

Version No. 040
Guardianship and Administration Act 1986

Act No. 58/1986

Version incorporating amendments as at 11 February 1999

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1. Purpose	1
2. Commencement	1
3. Definitions	1
4. Objects of Act	5
PART 2—<i>Repealed</i>	6
5–13. <i>Repealed</i>	6
PART 3—THE PUBLIC ADVOCATE	7
14. The Public Advocate	7
15. Functions of the Public Advocate	7
16. Powers and duties of the Public Advocate	8
17. Staff of office of the Public Advocate	10
18. Delegation	10
PART 4—GUARDIANSHIP ORDERS	12
Division 1—Application for Guardianship Order	12
19. Application for guardianship order	12
20. Who is entitled to notice of an application?	12
21. Date for hearing	13
Division 2—Appointment of Guardian	13
22. Guardianship order	13
23. Persons eligible as guardians	14
Division 3—Powers and Duties of Guardian	16
24. Authority of plenary guardian	16
25. Authority of limited guardian	17
26. Power to enforce guardianship order	17

<i>Section</i>	<i>Page</i>
27. Special powers in respect of persons with a disability	18
28. Exercise of authority by guardian	19
29. Ancillary powers of guardian	20
30. Guardian may seek advice	20
31. Notice of death of represented person	21
Division 4—Temporary Orders	21
32. Application for temporary order	21
33. Temporary order	21
Division 5—Appointment of Alternative Guardian	22
34. Appointment of alternative guardian	22
35. Authority of alternative guardian	23
Division 6—Powers of Board with Respect to Medical Procedures	23
36. Purpose of Division	23
37. Consent of Tribunal required for certain medical procedures	24
38. Guardian not to consent to certain medical procedures unless the Tribunal also consents	24
39. Represented person is a party	25
39A. Public Advocate entitled to notice of application	25
40. Date for hearing	25
41. Wishes of the represented person to be ascertained	25
42. Consent of the Tribunal	25
PART 5—ADMINISTRATION ORDERS	27
Division 1—Application for Administration Order	27
43. Application for administration order	27
44. Who is entitled to notice of an application?	27
45. Date for hearing	28
Division 2—Appointment of Administrator	28
46. Appointment of administrator	28
47. Persons eligible as administrators	29
Division 3—Powers and Duties of Administrator	31
48. Power of administrator	31
49. Exercise of power by administrator	32
50. Ancillary powers of administrator	32
51. Powers of investment	32
52. Restriction on powers of represented person to enter into contracts etc.	33
53. Interest of represented person in property not to be altered by sale or other disposition of property	34
54. Tribunal may open will	35

<i>Section</i>	<i>Page</i>
55. Administrator may seek advice	35
56. Application to the Tribunal by a creditor etc.	36
57. Power to administrator to act until notice of discharge etc. received	37
58. Accounts	37
58A. Power to make regulations setting fees	39
Division 3A—Additional Powers and Duties of Administrators	40
58B. Powers and duties in relation to represented persons	40
58C. Exercise of certain powers	43
58D. Action upon a person ceasing to be a represented person	44
58E. Represented person entitled to inspection of accounts	45
58F. Sale of personal effects if unclaimed within 2 years from date of discharge	46
58G. Power to open will	46
Division 4—Temporary Orders	46
59. Application for temporary order	46
60. Temporary order	47
PART 6—REVIEWS OF ORDERS	49
61. Reviews	49
62. Who is entitled to notice of a review?	49
63. Order after review	50
PART 7—GENERAL PROVISIONS	51
64, 65. <i>Repealed</i>	50
66. Matters before a Court	51
67–69. <i>Repealed</i>	52
70. Immunity from suit	53
71, 72. <i>Repealed</i>	53
73. Judicial notice	54
74–78. <i>Repealed</i>	53
79. Audit	54
80. General penalty	55
81. Offences by bodies corporate	55
82. Regulations	55
PART 8—AMENDMENTS TO THE PUBLIC TRUSTEE ACT 1958	57
83. Principal Act	57
84. <i>Repealed</i>	56

<i>Section</i>	<i>Page</i>
85. Existing protected persons	57
86. <i>Repealed</i>	58
PART 9—<i>Repealed</i>	58
87. <i>Repealed</i>	58
<hr/>	
SCHEDULES	60
SCHEDULES 1, 2— <i>Repealed</i>	59
SCHEDULE 3—Provisions with respect to the Public Advocate	61
<hr/> <hr/>	
NOTES	64
1. General Information	64
2. Table of Amendments	65
3. Explanatory Details	67
INDEX	67

Version No. 040
Guardianship and Administration Act 1986
Act No. 58/1986

Version incorporating amendments as at 11 February 1999

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

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

2. Commencement

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

3. Definitions

(1) In this Act—

"administration order" means—

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

S. 3(1) def. of "administration order" amended by No. 52/1998 s. 116(1)(a).

S. 3(1) def. of "Administrative Appeals Tribunal" repealed by No. 52/1998 s. 116(1)(b).

* * * * *

Guardianship and Administration Act 1986
Act No. 58/1986

s. 3

"administrator" means the State Trust or any other person named as administrator in an administration order;

S. 3(1) def. of "administrator" amended by No. 55/1987 s. 57(2)(Sch. 4 item 1).
S. 3(1) def. of "Board" repealed by No. 52/1998 s. 116(1)(b).

* * * * *

"determination" in relation to the Tribunal, includes order, direction, consent, advice and approval;

S. 3(1) def. of "determination" amended by No. 52/1998 s. 116(1)(c).

"disability" in relation to a person, means intellectual impairment, mental illness, brain damage, physical disability or senility;

* * * * *

S. 3(1) def. of "division" repealed by No. 52/1998 s. 116(1)(b).

* * * * *

S. 3(1) def. of "executive officer" repealed by No. 52/1998 s. 116(1)(b).

"guardian" means the Public Advocate, person or body named as a plenary guardian or limited guardian in a guardianship order or a person who becomes a guardian under section 35;

"guardianship order" means—

S. 3(1) def. of "guardianship order" amended by No. 52/1998 s. 116(1)(d).

- (a) an order of the Tribunal appointing a person as plenary guardian or limited guardian under section 22; or

Guardianship and Administration Act 1986

Act No. 58/1986

s. 3

- (b) an order of the Tribunal appointing a person as an alternative guardian under section 34; or
- (c) a temporary order of the Tribunal made under section 33;

S. 3(1) def. of "income" inserted by No. 45/1994 s. 32(1)(a).

"income" includes rents and profits;

"major medical procedure" means a procedure specified to be a major medical procedure in guidelines made under section 37(3);

S. 3(1) def. of "member" repealed by No. 52/1998 s. 116(1)(b).

* * * * *

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

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

"prescribed" means prescribed by the regulations;

* * * * *

S. 3(1) def. of "President" repealed by No. 52/1998 s. 116(1)(b).

"primary carer" means any person who is primarily responsible for providing support or care to a person;

"principal registrar" means principal registrar of the Tribunal;

S. 3(1) def. of "principal registrar" inserted by No. 52/1998 s. 116(1)(e).

"Public Advocate" means the person appointed as the Public Advocate under Part 3;

* * * * *

S. 3(1) def. of "Public Trustee" repealed by No. 55/1987 s. 57(2)(Sch. 4 item 2).

"regulations" means regulations made under this Act;

"represented person" means any person in respect of whom—

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

Guardianship and Administration Act 1986
Act No. 58/1986

s. 4

S. 3(1) def. of "State Trust" inserted by No. 55/1987 s. 57(2)(Sch. 4 item 3), repealed by No. 45/1994 s. 32(1)(b).

* * * * *

S. 3(1) def. of "Tribunal" inserted by No. 52/1998 s. 116(1)(e).

"Tribunal" means Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**.

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

S. 3(3) inserted by No. 45/1994 s. 32(2).

- (3) In this Act a reference to the State Trust is to be construed as a reference to State Trustees Limited A.C.N. 064 593 148.

4. *Objects of Act*

- (1) The objects of this Act are—

S. 4(1)(a) repealed by No. 52/1998 s. 116(2).

* * * * *

- (b) to provide for the appointment of a Public Advocate; and

-
- (c) to enable the making of guardianship orders and administration orders; and
 - (d) to ensure that persons with a disability and represented persons are informed of and make use of the provisions of this Act.
- (2) It is the intention of Parliament that the provisions of this Act be interpreted and that every function, power, authority, discretion, jurisdiction and duty conferred or imposed by this Act is to be exercised or performed so that—
- (a) the means which is the least restrictive of a person's freedom of decision and action as is possible in the circumstances is adopted; and
 - (b) the best interests of a person with a disability are promoted; and
 - (c) the wishes of a person with a disability are wherever possible given effect to.

* * * * *

Pt 2 (Heading and ss 5–13) amended by Nos 23/1994 s. 118(Sch. 1 item 23.1), 46/1998 s. 7(Sch. 1), repealed by No. 52/1998 s. 117.

PART 3—THE PUBLIC ADVOCATE

14. *The Public Advocate*

- (1) There is to be appointed a Public Advocate.
- (2) Schedule 3 has effect with respect to the Public Advocate.

15. *Functions of the Public Advocate*

The functions of the Public Advocate are—

- (a) to promote, facilitate and encourage the provision, development and co-ordination of services and facilities provided by government, community and voluntary organisations for persons with a disability with a view to—
 - (i) promoting the development of the ability and capacity of persons with a disability to act independently; and
 - (ii) minimizing the restrictions on the rights of persons with a disability; and
 - (iii) ensuring the maximum utilization by persons with a disability of those services and facilities; and
 - (iv) encouraging the involvement of voluntary organizations and relatives, guardians and friends in the provision and management of those services and facilities; and
 - (b) to co-ordinate and support the establishment of organizations involved with persons with a disability, relatives, guardians and friends for the purpose of—
 - (i) instituting citizen advocacy programs and other advocacy programs; and
-

- (ii) undertaking community education projects; and
- (iii) promoting family and community responsibility for guardianship; and
- (c) to arrange, co-ordinate and promote informed public awareness and understanding by the dissemination of information with respect to—
 - (i) the provisions of this Act and any other legislation dealing with or affecting persons with a disability; and
 - (ii) the role of the Tribunal and the Public Advocate; and
 - (iii) the duties, powers and functions of guardians and administrators under this Act; and
 - (iv) the protection of persons with a disability from abuse and exploitation and the protection of their rights; and
- (d) to investigate, report and make recommendations to the Minister on any aspect of the operation of this Act referred to the Public Advocate by the Minister.

S. 15(c)(ii)
amended by
No. 52/1998
s. 118(1).

16. Powers and duties of the Public Advocate

- (1) The Public Advocate may—
 - (a) where appointed by the Tribunal be—
 - (i) a guardian (whether plenary or limited);
or
 - (ii) an alternative guardian (whether plenary or limited); or
 - (iii) an administrator; and

S. 16(1)(a)
amended by
No. 52/1998
s. 118(2)(a).

Guardianship and Administration Act 1986

Act No. 58/1986

s. 16

S. 16(1)(b)
amended by
No. 52/1998
s. 118(2)(a).

(b) make an application to the Tribunal for the appointment of a guardian or administrator or the review of a guardianship order or an administration order; and

S. 16(1)(c)
repealed by
No. 52/1998
s. 118(2)(b).

* * * * *

S. 16(1)(d)
amended by
No. 52/1998
s. 118(2)(c).

(d) submit a report to the Tribunal on any matter referred to the Public Advocate for a report by the Tribunal; and

(e) seek assistance in the best interests of any person with a disability from any government department, institution, welfare organization or service provider; and

(f) make representations on behalf of or act for a person with a disability; and

(g) give advice to any person as to the provisions of this Act and in respect of applications for guardianship or administration; and

(h) investigate any complaint or allegation that a person is under inappropriate guardianship or is being exploited or abused or in need of guardianship; and

(i) provide information for persons who are or propose to be guardians; and

S. 16(1)(j)
amended by
No. 42/1995
s. 223(Sch. 1
item 2),
substituted by
No. 52/1998
s. 118(2)(d).

(j) report and make recommendations to the Tribunal on behalf of any person with a disability in any proceeding under the **Equal Opportunity Act 1995**; and

S. 16(1)(k)
inserted by
No. 52/1998
s. 118(2)(d).

-
- (k) perform any other function and exercise any other power conferred on him or her by this or any other Act.
 - (2) Where the Public Advocate is appointed as the guardian of a represented person or as the administrator of the estate of a represented person—
 - (a) the person for the time being holding the office or performing the functions of the Public Advocate is the guardian of that represented person or the administrator of the estate of that represented person as the case may be; and
 - (b) the Public Advocate must use his or her best endeavours to find an appropriate person to be appointed as the guardian or administrator.

17. *Staff of office of the Public Advocate*

- (1) Any employees that are necessary to enable the functions of the Public Advocate to be properly carried out may be employed under Part 3 of the **Public Sector Management and Employment Act 1998**.

S. 17(1)
substituted by
No. 46/1998
s. 7(Sch. 1).

* * * * *

S. 17(2)
repealed by
No. 52/1998
s. 118(3)(a).

18. *Delegation*

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

Guardianship and Administration Act 1986

Act No. 58/1986

s. 18

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

S. 18(2)
amended by
No. 52/1998
s. 118(3)(b)
(i)(ii).

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

PART 4—GUARDIANSHIP ORDERS

Division 1—Application for Guardianship Order

19. *Application for guardianship order*

(1) Any person may apply to the Tribunal for an order appointing—

S. 19(1)
amended by
No. 52/1998
s. 119(1).

(a) a plenary guardian; or

(b) a limited guardian—

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

(2) In addition to any other parties, the following are parties to a proceeding on an application under sub-section (1)—

S. 19(2)
substituted by
No. 52/1998
s. 119(2).

(a) the person in respect of whom the application is made; and

(b) the person proposed as guardian.

* * * * *

S. 19(3)
repealed by
No. 52/1998
s. 119(3).

20. *Who is entitled to notice of an application?*

Each of the following is entitled to notice of the making of an application for a guardianship order, notice of the hearing of the application and notice of any order made by the Tribunal in respect of the application—

S. 20
amended by
No. 33/1989
ss 4(a), 5(1),
substituted by
No. 52/1998
s. 120.

(a) the nearest relative available of the person in respect of whom the application is made, not being—

(i) the applicant; or

- (ii) the person proposed as guardian; or
- (iii) a person referred to in paragraph (d);
- (b) the primary carer of the person in respect of whom the application is made;
- (c) the Public Advocate;
- (d) any administrator of the estate of the person in respect of whom the application is made¹.

S. 21
amended by
No. 52/1998
s. 121(1)(a).

21. *Date for hearing*

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

Division 2—Appointment of Guardian

22. *Guardianship order*

S. 22(1)
amended by
No. 52/1998
s. 121(1)(a).

- (1) If the Tribunal is satisfied that the person in respect of whom an application for an order appointing a guardian is made—
 - (a) is a person with a disability; and
 - (b) is unable by reason of the disability to make reasonable judgments in respect of all or any of the matters relating to her or his person or circumstances; and
 - (c) is in need of a guardian—

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

S. 22(2)
amended by
No. 52/1998
s. 121(1)(a).

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

-
- | | |
|--|--|
| (3) The Tribunal cannot make an order under subsection (1) unless it is satisfied that the order would be in the best interests of the person in respect of whom the application is made. | S. 22(3)
amended by
No. 52/1998
s. 121(1)(a). |
| (4) The Tribunal cannot make an order appointing a plenary guardian unless it is satisfied that a limited guardianship order would be insufficient to meet the needs of the person in respect of whom the application is made. | S. 22(4)
amended by
No. 52/1998
s. 121(1)(a). |
| (5) Where the Tribunal makes an order appointing a limited guardian in respect of a person the order made must be that which is the least restrictive of that person's freedom of decision and action as is possible in the circumstances. | S. 22(5)
amended by
No. 52/1998
s. 121(1)(a). |

23. *Persons eligible as guardians*

- | | |
|---|--|
| (1) The Tribunal may appoint as a plenary guardian or limited guardian any person who has attained the age of 18 years and consents to act as guardian if the Tribunal is satisfied that that person—

(a) will act in the best interests of the proposed represented person; and

(b) is not in a position where the person's interests conflict or may conflict with the interests of the proposed represented person; and

(c) is a suitable person to act as the guardian of the proposed represented person. | S. 23(1)
amended by
No. 52/1998
s. 121(1)(a). |
| (2) In determining whether a person is suitable to act as the guardian of a represented person, the Tribunal must take into account—

(a) the wishes of the proposed represented person; and

(b) the desirability of preserving existing family relationships; and | S. 23(2)
amended by
No. 52/1998
s. 121(1)(a). |
-

(c) the compatibility of the person proposed as guardian with the proposed represented person and with the administrator (if any) of the proposed represented person's estate; and

(d) whether the person proposed as guardian will be available and accessible to the proposed represented person so as to fulfil the requirements of guardianship of that person.

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

(4) Where it appears to the Tribunal that—

(a) the person in respect of whom the application is made is a person in respect of whom an order could be made under section 22; and

(b) no other person fulfils the requirements of sub-section (1) for appointment as the guardian of that person—

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

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

(a) each person fulfils the requirements of sub-section (1); and

S. 23(4)
amended by
No. 52/1998
s. 121(1)(a).

S. 23(5)
amended by
No. 52/1998
s. 121(1)(a).

(b) the Tribunal considers it appropriate to do so.

S. 23(5)(b)
amended by
No. 52/1998
s. 121(1)(a).

Division 3—Powers and Duties of Guardian

24. Authority of plenary guardian

- (1) A guardianship order appointing a plenary guardian confers on the plenary guardian in respect of the represented person all the powers and duties which the plenary guardian would have if he or she were a parent and the represented person his or her child.
- (2) Without limiting sub-section (1) an order appointing a plenary guardian confers on the person named as plenary guardian the power—
 - (a) to decide where the represented person is to live, whether permanently or temporarily; and
 - (b) to decide with whom the represented person is to live; and
 - (c) to decide whether the represented person should or should not be permitted to work and, if so—
 - (i) the nature or type of work; and
 - (ii) for whom the represented person is to work; and
 - (iii) matters related thereto; and
 - (d) except as otherwise provided in Division 6, to consent to any health care that is in the best interests of the represented person.

* * * * *

S. 24(3)
repealed by
No. 52/1998
s. 121(1)(b).

- (4) Where a decision is made, action taken, consent given or thing done by a plenary guardian under an order made under Division 2 the decision, action, consent or thing has effect as if it had been made, taken, given or done by the represented person and the represented person had the legal capacity to do so.

25. *Authority of limited guardian*

S. 25(1)
amended by
No. 52/1998
s. 121(1)(c)(i).

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

S. 25(2)
amended by
No. 52/1998
s. 121(1)(c)(i),
repealed by
No. 52/1998
s. 121(1)(c)(ii).

* * * * *

S. 25(3)
amended by
No. 52/1998
s. 121(1)(c)(i).

- (3) Where a decision is made, action taken, consent given or thing done by a limited guardian under an order of the Tribunal under Division 2, the decision, action, consent or thing has effect as if it had been made, taken, given or done by the represented person and the represented person had the legal capacity to do so.

26. *Power to enforce guardianship order*

S. 26(1)
amended by
No. 52/1998
s. 121(1)(d).

- (1) Without limiting section 24 or 25, if the Tribunal makes an order under Division 2 appointing a plenary guardian or a limited guardian, the Tribunal may where it considers it appropriate to do so having regard to the circumstances of the case, specify in the order that the person named as

plenary guardian or limited guardian or some other specified person is empowered to take such measures or actions as are specified in the order to ensure that the represented person complies with any decision of the guardian in the exercise of the powers and duties conferred by the order.

- (2) Where a guardian or other person specified in the order under sub-section (1) takes any measure or action specified in the order in the belief that—
- (a) the measure or action is in the best interests of the represented person; and
 - (b) it is reasonable to take that measure or action in the circumstances—

the guardian or other person is not liable to any action for false imprisonment or assault or any other action, liability, claim or demand arising out of the taking of that measure or action.

27. *Special powers in respect of persons with a disability*

- (1) If the Tribunal has received information on oath that a person with a disability in respect of whom an application has been made under section 19—
- (a) is being unlawfully detained against her or his will; or
 - (b) is likely to suffer serious damage to her or his physical, emotional or mental health or well-being unless immediate action is taken—

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

S. 27(1)
amended by
No. 52/1998
s. 121(1)(e).

Guardianship and Administration Act 1986

Act No. 58/1986

s. 28

S. 27(2)
amended by
No. 52/1998
s. 121(1)(e).

- (2) If after receiving a report under sub-section (1) the Tribunal is satisfied that sub-section (1)(a) or (1)(b) applies the Tribunal may make an order enabling the person with a disability to be taken to and cared for at a place specified in the order until the application under section 19 is heard.
- (3) A member of the police force acting under an order made under sub-section (1) may with such assistance as is necessary use such force as is reasonably necessary to enter the premises where the person with a disability is.
- (4) A person must not delay or obstruct a person who is acting under an order under this section.
Penalty: 20 penalty units.

S. 27(4)
substituted by
No. 52/1998
s. 121(2).

28. *Exercise of authority by guardian*

- (1) A guardian must act in the best interests of the represented person.
- (2) Without limiting sub-section (1), a guardian acts in the best interests of a represented person if the guardian acts as far as possible—
 - (a) as an advocate for the represented person;
and
 - (b) in such a way as to encourage the represented person to participate as much as possible in the life of the community; and
 - (c) in such a way as to encourage and assist the represented person to become capable of caring for herself or himself and of making reasonable judgments in respect of matters relating to her or his person; and
 - (d) in such a way as to protect the represented person from neglect, abuse or exploitation;
and

-
- (e) in consultation with the represented person,
taking into account, as far as possible, the
wishes of the represented person.

29. *Ancillary powers of guardian*

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

30. *Guardian may seek advice*

- (1) A guardian may apply for the advice of the Tribunal upon any matter relating to the scope of the guardianship order or the exercise of any power by the guardian under the guardianship order.

S. 30(1)
amended by
No. 52/1998
s. 121(3)(a)(i).

* * * * *

S. 30(2)
repealed by
No. 52/1998
s. 121(3)(a)(ii).

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

S. 30(3)
amended by
No. 52/1998
s. 121(3)(a)(iii).

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

S. 30(4)
amended by
No. 52/1998
s. 121(3)(a)(iii).

s. 32

S. 31
amended by
No. 52/1998
s. 121(3)(b).

31. Notice of death of represented person

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

Division 4—Temporary Orders

32. Application for temporary order

S. 32(1)
amended by
No. 52/1998
s. 121(3)(c).

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

S. 32(2)
amended by
No. 52/1998
s. 121(3)(c).

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

S. 32(3)
substituted by
No. 52/1998
s. 121(4).

(3) Each person who would be entitled to notice under section 20 of an application under section 19 is entitled to notice of the making of an application under this section, notice of the hearing of the application and notice of any order made by the Tribunal in respect of the application.

S. 32(4)
amended by
No. 74/1987
s. 7(a),
repealed by
No. 52/1998
s. 121(5)(a).

* * * * *

33. Temporary order

S. 33(1)
amended by
No. 52/1998
s. 121(5)(b)(i).

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

(a) is a person with a disability; and

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

(c) is in need of a guardian—

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

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

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

S. 33(3)
amended by
No. 52/1998
s. 121(5)(b)(i).

* * * * *

S. 33(4)
repealed by
No. 52/1998
s. 121(5)(b)(ii).

Division 5—Appointment of Alternative Guardian

34. *Appointment of alternative guardian*

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

S. 34(1)
amended by
No. 52/1998
s. 121(5)(c).

(a) the person proposed as an alternative guardian has consented to act as guardian of the represented person in the event of the death, absence or incapacity of the original guardian; and

(b) the Tribunal is satisfied that the persons to whom notice of the hearing of a guardianship order is given under section 20

S. 34(1)(b)
amended by
No. 52/1998
s. 121(5)(c).

have had sufficient notice of the willingness of the person proposed as alternative guardian to act as alternative guardian.

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

35. *Authority of alternative guardian*

- (1) If an alternative guardian is appointed, the alternative guardian takes over the office of plenary guardian or limited guardian (as the case may be) without further proceedings immediately upon the death or during the period of absence or incapacity of the original guardian.
- (2) The alternative guardian must notify the Tribunal in writing of the death, absence or incapacity of the original guardian and send to the Tribunal evidence of the death, absence or incapacity of the original guardian.
- (3) Where an alternative guardian takes over the office of a guardian, the alternative guardian has the same powers and duties with respect to the represented person as the guardian had immediately before the guardian's death, absence or incapacity.

S. 35(2)
amended by
No. 52/1998
s. 121(5)(c).

Division 6—Powers of Board with Respect to Medical Procedures

36. *Purpose of Division*

- (1) The purpose of this Division is to protect the best interests of represented persons by ensuring that
-

they are not subject unnecessarily to certain medical procedures.

- (2) This Division applies to a represented person in respect of whom there is in force—
 - (a) an order appointing a plenary guardian; or
 - (b) an order appointing a limited guardian with the power to consent to any health care that is in the best interests of the represented person.
- (3) This Division does not apply in respect of any medical procedure carried out on any person in an emergency where the medical procedure is necessary to save the life of that person.

37. *Consent of Tribunal required for certain medical procedures*

- (1) A registered medical practitioner within the meaning of the **Medical Practice Act 1994** must not carry out any procedure which is a major medical procedure on a represented person unless the consent of the guardian and the Tribunal has been obtained.
- (2) A registered medical practitioner within the meaning of the **Medical Practice Act 1994** who contravenes sub-section (1) is guilty of professional misconduct.
- (3) The Tribunal may issue guidelines specifying major medical procedures for the purposes of this section.

S. 37(1)
amended by
Nos 23/1994
s. 118(Sch. 1
item 23.2),
52/1998
s. 121(5)(c).

S. 37(2)
amended by
No. 23/1994
s. 118(Sch. 1
item 23.2).

S. 37(3)
amended by
No. 52/1998
s. 121(5)(c).

38. *Guardian not to consent to certain medical procedures unless the Tribunal also consents*

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

S. 38(1)
amended by
No. 52/1998
s. 121(5)(c).

Guardianship and Administration Act 1986

Act No. 58/1986

s. 39A

S. 38(2)
amended by
No. 52/1998
s. 121(5)(c).

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

S. 39
amended by
No. 33/1989
s. 5(2),
substituted by
No. 52/1998
s. 122.

39. *Represented person is a party*

If an application for consent is made under section 38(2), the represented person in respect of whom the application is made is a party to the proceeding.

S. 39A
inserted by
No. 52/1998
s. 123.

39A. *Public Advocate entitled to notice of application*

The Public Advocate is entitled to notice of an application under section 38(2), notice of the hearing of the application and notice of any order made by the Tribunal in respect of the application.

S. 40
amended by
No. 52/1998
s. 124.

40. *Date for hearing*

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

S. 41(1)
amended by
No. 52/1998
s. 124.

41. *Wishes of the represented person to be ascertained*

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

S. 41(2)
amended by
No. 52/1998
s. 124.

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

S. 42
amended by
No. 52/1998
s. 124.

42. *Consent of the Tribunal*

If the Tribunal is satisfied on hearing an application under section 38 that it would be in

Guardianship and Administration Act 1986

Act No. 58/1986

the best interests of the represented person it may
by order consent to the major medical procedure.

PART 5—ADMINISTRATION ORDERS

Division 1—Application for Administration Order

43. *Application for administration order*

S. 43(1)
amended by
No. 52/1998
s. 125(1).

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

S. 43(2)
amended by
No. 52/1998
s. 125(1).

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

S. 43(3)
substituted by
No. 52/1998
s. 125(2).

- (3) In addition to any other parties, the following are parties to a proceeding on an application under sub-section (1)—

(a) the person in respect of whom the application is made; and

(b) the person proposed as administrator.

S. 43(4)
repealed by
No. 52/1998
s. 125(3).

* * * * *

S. 44
amended by
Nos 55/1987
s. 57(2)(Sch. 4
items 4, 5),
74/1987 s. 8,
33/1989
ss 4(b), 5(3),
substituted by
No. 52/1998
s. 126.

44. *Who is entitled to notice of an application?*

Each of the following is entitled to notice of the making of an application for an order appointing an administrator, notice of the hearing of the application and notice of any order made by the Tribunal in respect of the application—

- (a) the nearest relative available of the person in respect of whom the application is made;

- (b) the primary carer (if any) of the person in respect of whom the application is made;
- (c) the Public Advocate;
- (d) any guardian of the person in respect of whom the application is made;
- (e) any person who has advised the Tribunal of an interest in the person in respect of whom the application is made or in his or her estate.

45. *Date for hearing*

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

S. 45
amended by
No. 52/1998
s. 127(1)(a).

Division 2—Appointment of Administrator

46. *Appointment of administrator*

(1) If the Tribunal is satisfied that—

- (a) the person in respect of whom an application for an order appointing an administrator is made—
 - (i) is a person with a disability; and
 - (ii) is unable to make reasonable judgments in respect of the matters relating to all or any part of her or his estate by reason of the disability; and
 - (iii) is in need of an administrator of her or his estate; and
- (b) in the case of an application in respect of a person who does not reside in Victoria, the State Trust has not been authorised under section 12 of the **State Trustee (State Owned Company) Act 1994** to collect,

S. 46(1)
amended by
No. 52/1998
s. 127(1)(a).

S. 46(1)(b)
amended by
Nos 55/1987
s. 57(2)(Sch. 4
item 6),
45/1994
s. 33(1).

Guardianship and Administration Act 1986
Act No. 58/1986

manage, sell or otherwise dispose of or administer any property in Victoria which forms part of the estate of the person in respect of whom the application is made—

the Tribunal may make an order appointing an administrator of that person's estate.

S. 46(2)
amended by
No. 52/1998
s. 127(1)(a).

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

S. 46(3)
amended by
No. 52/1998
s. 127(1)(a).

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

S. 46(4)
amended by
No. 52/1998
s. 127(1)(a).

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

47. *Persons eligible as administrators*

S. 47(1)
amended by
No. 52/1998
s. 127(1)(a).

- (1) The Tribunal may appoint as an administrator of the estate of a proposed represented person—

S. 47(1)(a)
amended by
No. 55/1987
s. 57(2)(Sch. 4
item 7).

(a) the State Trust; or

(b) the Public Advocate; or

S. 47(1)(c)
amended by
No. 52/1998
s. 127(1)(a).

(c) any other person who consents to act as administrator if the Tribunal is satisfied that—

-
- (i) the person will act in the best interests of the proposed represented person; and
 - (ii) the person is not in a position where the person's interests conflict or may conflict with the interests of the proposed represented person; and
 - (iii) the person is a suitable person to act as the administrator of the estate of the proposed represented person; and
 - (iv) the person has sufficient expertise to administer the estate or there is a special relationship or other special reason why that person should be appointed as administrator.
- (2) In determining whether a person is suitable to act as the administrator of the estate of a proposed represented person, the Tribunal must take into account—
- (a) the wishes of the proposed represented person; and
 - (b) the compatibility of the person proposed as administrator with the proposed represented person and with the guardian (if any) of the proposed represented person.
- (3) Where a parent or nearest relative of the proposed represented person is proposed as the administrator, that person is not by virtue only of the fact that that person is a parent or nearest relative to be taken to be in a position where the person's interests conflict or may conflict with those of the proposed represented person.

S. 47(2)
amended by
No. 52/1998
s. 127(1)(a).

Guardianship and Administration Act 1986
Act No. 58/1986

s. 48

S. 47(4)
amended by
Nos 55/1987
s. 57(2)(Sch. 4
item 10),
52/1998
s. 127(1)(a).

(4) Where the Tribunal proposes—

S. 47(4)(a)
amended by
No. 55/1987
s. 57(2)(Sch. 4
item 8).

(a) to appoint the State Trust as administrator of the estate of a proposed represented person; and

S. 47(4)(b)
amended by
Nos 55/1987
s. 57(2)(Sch. 4
item 9),
45/1994
s. 33(2).

(b) to specify in the order that the administrator is to have powers and duties which are more limited than those referred to in Division 3A—

the Tribunal must give notice of its proposals to the State Trust which may decline to act as administrator of that estate.

S. 47(5)
amended by
Nos 55/1987
s. 57(2)(Sch. 4
item 11),
52/1998
s. 127(1)(a).

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

Division 3—Powers and Duties of Administrator

48. *Power of administrator*

S. 48(1)
amended by
No. 55/1987
s. 57(2)(Sch. 4
item 12),
substituted by
No. 45/1994
s. 34,
amended by
No. 52/1998
s. 127(1)(b)(i).
S. 48(2)
repealed by
No. 52/1998
s. 127(1)(b)(ii).

(1) An administrator has the powers and duties conferred by this Division and such of the powers and duties referred to in Division 3A as the Tribunal may specify in the order.

* * * * *

- (3) Where a decision is made, action taken, consent given or thing done by an administrator under an order made by the Tribunal the decision, action, consent or thing has effect as if it had been made, taken, given or done by the represented person and the represented person had the legal capacity to do so.
- (4) Upon the death of a represented person any order appointing an administrator of that person's estate under this Act lapses and the law relating to the administration of a deceased person's estate applies accordingly.

S. 48(3)
amended by
No. 52/1998
s. 127(1)(b)(i).

49. *Exercise of power by administrator*

- (1) An administrator must act in the best interests of the represented person.
- (2) Without limiting sub-section (1) an administrator acts in the best interests of the represented person if the administrator acts as far as possible—
 - (a) in such a way as to encourage and assist the represented person to become capable of administering the estate; and
 - (b) in consultation with the represented person, taking into account as far as possible the wishes of the represented person.

50. *Ancillary powers of administrator*

- (1) An administrator may on behalf of a represented person sign and do all such things as are necessary to give effect to any power or duty vested in the administrator.
- (2) This Act does not confer on an administrator the power to execute a will in the name of a represented person.

51. *Powers of investment*

Guardianship and Administration Act 1986

Act No. 58/1986

S. 51(1)
amended by
Nos 55/1987
s. 57(2)(Sch. 4
item 13),
45/1994
s. 36(1),
52/1998
s. 127(1)(c)(i).

(1) Except as provided in section 53 or any order of the Tribunal, an administrator other than the State Trust in respect of any part of the estate of the represented person of which the administrator is the administrator—

(a) may for such period as the administrator thinks fit allow any part of the estate to remain invested in the manner in which it has been invested by the represented person; and

(b) may in the case of money deposited in a bank re-deposit it after it becomes payable; and

S. 51(1)(c)
amended by
No. 104/1995
s. 6(Sch. 1
item 11(a)(i)).

(c) has and may exercise in relation to any part of the estate the same powers as the administrator would have if the administrator were a trustee of that part of the estate under the **Trustee Act 1958**.

S. 51(2)
repealed by
No. 104/1995
s. 6(Sch. 1
item 11(a)(ii)).

* * * * *

S. 51(3)
repealed by
No. 52/1998
s. 127(1)(c)(ii).

* * * * *

52. *Restriction on powers of represented person to enter into contracts etc.*

S. 52(1)
amended by
No. 52/1998
s. 127(1)(d).

(1) Where the Tribunal has made an administration order the represented person whilst a represented person or until the Tribunal revokes that order is, to the extent that the represented person's estate is under the control of the administrator, deemed incapable of dealing with, transferring, alienating or charging her or his money or property or any part thereof or becoming liable under any contract

without the order of the Tribunal or the written consent of the administrator.

- (2) Every dealing, transfer, alienation or charge by any represented person in respect of any part of the estate which is under the control of the administrator is void and of no effect, and the money or property the subject of the dealing, transfer, alienation or charge is recoverable by the administrator in any court of competent jurisdiction.
- (3) This section does not render invalid any dealing, transfer, alienation or charge by any represented person made for adequate consideration with or to or in favour of any other person who proves that she or he acted in good faith and did not know or could not reasonably have known that the person was a represented person.
- (4) For the purpose of this section the acceptance of payment of the whole or any part of a debt is deemed to be a dealing with property.

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

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

S. 53(1)
amended by
No. 52/1998
s. 127(1)(d).

Guardianship and Administration Act 1986

Act No. 58/1986

s. 54

S. 53(2)
amended by
No. 52/1998
s. 127(1)(d).

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

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

S. 53(4)
amended by
No. 104/1995
s. 6(Sch. 1
item 11(b)).

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

S. 54
amended by
No. 52/1998
s. 127(1)(d).

54. Tribunal may open will

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

55. Administrator may seek advice

S. 55(1)
amended by
No. 52/1998
s. 127(1)(e)(i).

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

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

S. 55(2) amended by Nos 55/1987 s. 57(2)(Sch. 4 item 14), 52/1998 s. 127(1)(e)(i).

* * * * *

S. 55(3) amended by No. 52/1998 s. 127(1)(e)(i), repealed by No. 52/1998 s. 127(1)(e)(ii).

(4) The Tribunal may—

S. 55(4) amended by No. 52/1998 s. 127(1)(e)(i).

(a) approve or disapprove of any act proposed to be done by the administrator; and

(b) give such advice as it considers appropriate; and

(c) make any order it considers necessary.

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

S. 55(5) amended by No. 52/1998 s. 127(1)(e)(i).

56. Application to the Tribunal by a creditor etc.

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

S. 56(1) amended by No. 52/1998 s. 127(1)(f)(i).

Guardianship and Administration Act 1986

Act No. 58/1986

s. 57

S. 56(2)
repealed by
No. 52/1998
s. 127(1)(f)(ii).

* * * * *

S. 56(3)
amended by
No. 52/1998
s. 127(1)(f)(i).

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

57. *Power to administrator to act until notice of discharge etc. received*

S. 57(1)
amended by
No. 52/1998
s. 127(1)(g).

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

S. 57(2)
amended by
No. 52/1998
s. 127(1)(g).

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

S. 57(3)
amended by
No. 52/1998
s. 127(1)(g).

- (3) Upon notice being given under sub-section (1) the represented person or the represented person's legal personal representative (as the case may be) is bound by and may take advantage of any act done on behalf of the represented person by the administrator within the powers conferred on the administrator by the Tribunal as if it had been done by the represented person and the represented person had the legal capacity to do so.

58. *Accounts*

S. 58(1)
amended by
Nos 55/1987
s. 57(2)(Sch. 4
item 15),
52/1998
s. 127(1)(h).

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

Guardianship and Administration Act 1986

Act No. 58/1986

s. 58

-
- | | |
|---|--|
| (2) The State Trust must examine the accounts and may make a report to the Tribunal recommending the disallowance of any item in the accounts. | S. 58(2)
amended by
Nos 55/1987
s. 57(2)(Sch. 4
item 16),
52/1998
s. 127(1)(h). |
| (3) Where the Tribunal receives a report under sub-section (2) the Tribunal cannot make an order disallowing an item if the Tribunal is satisfied that the administrator acted in good faith and with reasonable care in the exercise of powers conferred on the administrator. | S. 58(3)
amended by
No. 52/1998
s. 127(1)(h). |
| (4) Where any item is disallowed by the Tribunal the administrator is liable for the amount of the item disallowed and for the costs incurred by the State Trust in connection with the State Trust's report to the Tribunal. | S. 58(4)
amended by
Nos 55/1987
s. 57(2)(Sch. 4
items 17, 18),
52/1998
s. 127(1)(h). |
| (5) An administrator must pay to the State Trust in respect of each estate administered by an administrator other than the State Trust an amount certified by the State Trust as being the cost of examining the accounts. | S. 58(5)
amended by
No. 55/1987
s. 57(2)(Sch. 4
items 19, 20). |
| (6) The Tribunal may upon an application by the administrator and with the consent of the State Trust waive payment of the whole or part of the amount required to be paid under sub-section (5). | S. 58(6)
amended by
Nos 55/1987
s. 57(2)(Sch. 4
item 21),
52/1998
s. 127(1)(h). |
| (7) There is to be paid into the Guardianship and Administration Fund (which is hereby established) all fees prescribed under section 58A. | S. 58(7)
amended by
Nos 55/1987
s. 57(2)(Sch. 4
items 22, 23),
33/1989
s. 7(1)(a),
52/1998
s. 127(1)(i). |
-

Guardianship and Administration Act 1986
Act No. 58/1986

s. 58A

<p>S. 58(8) amended by No. 55/1987 s. 57(2)(Sch. 4 item 24), repealed by No. 33/1989 s. 7(1)(b).</p>	*	*	*	*	*
<p>S. 58(9) repealed by No. 33/1989 s. 7(1)(b).</p>	*	*	*	*	*
<p>S. 58(9A) inserted by No. 74/1987 s. 9, amended by No. 52/1998 s. 52(1)(i)(ii). repealed by No. 52/1998 s. 127(1)(k).</p>	<p>(9A) The Guardianship and Administration Fund is to be used to meet the costs and expenses of the Tribunal in respect of proceedings under this Act.</p>				
<p>S. 58A inserted by No. 33/1989 s. 7(2).</p>	*	*	*	*	*
<p>S. 58A(2)(c) amended by No. 52/1998 s. 127(1)(l).</p>	<p>58A. Power to make regulations setting fees</p> <p>(1) The Governor in Council may make regulations for or with respect to prescribing annual fees to be paid in respect of estates which are the subject of an administration order.</p> <p>(2) Regulations made under sub-section (1)—</p> <p style="margin-left: 40px;">(a) may prescribe fees in respect of a particular class or classes of estates only; and</p> <p style="margin-left: 40px;">(b) may prescribe different fees in respect of different classes of estates; and</p> <p style="margin-left: 40px;">(c) may authorise the Tribunal to waive fees in particular cases or classes of cases.</p> <p>(3) Before the Governor in Council may make regulations under this section, the Minister must</p>				

advise the Governor in Council that the Minister—

- (a) has consulted the President and the Public Advocate; 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 by the Tribunal and the Public Advocate to fulfil their estate administration functions under this Act in that year.
- (4) Regulations made under this section may be disallowed in whole or in part by resolution of either House of Parliament in accordance with the requirements of section 6(2) of the **Subordinate Legislation Act 1962** which disallowance is deemed disallowance by Parliament for the purposes of that Act.

S. 58A(3)(b) amended by No. 52/1998 s. 127(1)(l).

Division 3A—Additional Powers and Duties of Administrators

Pt 5 Div. 3A (Heading and ss 58B–58G) inserted by No. 45/1994 s. 35.

58B. Powers and duties in relation to represented persons

S. 58B inserted by No. 45/1994 s. 35.

- (1) Subject to and in accordance with this Act and the administration order appointing an administrator in each case—
 - (a) the administrator has the general care and management of the estate of the represented person; and
 - (b) it is the duty of the administrator to take possession and care of, recover, collect, preserve and administer the property and estate of the represented person and

- generally to manage the affairs of the represented person and to exercise all rights statutory or otherwise which the represented person might exercise if the represented person had legal capacity; and
- (c) the administrator in the name and on behalf of the represented person may generally do all acts and exercise all powers with respect to the estate as effectually and in the same manner as the represented person could have done if the represented person were not under a legal disability.
- (2) Without limiting sub-section (1), an administrator may in the name and on behalf of a represented person—
- (a) collect, receive and recover income of and money due or which becomes due to and any compensation or damages for injury to the estate or person of the represented person; and
- (b) invest any money in any security in which trustees may by law invest; and
- (c) 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 the Tribunal, for any longer term; and
- (d) exercise to the extent and in the manner the administrator thinks proper any power of leasing vested in the represented person; and
- (e) surrender any lease, accept any lease, accept the surrender of any lease or renew any lease; and
- (f) bring land under the **Transfer of Land Act 1958**; and
-

S. 58B(2)(c)
amended by
No. 52/1998
s. 127(1)(m).

-
- (g) sell, exchange, partition or convert into money any property; and
 - (h) mortgage or charge any property; and
 - (i) pay any debts and settle, adjust or compromise any demand made by or against the estate and discharge any encumbrance on the estate; and
 - (j) carry on so far as appears desirable any trade, profession or business which the represented person carried on; and
 - (k) agree to any alteration of the conditions of any partnership into which any represented person has entered or to a dissolution and distribution of the assets of the partnership; and
 - (l) bring and defend actions and other legal proceedings in the name of the represented person; and
 - (m) execute and sign deeds, instruments and other documents; and
 - (n) complete any contract for the performance of which the represented person was liable, or enter into any agreement terminating liability; and
 - (o) pay any sum for the maintenance of the represented person (and, in the event of his or her death, for funeral expenses) and for the maintenance of his or her spouse or de facto spouse or any child, parent or other person dependent upon him or her and for the maintenance and education of his or her children as to the administrator seems expedient and reasonable; and
 - (p) do all matters necessary or incidental to the performance of any of the above-mentioned
-

matters and apply any money from the estate which it is necessary to apply for the purposes of this Act.

- (3) An administrator may if it seems to be expedient and reasonable—
- (a) pay or cause to be paid to the represented person for the personal use of that person any amount of money standing to the credit of that person with the administrator; and
 - (b) give or cause to be given to the represented person for the personal use of that person any personal property which belongs to that person and is under the control of the administrator.

S. 58C
inserted by
No. 45/1994
s. 35.

58C. *Exercise of certain powers*

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

the administrator may on behalf and in the name of the represented person exercise the power or give the consent in any manner the administrator thinks fit.

- (2) If—

(a) a power is vested in a represented person in the character of a trustee or guardian, or the consent of a represented person to the exercise of a power is necessary in the character of a trustee or guardian or as a check upon the undue exercise of the power; and

(b) it appears to the administrator that the power should be exercised or the consent given—

the administrator may on behalf and in the name of the represented person exercise the power or give the consent in any manner the administrator thinks fit.

(3) The exercise by an administrator under this section or the State Trust under section 33 of the **State Trust Corporation of Victoria Act 1987** as in force immediately before the commencement of section 24 of the **State Trustees (State Owned Company) Act 1994** or the Public Trustee under section 52 of the **Public Trustee Act 1958** as in force immediately before the commencement of section 33 of the **State Trust Corporation of Victoria Act 1987** of a power vested in a represented person to appoint a new trustee is to be taken to be the appointment of a new trustee within the meaning of section 45 of the **Trustee Act 1958**.

58D. *Action upon a person ceasing to be a represented person*

S. 58D
inserted by
No. 45/1994
s. 35.

(1) If an administrator has received notice from the Tribunal that a represented person has ceased to be a represented person or has died, the administrator must—

S. 58D(1)
amended by
No. 52/1998
s. 127(1)(m).

Guardianship and Administration Act 1986

Act No. 58/1986

s. 58E

-
- (a) pay or cause to be paid to that person or to that person's personal representative (as the case requires) all money standing to his or her credit with the administrator; and
 - (b) deliver to that person or to that person's personal representative (as the case requires) all property forming part of his or her estate and any documents relating to the estate.
- (2) Any payment made under sub-section (1) is subject to the satisfaction of any amount due to the administrator and all costs, expenses and liabilities incurred by the administrator in respect of the administration of that person's estate.
- (3) The receipt of a person who has ceased to be a represented person or of that person's personal representative is an absolute discharge to an administrator despite any informality in the discharge or certification.

S. 58E
inserted by
No. 45/1994
s. 35.

58E. *Represented person entitled to inspection of accounts*

Any person who has ceased to be a represented person or the personal representative of any represented person is entitled, before or after obtaining the restoration of all or any part of the estate from an administrator—

S. 58E(a)
amended by
No. 35/1996
s. 453(Sch. 1
item 37).

- (a) to examine and inspect or cause to be examined and inspected by a legal practitioner or other authorised agent all books, accounts, notices and other documents in the custody of the administrator relating to the estate and to make or cause to be made copies or extracts; and

S. 58E(b)
amended by
No. 35/1996
s. 453(Sch. 1
item 37).

- (b) to have supplied to him or her or his or her legal practitioner or other authorised agent

copies of or extracts from any book, account, notice or document; and

- (c) to have given to him or her or his or her legal practitioner or other authorised agent information respecting the estate as is reasonably requested and can be given by the administrator.

S. 58E(c) amended by No. 35/1996 s. 453(Sch. 1 item 37).

58F. *Sale of personal effects if unclaimed within 2 years from date of discharge*

S. 58F inserted by No. 45/1994 s. 35.

- (1) All personal effects of any represented person in the possession of an administrator which are not claimed within 2 years after the date of ceasing to be a represented person may after public notice be sold by order of the administrator.
- (2) The proceeds are to be paid into the Consolidated Fund.

58G. *Power to open will*

An administrator may, either before or after the death of a represented person, open and read without order any paper or writing deposited with the administrator and purporting or alleged to be the will of the represented person.

S. 58G inserted by No. 45/1994 s. 35.

Division 4—Temporary Orders

59. *Application for temporary order*

- (1) Any person may apply to the Tribunal for a temporary order appointing the State Trust as the administrator of the estate of a person in respect of whom an application could be made under section 43.
- (2) An application may be made under sub-section (1) whether or not an application has been made to the Tribunal under section 43.

S. 59(1) amended by Nos 55/1987 s. 57(2)(Sch. 4 item 25), 52/1998 s. 127(1)(n).

S. 59(2) amended by No. 52/1998 s. 127(1)(n).

Guardianship and Administration Act 1986

Act No. 58/1986

s. 60

S. 59(3)
substituted by
No. 52/1998
s. 127(2).

- (3) Each person who would be entitled to notice under section 44 of an application under section 43 is entitled to notice of the making of an application under this section, notice of the hearing of the application and notice of any order made by the Tribunal in respect of the application.

S. 59(4)
amended by
No. 74/1987
s. 7(a),
repealed by
No. 52/1998
s. 127(3)(a).

* * * * *

60. Temporary order

S. 60(1)
amended by
Nos 55/1987
s. 57(2)(Sch. 4
item 27),
52/1998
s. 127(3)(b)(i).

- (1) If the Tribunal is satisfied that—
- (a) the person in respect of whom an application has been made under section 59—
 - (i) is a person with a disability; and
 - (ii) is unable to make reasonable judgments in respect of the matters relating to all or any part of her or his estate by reason of the disability; and
 - (iii) is in need of an administrator of her or his estate; and

S. 60(1)(b)
amended by
Nos 55/1987
s. 57(2)(Sch. 4
item 26),
45/1994
s. 33(1).

- (b) in the case of an application in respect of a person who does not reside in Victoria, the State Trust 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 which forms part of the estate of the person in respect of whom the application is made—

the Tribunal may make an order appointing the State Trust as an administrator of that person's estate.

Guardianship and Administration Act 1986
Act No. 58/1986

s. 60

-
- (2) A temporary order remains in effect for such period not exceeding 21 days as is specified in the order.
- (3) The Tribunal must hold a hearing to determine whether an administrator should be appointed under section 46 before the expiry of the temporary order.

S. 60(3)
amended by
No. 52/1998
s. 127(3)(b)(i).

* * * * *

S. 60(4)
repealed by
No. 52/1998
s. 127(3)(b)(ii).

PART 6—REVIEWS OF ORDERS

S. 61
substituted by
No. 52/1998
s. 128.

61. *Reviews*

- (1) The Tribunal must conduct a review of a guardianship order or an administration order—
 - (a) within 12 months after making the order, unless the Tribunal orders otherwise; and
 - (b) in any case, within 3 years after making the order.
- (2) The Tribunal may at any time conduct a review of a guardianship order or an administration order.
- (3) A review under this section may be conducted—
 - (a) on the Tribunal's own initiative; or
 - (b) on the application any person.
- (4) In addition to any other parties, the following are parties to a review—
 - (a) the represented person; and
 - (b) the guardian or administrator (as the case may be).

S. 62
amended by
Nos 55/1987
s. 57(2)(Sch. 4
item 28),
33/1989
ss 4(c), 5(4),
substituted by
No. 52/1998
s. 128.

62. *Who is entitled to notice of a review?*

- (1) Each of the following is entitled to notice of the making of an application for a review under section 61, notice of the hearing of the review and notice of any order made by the Tribunal in respect of the review—
 - (a) the nearest relative available of the represented person in respect of whom the application is made; and
 - (b) the primary carer (if any) of the represented person in respect of whom the application is made; and

-
- (c) in the case of a review of a guardianship order—
 - (i) the Public Advocate; and
 - (ii) any administrator of the estate of the represented person; and
 - (d) in the case of a review of an administration order, any guardian of the represented person.
- (2) If the Tribunal conducts a review on its own initiative, the Tribunal must give notice of the review, at least 7 days before the proposed day of the hearing, to the parties and to the persons specified in sub-section (1).
- (3) The Tribunal may, in a notice under sub-section (2), 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 the Tribunal in relation to the review.

63. Order after review

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

S. 63(1)
amended by
No. 52/1998
s. 129(1)(a)(i).

* * * * *

S. 63(2)
repealed by
No. 52/1998
s. 129(1)(a)(ii).

s. 66

PART 7—GENERAL PROVISIONS

S. 64 repealed by No. 52/1998 s. 129(1)(b).	*	*	*	*	*
S. 65 repealed by No. 110/1986 s. 140(2).	*	*	*	*	*

66. *Matters before a Court*

S. 66(1)
amended by
No. 52/1998
s. 129(1)(c).

(1) If in any civil proceedings before a Court the Court considers that a party may need to have a guardian or administrator or both appointed under this Act, the Court may refer the issue to the Tribunal for its determination.

S. 66(2)
substituted by
No. 52/1998
s. 129(2).

(2) If a Court refers an issue to the Tribunal under sub-section (1)—

- (a) the referral is to be treated as if it were an application to the Tribunal for the making of a guardianship order or an administration order (as the case requires); 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.

S. 66(3)(b)
amended by
No. 55/1987
s. 57(2)(Sch. 4
item 29).

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

- (a) is to be paid into court; and
- (b) unless the Court otherwise orders is to be paid out to the administrator (if any) of the estate of that person or the State Trust.

Guardianship and Administration Act 1986
Act No. 58/1986

s. 66

-
- (4) If any money—
- (a) is paid into court before or after the commencement of this section; and
 - (b) the money is being held in court on behalf of a person with a disability—
- the Court may by order direct that the money be paid out to the administrator (if any) of the estate of that person or the State Trust.
- (5) Where the Court adjudges or orders that property (whether real or personal) be delivered up or transferred to a person with a disability (whether or not that person is a party to a cause or matter), the Court—
- (a) may order that the property be delivered up or transferred to the administrator (if any) of the estate of that person or the State Trust; and
 - (b) may give any directions for the service of the order on that administrator or the State Trust as it thinks fit.
- (6) If an order under sub-section (5) is served on an administrator or the State Trust, the administrator or the State Trust must accept delivery or transfer of the property to which the order relates and the acceptance of the property is a sufficient discharge to the person delivering or transferring the property.
- (7) A copy of any order made under this section must be given by the administrator or the State Trust (as the case may be) to the Tribunal and the Public Advocate.
- S. 66(4)**
amended by
No. 55/1987
s. 57(2)(Sch. 4
item 30).
- S. 66(5)(a)**
amended by
No. 55/1987
s. 57(2)(Sch. 4
item 31).
- S. 66(5)(b)**
amended by
No. 55/1987
s. 57(2)(Sch. 4
item 31).
- S. 66(6)**
amended by
No. 55/1987
s. 57(2)(Sch. 4
item 32).
- S. 66(7)**
amended by
Nos 55/1987
s. 57(2)(Sch. 4
item 33),
52/1998
s. 129(1)(c).

Guardianship and Administration Act 1986
Act No. 58/1986

s. 70

S. 66(8)
amended by
No. 55/1987
s. 57(2)(Sch. 4
item 34).

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

S. 66(9)(b)
amended by
No. 74/1987
s. 10.

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

(a) the Supreme Court; or

(b) the County Court; or

S. 66(9)(c)
inserted by
No. 74/1987
s. 10,
substituted by
No. 57/1989
s. 3(Sch. item
89(a)).

(c) the Magistrates' Court.

S. 66(10)(11)
repealed by
No. 57/1989
s. 3(Sch. item
89(b)).

* * * * *

Ss 67–69
repealed by
No. 52/1998
s. 129(3)(a).

* * * * *

70. Immunity from suit

S. 70(1)
repealed by
No. 52/1998
s. 129(3)(b).

* * * * *

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

Guardianship and Administration Act 1986
Act No. 58/1986

s. 79

*	*	*	*	*	<p>S. 70(3) repealed by No. 55/1987 s. 57(2)(Sch. 4 item 35).</p>
*	*	*	*	*	<p>S. 71 amended by No. 33/1989 s. 6, repealed by No. 52/1998 s. 129(3)(c).</p>
*	*	*	*	*	<p>S. 72 substituted by No. 33/1989 s. 5(5), repealed by No. 52/1998 s. 129(3)(c).</p>

73. *Judicial notice*

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

*	*	*	*	*	<p>S. 73(a) repealed by No. 52/1998 s. 129(3)(d).</p>
---	---	---	---	---	---

(b) the signature of any person who is or has
been the Public Advocate or Acting Public
Advocate and of the fact that that person is
or was the Public Advocate or Acting Public
Advocate (as the case may be).

*	*	*	*	*	<p>S. 74 repealed by No. 52/1998 s. 129(3)(e).</p>
---	---	---	---	---	--

*	*	*	*	*	<p>Ss 75–78 repealed by No. 31/1994 s. 4(Sch. 2 item 39).</p>
---	---	---	---	---	---

79. *Audit*

Guardianship and Administration Act 1986
Act No. 58/1986

S. 79(1)–(4)
repealed by
No. 31/1994
s. 4(Sch. 2
item 39).

* * * * *

S. 79(5)
amended by
No. 52/1998
s. 129(3)(f).

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

S. 80
amended by
No. 52/1998
s. 129(3)(g).

80. *General penalty*

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

81. *Offences by bodies corporate*

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

82. *Regulations*

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

S. 82(1)(a)(b)
repealed by
No. 52/1998
s. 129(3)(h).

* * * * *

-
- (c) prescribing forms to be used for the purposes of this Act; and
 - (d) any matter or thing authorized or required to be prescribed or necessary to be prescribed for carrying this Act into effect.
- (2) Regulations under this Act—
- (a) may be of general or of specially limited application; and
 - (b) may differ according to differences in time, place or circumstance; and
 - (c) may impose a penalty not exceeding 10 penalty units for any contravention of the regulations.
-

**PART 8—AMENDMENTS TO THE PUBLIC TRUSTEE ACT
1958**

83. *Principal Act*

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

S. 84
repealed by
No. 55/1987
s. 57(2)(Sch. 4
item 36).

* * * * *

85. *Existing protected persons*

(1) In this section—

S. 85(1) def. of
"Principal
Act" amended
by No.
55/1987
s. 57(2)(Sch. 4
item 37).

"Principal Act" means the Principal Act as in force immediately before the commencement of section 84 of this Act or section 58(1) of the **State Trust Corporation of Victoria Act 1987** whichever occurs first;

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

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

S. 85(2)(a)
amended by
No. 55/1987
s. 57(2)(Sch. 4
item 38).

(a) who was an infirm person within the meaning of the Principal Act, until the State Trust seals a certificate in or to the effect of the Fifth Schedule of the Principal Act to the effect that the person is not or has ceased to be an infirm person; or

S. 85(2)(b)
amended by
No. 49/1988
s. 199.

(b) who was a patient within the meaning of the Principal Act, until the person ceases to be a patient within the meaning of the **Mental Health Act 1986**; or

Guardianship and Administration Act 1986

Act No. 58/1986

s. 85

-
- (c) in respect of whom an order is in force under section 54L of the Principal Act, until the Tribunal has made a determination under this section; or
- (d) who was a voluntary patient who had authorized the Public Trustee in accordance with section 48A of the Principal Act to administer his or her estate, until the person revokes the authority.
- (3) The Tribunal must hold a hearing in respect of every protected person to determine whether a guardianship order or an administration order should be made in respect of that protected person or the estate of that protected person under this Act.
- (4) A protected person may apply to the Tribunal to hold a hearing to determine whether a guardianship order or an administration order should be made in respect of that person or his or her estate.
- (5) The State Trust must provide such information and assistance to the Tribunal in relation to protected persons as is reasonably necessary to enable the Tribunal to carry out its function under this section.
- (6) Notwithstanding anything to the contrary in the **Public Trustee Act 1958** or in any order made under that Act, upon the coming into effect of a determination of the Tribunal under this section in relation to a protected person, that person ceases to be a protected person.
- (7) The Tribunal must notify the State Trust of a determination under this section without delay.
- S. 85(2)(c) amended by No. 52/1998 s. 129(3)(i)(i).
- S. 85(3) amended by No. 52/1998 s. 129(3)(i)(i).
- S. 85(4) amended by No. 52/1998 s. 129(3)(i)(i).
- S. 85(5) amended by Nos 55/1987 s. 57(2)(Sch. 4 item 39), 52/1998 s. 129(3)(i)(i).
- S. 85(6) amended by No. 52/1998 s. 129(3)(i)(i).
- S. 85(7) amended by Nos 55/1987 s. 57(2)(Sch. 4 item 40), 52/1998 s. 129(3)(i)(i).
-

Guardianship and Administration Act 1986
Act No. 58/1986

s. 86

S. 85(8)
amended by
Nos 55/1987
s. 57(2)(Sch. 4
item 41),
52/1998
s. 129(3)(i)(i),
repealed by
No. 52/1998
s. 129(3)(i)(ii).

* * * * *

S. 86
repealed by
No. 55/1987
s. 57(2)(Sch. 4
item 42).

* * * * *

Pt 9 (Heading
and s. 87)
repealed by
No. 45/1994
s. 36(2).

* * * * *

SCHEDULES

* * * * *

Sch. 1
amended by
Nos 42/1995
s. 224(Sch. 2
item 20.1
(a)(b)(c)),
46/1998
s. 7(Sch. 1),
repealed by
No. 52/1998
s. 129(3)(j).

* * * * *

Sch. 2
amended by
Nos 33/1989
s. 8(a)(b)(c),
74/1987
s. 7(b)(c),
repealed by
No. 52/1998
s. 129(3)(j).

SCHEDULE 3

PROVISIONS WITH RESPECT TO THE PUBLIC ADVOCATE

1. *The Public Advocate*

- (1) The Public Advocate—
- (a) is to be appointed by the Governor in Council; and
 - (b) holds office for a period of 7 years; and
 - (c) is entitled to be paid—
 - (i) such remuneration as is from time to time fixed by the Governor in Council; and
 - (ii) such travelling and other allowances as are from time to time fixed by the Governor in Council; and
 - (d) is not in respect of the office of Public Advocate subject to the provisions of the **Public Sector Management and Employment Act 1998**.
- (2) The Public Advocate ceases to hold office—
- (a) if the Public Advocate resigns in writing signed by the Public Advocate and the resignation is accepted by the Governor in Council; or
 - (b) if the Public Advocate engages in any paid employment outside the duties of the office without the approval of the Governor in Council; or
 - (c) if the Public Advocate is removed from office under sub-clause (5).
- (3) The Governor in Council may suspend or remove the Public Advocate from office.
- (4) The Minister must cause to be laid before each House of Parliament a full statement of the grounds of suspension of the Public Advocate within 7 sitting days after the

Sch. 3
cl. 1(1)(b)
amended by
No. 42/1995
s. 224(Sch. 2
item 20.2(a)).

Sch. 3 cl. 1(d)
amended by
No. 46/1998
s. 7(Sch. 1).

suspension if that House is then sitting or, if that House is not then sitting, within 7 sitting days after the next meeting of that House.

- (5) The Public Advocate may be removed from office by the Governor in Council if each House of Parliament, within 7 sitting days after the day when the statement is laid before it, declares by resolution that the Public Advocate ought to be removed from office and, unless each House within that period so declares, the Governor in Council must remove the suspension and restore the Public Advocate to office.
- (6) If the Public Advocate—
 - (a) becomes bankrupt; or
 - (b) is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence; or
 - (c) becomes incapable of performing the duties of the office of Public Advocate; or
 - (d) is removed from office under sub-clause (5) or resigns under sub-clause (2)(a); or

* * * * *

Sch. 3
cl. 1(6)(e)
repealed by
No. 42/1995
s. 224(Sch. 2
item 20.2(b)).

(f) dies—

the office of the Public Advocate becomes vacant.

2. *The Acting Public Advocate*

- (1) The Governor in Council may appoint an Acting Public Advocate during the temporary absence or the suspension of the Public Advocate and may at any time revoke the appointment.
- (2) The Acting Public Advocate while so acting—
 - (a) has all the powers and duties and may exercise any of the functions of the Public Advocate; and
 - (b) is entitled to be paid—
 - (i) such remuneration as is from time to time fixed by the Governor in Council; and

Guardianship and Administration Act 1986

Act No. 58/1986

Sch. 3

Sch. 3
cl. 2(2)(c)
amended by
No. 46/1998
s. 7(Sch. 1).

-
- (ii) such travelling and other allowances as are from time to time fixed by the Governor in Council; and
 - (c) is not in respect of the office of Acting Public Advocate subject to the provisions of the **Public Sector Management and Employment Act 1998**.

3. Oath or affirmation

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

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

NOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 28 November 1985

Legislative Council: 22 April 1986

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

The **Guardianship and Administration Board Act 1986** was assented to on 3 June 1986 and came into operation as follows:

Section 14 on 8 July 1986: Government Gazette 25 June 1986 page 2170;
Part 1, sections 5, 6, 15–18, 75–82, Schedule items 1 and 3 on 1 April 1987:
Government Gazette 25 March 1987 page 695; section 58 on 1 April 1987:
Government Gazette 1 April 1987 page 778; rest of Act on 14 July 1987:
Government Gazette 8 July 1987 page 1792.

The name of this Act was changed from the **Guardianship and Administration Board Act 1986** to the **Guardianship and Administration Act 1986** by Act No. 52/1998 section 115.

Guardianship and Administration Act 1986
Act No. 58/1986

2. Table of Amendments

This Version incorporates amendments made to the **Guardianship and Administration Act 1986** by Acts and subordinate instruments.

Supreme Court Act 1986, No. 110/1986

Assent Date: 16.12.86
Commencement Date: 1.1.87: s. 2
Current State: All of Act in operation

State Trust Corporation of Victoria Act 1987, No. 55/1987

Assent Date: 20.10.87
Commencement Date: 2.11.87: Government Gazette 28.10.87 p. 2925
Current State: All of Act in operation

Intellectually Disabled Persons' Services (Amendment) Act 1987, No. 74/1987

Assent Date: 24.11.87
Commencement Date: 24.11.87: Special Gazette (No. 50) 24.11.87 p. 1
Current State: All of Act in operation

Health Services Act 1988, No. 49/1988

Assent Date: 24.5.88
Commencement Date: S. 199 on 1.7.88: Government Gazette 29.6.88 p. 1896
Current State: This information relates only to the provision/s amending the **Guardianship and Administration Act 1986**

Guardianship and Administration Board (Amendment) Act 1989, No. 33/1989

Assent Date: 6.6.89
Commencement Date: 6.6.89: s. 2
Current State: All of Act in operation

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.98
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Medical Practice Act 1994, No. 23/1994

Assent Date: 17.5.94
Commencement Date: Ss 1, 2 on 17.5.94: s. 2(1); rest of Act on 1.7.94: Government Gazette 23.6.94 p. 1672
Current State: All of Act in operation

Guardianship and Administration Act 1986

Act No. 58/1986

Notes

Financial Management (Consequential Amendments) Act 1994, No. 31/1994

Assent Date: 31.5.94
Commencement Date: S. 4(Sch. 2 item 39) on 1.1.95: Government Gazette 28.7.94 p. 2055
Current State: This information relates only to the provision/s amending the **Guardianship and Administration Act 1986**

State Trustees (State Owned Company) Act 1994, No. 45/1994

Assent Date: 7.6.94
Commencement Date: Pt 1 (ss 1–3), s. 27 on 7.6.94: s. 2(1); rest of Act on 1.7.94: Special Gazette (No. 36) 23.6.94 p. 1
Current State: All of Act in operation

Equal Opportunity Act 1995, No. 42/1995

Assent Date: 14.6.95
Commencement Date: S. 224 on 5.10.95: Government Gazette 28.9.95 p. 2731; Sch. 2 items 20.1, 20.2, s. 223(Sch. 1 item 2) on 1.1.96: Government Gazette 21.12.95 p. 3571
Current State: This information relates only to the provision/s amending the **Guardianship and Administration Act 1986**

Trustee and Trustee Companies (Amendment) Act 1995, No. 104/1995

Assent Date: 5.12.95
Commencement Date: 1.1.96: s. 2
Current State: All of Act in operation

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 item 37) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Guardianship and Administration Act 1986**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s.2(2)
Current State: This information relates only to the provision/s amending the **Guardianship and Administration Act 1986**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Assent Date: 2.6.98
Commencement Date: Ss 114–129 on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Guardianship and Administration Act 1986**

3. Explanatory Details

¹ S. 20(d): Section 72 of the **Victorian Civil and Administrative Tribunal Act 1998** provides that the applicant must give notice to the other parties as well as to other persons entitled to notice.

Guardianship and Administration Act 1986
Act No. 58/1986

<i>Subject</i>	<i>Section</i>
Act	
commencement	2
objects	4
purpose	1
Administration order	
applications for	43–45
Administrator	
appointment	46
appointment of State Trust as	47, 59
eligibility	47
handling of accounts by	58
powers	48–51, 55, 57, 58, 58B–58G
Application	
for administration order	43
for guardianship order	19
entitlement to notice and date of hearing	20, 21, 44, 45
temporary order	32
Appointment	
administrator	46
guardian	
alternative	34
plenary and limited	22
Public Advocate	14
temporary	33
Definitions	
administration order	3
determination	3
disability	3
guardian	3
guardianship order	3
income	3
major medical procedure	3
nearest relative	3
next of kin	53
prescribed	3
primary cover	3
principal registrar	3
Public Advocate	3
regulations	3
represented person	3
Tribunal	3
<i>Subject</i>	<i>Section</i>

Guardianship and Administration Act 1986

Act No. 58/1986

Delegation	
by Public Advocate	18
Disabled Persons	
protection of	27
Guardian	
alternative	34, 35
ancillary powers of	29
appointment and eligibility of	22, 23
dealing with medical procedures by	38
limited	25
plenary	24
role of	28
seeking of advice by	30
temporary order	33
Guardianship order	
application for	19–21
enforcement	26
making	22
Medical procedures	
guardian's role in relation to	37, 38
notices and dates of hearing in relation to	40
notice to Public Advocate	39A
position of represented person in relation to	39, 41
powers of Tribunal with respect to	36, 37, 42
Notice	
death of represented person	31
of review hearing	62
entitlement to receive	20, 44
Offences	
by bodies corporate	81
penalties for	80, 82
Public Advocate	
Acting Public Advocate	Sch. 3
appointment and functions	14, 15, Sch. 3
delegation of authority by	18
engagement of auditor	79
judicial authority	73
notice	39A, 44, 62
powers and duties	16
provisions with respect to	Sch. 3
staffing	17
temporary order	32, 33

Subject *Section*

Guardianship and Administration Act 1986

Act No. 58/1986

Regulations	
associated with Act	82, 58A
Represented persons	
administrator's additional powers etc. in relation to death	58B 31
medical procedures in relation to opening of will by Tribunal or administrator	36–39 54, 58G
property and estate	53, 56, 58E, 58F
restriction on powers of	52
Review	
consequences of guardianship and administration order	63 61–63
serving of notice of	62
State Trust	
administration by	55
examination of accounts by	58
service of notices to	44, 66
Supreme Court	
orders made by	66
Temporary order	
application for	
administration order	59
guardianship order	32
making of	
administration order	60
guardianship order	33
Tribunal	
advice of	30
consent of	37, 38, 42
engagement of auditor	79
immunity	70
opening of will by	54
referral of matters to	66

NOTE:

This index does not form part of the **Guardianship and Administration Act 1986** and is provided for convenience of reference only.
