 - (a) the person for the time being holding the office or performing the functions of the Public Advocate is the guardian for that represented person; and
 - (b) the Public Advocate must use the Public Advocate's best endeavours to find an appropriate person to be appointed as the guardian.

17 Powers of inspection

- (1) The Public Advocate may enter any premises on which an institution is situated and—
 - (a) inspect those premises; and
 - (b) see any person who is a resident of those premises or who is receiving any service from the institution; and
 - (c) make enquiries relating to the admission, care, detention, treatment or control of any such person; and
 - (d) subject to subsection (2), inspect any document relating to any such person or any record required to be kept under—
 - (i) this Act; or
 - (ii) the **Disability Act 2006**; or
 - (iii) the **Health Services Act 1988**; or
 - (iv) the **Mental Health and Wellbeing Act 2022**; or

S. 17(1)(d)(iv)
amended by
No. 39/2022
s. 827(1).

(v) the **Social Services Regulation Act 2021**.

S. 17(1)(d)(v)
amended by
No. 37/2021
s. 393.

- (2) Subsection (1)(d) does not authorise the Public Advocate to inspect—
- (a) a person's medical records unless the person consents; or
 - (b) personnel records unless the person to whom the records relate consents.
- (3) The person in charge, and the members of staff or management, of an institution must provide the Public Advocate with any reasonable assistance that the Public Advocate requires to perform or exercise any power, function or duty under this section effectively.
- (4) A person in charge, or a member of the staff or management, of an institution must not unreasonably refuse or neglect to give assistance when required to do so under subsection (3).
- Penalty: 25 penalty units.
- (5) A person in charge, or a member of the staff or management, of an institution must not refuse or fail to give full and true answers to the best of that person's knowledge to any questions asked by the Public Advocate in the performance or exercise of any power, function or duty under this section.
- Penalty: 25 penalty units.
- (6) A person in charge, or a member of the staff or management, of an institution must not assault, obstruct or threaten the Public Advocate in the performance or exercise of any power, function or duty under this section.

Penalty: 25 penalty units.

S. 17(7) def. of
institution
amended by
Nos 19/2019
s. 262, 37/2021
s. 393, 39/2022
s. 827(2),
9/2023 ss 234,
256.

(7) In this section—

institution means any of the following—

- (a) a disability service provider, residential service or residential treatment facility, all within the meaning of the **Disability Act 2006**;
- (b) a designated public hospital within the meaning of the **Health Services Act 1988**;
- (c) a mental health and wellbeing service provider within the meaning of the **Mental Health and Wellbeing Act 2022**;
- (ca) a short-term accommodation dwelling within the meaning of section 3(1) of the **Disability Act 2006**;
- (cab) accommodation approved for supervised treatment under section 187 of the **Disability Act 2006**;
- (cb) an SDA dwelling in respect of which an SDA resident resides under an SDA residency agreement within the meaning of the **Residential Tenancies Act 1997**;
- (d) a supported residential service within the meaning of the **Social Services Regulation Act 2021**.

18 Public Advocate employees

There may be employed under Part 3 of the **Public Administration Act 2004** any employees who are necessary to enable the Public Advocate to exercise the Public Advocate's powers, to carry out the Public Advocate's functions or to perform the Public Advocate's duties.

19 Delegation

- (1) The Public Advocate may, by an instrument of delegation, delegate to a Public Advocate employee any one or more of the following—
 - (a) a power, duty or function of the Public Advocate under this Act or any other Act, other than this power of delegation;
 - (b) any or all of the Public Advocate's powers or duties in the Public Advocate's capacity as guardian;
 - (c) despite section 25 of the **Powers of Attorney Act 2014**, any or all of the Public Advocate's powers or duties in the Public Advocate's capacity as an attorney under an enduring power of attorney within the meaning of that Act.

Example

The Public Advocate delegates to a specified class of Public Advocate employee all the Public Advocate's powers and duties under orders (as in existence from time to time) made by VCAT under Part 3.

Example to
s. 19(1)
inserted by
No. 14/2026
s. 64.

- (2) The Public Advocate may, with VCAT's approval, by instrument of delegation, delegate any or all of the Public Advocate's powers or duties in the Public Advocate's capacity as guardian to an individual (other than to a Public Advocate employee) or organisation specified in the instrument of delegation.

20 Confidentiality

- (1) This section applies to a person who is, or has been—
 - (a) the Public Advocate; or
 - (b) an Acting Public Advocate; or
 - (c) a Public Advocate employee.

- (2) A person must not, directly or indirectly, make a record of, disclose or communicate to any other person, any information relating to the affairs of an individual acquired in the exercise of a power, the carrying out of a function or the performance of a duty under this Act which may identify the individual unless—
- (a) it is necessary to do so for the purposes of, or in connection with, the exercise of a power, the carrying out of a function or the performance of a duty under this or any other Act; or
 - (b) it is necessary to do so for the purposes of a criminal proceeding or any other proceeding under this or any other Act; or
 - (c) the individual to whom the information relates gives written consent to the making of the record, disclosure or communication; or
 - (d) it is necessary to do so for the purposes of enabling a guardian, supportive guardian, relative or primary carer of the individual to provide support or care to that individual; or
 - (e) the information is disclosed or communicated to a police officer for the purposes of reporting a suspected offence or assisting in the investigation of a suspected offence; or
 - (f) making the record of the information, or disclosing or communicating the information to any other person, is authorised by an Act or an Act of the Commonwealth or any other State or a Territory.

Penalty: 60 penalty units.

21 Annual report

- (1) As soon as practicable in each year but not later than 30 September, the Public Advocate must submit to the Minister a report on the Public Advocate's performance of the Public Advocate's functions under this and any other Act during the 12 months ending on the preceding 30 June.
- (2) The Minister must cause a report submitted under subsection (1) to be laid before each House of the Parliament within 14 sitting days of that House after it is received by the Minister.

Part 3—Guardianship orders and administration orders

Division 1—Applications for guardianship orders and administration orders

22 Application for guardianship orders

A person may apply to VCAT for a guardianship order that appoints a guardian for a person with a disability who is—

- (a) of or over 18 years of age; or
- (b) under 18 years of age but the order takes effect on that person attaining 18 years of age.

23 Application for administration orders

- (1) A person may apply to VCAT for an administration order that appoints an administrator for a person with a disability who is—

- (a) of or over 18 years of age; or
- (b) under 18 years of age but the order takes effect on that person attaining 18 years of age.

- (2) Subject to subsection (1), if the person for whom an administration order is sought does not reside in Victoria but the person's property is partly or wholly in Victoria, an application may be made for an administration order appointing an administrator for the person in relation to that part of the property that is in Victoria.

24 Matters to be included in application to VCAT

A person applying to VCAT for an order under this Division must include the following in the application—

- (a) the name and contact details of the proposed represented person;
- (b) the type of order applied for, including details of the personal matter or financial matter in relation to which the order is sought;
- (c) details of the reasons for making the application;
- (d) the name and contact details of any person proposed as guardian or administrator;
- (e) the name and contact details of the applicant and of any person who has a direct interest in the application (if known to the applicant);

Note

Persons having a direct interest includes, amongst others, the proposed represented person's relatives, any primary carer, close friends, any attorney appointed under an enduring power of attorney and any supportive attorney appointed under the **Powers of Attorney Act 2014**.

- (f) any support needs of the proposed represented person including support provided to the proposed represented person by any companion animal of the proposed represented person.

Note

Section 67 of the VCAT Act sets out additional requirements in relation to making an application.

25 Who are the parties to a proceeding on an application?

The following persons are parties to a proceeding on an application under this Division—

- (a) the applicant;
- (b) the proposed represented person;
- (c) the person proposed as guardian or administrator, as the case requires;
- (d) in the case of an application for a guardianship order, any current administrator for the proposed represented person;
- (e) in the case of an application for an administration order, any current guardian for the proposed represented person;
- (f) any other person VCAT orders to be joined as a party to the proceeding.

Note

Section 60 of the VCAT Act provides that VCAT may in certain circumstances order that a person be joined as a party to a proceeding.

26 Who is entitled to notice of an application, the hearing and any order made in the proceeding?

For the purposes of sections 72(1), 99(1) and 116(2) of the VCAT Act, the following persons are entitled to a notice referred to in each of those sections—

- (a) any party to a proceeding on an application under this Part;
- (b) the spouse or domestic partner of the proposed represented person, if any;
- (c) the primary carer of the proposed represented person, if any;

- (d) any person referred to in the application as having a direct interest in the application;
- (e) in the case of an application for a guardianship order, the Public Advocate, if no person is proposed as guardian;
- (f) any other person VCAT directs be given notice.

Note

Section 72(1) of the VCAT Act provides that an applicant for a VCAT order must serve a copy of the application on each party, each other person entitled to notice of the application under the enabling enactment (which is this Act) and each other person that VCAT so directs. Section 99(1)(b) of the VCAT Act provides that the principal registrar of VCAT must give notice of the time and place for the hearing of a proceeding to a person entitled to notice of the proceeding or hearing under the enabling enactment. Section 116(2)(a) of the VCAT Act provides that VCAT must give a copy of any order it makes in a proceeding to each party and each other person entitled to notice of the proceeding or of the order under the enabling enactment.

27 Contents of notice of application

- (1) A notice of an application given to a party to the application must include the following—
 - (a) a copy of the application and any information filed in support of the application, subject to clause 37A of Part 9 of Schedule 1 to the VCAT Act;

Note

Clause 37A of Part 9 of Schedule 1 to the VCAT Act provides that a person may make an application to the principal registrar of VCAT that any documents lodged in relation to a proceeding under this Act not be disclosed to a specified person or class of persons.

- (b) the names of—
 - (i) the parties to the proceeding; and
 - (ii) the other persons entitled to the notice under section 26;

- (c) information about the rights of the party in relation to the application.
- (2) A notice of an application given to a person referred to in section 26 who is not a party to the application must include the following—
 - (a) a copy of the application;
 - (b) the names of—
 - (i) the parties to the proceeding; and
 - (ii) the other persons entitled to the notice under section 26;
 - (c) information about the rights of the person to seek information about the application;
 - (d) information about how to apply to VCAT to be made a party to the proceeding.

28 Date for hearing of application for guardianship order or administration order

VCAT must commence to hear an application made under this Division within 30 days after the day on which the application is received by VCAT unless VCAT or the principal registrar under Division 5 of Part 4 of the VCAT Act—

- (a) requires the parties to attend a compulsory conference in relation to the application; or
- (b) refers the proceeding in relation to the application, or any part of it, for mediation.

29 Participation of proposed represented person at hearing

The proposed represented person must attend in person a hearing conducted by VCAT in relation to an application made under this Division unless VCAT is satisfied that—

- (a) the proposed represented person does not wish to attend the hearing in person; or

- (b) the personal attendance of the proposed represented person at the hearing is impracticable or unreasonable, despite any arrangement that VCAT may make.

Note

See section 100(1) of the VCAT Act which provides that if VCAT thinks it appropriate, it may conduct all or part of a proceeding by means of a conference conducted using telephones, video links or any other system of telecommunication.

Division 2—Making guardianship orders and administration orders and eligibility of persons appointed

30 VCAT may make a guardianship order or administration order

- (1) After considering an application made under Division 1—
 - (a) VCAT may make one or more of the following orders—
 - (i) a guardianship order, subject to subsection (2);
 - (ii) an administration order, subject to subsection (2);
 - (iii) a supportive guardianship order under section 87, subject to Part 4;
 - (iv) supportive administration order under section 87, subject to Part 4; or
 - (b) VCAT may make no order under this Act.

Note

See sections 34(1)(f) and 36 in relation to guardianship orders and administration orders that are urgent orders.

- (2) VCAT may only make a guardianship order or an administration order under this Division if satisfied that—

- (a) because of the proposed represented person's disability, the person does not have decision-making capacity in relation to—
 - (i) in the case of a guardianship order, the personal matter in relation to which the order is sought; or
 - (ii) in the case of an administration order, the financial matter in relation to which the order is sought; and
- (b) the proposed represented person is in need of a guardian or administrator, as the case requires; and

Note

Section 31 sets out factors to consider in determining whether a person is in need of a guardian or an administrator.

- (c) the guardianship order or administration order, as the case requires, will promote the proposed represented person's personal and social wellbeing; and
- (d) in the case of an application for an administration order for a proposed represented person who does not reside in Victoria, State Trustees has not been authorised under section 12 of the **State Trustees (State Owned Company) Act 1994** to collect, manage, sell or otherwise dispose of or administer any property in Victoria in relation to which the administration order is sought.

31 Factors to consider in determining need for guardian or administrator

For the purposes of section 30(2)(b), in determining whether a person is in need of a guardian or administrator, VCAT must consider the following—

- (a) the will and preferences of the proposed represented person (so far as they can be ascertained);
- (b) whether decisions in relation to the personal or financial matter for which the order is sought—
 - (i) may more suitably be made by informal means; or
 - (ii) may reasonably be made through negotiation, mediation or similar means;
- (c) the wishes of any primary carer or relative of the proposed represented person or other person with a direct interest in the application;
- (d) the desirability of preserving existing relationships that are important to the proposed represented person.

32 Persons eligible as guardians or administrators

- (1) VCAT may appoint as a guardian any individual who is of or over the age of 18 years and who consents to act as guardian if VCAT is satisfied that the individual—
 - (a) will act in accordance with the duties set out in Division 4; and
 - (b) is not in a position where the individual's interests conflict, or may conflict, with the interests of the proposed represented person; and
 - (c) is a suitable person to act as the guardian for the proposed represented person.

- (2) VCAT may appoint as an administrator any person (individual or body corporate) which, in the case of an individual, is of or over the age of 18 years and which consents to act as administrator if VCAT is satisfied that the person—
- (a) will act in accordance with the duties set out in Division 7; and
 - (b) is not in a position where the person's interests conflict, or may conflict, with the interests of the proposed represented person; and
 - (c) is a suitable person to act as the administrator in relation to the proposed represented person; and
 - (d) has sufficient expertise to make decisions about any financial matter to be specified in the administration order.
- (3) In determining whether a person is a suitable person to act as a guardian or administrator for a proposed represented person, VCAT must take into account the following—
- (a) the will and preferences of the proposed represented person (so far as they can be ascertained);
 - (b) the desirability of preserving existing relationships that are important to the proposed represented person;
 - (c) the desirability of appointing a person who is a relative of the proposed represented person, or who has a personal relationship with the proposed represented person, rather than appointing a person with no such relationship;

- (d) whether the person will be available to the proposed represented person and able to meet and communicate with the proposed represented person;
 - (e) whether the person will act cooperatively with any current guardian or administrator for the proposed represented person (as the case requires);
 - (f) whether, in the case of an administration order, the person proposed as administrator is or was a member of VCAT as constituted for a proceeding under this Act.
- (4) VCAT may appoint as an administrator a person who was at any time a member of VCAT as constituted for a proceeding under this Act if VCAT considers that in the circumstances it is appropriate for the person to act as an administrator.
- (5) VCAT must not assume without any evidence that a proposed represented person's relative who is proposed as the guardian or administrator—
- (a) has interests that conflict, or may conflict, with those of the proposed represented person merely because the proposed guardian or administrator is a relative of the proposed represented person; or
 - (b) is not suitable to be appointed as the guardian or administrator merely because that relative disagrees with another relative of the proposed represented person about a matter pertaining to the proposed represented person.
- (6) If a statement of wishes for a future appointment was lodged under section 35, VCAT must consider that statement.

33 Other matters pertaining to appointments

- (1) VCAT may appoint the Public Advocate as guardian for a proposed represented person if VCAT is satisfied that no other person fulfils the requirements of section 32 for appointment as a guardian for the proposed represented person.
- (2) Despite anything to the contrary in subsection (1), VCAT may appoint persons (including the Public Advocate or any other person) as joint guardians for the proposed represented person if—
 - (a) each person fulfils the relevant requirements of section 32; and
 - (b) VCAT considers it appropriate to do so.

34 Matters to be specified in guardianship orders and administration orders

- (1) A guardianship order must specify the following—
 - (a) the name of the represented person;
 - (b) the name of the guardian;
 - (c) the personal matters in relation to which the guardian has powers;
 - (d) whether VCAT specifically confers on the guardian the power to undertake legal proceedings under section 40;
 - (e) any restrictions on the guardian's exercise of a power referred to in paragraph (c) or (d);
 - (f) whether the order is an urgent order.
- (2) An administration order must specify the following—
 - (a) the name of the represented person;
 - (b) the name of the administrator;

- (c) the financial matters in relation to which the administrator has powers;
- (d) any other power referred to in Division 6 that VCAT specifically confers on the administrator;

Note

Sections 51 and 52 provide for powers which may be specified in an administration order.

- (e) any restrictions on the administrator's exercise of a power referred to in paragraph (c) or (d);
- (f) whether the order is an urgent order.

35 Statement of wishes for future appointment may be lodged

- (1) The following persons in relation to a represented person may lodge with VCAT at any time a statement of wishes for a future guardian or administrator appointment for the represented person—
 - (a) the guardian;
 - (b) the supportive guardian;
 - (c) the administrator;
 - (d) the supportive administrator;
 - (e) the primary carer;
 - (f) a relative.
- (2) A statement of wishes for a future guardian or administrator appointment referred to in subsection (1) must set out—
 - (a) the wishes of the person lodging the statement as to who in the future should be appointed as a guardian or administrator for the represented person; and
 - (b) the reasons for those wishes.

36 Urgent guardianship orders and urgent administration orders

- (1) VCAT may waive any of the requirements set out in section 24, 26, 27 or 29 and make an urgent guardianship order or urgent administration order under section 30 if VCAT is satisfied on reasonable grounds that there is an immediate risk of harm to the health, welfare or property of a proposed represented person if the order were not made.
- (2) The risk of harm referred to in subsection (1) may be caused by one or more factors, including the following—
 - (a) abuse, exploitation or neglect of the proposed represented person;
 - (b) self-neglect by the proposed represented person.
- (3) A guardianship order or administration order that is an urgent order—
 - (a) remains in force for the period specified in the order, being a period not exceeding 21 days; and
 - (b) may be renewed once for a further period not exceeding 21 days.

37 Hearing after making of urgent guardianship order or urgent administration order

As soon as practicable after making a guardianship order or an administration order that is an urgent order (but within 42 days after making such an order) VCAT must hold a hearing to determine whether a guardianship order or an administration order (as the case requires) that is not an urgent order should be made.

Division 3—Powers of guardians

38 Powers of guardians

- (1) A guardianship order confers on the person appointed as guardian—
 - (a) a power to make decisions about the personal matters in relation to the represented person that are specified in the order; and
 - (b) the power to sign and do any thing that is necessary to give effect to any power or duty vested in the guardian; and
 - (c) the power to undertake legal proceedings under section 40, if specified in the order.
- (2) For the purposes of subsection (1)(c), VCAT may only specify the power to undertake legal proceedings under section 40 if VCAT is satisfied that the power is necessary or desirable for the purposes of promoting the represented person's personal and social wellbeing.
- (3) A decision made, action taken, consent given or thing done by a guardian under a guardianship order has effect as if it were made, taken, given or done by the represented person and the represented person had decision-making capacity for the matter in relation to which the order was made.

39 Matters for which power cannot be given under a guardianship order

Despite anything to the contrary in this Division, a guardianship order does not confer on the person appointed as guardian the power—

- (a) to make or revoke a will for the represented person; or
- (b) to make or revoke an enduring power of attorney for the represented person; or

- (c) to vote on the represented person's behalf in an election for the State or the Commonwealth or another State or a Territory of the Commonwealth or in a local election or a referendum; or
- (d) to consent to the entering into, or dissolving of, a marriage of the represented person or a sexual relationship of the represented person; or
- (e) to make or give effect to a decision about—
 - (i) the care and wellbeing of a child of the represented person; or
 - (ii) the adoption of a child under the age of 18 years of the represented person; or
- (f) to enter into, or agree to enter into, a surrogacy arrangement within the meaning of the **Assisted Reproductive Treatment Act 2008** on the represented person's behalf; or
- (g) to consent to the making or discharge of a substitute parentage order within the meaning of the **Status of Children Act 1974** on the represented person's behalf; or
- (h) to manage the estate of the represented person on the death of the represented person; or
- (i) to consent to an unlawful act.

40 Power for guardian to undertake legal proceedings

- (1) VCAT may specify in a guardianship order that the guardian has power to bring and defend an action or other legal proceeding in the name, and on behalf, of the represented person if the action or other legal proceeding is in relation to a personal matter specified in the order.

- (2) A guardian on whom the power to bring and defend actions and other legal proceedings is conferred is not required to be appointed a litigation guardian in accordance with rules of the relevant court or tribunal.
- (3) If a guardian undertakes a legal proceeding in accordance with subsection (1), the costs of the proceeding are to be paid out of the represented person's estate.
- (4) Despite subsection (3), a court or tribunal may order that a guardian is personally liable to pay for any costs of the legal proceeding if the guardian was negligent or engaged in misconduct.
- (5) A court or tribunal may order that a person who is or was a guardian be reimbursed from the represented person's estate for any costs incurred by the person as a guardian in bringing or defending an action or other legal proceeding in accordance with subsection (1).

Division 4—Duties of guardians

41 Exercise of power by guardian

- (1) A guardian—
 - (a) must act in accordance with the general principles set out in section 8 and the decision-making principles set out in section 9; and
 - (b) must act as an advocate for the represented person; and
 - (c) must encourage and assist the represented person to develop the person's decision-making capacity in relation to personal matters; and

- (d) must act in such a way so to protect the represented person from neglect, abuse or exploitation; and
 - (e) must act honestly, diligently and in good faith; and
 - (f) must exercise reasonable skill and care; and
 - (g) must not use the position for profit; and
 - (h) must avoid acting if there is or may be a conflict of interest; and
 - (i) must not disclose confidential information gained as a guardian unless authorised to do so under the guardianship order or by law.
- (2) A guardian who has the power to make medical treatment decisions for a represented person must comply with the **Medical Treatment Planning and Decisions Act 2016** in relation to those decisions.

42 Guardian to report death of represented person

If a guardian is advised of the death of a represented person for whom the guardian is appointed, the guardian must report the death in writing to VCAT as soon as practicable.

Division 5—Other matters pertaining to applications for guardianship orders and to guardianship orders

43 Special order in relation to proposed represented person unlawfully detained or at risk of harm

- (1) This section applies if—
- (a) an application for a guardianship order has been made under section 22; and

- (b) VCAT has received information on oath or affirmation that the proposed represented person—
 - (i) is unlawfully detained against the person's will; or
 - (ii) is likely to suffer serious damage to the person's physical, emotional or mental health or wellbeing unless immediate action is taken.
- (2) VCAT may by order empower the Public Advocate, or some other person specified in the order, to visit the proposed represented person in the company of a police officer for the purpose of preparing a report for VCAT.
- (3) If, after receiving a report referred to in subsection (2), VCAT is satisfied that one of the circumstances described in subsection (1)(b) exists, VCAT may make an order enabling the proposed represented person to be taken to a place specified in the order for assessment and placement until the application under section 22 is determined.
- (4) A police officer acting under an order made under subsection (2) may, with such assistance as is necessary, use reasonable force to enter the premises where the proposed represented person is.
- (5) A person must not delay or obstruct a person who is acting under an order under this section.

Penalty: 20 penalty units.

Note

Section 193 applies to an offence against this subsection.

44 Guardian may seek advice from VCAT

- (1) A guardian may apply to VCAT for advice on any matter relating to the scope of the guardianship order or the exercise of any power under the order.
- (2) After considering an application for advice or on its own initiative, VCAT may—
 - (a) approve or disapprove of any act proposed to be done by the guardian; and
 - (b) give advice as it considers appropriate; and
 - (c) make any order it considers necessary.
- (3) An action does not lie against a guardian on account of an act or thing done or omitted to be done by the guardian under any order or on the advice of VCAT made or given under this section unless, in representing the facts to VCAT, the guardian is guilty of fraud, wilful concealment or misrepresentation.

45 Order for represented person to comply with guardian's decisions

- (1) VCAT may make an order at any time while a guardianship order is in force that gives the guardian or another specified person power to take specified measures or actions to ensure that the represented person complies with the guardian's decisions in the exercise of the powers and duties conferred by the guardianship order.
- (2) VCAT must hold a hearing to reassess an order made under subsection (1) as soon as practicable after making the order but within 42 days after making the order.
- (3) A guardian or other person specified in an order made under subsection (1) is not liable to any action for false imprisonment or assault or any other action, liability, claim or demand arising out

of the taking of a measure or action under the order if the guardian or other person takes that measure or action in the belief that it will promote the represented person's personal and social wellbeing.

(4) Subsection (1) does not limit section 38.

Division 6—Powers of administrators

46 Powers of administrators

- (1) An administration order confers on the person appointed as administrator—
- (a) a power to make decisions about the financial matters in relation to the represented person specified in the order; and
 - (b) a power to make gifts in accordance with section 47; and
 - (c) a power of investment in accordance with section 48; and
 - (d) a power to open the will of the represented person in accordance with section 49; and
 - (e) any other power that is specified in the order; and

Note

Sections 51 and 52 provide for powers which may be specified in an administration order.

- (f) a power to sign and do any thing that is necessary to give effect to any power or duty vested in the administrator; and
- (g) a power to do all matters necessary or incidental to the performance of any power conferred on the administrator.

- (2) For the purposes of subsection (1)(e), VCAT may only specify a power if VCAT is satisfied that the power is necessary or desirable for the purposes of promoting the represented person's personal and social wellbeing.
- (3) Subject to, and in accordance with, this Act and the administration order, an administrator may do all acts and exercise all powers in relation to the financial matters specified in the order in the name, and on behalf, of the represented person as effectually and in the same manner as the represented person may have done if the represented person had the relevant decision-making capacity.
- (4) A decision made, action taken, consent given or thing done by an administrator under an administration order has effect as if it were made, taken, given or done by the represented person and the represented person had decision-making capacity for the matter in relation to which the order was made.

47 Power to make gifts

- (1) Except as provided in any order of VCAT, an administrator may make a gift of a represented person's property if—
 - (a) the gift is reasonable, having regard to all the circumstances, including the represented person's financial circumstances; and
 - (b) the gift is—
 - (i) to a relative or a close friend of the represented person and is of a seasonal nature or for a special event; or

Example

An example of a special event is a birth or a marriage.

- (ii) of a type of donation that the represented person made when the represented person had decision-making capacity in relation to making donations or that the represented person might reasonably be expected to make.
- (2) A gift may be made by an administrator under subsection (1) even if the gift is made to—
 - (a) the administrator; or
 - (b) a relative or close friend of the administrator; or
 - (c) an organisation with which the administrator has a connection.

Note

Section 61 sets out accounting requirements in relation to certain gifts that are of or over \$100 or the prescribed amount (whichever is greater).

48 Powers of investment

Except as provided in section 76 or in any order of VCAT, an administrator—

- (a) in the case of investments of the represented person, may continue those investments in the manner in which they were invested by the represented person for such period as the administrator thinks fit, including taking up rights to issues of new shares and options; and
- (b) in the case of money deposited in an ADI, may re-deposit it after it becomes payable; and
- (c) in the case of property, has, and may, exercise the same powers as the administrator would have if the administrator were a trustee in

relation to that property under the **Trustee Act 1958**.

49 Power to open will deposited with administrator

An administrator may, either before or after the death of the represented person, open and read without an order of VCAT any paper or writing deposited with the administrator that is a will, a revoked will, a purported will or a copy of a will of the represented person.

50 Power to exercise certain powers vested in represented person

- (1) An administrator may, on behalf and in the name of a represented person, exercise a power or give consent as the administrator thinks fit if—
 - (a) the power is vested in a represented person for that person's own benefit or the consent of the represented person is necessary to the exercise of the power; and
 - (b) the power or consent is in the nature of a beneficial interest in the represented person; and
 - (c) the administrator believes exercising the power or giving the consent will benefit the represented person.
- (2) An administrator may, on behalf and in the name of a represented person, exercise a power or give consent as the administrator thinks fit if—
 - (a) the power is vested in the represented person in the represented person's capacity as a trustee or guardian of a trust or the consent of the represented person to the exercise of a power is necessary in the represented person's capacity as a trustee or guardian of a trust; and

- (b) the administrator believes that the power should be exercised or that the consent should be given.
- (3) The exercise under this section by an administrator of a power vested in a represented person to appoint a new trustee is taken to be power to appoint a new trustee within the meaning of section 45 of the **Trustee Act 1958**.

51 Power for administrator to undertake legal proceedings

- (1) VCAT may specify in an administration order that the administrator has power to bring and defend an action or other legal proceeding in the name, and on behalf, of a represented person if the action or other legal proceeding is in relation to a financial matter specified in the order.
- (2) An administrator on whom the power to bring and defend actions and other legal proceedings is conferred is not required to be appointed a litigation guardian in accordance with rules of the relevant court or tribunal.
- (3) If an administrator undertakes a legal proceeding in accordance with subsection (1), the costs of the proceeding are to be paid out of the represented person's estate.
- (4) Despite subsection (3), a court or tribunal may order that an administrator is personally liable to pay for any costs of the legal proceeding if the administrator was negligent or engaged in misconduct.
- (5) A court or tribunal may order that a person who is or was an administrator be reimbursed from the represented person's estate for any costs incurred by the person as an administrator in bringing or defending an action or other legal proceeding in accordance with subsection (1).

52 Other powers that may be specified in administration order

VCAT may specify in an administration order that the administrator has any or all of the following powers in relation to a financial matter specified in the order—

- (a) the power to collect, receive and recover—
 - (i) income of the represented person; and
 - (ii) money due or which becomes due to the represented person; and
 - (iii) any compensation or damages for injury to the estate or person of the represented person;
- (b) the power to invest any money in any security in which a trustee may by law invest;
- (c) the power to demise land at a rent and on conditions as the administrator thinks fit for any term not exceeding 5 years or, with the consent of VCAT, for any longer term;
- (d) the power to exercise, to the extent and in the manner the administrator thinks fit, any power of leasing vested in the represented person;
- (e) the powers to surrender any lease, accept any lease, accept the surrender of any lease or renew any lease;
- (f) the power to bring land under the **Transfer of Land Act 1958**;
- (g) the power to sell, exchange, partition or convert into money any property;
- (h) the power to mortgage or charge any property;

- (i) the power to pay any debts and settle, adjust or compromise any demand made by or against the represented person's estate and discharge any encumbrance on the represented person's estate;
- (j) the power to carry on, to the extent the administrator thinks appropriate, any trade, profession or business which the represented person carried on;
- (k) the power to agree to any alteration of a condition of any partnership into which the represented person has entered or to a dissolution and distribution of the assets of the partnership;
- (l) the power to execute and sign deeds, instruments and other documents;
- (m) the power to complete any contract for the performance of which the represented person was liable, or enter into any agreement terminating liability;
- (n) the power to pay a sum for—
 - (i) the maintenance of the represented person and, in the event of the represented person's death, the represented person's funeral expenses; and
 - (ii) the maintenance of the represented person's spouse or domestic partner or any child, parent or other person dependent on the represented person; and
 - (iii) the education of any child of the represented person; and
 - (iv) the ongoing care of any companion animal of the represented person;

- (o) the power to pay to the represented person any amount of money standing to the credit of the person with the administrator for the personal use of that person;
- (p) the power to give to the represented person for the personal use of that person any personal property which is under the control of the administrator and belongs to the person;
- (q) any other relevant power in relation to a specified financial matter.

53 Matters for which power cannot be given under an administration order

Despite anything to the contrary in this Division, an administration order does not confer on the person appointed as administrator the power—

- (a) to make or revoke a will for the represented person; or
- (b) to make or revoke an enduring power of attorney for the represented person; or
- (c) to vote on the represented person's behalf in an election for the State or the Commonwealth or another State or a Territory of the Commonwealth or in a local election or a referendum; or
- (d) to consent to the entering into, or dissolving of, a marriage of the represented person or a sexual relationship of the represented person; or
- (e) to make or give effect to a decision about—
 - (i) the care and wellbeing of a child of the represented person; or
 - (ii) the adoption of a child under the age of 18 years of the represented person; or

- (f) to enter into, or agree to enter into, a surrogacy arrangement within the meaning of the **Assisted Reproductive Treatment Act 2008** on the represented person's behalf; or
- (g) to consent to the making or discharge of a substitute parentage order within the meaning of the **Status of Children Act 1974** on the represented person's behalf; or
- (h) to manage the estate of the represented person on the death of the represented person; or
- (i) to consent to an unlawful act.

54 Powers of administrator cease on death of represented person

An administration order lapses on the death of the represented person and the law relating to the administration of a deceased person's estate applies accordingly.

Division 7—Duties of administrators

55 Exercise of power by administrator

An administrator—

- (a) must act in accordance with the general principles set out in section 8 and the decision-making principles set out in section 9; and
- (b) must act as an advocate for the represented person; and
- (c) must encourage and assist the represented person to develop the person's decision-making capacity in relation to financial matters; and

- (d) must act in such a way so to protect the represented person from neglect, abuse or exploitation; and
- (e) must act honestly, diligently and in good faith; and
- (f) must exercise reasonable skill and care; and
- (g) must not use the position for profit unless permitted under section 175 or otherwise authorised by law; and
- (h) must avoid acting if there is or may be a conflict of interest unless so authorised under this Act, by order of VCAT or otherwise by law; and
- (i) must not disclose confidential information gained as an administrator unless authorised to do so under the administration order or by law.

56 Property of represented person

Subject to, and in accordance with, this Act and the administration order, the administrator must—

- (a) take possession and care of, recover, collect, preserve and administer, the property and estate of the represented person; and
- (b) generally manage the property and financial affairs of the represented person.

57 Conflict transactions

- (1) Subject to section 58, an administrator must not enter into a transaction in the capacity of administrator if the transaction is one in which there is, or may be, a conflict between—
 - (a) the duty of the administrator to the represented person; and

- (b) the interests of the administrator, or of a relative, business associate or close friend of the administrator.
- (2) Subsection (1) does not apply to—
- (a) a gift made in accordance with section 47; or
 - (b) a transaction providing for the maintenance of a dependant of the represented person made in accordance with section 52(n); or
 - (c) a transaction merely because in the transaction, the administrator (in the administrator's own right and on behalf of the represented person)—
 - (i) deals with an interest in property held jointly by the administrator and the represented person (whether as joint tenants or tenants in common); or
 - (ii) obtains a loan or gives a guarantee or indemnity in respect of a transaction referred to in subparagraph (i).

58 Permitted conflict transactions

- (1) An administrator may enter into a transaction prohibited by section 57(1) if VCAT authorises the administrator at or before the time of the transaction to enter into—
 - (a) the transaction; or
 - (b) a transaction of a similar nature; or
 - (c) any transaction prohibited by section 57(1).
- (2) VCAT may validate a transaction prohibited under section 57(1).
- (3) A transaction validated under subsection (2) is taken to be valid from the time it was entered into.

59 Keeping records

An administrator must keep accurate records and accounts of all dealings and transactions made by the administrator in relation to the financial matters specified in the administration order.

60 Separation of administrator's property and the represented person's property

- (1) An administrator must keep the administrator's property separate from the represented person's property.
- (2) Subsection (1) does not apply to property owned jointly by the administrator and the represented person.
- (3) Subsection (1) does not affect any other obligation imposed by law.

61 Accounts

- (1) VCAT may, at the time it appoints an administrator, or at any later time, appoint a person to examine or audit the accounts of all dealings and transactions relating to the financial matters specified in the administration order for a fee approved by VCAT and paid from the represented person's estate.
- (2) Unless VCAT otherwise directs, on, or as soon as practicable after, the anniversary in each year of the appointment of the administrator, the administrator must lodge with VCAT an account of the dealings and transactions relating to the financial matters specified in the administration order during the previous 12 months.
- (3) Despite subsection (2), VCAT may require an administrator to lodge accounts at a time other than the time specified in that subsection.

- (4) An account lodged under subsection (2) or (3) must—
 - (a) provide a full and true account of—
 - (i) the assets and liabilities of the represented person in relation to the financial matters specified in the administration order; and
 - (ii) all receipts and disbursements in relation to those financial matters made during the previous 12 months; and
 - (b) include details of any gift made by the administrator of the represented person's property with a total value of or over the prescribed amount (or, if an amount is not prescribed, of or over \$100) to—
 - (i) the administrator; or
 - (ii) a relative or close friend of the administrator; or
 - (iii) an organisation with which the administrator has a connection.
- (5) A person appointed under subsection (1) to examine or audit the accounts—
 - (a) must lodge with VCAT a report in relation to the accounts examined or audited; and
 - (b) may recommend in the report the disallowance of any item in the accounts.
- (6) VCAT must not make an order disallowing an item referred to in subsection (5) if VCAT is satisfied that the administrator acted in good faith and with reasonable care in the exercise of powers conferred on the administrator.
- (7) If VCAT makes an order disallowing an item referred to in subsection (5), the administrator is liable for the amount of the item disallowed.

62 Payments to person examining or auditing accounts

- (1) An administrator must pay to a person appointed under section 61(1) an amount certified by that person as being the reasonable cost of examining or auditing the accounts referred to in that section.
- (2) On the application by the administrator, and with the consent of the person appointed under section 61(1) to examine or audit the accounts, VCAT may waive payment of the whole or part of the amount required to be paid under subsection (1).

63 Administrator to report death of represented person

If an administrator is advised of the death of a represented person for whom the administrator is appointed, the administrator must report the death in writing to VCAT as soon as practicable.

Division 8—Other matters pertaining to administration orders

64 Administrator may seek advice from VCAT

- (1) An administrator may apply to VCAT for advice on any matter relating to the scope of the administration order or the exercise of any power under the order.
- (2) Without limiting subsection (1), the jurisdiction of VCAT includes jurisdiction in the case of an administration by State Trustees to approve, order or advise the commencement of a proceeding by State Trustees acting in one capacity or on behalf of one represented person against State Trustees acting in another capacity or on behalf of another represented person.
- (3) After considering an application for advice, or on its own initiative, VCAT may—
 - (a) approve or disapprove of any act proposed to be done by the administrator; and

- (b) give advice as it considers appropriate; and
 - (c) make any order it considers necessary.
- (4) An action does not lie against an administrator on account of an act or thing done or omitted to be done by the administrator under any order or on the advice of VCAT made or given under this section unless, in representing the facts to VCAT, the administrator is guilty of fraud, wilful concealment or misrepresentation.

65 Administrator may seek advice from professional adviser

- (1) An administrator may seek advice from a professional adviser about the financial matters specified in the administration order.
- (2) An administrator is entitled to be reimbursed from the represented person's estate for any costs paid by the administrator in the course of obtaining professional advice.
- (3) In this section—

professional adviser means a person who provides professional advice to administrators and includes a financial adviser, a legal practitioner and an accountant.

66 VCAT may open will

VCAT may open and read any paper or writing that is a will, a revoked will, a purported will or a copy of a will of—

- (a) a represented person who does not have testamentary capacity; or
- (b) a deceased person who, immediately before the person died, was a represented person.

67 VCAT may compel production of will

VCAT may make an order compelling a person who has possession or control of a will, a revoked will or a purported will of a represented person who does not have testamentary capacity to produce that document to VCAT—

- (a) for the purposes of section 66 or 68; or
- (b) on the application of an administrator.

68 VCAT may make copy of will available to administrator

VCAT may make available to an administrator a full or redacted copy of a will, a revoked will or a purported will of the represented person if VCAT is satisfied that the represented person does not have testamentary capacity.

69 VCAT to notify administrator if person ceases to be a represented person

- (1) If VCAT knows that a person has ceased to be a represented person or has died, VCAT must give notice of that fact to the administrator as soon as practicable.
- (2) An administrator may exercise all or any of the powers given to the administrator by the administration order until the administrator knows that the represented person has ceased to be a represented person or has died.

70 Actions of administrator taken to be actions of former represented person

On and after VCAT gives notice to an administrator under section 69(1), the former represented person or that person's personal representative (as the case requires) is bound by, and may take advantage of, any act done on behalf of the represented person by the

administrator within the powers conferred on the administrator by VCAT as if—

- (a) the act had been done by the represented person; and
- (b) the represented person had decision-making capacity to do the act.

71 Administrator to pay to former represented person any money outstanding

- (1) If an administrator receives a notice under section 69 or is otherwise advised that a person has ceased to be a represented person or has died, the administrator must—
 - (a) pay or cause to be paid to the person or to the person's personal representative (as the case requires) all money standing to the person's credit with the administrator; and
 - (b) deliver to the person or to the person's personal representative (as the case requires) all property of the person that is in the custody of the administrator and, subject to an order under section 73, any documents relating to that property.
- (2) Any payment made under subsection (1) and any property delivered under that subsection is subject to the satisfaction of any amount due to the administrator and all costs, expenses and liabilities incurred by the administrator in relation to the dealings and transactions made for the financial matters specified in the administration order.
- (3) The receipt by a person who has ceased to be a represented person or by that person's personal representative is an absolute discharge to an administrator despite any informality in the discharge or certification.

72 Former represented person entitled to inspection of accounts

Subject to an order under section 73, a person who has ceased to be a represented person (or the personal representative of such a person), before or after obtaining the restoration of all or any part of the person's money or other property from the administrator—

- (a) may examine and inspect, or cause a legal practitioner or other authorised agent to examine and inspect, all books, accounts, notices and other documents in the custody of the administrator relating to the dealings and transactions made for the financial matters specified in the administration order and make or cause to be made copies of, or extracts from, these items; and
- (b) must be provided with—
 - (i) copies of or extracts from any book, account, notice or document relating to the dealings and transactions made for the financial matters specified in the administration order by the administrator; and
 - (ii) information relating to the dealings and transactions made for the financial matters specified in the administration order by the administrator that is reasonable to request and that can be given by the administrator.

73 VCAT order that delivery of, or access to, documents be withheld

- (1) An administrator may apply to VCAT for an order that a book, account, notice or other document (or any part of such book, account, notice or other document) in the custody of the

administrator relating to the property or financial affairs of a former represented person be withheld from the person specified in the order or a person belonging to a class of person specified in the order.

- (2) VCAT may make an order referred to in subsection (1) if VCAT is satisfied that—
- (a) it is in the interests of the former represented person that the information, or part of the information, contained in the book, account, notice or other document remain confidential; or
 - (b) the book, account, notice or other document contains confidential information about another person.

74 Sale of personal effects if unclaimed within 2 years after person ceases to be represented person

- (1) After public notice, an administrator may sell any personal effect of a former represented person that—
- (a) is in the administrator's possession; and
 - (b) is not claimed within 2 years after the date on which the person ceased to be a represented person.
- (2) The proceeds of a sale referred to in subsection (1) are to be paid into the Consolidated Fund.

75 Restriction on powers of represented person in relation to financial matters

- (1) Without an order of VCAT or the written consent of the administrator, to the extent that a financial matter in relation to a represented person is subject to an administration order, the represented person is taken not to have decision-making capacity in relation to—

- (a) dealing with, transferring, alienating or charging the represented person's money or other property, in whole or in part; or
 - (b) becoming liable under a contract.
- (2) Any dealing, transfer, alienation or charge by a represented person in relation to a financial matter that is subject to an administration order is void and of no effect, and the money or other property that is the subject of the dealing, transfer, alienation or charge is recoverable by the administrator in any court of competent jurisdiction.
- (3) This section does not render invalid any dealing, transfer, alienation or charge by a represented person if—
 - (a) the dealing, transfer, alienation or charge was made for adequate consideration with or to or in favour of another person; and
 - (b) the other person proves that the other person acted in good faith and did not know or could not reasonably have known that the represented person was a represented person.
- (4) For the purpose of this section, the acceptance of payment of the whole or a part of a debt is taken to be a dealing with property.

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

- (1) A represented person (irrespective of whether the represented person has testamentary capacity) and a beneficiary of a represented person have the same interest in any money or other property arising from or received in respect of any sale, mortgage, exchange, partition or other disposition under the powers conferred on an administrator by an administration order which have not been applied under those powers that the represented

person or beneficiary would have had in the property the subject of the sale, mortgage, exchange, partition or disposition if no sale, mortgage, exchange, partition or disposition had been made.

- (2) For the purposes of this section, money arising from the compulsory acquisition or purchase under any Act of property of a represented person is taken to be money arising from the sale of that property under the powers conferred on an administrator under an administration order.
- (3) An administrator is not required to keep the proceeds of the sale or other disposition of property under this section separate from the represented person's other assets.
- (4) Money received by an administrator under this section may be invested in any manner in which trust funds may be invested under the **Trustee Act 1958**.
- (5) In this section, *beneficiary of a represented person* means—
 - (a) a beneficiary under the will of a represented person; or
 - (b) a represented person's executor; or
 - (c) a represented person's administrator under the **Administration and Probate Act 1958**.

77 Guardianship and Administration Fund

- (1) The account known as "The Guardianship and Administration Fund" that was established in the Public Account under section 58AA of the **Guardianship and Administration Act 1986** continues in existence.

- (2) The following must be paid into the Guardianship and Administration Fund—
 - (a) any annual fee prescribed under section 194(1)(b) that is paid in relation to an estate of a represented person;
 - (b) interest received from the investment of money in the Fund.
- (3) Money standing to the credit of the Guardianship and Administration Fund may be invested in any manner in which trust funds may be invested under the **Trustee Act 1958**.
- (4) The Guardianship and Administration Fund is to be used to meet the costs and expenses of VCAT in relation to proceedings under this Act.

78 Application to VCAT by represented person or a person interested

- (1) A represented person or a person interested as a creditor, beneficiary, next of kin, guardian, nearest relative, primary carer or the Public Advocate or otherwise in a financial matter specified in the administration order may apply to VCAT on any matter arising out of any dealing or transaction in relation to that financial matter.
- (2) VCAT may make any order in relation to the application which VCAT considers appropriate.
- (3) In this section—
 - next of kin***, in relation to a represented person, means any person who would be entitled to the property of the represented person or to any share of the property under any law for the distribution of the property of intestates if the represented person had died intestate.

Part 4—Supportive guardianship orders and supportive administration orders

Division 1—Application for supportive guardianship orders and supportive administration orders

79 Application for supportive guardianship order

A person may apply to VCAT for a supportive guardianship order that appoints a supportive guardian for a person with a disability who is—

- (a) of or over 18 years of age; or
- (b) under 18 years of age but the order takes effect on that person attaining 18 years of age.

80 Application for supportive administration order

- (1) A person may apply to VCAT for a supportive administration order that appoints a supportive administrator for a person with a disability who is—

- (a) of or over 18 years of age; or
- (b) under 18 years of age but the order takes effect on that person attaining 18 years of age.

- (2) Subject to subsection (1), if the person in relation to whom a supportive administration order is sought does not reside in Victoria but the person's property is partly or wholly in Victoria, an application may be made for an order appointing a supportive administrator for the person in relation to that part of the property that is in Victoria.

81 Matters to be included in application to VCAT

A person applying to VCAT for a supportive guardianship order or supportive administration order must include the following in the application—

- (a) the name and contact details of the proposed supported person;
- (b) the type of order applied for, including details of the personal matters or financial matters in relation to which the order is sought;
- (c) details of the reasons for making the application;
- (d) the name and contact details of the person proposed as supportive guardian or supportive administrator;
- (e) the name and contact details of the applicant and of any person who has a direct interest in the application (if known to the applicant);

Note

Persons having a direct interest includes, amongst others, the proposed supported person's relatives, any primary carer, close friends, any attorney appointed under an enduring power of attorney and any supportive attorney appointed under the **Powers of Attorney Act 2014**.

- (f) any support needs of the proposed supported person including support provided to the proposed supported person by any companion animal of the proposed supported person.

Note

Section 67 of the VCAT Act sets out additional requirements in relation to making an application.

82 Who are the parties to a proceeding on an application?

The following persons are parties to a proceeding on an application under this Division—

- (a) the applicant;
- (b) the proposed supported person;
- (c) the person proposed as supportive guardian or supportive administrator, as the case requires;
- (d) any other person VCAT orders to be joined as a party to the proceeding.

Note

Section 60 of the VCAT Act provides that VCAT may in certain circumstances order that a person be joined as a party to a proceeding.

83 Who is entitled to notice of an application, the hearing and any order made in the proceeding?

For the purposes of sections 72(1), 99(1) and 116(2) of the VCAT Act, the following persons are entitled to a notice referred to in each of those provisions—

- (a) any party to a proceeding on an application under this Part;
- (b) the spouse or domestic partner of the proposed supported person, if any;
- (c) the primary carer of the proposed supported person, if any;
- (d) any person referred to in the application as having a direct interest in the application;
- (e) any other person VCAT directs be given notice.

Note

Section 72(1) of the VCAT Act provides that an applicant for a VCAT order must serve a copy of the application on each party, each other person entitled to notice of the application under the enabling enactment (which is this Act) and each other person that VCAT so directs. Section 99(1)(b) of the VCAT Act provides that the principal registrar of VCAT must give notice of the time and place for the hearing of a proceeding to a person entitled to notice of the proceeding or hearing under the enabling enactment. Section 116(2)(a) of the VCAT Act provides that VCAT must give a copy of any order it makes in a proceeding to each party and each other person entitled to notice of the proceeding or of the order under the enabling enactment.

84 Contents of notice of application

- (1) A notice of an application given to a party to the application must include the following—
- (a) a copy of the application and any information filed in support of the application, subject to clause 37A of Part 9 of Schedule 1 to the VCAT Act;

Note

Clause 37A of Part 9 of Schedule 1 to the VCAT Act provides that a person may make an application to the principal registrar of VCAT that any documents lodged in relation to a proceeding under this Act not be disclosed to a specified person or class of persons.

- (b) the names of—
- (i) the parties to the proceeding; and
- (ii) the other persons entitled to the notice under section 83;
- (c) information about the rights of the party in relation to the application.

- (2) A notice of an application given to a person referred to in section 83 who is not a party to the application must include the following—
- (a) a copy of the application;
 - (b) the names of—
 - (i) the parties to the proceeding; and
 - (ii) the other persons entitled to the notice under section 83;
 - (c) information about the rights of the person to seek information about the application;
 - (d) information about how to apply to VCAT to be made a party to the proceeding.

85 Date for hearing of application for supportive guardianship order or supportive administration order

VCAT must commence to hear an application made under this Division within 30 days after the day on which the application is received by VCAT unless VCAT or the principal registrar under Division 5 of Part 4 of the VCAT Act—

- (a) requires the parties to attend a compulsory conference in relation to the application; or
- (b) refers the proceeding in relation to the application, or any part of it, for mediation.

86 Participation of proposed supported person at hearing

The proposed supported person must attend in person a hearing conducted by VCAT in relation to an application made under this Division unless VCAT is satisfied that—

- (a) the proposed supported person does not wish to attend the hearing in person; or

- (b) the personal attendance of the proposed supported person at the hearing is impracticable or unreasonable, despite any arrangement that VCAT may make.

Note

See section 100(1) of the VCAT Act which provides that if VCAT thinks it appropriate, it may conduct all or part of a proceeding by means of a conference conducted using telephones, video links or any other system of telecommunication.

Division 2—Making supportive guardianship orders and supportive administration orders and eligibility of persons appointed

87 VCAT may make a supportive guardianship order or supportive administration order

- (1) Subject to this Division, VCAT may make a supportive guardianship order or supportive administration order after considering—
 - (a) an application under Division 1; or
 - (b) an application for a guardianship order or an administration order for a proposed represented person.
- (2) VCAT may only make an order appointing a supportive guardian or a supportive administrator for a proposed supported person if VCAT is satisfied that—
 - (a) the person consents to VCAT making the order; and
 - (b) if the person is given practicable and appropriate support, the person will have decision-making capacity in relation to the personal matter or financial matter in relation to which the supportive guardianship order or supportive administration order may be made; and

- (c) the supportive guardianship order or supportive administration order, as the case requires, will promote the person's personal and social wellbeing.

88 Persons eligible as supportive guardians or supportive administrators

- (1) VCAT may appoint as a supportive guardian or supportive administrator, as the case requires, any individual who is of or over 18 years of age and who consents to act as supportive guardian or supportive administrator if VCAT is satisfied that the individual—
 - (a) will act in accordance with the duties and obligations set out in section 94; and
 - (b) is a suitable person to act as the supportive guardian or supportive administrator for the proposed supported person.
- (2) In determining whether a person is a suitable person to act as a supportive guardian or supportive administrator for a proposed supported person, VCAT must take into account the following—
 - (a) the will and preferences of the proposed supported person (so far as they can be ascertained);
 - (b) the desirability of preserving existing family relationships and other relationships that are important to the proposed supported person;
 - (c) the nature of the relationship between the person and the proposed supported person, in particular whether the relationship is characterised by trust;

- (d) whether the person will be available to the proposed supported person and able to meet and communicate with the proposed supported person;
- (e) the capacity of the person to recognise and give due regard to the importance of the relationship the proposed supported person has with any companion animal of the proposed supported person.

89 Matters to be specified in supportive guardianship orders and supportive administration orders

A supportive guardianship order or supportive administration order must specify the following—

- (a) the name of the supported person;
- (b) the name of the supportive guardian or supportive administrator, as the case requires;
- (c) in the case of a supportive guardianship order, the personal matters in relation to which the supportive guardian has powers;
- (d) in the case of a supportive administration order, the financial matters in relation to which the supportive administrator has powers;
- (e) any power referred to in Division 3 that VCAT confers on the supportive guardian or supportive administrator;

Note

Sections 91, 92 and 93 provide for powers which may be specified in a supportive guardianship order or supportive administration order.

- (f) any restrictions on the supportive guardian's or supportive administrator's exercise of powers.

Division 3—Powers and duties of supportive guardians and supportive administrators

90 Powers of supportive guardians or supportive administrators

- (1) A supportive guardianship order or supportive administration order confers on the person appointed as supportive guardian or supportive administrator, as the case requires, one or more of the following powers listed in this subsection and specified in the order—
 - (a) a power to access, collect or obtain information, or to assist the supported person to access, collect or obtain information, in accordance with section 91;
 - (b) a power to communicate certain information about the supported person with others, in accordance with section 92(a);
 - (c) a power to communicate decisions made by the supported person, or to assist the supported person in communicating these decisions in accordance with section 92(b);
 - (d) a power to take any reasonable action or do anything that is reasonably necessary to give effect to certain decisions in accordance with section 93(1).
- (2) For the purposes of subsection (1), VCAT may only specify a power if VCAT is satisfied that the power will ensure that the supportive guardian or supportive administrator can give practicable and appropriate support to the supported person to enable that person to have decision-making capacity in relation to the relevant personal matters or financial matters.

91 Information power

- (1) VCAT may specify in a supportive guardianship order or in a supportive administration order that the supportive guardian or supportive administrator, as the case requires, has power to access, collect or obtain from any person, or assist the supported person to access, collect or obtain from any person, any personal information about the supported person that—
 - (a) is relevant to a supported decision; and
 - (b) may lawfully be collected or obtained by the supported person.
- (2) For the purposes of subsection (1), a person referred to in that subsection is authorised to disclose personal information about the supported person to the supportive guardian or supportive administrator, as the case requires.

Note

See also the **Disability Act 2006**, the **Health Records Act 2001** and the **Privacy and Data Protection Act 2014** for provisions as to disclosure of personal information to supportive guardians and supportive administrators and access to personal information by supportive guardians and supportive administrators.

- (3) A supportive guardian or supportive administrator, as the case requires, may disclose any information given under subsection (1) for the purpose of—
 - (a) anything that is relevant and necessary to the supportive guardian or supportive administrator carrying out that role; or

(b) any legal proceeding under this Act, or any report of a legal proceeding under this Act; or

(c) any other lawful reason.

92 Communication power

VCAT may specify in a supportive guardianship order or in a supportive administration order that the supportive guardian or supportive administrator, as the case requires, has power—

(a) to communicate any information about the supported person that is relevant to or necessary for the making of or giving effect to a supported decision; or

(b) to communicate or assist the supported person to communicate a supported decision of the supported person.

93 Power to give effect to decisions

(1) VCAT may specify in a supportive guardianship order or supportive administration order that the supportive guardian or supportive administrator, as the case requires, has power to take any reasonable action or do anything that is reasonably necessary to give effect to a supported decision, other than a decision about a significant financial transaction.

(2) In this section, *significant financial transaction* includes—

(a) making an investment for the supported person or continuing an investment of the supported person, including taking up rights to issues of new shares or options for new shares to which the supported person becomes entitled by the supported person's existing shareholding; or

- (b) undertaking any real estate transaction for the supported person, excluding entering into a residential tenancy for a premises in which the supported person lives or intends to live; or
 - (c) dealing with land on behalf of the supported person, including taking out a loan on behalf of the supported person or giving a guarantee on behalf of the supported person; or
 - (d) undertaking a transaction for the supported person involving the use of the supported person's property as security for an obligation; or
 - (e) buying and selling substantial personal property on behalf of the supported person.
- (3) For the purpose of the definition of *significant financial transaction* in subsection (2), paragraph (a) does not include investing or continuing an investment of an amount of \$10 000 or less in total in one or more interest-bearing accounts of an ADI.

94 Duties and obligations of supportive guardians and supportive administrators

A supportive guardian under a supportive guardianship order or a supportive administrator under a supportive administration order—

- (a) must act in accordance with the general principles set out in section 8; and
- (b) must act honestly, diligently and in good faith; and
- (c) must exercise reasonable skill and care; and

- (d) must not use the position for profit; and
- (e) must avoid acting when there is or may be a conflict of interest and, if acting when there is a conflict of interest, must ensure that the interests of the supported person are the primary consideration; and
- (f) must discuss anything relating to a supported decision with the supported person in a way that the supported person can understand and that will assist the supported person to make the decision; and
- (g) must not assist the supported person, in the role of supportive guardian or supportive administrator (as the case requires), to conduct any illegal activity; and
- (h) must not coerce, intimidate or in any way unduly influence the supported person into a particular course of action.

Division 4—General

95 No entitlement to remuneration

A supportive guardian or supportive administrator is not entitled to receive any remuneration for acting in that role.

96 When does a supportive guardianship order or supportive administration order cease to have effect?

- (1) A supportive guardianship order or supportive administration order ceases to have effect to the extent that it is inconsistent with any subsequent guardianship order or administration order.

- (2) VCAT may modify a supportive guardianship order or supportive administration order—
 - (a) if a subsequent guardianship order or administration order is made for the supported person; or
 - (b) under Part 7.

97 Advice from VCAT

- (1) A supportive guardian may apply to VCAT for advice on any matter relating to the scope of the supportive guardianship order or the exercise of any power by the supportive guardian under the supportive guardianship order.
- (2) A supportive administrator may apply to VCAT for advice on any matter relating to the scope of the supportive administration order or the exercise of any power by the supportive administrator under the supportive administration order.
- (3) After considering an application for advice, or on its own initiative, VCAT may—
 - (a) approve or disapprove of any act proposed to be done by the supportive guardian or supportive administrator; and
 - (b) give such advice as it considers appropriate; and
 - (c) make any order it considers necessary.
- (4) An action does not lie against a supportive guardian or supportive administrator on account of an act or thing done or omitted by the supportive guardian or supportive administrator under any order or on the advice of VCAT made or given under this section unless, in representing the facts to VCAT, the supportive guardian or supportive administrator has been guilty of fraud, wilful concealment or misrepresentation.

**98 Supportive guardian or supportive administrator
to report death of supported person**

If a supportive guardian or supportive administrator is advised of the death of a supported person for whom the supportive guardian or supportive administrator is appointed, the supportive guardian or supportive administrator must report the death in writing to VCAT as soon as practicable.

Part 5—Administration (missing person) orders

Division 1—Application for administration (missing person) orders

99 Application for administration (missing person) orders

A person may apply to VCAT for an administration (missing person) order that appoints an administrator in relation to a financial matter for a missing person who is of or over 18 years of age.

100 Matters to be included in application to VCAT

A person applying to VCAT for an administration (missing person) order must include the following in the application—

- (a) the name of the missing person;
- (b) details of the reasons for making the application;
- (c) the name and contact details of any person proposed as administrator;
- (d) the name and contact details of the applicant and of any person who has a direct interest in the application (if known to the applicant).

Note

Persons having a direct interest includes, amongst others, the missing person's relatives, any primary carer, close friends, any attorney appointed under an enduring power of attorney and any supportive attorney appointed under the **Powers of Attorney Act 2014**.

Note

Section 67 of the VCAT Act sets out additional requirements in relation to making an application.

101 Who are the parties to a proceeding on an application?

The following persons are parties to a proceeding on an application for an administration (missing person) order—

- (a) the applicant;
- (b) the missing person;
- (c) the person proposed as administrator;
- (d) any other person VCAT orders to be joined as a party to the proceeding.

Note

Section 60 of the VCAT Act provides that VCAT may in certain circumstances order that a person be joined as a party to a proceeding.

102 Who is entitled to notice of an application, the hearing and any order made in the proceeding?

For the purposes of sections 72(1), 99(1) and 116(2) of the VCAT Act, the following persons are entitled to a notice referred to in each of those sections—

- (a) any party to a proceeding on an application under this Part;
- (b) the spouse or domestic partner of the missing person, if any;
- (c) the primary carer of the missing person, if any;
- (d) any person referred to in the application as having a direct interest in the application;
- (e) any other person VCAT directs be given notice.

Note

Section 72(1) of the VCAT Act provides that an applicant for a VCAT order must serve a copy of the application on each party, each other person entitled to notice of the application under the enabling enactment (which is this Act) and each other person that VCAT so directs. Section 99(1)(b) of the VCAT Act provides that the principal registrar of VCAT must give notice of the time and place for the hearing of a proceeding to a person entitled to notice of the proceeding or hearing under the enabling enactment. Section 116(2)(a) of the VCAT Act provides that VCAT must give a copy of any order it makes in a proceeding to each party and each other person entitled to notice of the proceeding or of the order under the enabling enactment.

103 Contents of notice of application

- (1) A notice of an application given to a party to the application must include the following—
- (a) a copy of the application and any information filed in support of the application, subject to clause 37A of Part 9 of Schedule 1 to the VCAT Act;

Note

Clause 37A of Part 9 of Schedule 1 to the VCAT Act provides that a person may make an application to the principal registrar of VCAT that any documents lodged in relation to a proceeding under this Act not be disclosed to a specified person or class of persons.

- (b) the names of—
- (i) the parties to the proceeding on an application under section 101; and
- (ii) the other persons entitled to the notice under section 102;
- (c) information about the rights of the party in relation to the application.
- (2) A notice of an application given to a person referred to in section 102 who is not a party to the application must include the following—

- (a) a copy of the application;
- (b) the names of—
 - (i) the parties to the proceeding; and
 - (ii) the other persons entitled to the notice under section 102;
- (c) information about the rights of the person to seek information about the application;
- (d) information about how to apply to VCAT to be made a party to the proceeding on the application.

104 Date for hearing of application for administration (missing person) order

VCAT must commence to hear an application for an administration (missing person) order within 30 days after the day on which the application is received by VCAT unless VCAT or the principal registrar under Division 5 of Part 4 of the VCAT Act—

- (a) requires the parties to attend a compulsory conference in relation to the application; or
- (b) refers the proceeding in relation to the application, or any part of it, for mediation.

Division 2—Making administration (missing person) orders and eligibility of persons appointed

105 VCAT may make administration (missing person) order

- (1) After considering an application for an administration (missing person) order, VCAT may—

- (a) subject to subsection (2), make an administration (missing person) order; or

Note

See sections 106 and 109 in relation to administration (missing person) orders that are urgent orders.

- (b) make no order under this Act.

- (2) VCAT may only make an administration (missing person) order if VCAT—

- (a) has determined under subsection (3) that the person is a missing person who usually resides in Victoria; and

- (b) is satisfied that—

- (i) while the person is missing there is, or is likely to be, a need for a decision to be made in relation to the person's financial matters including the ongoing care of any companion animal of the person; and

- (ii) the order would promote the missing person's personal and social wellbeing while that person is missing.

- (3) VCAT may determine that a person is a missing person for the purposes of this Act if VCAT is satisfied that—

- (a) it is not known whether the person is alive; and

- (b) reasonable efforts have been made to find the person; and

- (c) for at least 90 days, the person has not contacted—

- (i) anyone who lives at the person's last-known home address; or

- (ii) any relative or friend of the person with whom the person is likely to communicate.
- (4) VCAT must not make an order under subsection (1)(a) in relation to the property of a missing person if the property is subject to—
 - (a) an order under section 24A of the **Administration and Probate Act 1958**; or
 - (b) an application for an order under section 24A of the **Administration and Probate Act 1958**.

Note

Section 24A of the **Administration and Probate Act 1958** enables a trustee company to apply to the Supreme Court for an order authorising the trustee company to do any act, matter or thing in relation to the property or affairs of the owner of property in Victoria in circumstances where among other things the owner cannot be found or it is not known whether the owner is alive or dead.

106 Duration of order

- (1) An administration (missing person) order that is not an urgent order is in force for the period specified in the order, being a period not exceeding 2 years.
- (2) An administration (missing person) order that is an urgent order is in force for the period specified in the order, being a period not exceeding 21 days.

Note

Section 109 provides that a hearing must be held after an urgent administration (missing person) order is made.

- (3) If VCAT is satisfied that the matters referred to in section 105(2) continue to apply, on the application of the administrator, VCAT may renew—

- (a) an administration (missing person) order that is not an urgent order once for a further period not exceeding 2 years specified in the order; and
 - (b) an administration (missing person) order that is an urgent order once for a further period not exceeding 21 days specified in the order.
- (4) Nothing in this section prevents a person applying for a new administration (missing person) order if the previous order has expired.

Note

A person may apply at any time for a reassessment of an order under Part 7.

107 Persons eligible as administrators for missing persons

- (1) VCAT may appoint as an administrator for a missing person a person (being an individual or a body corporate) which, in the case of an individual, is of or over the age of 18 years who consents to act as administrator if VCAT is satisfied that the person—
- (a) will act in accordance with the duties set out in Division 4; and
 - (b) is not in a position where the person's interests conflict, or may conflict, with the interests of the missing person; and
 - (c) is a suitable person to act as the administrator for the missing person; and
 - (d) has sufficient expertise to make decisions about any financial matter to be specified in the administration (missing person) order.
- (2) In determining whether a person is suitable to act as the administrator for a missing person, VCAT must take into account the following—

- (a) the will and preferences of the missing person (so far as they can be ascertained);
 - (b) the desirability of preserving existing relationships that are important to the missing person;
 - (c) the desirability of appointing a person who is a relative of the missing person, or who has a personal relationship with the missing person, rather than appointing a person with no such relationship;
 - (d) whether the person proposed as administrator is or was a member of VCAT as constituted for a proceeding under this Act.
- (3) VCAT may appoint as an administrator a person who was at any time a member of VCAT as constituted for a proceeding under this Act if VCAT considers that in the circumstances it is appropriate for the person to act as an administrator.
- (4) VCAT must not assume without any evidence that a missing person's relative who is proposed as administrator—
- (a) has interests that conflict, or may conflict, with those of the missing person merely because the proposed administrator is a relative of the missing person; or
 - (b) is not suitable to be appointed as the administrator merely because that relative disagrees with another relative of the missing person about a matter pertaining to the missing person.

108 Matters to be specified in administration (missing person) orders

An administration (missing person) order must specify the following—

- (a) the name of the missing person;
- (b) the name of the administrator;
- (c) the financial matters in relation to which the administrator has powers;
- (d) any other power referred to in Division 3 that VCAT specifically confers on the administrator;
- (e) any restrictions on the administrator's exercise of powers referred to in paragraph (c) or (d);
- (f) whether the order is an urgent order.

109 Urgent administration (missing person) orders

- (1) VCAT may waive any of the requirements set out in section 100, 102 or 103 and make an urgent administration (missing person) order under section 105 if VCAT is satisfied on reasonable grounds that there is an immediate risk of harm to the property of a missing person if the order were not made.
- (2) As soon as practicable after making an administration (missing person) order that is an urgent order (but within 42 days after making such an order) VCAT must hold a hearing to determine whether an administration (missing person) order that is not an urgent order should be made.

Division 3—Powers of administrators for missing persons

110 Powers of administrators for missing persons

- (1) An administration (missing person) order confers on the person appointed as administrator—
- (a) a power to make decisions about the financial matters in relation to the missing person specified in the order; and
 - (b) a power of investment in accordance with section 111; and
 - (c) a power to open the will of the missing person in accordance with section 112; and
 - (d) any other power that is specified in the order; and
- Note**
- Sections 113 and 114 provide for powers which may be specified in an administration (missing person) order.
- (e) a power to sign and do any thing that is necessary to give effect to any power or duty vested in the administrator; and
 - (f) a power to do all matters necessary or incidental to the performance of any power conferred on the administrator.
- (2) For the purposes of subsection (1)(d), VCAT may only specify a power if VCAT is satisfied that the power is necessary or desirable for the purposes of promoting the personal and social wellbeing of the missing person.
- (3) Subject to, and in accordance with, this Act and the administration (missing person) order, an administrator may do all acts and exercise all powers in relation to the financial matters specified in the order in the name, and on behalf,

of the missing person as effectually and in the same manner as the missing person may have done if the missing person were not missing and had the relevant decision-making capacity.

- (4) A decision made, action taken, consent given or thing done by an administrator under a administration (missing person) order has effect as if it were made, taken, given or done by the missing person and the missing person were not missing and had the decision-making capacity for the matter in relation to which the order was made.

111 Powers of investment

Except as provided in section 136 or in any order of VCAT, an administrator—

- (a) in the case of investments of the missing person, may continue those investments in the manner in which they were invested by the missing person for such period as the administrator thinks fit, including taking up rights to issues of new shares and options; and
- (b) in the case of money deposited in an ADI, may re-deposit it after it becomes payable; and
- (c) in the case of property, has, and may, exercise the same powers as the administrator would have if the administrator were a trustee in relation to that property under the **Trustee Act 1958**.

112 Power to open will

An administrator may open and read without an order of VCAT any paper or writing deposited with the administrator that is a will, a revoked will, a purported will or a copy of a will of the missing person.

113 Power to undertake legal proceedings

- (1) VCAT may specify in an administration (missing person) order that the administrator has power to bring and defend an action or other legal proceeding in the name, and on behalf, of the missing person if the action or other legal proceeding is in relation to a financial matter specified in the order.
- (2) An administrator on whom the power to bring and defend actions and other legal proceedings is conferred is not required to be appointed a litigation guardian in accordance with rules of the relevant court or tribunal.
- (3) If an administrator undertakes a legal proceeding in accordance with subsection (1), the costs of the proceeding are to be paid out of the missing person's estate.
- (4) Despite subsection (3), a court or tribunal may order that an administrator is personally liable to pay for any costs of the legal proceeding if the administrator was negligent or engaged in misconduct.
- (5) A court or tribunal may order that a person who is or was an administrator be reimbursed from the missing person's estate for any costs incurred by the person as an administrator in bringing or defending an action or other legal proceeding in accordance with subsection (1).

114 Other powers that may be specified in administration (missing person) order

VCAT may specify in an administration (missing person) order that the administrator has any or all of the following powers in relation to a financial matter specified in the order—

- (a) the power to collect, receive and recover—
 - (i) income of the missing person; and
 - (ii) money due or which becomes due to the missing person; and
 - (iii) any compensation or damages for injury to the estate or person of the missing person;
- (b) the power to invest any money in any security in which a trustee may by law invest;
- (c) the power to demise land at a rent and on conditions as the administrator thinks fit for any term not exceeding 5 years or, with the consent of VCAT, for any longer term;
- (d) the power to exercise, to the extent and in the manner the administrator thinks fit, any power of leasing vested in the missing person;
- (e) the power to surrender any lease, accept any lease, accept the surrender of any lease or renew any lease;
- (f) the power to bring land under the **Transfer of Land Act 1958**;
- (g) the power, with the approval of VCAT, to sell, exchange, partition or convert into money any property;
- (h) the power to mortgage or charge any property;
- (i) the power to pay any debts and settle, adjust or compromise any demand made by or against the missing person's estate and discharge any encumbrance on the missing person's estate;

- (j) the power to carry on, to the extent the administrator thinks appropriate, any trade, profession or business which the missing person carried on;
- (k) the power to agree to any alteration of a condition of any partnership into which the missing person has entered or to a dissolution and distribution of the assets of the partnership;
- (l) the power to execute and sign deeds, instruments and other documents;
- (m) the power to complete any contract for the performance of which the missing person was liable, or enter into any agreement terminating liability;
- (n) the power to pay a sum for—
 - (i) the maintenance of the missing person's spouse or domestic partner or any child, parent or other person dependent on the missing person; and
 - (ii) the education of any child of the missing person;
- (o) any other relevant power in relation to a specified financial matter.

115 Matters for which power cannot be given under an administration (missing person) order

Despite anything to the contrary in this Part, an administration (missing person) order does not confer on the person appointed as administrator the power—

- (a) to make or revoke a will for the missing person; or
- (b) to make or revoke an enduring power of attorney for the missing person; or

- (c) to vote on the missing person's behalf in an election for the State or the Commonwealth or another State or a Territory of the Commonwealth or in a local election or a referendum; or
- (d) to consent to the entering into, or the dissolving of, a marriage of the missing person; or
- (e) to make or give effect to a decision about—
 - (i) the care and wellbeing of a child of the missing person; or
 - (ii) the adoption of a child under the age of 18 years of the missing person; or
- (f) to enter into, or agree to enter into, a surrogacy arrangement within the meaning of the **Assisted Reproductive Treatment Act 2008** on the missing person's behalf; or
- (g) to consent to the making or discharge of a substitute parentage order within the meaning of the **Status of Children Act 1974** on the missing person's behalf; or
- (h) to manage the estate of the missing person on the death of the missing person; or
- (i) to consent to an unlawful act.

Division 4—Duties of administrators under administration (missing person) orders

116 Exercise of power by administrator

An administrator must—

- (a) take actions that the administrator considers necessary or desirable for—
 - (i) the payment of the debts and engagements of, and otherwise for the benefit of, the missing person; and

- (ii) the maintenance and benefit of dependants of the missing person; and
- (iii) the care and management of the property of the missing person; and
- (b) act in accordance with the decision-making principles set out in section 9; and
- (c) act as an advocate for the missing person; and
- (d) act honestly, diligently and in good faith; and
- (e) exercise reasonable skill and care; and
- (f) not use the position for profit unless permitted under section 175 or otherwise authorised by law; and
- (g) avoid acting if there is or may be a conflict of interest unless so authorised under this Act, by order of VCAT or otherwise by law; and
- (h) not disclose confidential information gained as an administrator unless authorised to do so under the administration (missing person) order or by law.

117 Property of missing person

Subject to, and in accordance, with this Act and the administration (missing person) order, the administrator must—

- (a) take possession and care of, recover, collect, preserve and administer the property and estate of the missing person; and
- (b) generally manage the property and financial affairs of the missing person.

118 Conflict transactions

- (1) Subject to section 119, an administrator must not enter into a transaction in the capacity of administrator if the transaction is one in which there is, or may be, a conflict between—
 - (a) the duty of the administrator to the missing person; and
 - (b) the interests of the administrator, or of a relative, business associate or close friend of the administrator.
- (2) Subsection (1) does not apply to—
 - (a) a transaction providing for the maintenance of a dependant of the missing person made in accordance with section 114(n); or
 - (b) a transaction merely because in the transaction, the administrator (in the administrator's own right and on behalf of the missing person)—
 - (i) deals with an interest in property held jointly by the administrator and the missing person (whether as joint tenants or tenants in common); or
 - (ii) obtains a loan or gives a guarantee or indemnity in respect of a transaction referred to in subparagraph (i).

119 Permitted conflict transactions

- (1) An administrator may enter into a transaction prohibited by section 118(1) if VCAT authorises the administrator at or before the time of the transaction to enter into—
 - (a) the transaction; or
 - (b) a transaction of a similar nature; or

- (c) any transaction prohibited by section 118(1).
- (2) Despite section 118(1), VCAT may validate a transaction prohibited under that section.
- (3) A transaction validated under subsection (2) is taken to be valid from the time it was entered into.

120 Keeping records

An administrator must keep accurate records and accounts of all dealings and transactions made by the administrator in relation to the financial matters specified in the administration (missing person) order.

121 Separation of administrator's property and missing person's property

- (1) An administrator must keep the administrator's property separate from the missing person's property.
- (2) Subsection (1) does not apply to property owned jointly by the administrator and the missing person.
- (3) Subsection (1) does not affect any other obligation imposed by law.

122 Accounts

- (1) VCAT may, at the time it appoints an administrator or at any later time, appoint a person to examine or audit the accounts of all dealings and transactions relating to the financial matters specified in the administration (missing person) order for a fee approved by VCAT and paid from the missing person's estate.
- (2) Unless VCAT otherwise directs, on, or as soon as practicable after, the anniversary in each year of the appointment of the administrator, the administrator must lodge with VCAT an account

of the dealings and transactions relating to the financial matters specified in the administration (missing person) order during the previous 12 months.

- (3) Despite subsection (2), VCAT may require an administrator to lodge accounts at a time other than the time specified in that subsection.
- (4) An account lodged under subsection (2) or (3) must provide a full and true account of the assets and liabilities of the missing person in relation to the financial matters specified in the administration (missing person) order and of all receipts and disbursements in relation to those financial matters made during the previous 12 months.
- (5) A person appointed under subsection (1) to examine or audit the accounts—
 - (a) must lodge with VCAT a report in relation to the accounts examined or audited; and
 - (b) may recommend in the report the disallowance of any item in the accounts.
- (6) VCAT must not make an order disallowing an item referred to in subsection (5) if VCAT is satisfied that the administrator acted in good faith and with reasonable care in the exercise of powers conferred on the administrator.
- (7) If VCAT makes an order disallowing an item referred to in subsection (5), the administrator is liable for the amount of the item disallowed.

123 Payments to person examining or auditing accounts

- (1) An administrator must pay to a person appointed under section 122(1) an amount certified by that person as being the reasonable cost of examining or auditing the accounts referred to in that section.

- (2) On the application by the administrator, and with the consent of the person appointed under section 122(1) to examine or audit the accounts, VCAT may waive payment of the whole or part of the amount required to be paid under subsection (1).

124 Administrator to notify VCAT about status of missing person

An administrator must notify VCAT in writing as soon as practicable after the administrator becomes aware that—

- (a) the missing person is alive (either in Victoria or elsewhere); or
- (b) the missing person has died.

Division 5—Other matters pertaining to administration (missing person) orders

125 Administrator may seek advice from VCAT

- (1) An administrator may apply to VCAT for advice on any matter relating to the scope of the administration (missing person) order or the exercise of any power under the order.
- (2) Without limiting subsection (1), the jurisdiction of VCAT includes jurisdiction in the case of an administration by State Trustees to approve, order or advise the commencement of a proceeding by State Trustees acting in one capacity or on behalf of one represented person or missing person against State Trustees acting in another capacity or on behalf of another represented person or missing person.
- (3) After considering an application for advice or on its own initiative, VCAT may—
 - (a) approve or disapprove of any act proposed to be done by the administrator; and

- (b) give advice as it considers appropriate; and
 - (c) make any order it considers necessary.
- (4) An action does not lie against an administrator on account of an act or thing done or omitted to be done by the administrator under any order or on the advice of VCAT made or given under this section unless, in representing the facts to VCAT, the administrator is guilty of fraud, wilful concealment or misrepresentation.

126 Administrator may seek advice from professional adviser

- (1) An administrator may seek advice from a professional adviser about the financial matters specified in the administration (missing person) order.
- (2) An administrator is entitled to be reimbursed from the missing person's estate for any costs paid by the administrator in the course of obtaining professional advice.
- (3) In this section—

professional adviser means a person who provides professional advice to administrators and includes a financial adviser, a legal practitioner and an accountant.

127 VCAT may open will

VCAT may open and read any paper or writing that is a will, a revoked will, a purported will or a copy of a will of a missing person.

128 VCAT may compel production of will

VCAT may make an order compelling a person who has possession or control of a will, a revoked will or a purported will of a missing person to produce that document to VCAT—

- (a) for the purposes of section 127 or 129; or
- (b) on the application of an administrator.

129 VCAT may make copy of will available to administrator

VCAT may make available to an administrator a full or redacted copy of a will, a revoked will or a purported will of the missing person if VCAT is satisfied that it is reasonable to make the full or redacted copy available in the circumstances, taking into account whether—

- (a) the copy will assist the administrator to make decisions about the financial matters specified in the administration (missing person) order; and
- (b) the administrator is also a beneficiary under the will.

130 VCAT to notify administrator if person ceases to be a missing person

- (1) If VCAT knows that a person has ceased to be a missing person or that a missing person has died, VCAT must give notice of that fact to the administrator as soon as practicable.
- (2) An administrator may exercise all or any of the powers given to the administrator by the administration (missing person) order until the administrator knows that the missing person has ceased to be a missing person or has died.

131 Actions of administrator taken to be actions of former missing person

On and after VCAT gives notice to an administrator under section 130(1), the former missing person or that person's personal representative (as the case requires) is bound by, and may take advantage of, any act done on behalf of the missing person by

the administrator within the powers conferred on the administrator by VCAT as if—

- (a) the act had been done by the missing person; and
- (b) the missing person had decision-making capacity to do the act.

132 Administrator to pay to former missing person any money outstanding

- (1) If an administrator receives a notice under section 130 or is otherwise informed that a person has ceased to be a missing person or a missing person has died, the administrator must—
 - (a) pay or cause to be paid to the person or to the person's personal representative (as the case requires) all money standing to the person's credit with the administrator; and
 - (b) deliver to the person or to the person's personal representative (as the case requires) all property of the person that is in the custody of the administrator and, subject to an order under section 134, any documents relating to that property.
- (2) Any payment made under subsection (1) and any property delivered under that subsection is subject to the satisfaction of any amount due to the administrator and all costs, expenses and liabilities incurred by the administrator in relation to the dealings and transactions made for the financial matters specified in the administration (missing person) order.
- (3) The receipt by a person who has ceased to be a missing person or by that person's personal representative is an absolute discharge to an administrator despite any informality in the discharge or certification.

133 Former missing person entitled to inspection of accounts

Subject to an order under section 134, a person who has ceased to be a missing person (or the personal representative of such a person), before or after obtaining the restoration of all or any part of the person's money or other property from the administrator—

- (a) may examine and inspect, or cause a legal practitioner or other authorised agent to examine and inspect, all books, accounts, notices and other documents in the custody of the administrator relating to the dealings and transactions made for the financial matters specified in the administration (missing person) order and make or cause to be made copies of, or extracts from, these items; and
- (b) must be provided with—
 - (i) copies of or extracts from any book, account, notice or document relating to the dealings and transactions made for the financial matters specified in the administration (missing person) order by the administrator; and
 - (ii) information relating to the dealings and transactions made for the financial matters specified in the administration (missing person) order by the administrator that is reasonable to request and that can be given by the administrator.

134 VCAT order that delivery of, or access to, documents be withheld

- (1) An administrator may apply to VCAT for an order that a book, account, notice or other document (or any part of such book, account, notice or other document) in the custody of the administrator relating to the property or financial affairs of a former missing person be withheld from the person specified in the order or a person belonging to a class of person specified in the order.
- (2) VCAT may make an order referred to in subsection (1) if VCAT is satisfied that—
 - (a) it is in the interests of the former missing person that the information, or part of the information, contained in the book, account, notice or other document remain confidential; or
 - (b) the book, account, notice or other document contains confidential information about another person.

135 Sale of personal effects if unclaimed within 2 years after person ceases to be missing person

- (1) After public notice, an administrator may sell any personal effect of a former missing person that—
 - (a) is in the administrator's possession; and
 - (b) is not claimed within 2 years after the date on which the person ceased to be a missing person.
- (2) The proceeds of a sale referred to in subsection (1) are to be paid into the Consolidated Fund.

136 Interest of missing person in property not to be altered by sale or other disposition of property

- (1) A missing person and a beneficiary of a missing person have the same interest in any money or other property arising from or received in respect of any sale, mortgage, exchange, partition or other disposition under the powers conferred on an administrator by an administration (missing person) order which have not been applied under those powers that the missing person or beneficiary would have had in the property the subject of the sale, mortgage, exchange, partition or disposition if no sale, mortgage, exchange, partition or disposition had been made.
- (2) For the purposes of this section, money arising from the compulsory acquisition or purchase under any Act of property of a missing person is taken to be money arising from the sale of that property under the powers conferred on an administrator under an administration (missing person) order.
- (3) An administrator is not required to keep the proceeds of the sale or other disposition of property under this section separate from the missing person's other assets.
- (4) Money received by an administrator under this section may be invested in any manner in which trust funds may be invested under the **Trustee Act 1958**.
- (5) In this section, *beneficiary of a missing person* means—
 - (a) a beneficiary under the will of a missing person; or

- (b) a missing person's executor; or
- (c) a missing person's administrator under the **Administration and Probate Act 1958**.

137 Application to VCAT by a person interested

- (1) A person interested as a creditor, beneficiary, next of kin, guardian, nearest relative, primary carer or the Public Advocate or otherwise in a financial matter specified in the administration (missing person) order may apply to VCAT on any matter arising out of any dealing or transaction in relation to that financial matter.
- (2) VCAT may make any order in relation to the application which VCAT considers appropriate.
- (3) In this section—

next of kin, in relation to a missing person, means any person who would be entitled to the property of the missing person or to any share of the property under any law for the distribution of the property of intestates if the missing person had died intestate.

138 Order to revoke administration (missing person) order

- (1) VCAT may, by order, revoke an administration (missing person) order—
 - (a) on application by the person who was the missing person; or
 - (b) on application by the administrator or any other person, if satisfied that—
 - (i) the missing person is alive; or
 - (ii) the missing person is dead; or
 - (iii) the missing person may be presumed to be dead.

- (2) VCAT must, by order, revoke an administration (missing person) order—
- (a) if the Supreme Court, on being satisfied of the death of the missing person, whether by direct evidence or on presumption of death, has made a grant of probate of the will or administration of the estate of the missing person under section 7 of the **Administration and Probate Act 1958**; or
 - (b) if the registrar of probates, on being satisfied of the death of the missing person, whether by direct evidence or on presumption of death, has made a grant of probate of the will or administration of the estate of the missing person under section 12 of the **Administration and Probate Act 1958**; or
 - (c) if the presumption of death is successfully invoked in relation to the missing person for the purpose of any other proceeding before a court in Victoria or elsewhere in Australia; or
 - (d) if any property or affairs of the missing person becomes subject to an order under section 24A of the **Administration and Probate Act 1958**.

139 Part does not exclude Administration and Probate Act 1958

This Part is not intended to exclude or limit the operation of the **Administration and Probate Act 1958**.

Part 6—Special medical procedures

140 Definitions

In this Part—

medical treatment decision maker has the same meaning as in the **Medical Treatment Planning and Decisions Act 2016**;

patient means a person with a disability (irrespective of whether the person is or is not a represented person) who—

- (a) is of or over the age of 18 years; and
- (b) does not have decision-making capacity in relation to giving consent to the carrying out of a special medical procedure;

special medical procedure means—

- (a) any procedure that is intended, or is reasonably likely, to have the effect of rendering permanently infertile the person on whom it is carried out; or
- (b) a termination of pregnancy; or
- (c) any removal of tissue for the purposes of transplantation to another person; or
- (d) any other medical treatment within the meaning of the **Medical Treatment Planning and Decisions Act 2016** that is prescribed under this Act to be a special medical procedure for the purposes of this Part.

141 VCAT may consent to special medical procedure

Subject to section 145, VCAT may give consent to the carrying out of a special medical procedure on a patient.

142 Effect of consent

A consent given in accordance with this Part has effect as if—

- (a) the patient had decision-making capacity in relation to giving consent to the carrying out of the special medical procedure; and
- (b) the special medical procedure was carried out with the consent of the patient.

143 Application for VCAT's consent to special medical procedure

- (1) An application to VCAT for VCAT's consent to the carrying out of a special medical procedure on a patient may be made by—
 - (a) the patient's medical treatment decision maker; or
 - (b) any person VCAT determines to have a special interest in the affairs of the patient.
- (2) A patient in relation to whom an application for VCAT's consent is made under this Part is a party to the proceeding.
- (3) VCAT must give the Public Advocate and any other person VCAT determines to have a special interest in the affairs of the patient—
 - (a) notice of the application for VCAT's consent to the carrying out of the special medical procedure on the patient; and
 - (b) notice of the hearing of the application and of any order in relation to the application; and
 - (c) notice of any direction or advisory opinion in relation to the application.

144 Date for hearing

VCAT must commence to hear an application under this Part within 30 days after the day on which the application is received by VCAT.

145 Consent of VCAT to special medical procedure

- (1) On hearing an application under this Part, VCAT may consent to the carrying out of a special medical procedure if VCAT is satisfied that—
 - (a) the patient has not given an instructional directive (within the meaning of the **Medical Treatment Planning and Decisions Act 2016**) in relation to the special medical procedure; and
 - (b) the patient does not have decision-making capacity in relation to giving consent; and
 - (c) the patient is not likely to have decision-making capacity in relation to giving consent within a reasonable time; and
 - (d) the patient would consent to the carrying out of the special medical procedure if the patient had decision-making capacity in relation to giving consent.
- (2) For the purposes of determining whether VCAT is satisfied as to the matter set out in subsection (1)(d)—
 - (a) first, if the patient has given a valid and relevant values directive (within the meaning of the **Medical Treatment Planning and Decisions Act 2016**), VCAT must consider the values directive; and
 - (b) second, VCAT must take into account any other relevant preferences that the patient has expressed and the circumstances in which those preferences were expressed; and

- (c) if VCAT is unable to identify any relevant preferences under paragraphs (a) and (b), VCAT must give consideration to the patient's values whether—
 - (i) expressed other than by way of a values directive; or
 - (ii) inferred from the patient's life; and
 - (d) VCAT must also consider—
 - (i) the likely effects and consequences of the special medical procedure, including the likely effectiveness of the procedure and whether these are consistent with the patient's preferences or values; and
 - (ii) whether there are any alternatives, including refusing the special medical procedure, that would be more consistent with the patient's preferences or values.
- (3) If VCAT is unable to apply the process required by subsection (2) because it is not possible to ascertain or apply the patient's preferences or values, VCAT may consent to the carrying out of the special medical procedure if—
- (a) VCAT is satisfied that the special medical procedure will promote the personal and social wellbeing of the patient, having regard to the need to respect the patient's individuality; and
 - (b) VCAT has considered—
 - (i) the likely effects and consequences of the special medical procedure, including the likely effectiveness of the procedure; and

- (ii) whether there are any alternatives, including refusing the special medical procedure, that would better promote the patient's personal and social wellbeing.
- (4) In the case of either subsection (2) or (3), VCAT must also consult any other person who VCAT reasonably believes the patient would want to be consulted in the circumstances.

146 VCAT may confer authority to consent to continuing or further special medical procedure

- (1) If VCAT consents to the carrying out of a special medical procedure on a patient, subject to subsection (2), VCAT may confer authority on the patient's medical treatment decision maker to consent to—
 - (a) the continuation of the special medical procedure; or
 - (b) the carrying out of any further special medical procedure of a similar nature.
- (2) VCAT may confer an authority under this section only at the request, or with the consent, of the patient's medical treatment decision maker.
- (3) If a person on whom VCAT has conferred authority under this section ceases to be the patient's medical treatment decision maker, on the application of the patient's new medical treatment decision maker, VCAT may confer authority under this section on the new medical treatment decision maker.
- (4) VCAT may at any time—
 - (a) impose conditions or give directions as to the exercise of an authority under this section; or
 - (b) revoke that authority.

- (5) If VCAT confers an authority under this section, a person may request the consent of the patient's medical treatment decision maker to the continuation of the special medical procedure or any further special medical procedure of a similar nature.

147 Special medical procedure without consent of VCAT an offence

- (1) Subject to section 53 of the **Medical Treatment Planning and Decisions Act 2016**, a registered medical practitioner must not carry out, or supervise the carrying out of, any special medical procedure on a patient unless—
 - (a) VCAT has consented to the carrying out of that procedure; or
 - (b) the patient's medical treatment decision maker (with authority to consent to the continuation of the special medical procedure or a further special medical procedure under section 146) has consented to the carrying out of that procedure.

Penalty: Imprisonment for 2 years
or 240 penalty units or both.

- (2) A registered medical practitioner who, in good faith and without negligence, carries out, or supervises the carrying out of, a special medical procedure on a patient in the belief on reasonable grounds that the requirements of this Part have been complied with—
 - (a) is not guilty of an offence; and
 - (b) is not liable for unprofessional conduct or professional misconduct; and
 - (c) is not liable in any civil proceeding; and
 - (d) is not liable for a contravention of any code of conduct.

- (3) Nothing in this Part affects any duty of care owed by a registered medical practitioner to a patient.

148 Refusal of consent to special medical procedure under an instructional directive

A registered medical practitioner must not carry out a special medical procedure under this Part if the patient has refused consent to the procedure under an instructional directive within the meaning of the **Medical Treatment Planning and Decisions Act 2016**.

149 Unlawful consent to special medical procedure an offence

A person must not purport to give consent on behalf of a patient to the continuation of a special medical procedure or a further special medical procedure unless—

- (a) the person knows that the person is authorised under section 146 to give such consent; or
- (b) the person believes on reasonable grounds that the person is authorised under section 146 to give such consent.

Penalty: 20 penalty units.

Part 7—Rehearings and reassessment of orders

Division 1—Rehearings

150 Application for rehearing of application for order

- (1) The Public Advocate and any person who was a party to an application in relation to which VCAT made an order under this Act (other than an urgent order appointing a guardian or an administrator) may apply to VCAT for a rehearing of the application.
- (2) A person entitled to notice of an application in relation to which VCAT made an order under this Act (other than an urgent order appointing a guardian or an administrator) who was not, or did not become, a party to that application may, if VCAT gives leave, apply to VCAT for a rehearing of the application.

151 Application for rehearing of reassessment of order

If VCAT makes an order on a reassessment under section 167 conducted on VCAT's own initiative, a party to the reassessment or a person entitled to notice of the reassessment may, if VCAT gives leave, apply to VCAT for a rehearing of the reassessment.

152 When may application for rehearing of application or for leave to apply for rehearing of application or rehearing of reassessment be made?

- (1) An application under this Division for—
 - (a) a rehearing of an application; or
 - (b) leave to apply for a rehearing of an application; or

- (c) leave to apply for a rehearing of a reassessment—

must be made within 28 days after the day on which VCAT makes the order on the rehearing or the reassessment.

- (2) For the purposes of subsection (1), if VCAT gives oral reasons for making an order and a party then requests written reasons under section 117 of the VCAT Act, the day on which the written reasons are given to the party is taken to be the day on which the order is made.

153 Matters for which application for rehearing cannot be made

A person cannot apply for a rehearing of—

- (a) an application in relation to which an order was made by VCAT constituted by the President (whether with or without others); or
- (b) an application for a rehearing; or
- (c) an application for leave to apply for a rehearing of an application; or
- (d) an application for leave to apply for a rehearing of a reassessment.

154 Who are the parties to a rehearing?

The following persons are parties to a rehearing—

- (a) in the case of the rehearing of an application referred to in section 150—
 - (i) the applicant for the rehearing; and
 - (ii) any person who was a party to the proceeding on the application at first instance;

- (b) in the case of the rehearing of a reassessment referred to in section 151—
 - (i) the applicant for the rehearing; and
 - (ii) any person who was a party to that reassessment;
- (c) any other person VCAT orders to be joined as a party.

Note

Section 60 of the VCAT Act provides that VCAT may in certain circumstances order that a person be joined as a party to a proceeding.

155 Who is entitled to notice of an application for a rehearing?

The following persons are entitled to notice of an application for a rehearing—

- (a) in the case of the rehearing of an application referred to in section 150, a person who was entitled to notice of that application;
- (b) in the case of the rehearing of a reassessment referred to in section 151, a person who was entitled to notice of the reassessment;
- (c) any other person VCAT directs be given notice.

156 Participation of proposed represented person or represented person at hearing

The proposed represented person, represented person, proposed supported person or supported person (as the case requires) must attend in person a hearing conducted by VCAT in relation to an application made under this Division unless VCAT is satisfied that—

- (a) the person does not wish to attend the hearing in person; or

- (b) the personal attendance of the person at the hearing is impracticable or unreasonable, despite any arrangement that VCAT may make.

Note

See section 100(1) of the VCAT Act which provides that if VCAT thinks it appropriate, it may conduct all or part of a proceeding by means of a conference conducted using telephones, video links or any other system of telecommunication.

157 Rehearing

- (1) On an application made under section 150 or 151, VCAT must rehear the matter and, for that purpose, VCAT has all the functions and powers that VCAT had with respect to the matter at first instance.
- (2) In determining a rehearing, VCAT may—
 - (a) affirm the order of VCAT at first instance; or
 - (b) vary the order of VCAT at first instance; or
 - (c) set aside the order of VCAT at first instance and make another order in substitution for it.

158 Effect of first instance order pending rehearing

- (1) Subject to subsection (2), the making of an application for a rehearing—
 - (a) does not affect the operation of any order to which the application relates; and
 - (b) does not prevent the taking of action to enforce any order to which the application relates.
- (2) VCAT may make an order staying the operation of an order pending the determination of the application for a rehearing to which the order relates.

Division 2—Reassessment of orders

159 Reassessment

- (1) This section applies in relation to the following orders—
 - (a) a guardianship order;
 - (b) a supportive guardianship order;
 - (c) an administration order;
 - (d) a supportive administration order;
 - (e) an administration (missing person) order.
- (2) VCAT must conduct a reassessment of an order—
 - (a) within 12 months after making the order, unless VCAT orders otherwise; and
 - (b) in any case, at least once within each 3 year period after making the order, unless VCAT orders otherwise.
- (3) VCAT, on its own initiative or on the application of any other person, may conduct at any time a reassessment of any order to which this section applies.

160 Matters to be included in application to VCAT

A person applying to VCAT for a reassessment must include the following in the application—

- (a) the name and contact details of the represented person, supported person or missing person, as the case requires;
- (b) the type of order referred to in section 159 to which the application relates;
- (c) details of the reasons for making the application;

- (d) the name and contact details of the guardian, administrator, supportive guardian or supportive administrator, as the case requires;
- (e) the name and contact details of the applicant and of any person who has a direct interest in the application (if known to the applicant);

Note

Persons having a direct interest includes, amongst others, the relatives of the represented person, supported person or missing person, any primary carer, close friends, any attorney appointed under an enduring power of attorney and any supportive attorney appointed under the **Powers of Attorney Act 2014**.

- (f) any support needs of the represented person or supported person, as the case requires.

Note

Section 67 of the VCAT Act sets out additional requirements in relation to making an application.

161 Who are the parties to a reassessment?

The following persons are parties to a reassessment—

- (a) the applicant, if any;
- (b) the represented person or supported person, as the case requires;
- (c) the guardian, administrator, supportive guardian or supportive administrator, as the case requires;
- (d) any other person VCAT orders to be joined as a party to the reassessment.

Note

Section 60 of the VCAT Act provides that VCAT may in certain circumstances order that a person be joined as a party to a proceeding.

162 Who is entitled to notice of a reassessment, the hearing and any order made in the proceeding?

For the purposes of sections 72(1), 99(1) and 116(2) of the VCAT Act, the following persons are entitled to a notice referred to in each of those sections—

- (a) any party to a reassessment under this Division;
- (b) the spouse or domestic partner of the represented person, supported person or missing person, if any;
- (c) the primary carer of the represented person or supported person, if any;
- (d) any person referred to in the application as having a direct interest in the application;
- (e) any other person VCAT directs be given notice.

Note

Section 72(1) of the VCAT Act provides that an applicant for a VCAT order must serve a copy of the application on each party, each other person entitled to notice of the application under the enabling enactment (which is this Act) and each other person that VCAT so directs. Section 99(1)(b) of the VCAT Act provides that the principal registrar of VCAT must give notice of the time and place for the hearing of a proceeding to a person entitled to notice of the proceeding or hearing under the enabling enactment. Section 116(2)(a) of the VCAT Act provides that VCAT must give a copy of any order it makes in a proceeding to each party and each other person entitled to notice of the proceeding or of the order under the enabling enactment.

163 Contents of notice of application for a reassessment

- (1) A notice of an application for a reassessment given to a party to the application must include the following—

- (a) a copy of the application for the reassessment and any information filed in support of the application subject to clause 37A of Part 9 of Schedule 1 to the VCAT Act;

Note

Clause 37A of Part 9 of Schedule 1 to the VCAT Act provides that a person may make an application to the principal registrar of VCAT that any documents lodged in relation to a proceeding under this Act not be disclosed to a specified person or class of persons.

- (b) the names of—
 - (i) the parties to the proceeding; and
 - (ii) the other persons entitled to the notice under section 162;
 - (c) information about the rights of the party in relation to the application.
- (2) A notice of an application for a reassessment given to a person referred to in section 162 who is not a party to the application must include the following—
- (a) a copy of the application;
 - (b) the names of—
 - (i) the parties to the reassessment; and
 - (ii) the other persons entitled to the notice under section 162;
 - (c) information about the rights of the person to seek information about the application;
 - (d) information about how to apply to VCAT to be made a party to the proceeding.

164 Conduct of reassessment on VCAT's initiative

- (1) Before conducting a reassessment on its own initiative, VCAT must determine whether—
 - (a) to conduct a hearing in relation to the reassessment; or
 - (b) to reassess the relevant order on the papers.
- (2) In making a determination under subsection (1), VCAT must take reasonable steps to contact the represented person or supported person (as the case requires) to ascertain whether the person wishes VCAT to conduct a hearing or to reassess the relevant order on the papers.
- (3) If VCAT determines to conduct a hearing in relation to a reassessment on its own initiative, VCAT must give notice of the reassessment, at least 7 days before the proposed day of the hearing, to the parties and to the following persons—
 - (a) the spouse or domestic partner of the represented person, supported person or missing person, if any;
 - (b) the primary carer of the represented person or supported person, if any;
 - (c) the nearest relative available (other than the spouse or domestic partner) of the represented person, supported person or missing person, if any;
 - (d) any person VCAT determines to have an interest in the reassessment.
- (4) If VCAT does not propose to amend, vary or replace the relevant order and intends to conduct the reassessment on the papers, VCAT may give notice to the parties and each person specified in subsection (3) that the party or person has 14 days

after the date of the notice to request, in writing, a hearing of the reassessment.

- (5) If any of the parties or persons to whom a notice is given under subsection (4) requests a hearing within 14 days after the date of the notice, VCAT must give at least 7 days' notice of the hearing to each of the parties and persons.
- (6) If none of the parties or persons to whom a notice is given under subsection (4) requests a hearing within 14 days after the date of the notice, VCAT is not required to hold a hearing of the reassessment.
- (7) VCAT may, in a notice under subsection (4) or (5), advise that a person to whom the notice is given (other than a party) is not required to attend the hearing if that person does not have any matters to raise with VCAT in relation to the reassessment.

165 Participation of represented person or supported person at hearing

The represented person or supported person must attend in person a hearing conducted by VCAT in relation to a reassessment under this Division unless VCAT is satisfied that—

- (a) the represented person or supported person does not wish to attend the hearing in person; or
- (b) the personal attendance of the represented person or supported person at the hearing is impracticable or unreasonable, despite any arrangement that VCAT may make.

Note

See section 100(1) of the VCAT Act which provides that if VCAT thinks it appropriate, it may conduct all or part of a proceeding by means of a conference conducted using telephones, video links or any other system of telecommunication.

166 VCAT to consider role of appointed person

In the course of conducting a reassessment of an order referred to in section 159(1), VCAT must consider whether, as the case requires—

- (a) the guardian appointed at first instance has performed duties in compliance with section 41; or
- (b) the administrator appointed at first instance in an administration order has performed duties in compliance with section 55; or
- (c) the supportive guardian or supportive administrator appointed at first instance has performed duties in compliance with section 94; or
- (d) the administrator appointed at first instance in an administration (missing person) order has performed duties in compliance with section 116.

167 Order after reassessment

- (1) On completing a reassessment of an order referred to in section 159(1), VCAT may by order—
 - (a) amend, vary, continue or replace the relevant order subject to any conditions or requirements it considers necessary; or
 - (b) revoke the relevant order.
- (2) If the Public Advocate is appointed as guardian for a represented person in an order of VCAT at first instance, that appointment may only be retained on reassessment if VCAT is satisfied that no other person fulfils the requirements for appointment as guardian.

Part 8—Interstate orders

168 Application of Part

This Part applies to—

- (a) a guardianship order, a supportive guardianship order, an administration order or a supportive administration order made under a corresponding law of a participating State or Territory in relation to a person who—
 - (i) resides in the participating State or Territory and proposes entering Victoria; or
 - (ii) has property in Victoria; and
- (b) an administration (missing person) order made under a corresponding law of a participating State or Territory in relation to a person who has property in Victoria.

169 Definitions

In this Part—

corresponding law means a law that is declared to be a corresponding law by an Order in Council made under section 170;

determining body, in relation to a participating State or Territory, means a court, tribunal, board or other body that is authorised under a corresponding law to make, revoke, amend or vary a guardianship order, a supportive guardianship order, an administration order, a supportive administration order or an administration (missing person) order;

interstate order means an order made under a corresponding law of a participating State or Territory;

participating State or Territory means a State or Territory of the Commonwealth in which a corresponding law is in force.

170 Corresponding laws and orders

- (1) The Governor in Council, on the recommendation of the Minister, by Order published in the Government Gazette, may declare that a law of another State or of a Territory of the Commonwealth is a corresponding law for the purposes of this Part.
- (2) An Order under subsection (1) in relation to a law of another State or a Territory may include a declaration that an order under that law is substantially similar to a guardianship order, a supportive guardianship order, an administration order, a supportive administration order or an administration (missing person) order for the purposes of this Part.

171 Ministerial agreements

The Minister may make an agreement with a Minister responsible for administering a corresponding law about any matter in connection with the administration of this Part or a corresponding law.

172 Registration of interstate orders

- (1) VCAT may register an interstate order on the application of—
 - (a) a guardian, a supportive guardian, an administrator or a supportive administrator in a participating State or Territory; or
 - (b) the Public Advocate.

- (2) If the guardian in a participating State or Territory is a person who holds an equivalent position to the Public Advocate, VCAT may appoint the Public Advocate as the guardian for the represented person if no other person fulfils the requirements of section 32 for appointment as guardian for that person.
- (3) On registration of an interstate order, VCAT must notify the determining body which made the order that the order has been registered.
- (4) An interstate order that is registered under this Part has the same force and effect according to its terms as a guardianship order, a supportive guardianship order, an administration order, a supportive administration order or an administration order (missing person) order (as the case requires) that is made under this Act.
- (5) A guardianship order, a supportive guardianship order, an administration order, a supportive administration order or an administration (missing person) order made under this Act is not revoked in Victoria if that order is registered in a participating State or Territory.

173 Reassessment of interstate orders

- (1) An interstate order (other than an administration (missing person) order) that is registered under this Part may be reassessed by VCAT in accordance with Division 2 of Part 7.
- (2) VCAT may make any order that it is authorised to make under Division 2 of Part 7 in relation to an interstate order that is registered under this Part, including an order appointing a new guardian, supportive guardian, administrator or supportive administrator.

- (3) VCAT must notify the determining body which made the interstate order as soon as practicable after VCAT makes an order under subsection (2).
- (4) An order made by VCAT under subsection (2) has no effect in the participating State or Territory in which the interstate order was made.
- (5) The revocation, amendment or variation of an interstate order by a determining body after the order is registered under this Part has no effect in Victoria.

174 Reciprocal arrangements under the State Trustees (State Owned Company) Act 1994

Nothing in this Part affects the operation of section 12 of the **State Trustees (State Owned Company) Act 1994**.

Part 9—General provisions

175 Remuneration of administrators

- (1) An administrator (other than a person who carries on a business of, or including, the administration of estates) is not entitled to receive any fee, remuneration or other reward from the estate of a represented person or missing person for acting as administrator unless VCAT otherwise specifies in the administration order or administration (missing person) order, as the case requires.
- (2) Remuneration to which an administrator who carries on a business of, or including, the administration of estates is entitled must be—
 - (a) in accordance with a scale in relation to remuneration for administrators that is fixed by rules made under the VCAT Act; or
 - (b) as determined by VCAT.
- (3) Despite subsection (2), remuneration determined by VCAT in relation to a licensed trustee company (within the meaning of section 601RAA of the Corporations Act) must not exceed the limit on fees that may be charged by a licensed trustee company under Chapter 5D of the Corporations Act.
- (4) VCAT may request an administrator to provide VCAT with any account in the administrator's custody in relation to dealings and transactions relating to the financial matters specified in the administration order or administration (missing person) order (as the case requires) for the purpose of examining those accounts and determining whether the administrator has complied with the requirements of this Act, any order made by VCAT or any approval or specification made by VCAT in relation to remuneration under this section.

- (5) VCAT may require by order an administrator to pay to the estate of the represented person or missing person any remuneration or other reward paid or deducted from the estate which VCAT specifies.

176 Costs incurred by administrator

- (1) A court or tribunal may order that the costs incurred by an administrator arising from the administrator's dealings and transactions relating to the financial matters specified in the administration order or administration (missing person) order may be paid out of, or reimbursed from, the estate of the represented person or missing person, whether or not the appointment as administrator is no longer in force or is revoked or set aside.
- (2) An order referred to in subsection (1) may be made on an application under section 64 or 125 or otherwise, and for that purpose, a reference in section 64 or 125 to an administrator is taken to include a reference to a person whose appointment as an administrator has been revoked or set aside.

177 Resolution of disagreements between persons appointed as guardians or administrators

- (1) This section applies if—
- (a) VCAT appoints for the same represented person—
- (i) more than one guardian; or
 - (ii) more than one administrator; or
 - (iii) both a guardian and an administrator; or
- (b) VCAT appoints for the same missing person more than one administrator.

- (2) A guardian or administrator must consult any other guardian or administrator appointed for the same represented person or missing person (as the case requires) in relation to any overlap in the exercise, in accordance with the relevant orders made under this Act, of the guardian's or administrator's powers.
- (3) If there is a disagreement between persons appointed as a guardian or an administrator for the same represented person or missing person (as the case requires) about the exercise of their respective powers under each relevant order, the appointed persons must—
 - (a) first, seek to resolve the disagreement by informal means or by mediation; and
 - (b) second, if the disagreement continues, seek advice from VCAT about how to resolve the disagreement.
- (4) Unless otherwise agreed by each person appointed as a guardian or an administrator for the same represented person or unless otherwise directed by VCAT—
 - (a) a decision of a guardian prevails over a decision of an administrator, to the extent of any inconsistency; and
 - (b) subject to subsection (5), an administrator must take any necessary steps to ensure that a guardian's decision may be implemented.
- (5) If an administrator reasonably believes that taking steps to comply with the requirement of subsection (4)(b) is likely to deplete seriously the represented person's estate, the administrator—

- (a) is not required to comply with the requirement of subsection (4)(b); and
- (b) must seek advice from VCAT about how to resolve the disagreement.

178 Enforcement orders

- (1) A guardian or administrator may apply to VCAT for an enforcement order in relation to a decision or act that the guardian or administrator claims—
 - (a) is an exercise of the guardian's or administrator's powers under this Act; and
 - (b) is not recognised as an exercise of the guardian's or administrator's powers under this Act, or given effect to, by another specified person.
- (2) The specified person referred to in subsection (1)(b) is entitled to notice of the application.

Note

See section 72 of the VCAT Act.

- (3) VCAT may make an order that the specified person referred to in subsection (1)(b) recognise or give effect to the decision or act that the guardian or administrator claims is an exercise of the guardian's or administrator's powers under this Act if VCAT is satisfied that—
 - (a) the relevant decision or act is an exercise of the guardian's or administrator's powers under this Act; and
 - (b) the specified person has failed or refused to recognise or give effect to the decision or act as an exercise of the guardian's or administrator's powers under this Act; and

- (c) the order will promote the personal and social wellbeing of the represented person or missing person for whom the guardian or administrator is appointed.

Note

Section 133 of the VCAT Act provides that it is an offence not to comply with an order of VCAT.

179 Matters before a Court

- (1) If in any civil proceeding before a Court the Court considers that a party may be in need of a guardian, a supportive guardian, an administrator or a supportive administrator, the Court may refer the issue to VCAT for determination.
- (2) If a Court refers an issue to VCAT under subsection (1)—
 - (a) the referral is to be treated as if it were an application to VCAT for the making of the relevant order under this Act; and
 - (b) the prothonotary (in the case of a referral by the Supreme Court) or the principal registrar of the Court (in any other case) is to be taken to be the applicant.
- (3) If in any civil proceeding before a Court it is adjudged or ordered that money be paid to a person with a disability (whether or not that person is a party to a cause or matter), the money—
 - (a) is to be paid into court; and
 - (b) unless the Court otherwise orders, is to be paid out to the administrator (if any) for that person or State Trustees.

- (4) If any money—
- (a) is paid into court before or after the commencement of this section; and
 - (b) the money is being held in court on behalf of a person with a disability—
- the Court may by order direct that the money be paid out to the administrator (if any) for that person or State Trustees.
- (5) If the Court adjudges or orders that property (whether real or personal) be delivered up or transferred to a person with a disability (whether or not that person is a party to a cause or matter), the Court—
- (a) may order that the property be delivered up or transferred to the administrator (if any) for that person or State Trustees; and
 - (b) may give any directions for the service of the order on that administrator or State Trustees as it thinks fit.
- (6) If an order under subsection (5) is served on an administrator or State Trustees, the administrator or State Trustees must accept delivery or transfer of the property to which the order relates and the acceptance of the property is a sufficient discharge to the person delivering or transferring the property.
- (7) A copy of any order made under this section must be given by the administrator or State Trustees (as the case requires) to VCAT and the Public Advocate.
- (8) An order of the Court under this section that money be paid out to an administrator (if any) for a person or State Trustees has effect as if it were an administration order.

(9) In this section, ***Court*** means—

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

180 Effect of setting aside administration order or administration (missing person) order on previous actions of administrator

- (1) An order of a court or VCAT (the ***setting aside order***) that sets aside, or has the effect of setting aside, an administration order or administration (missing person) order does not affect the validity of anything done in accordance with the administration order or administration (missing person) order before the setting aside order takes effect.
- (2) Subsection (1) is subject to any order to the contrary by the court or VCAT making the setting aside order.

181 Compensation for acts of guardian or administrator

- (1) The Supreme Court or VCAT may order a guardian or administrator to compensate the represented person or missing person for whom the guardian or administrator is appointed for a loss caused by the guardian or administrator contravening this Act when acting as guardian or administrator.
- (2) Subsection (1) applies even if—
 - (a) the guardian or administrator is convicted of an offence in relation to the guardian's or administrator's contravention; or
 - (b) the represented person or missing person has died, in which case compensation is payable to the estate of the represented person or missing person; or

- (c) the order appointing the guardian or administrator is no longer in force or is revoked or set aside.

182 Relief from personal liability

If the Supreme Court or VCAT considers that a guardian or administrator—

- (a) is or may be personally liable for a contravention of a provision of this Act; and
- (b) acted honestly and reasonably and ought fairly to be excused for the contravention—

the Supreme Court or VCAT may relieve the guardian or administrator from all or part of that personal liability.

183 Who can apply for an order for compensation?

The following persons may apply for an order for compensation under section 181—

- (a) the represented person or a person who has ceased to be a represented person;
- (b) a former missing person;
- (c) the personal representative of a person referred to in paragraph (a) or (b);
- (d) an executor or administrator (within the meaning of the **Administration and Probate Act 1958**) of the represented person's or missing person's estate;
- (e) the Public Advocate;
- (f) the nearest relative of the represented person or missing person;
- (g) any other person the Supreme Court or VCAT determines to have a special interest in the affairs of the represented person or missing person.

184 Time limit for application for order for compensation

- (1) An application for an order for compensation under section 181 must be made—
 - (a) if the represented person or missing person has died, within 6 months after that death; or
 - (b) if the guardian or administrator has died, within 6 months after that death; or
 - (c) if both the represented person (or missing person) and the guardian (or administrator) have died, within 6 months after the first death.
- (2) The Supreme Court or VCAT may extend the time specified under subsection (1).

185 VCAT may refer matter to Supreme Court

VCAT may refer to the Supreme Court an application made to VCAT for an order for compensation under section 181.

186 No compensation

No compensation is payable by the State in relation to any damage, loss or injury sustained by a person by reason of an act or omission of a guardian or an administrator under this Act.

187 Judicial notice

All courts and persons acting judicially must take judicial notice of the signature of any person who is or has been the Public Advocate or Acting Public Advocate and of the fact that that person is or was the Public Advocate or Acting Public Advocate (as the case requires).

188 Offence for guardian to use guardianship order dishonestly

- (1) A guardian must not dishonestly use the guardianship order to obtain financial advantage for the guardian or another person.

Penalty: Level 6 imprisonment (5 years maximum) or 600 penalty units or both.

- (2) A guardian must not dishonestly use the guardianship order to cause loss to the represented person or another person.

Penalty: Level 6 imprisonment (5 years maximum) or 600 penalty units or both.

189 Offence for administrator to use administration order dishonestly

- (1) An administrator must not dishonestly use the administration order to obtain financial advantage for the administrator or another person.

Penalty: In the case of a natural person, level 6 imprisonment (5 years maximum) or 600 penalty units or both;
In the case of a body corporate, 2300 penalty units.

- (2) An administrator must not dishonestly use the administration order to cause loss to the represented person or another person.

Penalty: In the case of a natural person, level 6 imprisonment (5 years maximum) or 600 penalty units or both;
In the case of a body corporate, 2300 penalty units.

Note

Section 193 applies to an offence against subsection (1) or (2).

190 Offence for administrator to use administration (missing person) order dishonestly

- (1) An administrator must not dishonestly use the administration (missing person) order to obtain financial advantage for the administrator or another person.

Penalty: In the case of a natural person, level 6 imprisonment (5 years maximum) or 600 penalty units or both;

In the case of a body corporate, 2300 penalty units.

- (2) An administrator must not dishonestly use the administration (missing person) order to cause loss to the missing person or another person.

Penalty: In the case of a natural person, level 6 imprisonment (5 years maximum) or 600 penalty units or both;

In the case of a body corporate, 2300 penalty units.

Note

Section 193 applies to an offence against subsection (1) or (2).

191 Offence for supportive guardian to use supportive guardianship order dishonestly

- (1) A supportive guardian must not dishonestly use the supportive guardianship order to obtain financial advantage for the supportive guardian or another person.

Penalty: Level 6 imprisonment (5 years maximum) or 600 penalty units or both.

- (2) A supportive guardian must not dishonestly use the supportive guardianship order to cause loss to the supported person or another person.

Penalty: Level 6 imprisonment (5 years maximum) or 600 penalty units or both.

192 Offence for supportive administrator to use supportive administration order dishonestly

- (1) A supportive administrator must not dishonestly use the supportive administration order to obtain financial advantage for the supportive administrator or another person.

Penalty: In the case of a natural person, level 6 imprisonment (5 years maximum) or 600 penalty units or both;

- (2) A supportive administrator must not dishonestly use the supportive administration order to cause loss to the supported person or another person.

Penalty: In the case of a natural person, level 6 imprisonment (5 years maximum) or 600 penalty units or both;

193 Criminal liability of officers of bodies corporate—failure to exercise due diligence

- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.

- (2) For the purposes of subsection (1), the following provisions are specified—

- (a) section 43(5);
- (b) section 189(1);
- (c) section 189(2);

- (d) section 190(1);
 - (e) section 190(2).
- (3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to—
- (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
 - (d) any other relevant matter.
- (4) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.
- (5) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.
- (6) In this section—
- body corporate*** has the same meaning as corporation has in section 57A of the Corporations Act;

officer, in relation to a body corporate, means—

- (a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or
- (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.

194 Regulations

- (1) The Governor in Council may make regulations for or with respect to—
 - (a) prescribing any treatment to be a special medical procedure for the purposes of Part 6; and
 - (b) prescribing annual fees to be paid in relation to estates which are the subject of an administration order; and
 - (c) any matter or thing authorised or required to be prescribed or necessary to be prescribed for carrying this Act into effect.
- (2) Regulations under this Act—
 - (a) may be of general or of specially limited application; and
 - (b) may differ according to differences in time, place or circumstance; and
 - (c) may impose a penalty not exceeding 10 penalty units for any contravention of the regulations.
- (3) Regulations made under subsection (1)(b)—
 - (a) may prescribe fees in relation to a particular class or classes of estates only; and

- (b) may prescribe different fees in relation to different classes of estates; and
 - (c) may authorise VCAT to waive fees in particular cases or classes of cases.
- (4) Before the Governor in Council may make regulations under subsection (1)(b), the Minister must advise the Governor in Council that the Minister—
- (a) has consulted the President of VCAT; and
 - (b) is of the opinion that the fees to be charged in the proposed regulations will not result in an amount of fees being collected in any year that will exceed the amount required to meet the costs and expenses of VCAT in relation to proceedings under this Act in that year.

S. 195
expired by
force of
No. 13/2019
s. 195(5).

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Part 10—Repeal of Guardianship and Administration Act 1986 and savings and transitional provisions

196 Definitions

(1) In this Part—

commencement day means the day on which
section 197 comes into operation;

new Act means the **Guardianship and
Administration Act 2019**;

old Act means the **Guardianship and
Administration Act 1986**.

(2) A word or expression that is defined in the old Act
and is used in this Part in relation to the old Act
has the same meaning as is given in the old Act.

197 Guardianship and Administration Act 1986 repealed

(1) The **Guardianship and Administration
Act 1986** is repealed.

(2) Except as is expressly or by necessary implication
provided in the new Act, all persons, things and
circumstances appointed or created by or under
the old Act or existing or continuing under the old
Act immediately before commencement day
continue under and subject to the new Act to have
the same status, operation and effect as they
would have had if the old Act had not been
repealed.

(3) On and after commencement day, any reference
in any Act (other than the new Act or regulations
under that Act), regulation, subordinate instrument
or other document whatsoever to the old Act is to
be construed as a reference to the new Act unless
the contrary intention appears.

- (4) Nothing in this Part limits or otherwise affects the operation of the **Interpretation of Legislation Act 1984**.

198 Guardianship orders made under the old Act

- (1) Despite the repeal of the old Act, a guardianship order made under section 22 or 33 of the old Act and in force immediately before commencement day remains in force for the period specified in the order unless sooner revoked or set aside by an order of a court or VCAT and—
- (a) subject to anything to the contrary in this Part, the provisions of the old Act continue to apply, and the provisions of the new Act do not apply, to the guardian appointed under that guardianship order and to the represented person; and
 - (b) without limiting the generality of paragraph (a), the powers and duties of the guardian appointed by the guardianship order are the powers and duties conferred on the guardian under the old Act; and
 - (c) if, before the revocation or setting aside of the guardianship order, the alternative guardian takes over the office of the guardian in accordance with section 35 of the old Act, the alternative guardian has the same powers and duties with respect to the represented person as the guardian had immediately before the guardian's death, absence or incapacity.
- (2) On and after commencement day, the following provisions of the new Act apply to the guardian and to the represented person referred to in subsection (1)—
- (a) section 177 of the new Act (resolution of disagreements);

- (b) section 178 of the new Act (enforcement orders);
 - (c) sections 181 to 186 of the new Act (compensation), as if the contravention relevant to those provisions were a contravention of a provision under the old Act occurring after commencement day;
 - (d) section 188 of the new Act (offences to use guardianship order dishonestly).
- (3) On and after commencement day, a temporary guardianship order made under section 33 of the old Act may be renewed once in accordance with section 33(2) of that Act and VCAT must hold a hearing to determine whether a guardianship order should be made under the new Act as soon as practicable after the making of the temporary order under the old Act but within 42 days after making that order.

199 Administration orders made under the old Act

- (1) Despite the repeal of the old Act, an administration order made under section 46 or 60 of the old Act and in force immediately before commencement day remains in force for the period specified in the order unless sooner revoked or set aside by an order of a court or VCAT and—
- (a) subject to anything to the contrary in this Part, the provisions of the old Act continue to apply in relation to the administrator appointed under that administration order and to the represented person; and
 - (b) without limiting the generality of paragraph (a), the powers and duties of the administrator appointed by the administration order are the powers

and duties conferred on the administrator
under the old Act.

- (2) On and after commencement day, the following provisions of the new Act apply to the administrator and to the represented person referred to in subsection (1)—
- (a) section 51(3), (4) and (5) of the new Act, if the administration order made under the old Act conferred on the administrator the power to bring and defend actions and other legal proceedings in the name of the represented person under section 58B of the old Act;
 - (b) Division 8 of Part 3 of the new Act;
 - (c) section 177 of the new Act (resolution of disagreements);
 - (d) section 178 of the new Act (enforcement orders);
 - (e) sections 181 to 186 of the new Act (compensation), as if the contravention relevant to those provisions were a contravention of a provision under the old Act occurring after commencement day;
 - (f) section 189 of the new Act (offences to use administration order dishonestly).
- (3) On and after commencement day, a temporary administration order made under section 60 of the old Act may be renewed once in accordance with section 60(2) of that Act and VCAT must hold a hearing to determine whether an administration order should be made under the new Act as soon as practicable after the making of the temporary order under the old Act but within 42 days after making that order.

**200 Administration orders made under the old Act in
respect of the estate of a missing person**

- (1) Despite the repeal of the old Act, an administration order made under section 60AB or 60AG of the old Act and in force immediately before commencement day remains in force for the period specified in the order unless sooner revoked or set aside by an order of a court or VCAT and—
 - (a) subject to anything to the contrary in this Part, the provisions of the old Act continue to apply in relation to the administrator appointed under that administration order and to the missing person; and
 - (b) without limiting the generality of paragraph (a), the powers and duties of the administrator appointed by the administration order are the powers and duties conferred on the administrator under the old Act.
- (2) On and after commencement day, the following provisions of the new Act apply to the administrator and to the missing person referred to subsection (1)—
 - (a) section 113(3), (4) and (5) of the new Act, if the administration order made under the old Act conferred on the administrator the power to bring and defend actions and other legal proceedings in the name of the missing person under section 58B of the old Act (as modified by section 60AI of the old Act);
 - (b) Division 5 of Part 5 of the new Act;
 - (c) section 177 of the new Act (resolution of disagreements);
 - (d) section 178 of the new Act (enforcement orders);

- (e) sections 181 to 186 of the new Act (compensation), as if the contravention relevant to those provisions were a contravention of a provision under the old Act occurring after commencement day;
 - (f) section 190 of the new Act (offences to use administration (missing person) order dishonestly).
- (3) On and after commencement day, a temporary administration order appointing an administrator in respect of the estate of a missing person made under section 60AG of the old Act may be renewed once in accordance with section 60AG(2) of that Act and VCAT must hold a hearing to determine whether an administration (missing person) order should be made under the new Act as soon as practicable after the making of the temporary order under the old Act but within 42 days after making that order.

201 Applications made under the old Act for guardianship orders and administration orders

- (1) On and after commencement day, an application made under section 19 of the old Act for a guardianship order that is not determined before commencement day—
- (a) is taken to be an application made under section 22 of the new Act for a guardianship order; and
 - (b) must be determined by VCAT in accordance with the new Act.
- (2) On and after commencement day, an application made under section 43 of the old Act for an administration order that is not determined before commencement day—

- (a) is taken to be an application made under section 23 of the new Act for an administration order; and
 - (b) must be determined by VCAT in accordance with the new Act.
- (3) On and after commencement day, an application made under section 60AA of the old Act for an administration order in respect of the estate of a missing person that is not determined before commencement day—
 - (a) is taken to be an application made under section 99 of the new Act for an administration (missing person) order; and
 - (b) must be determined by VCAT in accordance with the new Act.

202 Special medical procedures

- (1) On and after commencement day, an application for the Tribunal's consent to the carrying out of any special medical procedure made under section 42B of the old Act that is not determined before commencement day must be determined in accordance with Part 6 of the new Act.
- (2) On and after commencement day, a consent given by the Tribunal under section 42E of the old Act is taken to be a consent given by VCAT under section 145 of the new Act.
- (3) On and after commencement day, an authority conferred by the Tribunal under section 42F of the old Act is taken to be an authority conferred by VCAT under section 146 of the new Act.

203 Rehearings of orders made under the old Act

Despite the repeal of the old Act, on and after commencement day—

- (a) a person may apply under section 60A of the old Act, within 28 days after an order under that Act was made, for a rehearing (or for leave to apply for a rehearing) in relation to that order; and
- (b) any application for a rehearing (or for leave to apply for a rehearing) in relation to an order made under the old Act that is not determined before commencement day must be determined by VCAT in accordance with the old Act; and
- (c) in conducting a rehearing in relation to an order made under the old Act, VCAT is taken to have the same powers and functions as it had with respect to the matter at first instance under the old Act; and
- (d) any order made by VCAT in determining the application for the rehearing is taken to be an order under the old Act and, accordingly, sections 198, 199 and 200 of the new Act apply to that order.

204 Reassessments of orders made under the old Act

- (1) A reassessment of an order made under the old Act (irrespective of whether the application for the reassessment is made before or after commencement day or on VCAT's initiative before or after commencement day) that is not determined before commencement day must be conducted in accordance with the new Act.

- (2) Despite anything to the contrary in subsection (1)—
 - (a) in the course of conducting the reassessment, VCAT is not to consider whether, as the case requires—
 - (i) the guardian appointed at first instance has performed duties in compliance with section 41 of the new Act; or
 - (ii) the administrator appointed at first instance in an administration order has performed duties in compliance with section 55 of the new Act; and
 - (b) on completing the reassessment, VCAT—
 - (i) must revoke the order; and
 - (ii) may make an order under the new Act.

205 Interstate orders

- (1) On and after commencement day, an agreement referred to in section 63D of the old Act is taken to be an agreement referred to in section 171 of the new Act.
- (2) On and after commencement day, an interstate order that is registered under section 63E of the old Act is taken to be an interstate order registered under section 172 of the new Act.

206 VCAT may make orders of a transitional nature

- (1) If any difficulty arises in a proceeding because of the operation of this Part, VCAT may make any order of a transitional nature it considers appropriate to resolve the difficulty.
- (2) VCAT may make such an order on the application of any party to the proceeding or on its own initiative.

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Pt 11
(Headings
and ss 207–
222)
repealed by
No. 13/2019
s. 222.

* * * * *

Sch. 1
repealed by
No. 13/2019
s. 222.

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Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 19 December 2018

Legislative Council: 2 May 2019

The long title for the Bill for this Act was "A Bill for an Act to re-enact with amendments the law relating to guardianship and administration, to repeal the **Guardianship and Administration Act 1986** and to amend consequentially various other Acts and for other purposes."

The **Guardianship and Administration Act 2019** was assented to on 4 June 2019 and came into operation as follows:

Part 1 (sections 1–9), section 195 on 28 February 2020: Special Gazette (No. 91) 25 February 2020 page 1; sections 10–194, 196–222, Schedule 1 on 1 March 2020: section 2(2).

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

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2 Table of Amendments

This publication incorporates amendments made to the **Guardianship and Administration Act 2019** by Acts and subordinate instruments.

Guardianship and Administration Act 2019, No. 13/2019

<i>Assent Date:</i>	4.6.19
<i>Commencement Date:</i>	S. 222 on 1.3.20: s. 2(2); s. 195(5) on 28.2.20 Special Gazette (No. 91) 25.2.20 p. 1
<i>Note:</i>	S. 222 repealed Pt 11 (ss 207–222), Sch. 1 on 1.3.21; s. 195(5) provided that s. 195 expired on 28.2.22
<i>Current State:</i>	This information relates only to the provision/s amending the Guardianship and Administration Act 2019

Disability (National Disability Insurance Scheme Transition) Amendment Act 2019, No. 19/2019

<i>Assent Date:</i>	25.6.19
<i>Commencement Date:</i>	S. 262(1) on 1.3.20: s. 2(2); s. 262(2) on 1.7.20: s. 2(4)
<i>Current State:</i>	This information relates only to the provision/s amending the Guardianship and Administration Act 2019

Local Government Act 2020, No. 9/2020

<i>Assent Date:</i>	24.3.20
<i>Commencement Date:</i>	S. 390(Sch. 1 item 46) on 6.4.20: Special Gazette (No. 150) 24.3.20 p. 1
<i>Current State:</i>	This information relates only to the provision/s amending the Guardianship and Administration Act 2019

Social Services Regulation Act 2021, No. 37/2021 (as amended by No. 40/2022)

<i>Assent Date:</i>	21.9.21
<i>Commencement Date:</i>	S. 393 on 1.7.24: s. 2(2)
<i>Current State:</i>	This information relates only to the provision/s amending the Guardianship and Administration Act 2019

Mental Health and Wellbeing Act 2022, No. 39/2022

<i>Assent Date:</i>	6.9.22
<i>Commencement Date:</i>	S. 827 on 1.9.23: s. 2(2)
<i>Current State:</i>	This information relates only to the provision/s amending the Guardianship and Administration Act 2019

Disability and Social Services Regulation Amendment Act 2023, No. 9/2023

<i>Assent Date:</i>	23.5.23
<i>Commencement Date:</i>	S. 234 on 24.5.23: s. 2(1); s. 256 on 1.7.24: s. 2(3)
<i>Current State:</i>	This information relates only to the provision/s amending the Guardianship and Administration Act 2019

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Justice Legislation Further Amendment (Miscellaneous) Act 2026, No. 14/2026

<i>Assent Date:</i>	14.4.26
<i>Commencement Date:</i>	Ss 63, 64 on 15.4.26: s. 2(1)
<i>Current State:</i>	This information relates only to the provision/s amending the Guardianship and Administration Act 2019

3 Explanatory details

No entries at date of publication.