

Guardianship and Administration (Further Amendment) Act 2006

Act No. 3/2006

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Victoria

No. 3 of 2006

Guardianship and Administration (Further Amendment) Act 2006[†]

[Assented to 7 March 2006]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

The purpose of this Bill is—

- (a) to amend the **Guardianship and Administration Act 1986** to—
 - (i) establish a new process for obtaining consent to medical research procedures for patients;

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- (ii) make miscellaneous amendments to improve the operation of the Act;
 - (b) to make consequential amendments to the **Mental Health Act 1986**.

2. Commencement

- (1) Subject to sub-section (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 November 2006, it comes into operation on that day.

3. Principal Act

In this Act, the **Guardianship and Administration Act 1986** is called the Principal Act.

See:
Act No.
58/1986.
Reprint No. 6
as at
1 January
2003
and
amending
Act Nos
75/2003 and
108/2004.
LawToday:
www.dms.
dpc.vic.
gov.au

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PART 2—MEDICAL RESEARCH PROCEDURES

4. Definitions and objects

(1) In section 3(1) of the Principal Act—

(a) **insert** the following definitions—

' **"human research ethics committee"**
means—

- (a) a human research ethics committee established in accordance with the requirements of the National Statement; or
- (b) an ethics committee established under the by-laws of a public hospital, public health service, denominational hospital or multi-purpose service (within the meaning of the **Health Services Act 1988**);

"medical research procedure" means—

- (a) a procedure carried out for the purposes of medical research, including, as part of a clinical trial, the administration of medication or the use of equipment or a device; or
- (b) a procedure that is prescribed by the regulations to be a medical research procedure for the purposes of this Act—

but does not include—

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- (c) any non-intrusive examination (including a visual examination of the mouth, throat, nasal cavity, eyes or ears or the measuring of a person's height, weight or vision); or
- (d) observing a person's activities; or
- (e) undertaking a survey; or
- (f) collecting or using information, including personal information (within the meaning of the **Information Privacy Act 2000**) or health information (within the meaning of the **Health Records Act 2001**); or
- (g) any other procedure that is prescribed by the regulations not to be a medical research procedure for the purposes of this Act;

"National Statement" means—

- (a) the National Statement on Ethical Conduct in Research Involving Humans published by the National Health and Medical Research Council in 1999 as in force from time to time; or
- (b) any superseding document published by the National Health and Medical Research Council that covers the same subject matter;

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"relevant human research ethics committee" for a medical research procedure means the human research ethics committee responsible for approving the relevant research project;

"relevant research project" for a medical research procedure means the research project for the purposes of which the procedure is, or is to be, carried out;

"working day" means a day other than a Saturday, a Sunday or a public holiday appointed under the **Public Holidays Act 1993**;

(b) in the definition of "medical or dental treatment", after paragraph (d) **insert**—

"(da) a medical research procedure; or";

(c) in the definition of "special procedure", paragraph (b) is **repealed**.

(2) Section 3(3) of the Principal Act is **repealed**.

(3) For section 4(1)(f) of the Principal Act **substitute**—

"(f) to provide for consent to special procedures, medical research procedures and medical and dental treatment on behalf of persons incapable of giving consent to those procedures or treatment; and".

5. Functions of Public Advocate

In section 16(1)(ja) of the Principal Act, after "special procedure" **insert** "or medical research procedure".

6. Consent to medical research procedures

(1) In the Principal Act—

- (a) in section 36(1)(b) and (2), after "special procedure" **insert** ", a medical research procedure";
- (b) in section 37(1)—
 - (i) after "in relation to" (where secondly occurring) **insert** "a proposed medical research procedure or";
 - (ii) in paragraphs (b), (c) and (d), before "treatment" **insert** "procedure or";
 - (iii) in paragraph (e), after "in relation to" **insert** "medical research procedures that include the proposed procedure or".

(2) After section 37(6) of the Principal Act **insert**—

- '(7) For the purposes of sub-section (1)(h), if the patient—
- (a) is likely to be capable of giving consent to the carrying out of a medical research procedure, but not within a reasonable time as determined in accordance with section 42R(2); and
 - (b) objects to a relative referred to in paragraphs (a) to (g) of the definition of "nearest relative" in section 3(1) being involved in decisions concerning the patient that would include a medical research procedure being carried out on the patient—

that relative is taken not to be the nearest relative of the patient.'

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- (3) At the end of section 39 of the Principal Act **insert**—
- "(2) Division 6 contains provisions for the giving of consent in relation to the carrying out of a medical research procedure on a patient."
- (4) In the Principal Act—
- (a) in section 40, after "special procedure" **insert** ", a medical research procedure";
 - (b) in section 41, after "dental treatment," **insert** "medical research procedure";
 - (c) in section 42(a), after "section 42F" **insert** ", or to a medical research procedure";
 - (d) in section 42A(1)—
 - (i) for "or medical or dental treatment on a patient without consent under this Part if the practitioner believes on reasonable grounds that the treatment" **substitute** ", a medical research procedure or medical or dental treatment on a patient without consent under this Part or authorisation under section 42T if the practitioner believes on reasonable grounds that the procedure or treatment";
 - (ii) in paragraph (c), after "in the case of" **insert** "a medical research procedure or";
 - (e) in section 42A(2)—
 - (i) after "special procedure" **insert** ", a medical research procedure";
 - (ii) after "this Division" **insert** "and, in the case of a medical research procedure, section 42Q";
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- (iii) in paragraph (c), for "battery."
substitute "battery; or";
- (f) after section 42A(2)(c) **insert**—
"(d) guilty of an offence against
section 42G(1) or 42Y(1).".

7. New section 42E substituted

For section 42E of the Principal Act **substitute**—

"42E. Consent of Tribunal to special procedure

On hearing an application under this Division, the Tribunal may consent to the carrying out of a special procedure only if it is satisfied that—

- (a) the patient is incapable of giving consent; and
- (b) the patient is not likely to be capable, within a reasonable time, of giving consent; and
- (c) the special procedure would be in the patient's best interests."

8. Further amendments to Part 4A

- (1) In section 42G of the Principal Act—
 - (a) at the foot of sub-section (1) **insert**—
"Penalty: Imprisonment for 2 years or
240 penalty units or both.";
 - (b) in sub-section (2)(e), for "battery."
substitute "battery; or";
 - (c) after sub-section (2)(e) **insert**—
"(f) guilty of an offence against sub-
section (1).".

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(2) After section 42N(6) of the Principal Act **insert—**

"(7) An application cannot be made, and the Tribunal cannot make any order, under this section in relation to a medical research procedure.

Note: Sections 42V, 42W and 42X provide for the Tribunal's jurisdiction in relation to medical research procedures."

9. New Division 6 inserted in Part 4A

After Division 5 of Part 4A of the Principal Act **insert—**

'Division 6—Medical Research Procedures

42P. Introduction and outline of Division

(1) This Division contains provisions for the carrying out of a medical research procedure on a patient.

Note: See section 36 for the definition of "patient".

(2) In essence, this Division provides a 4 step process for authorising the carrying out of a medical research procedure on a patient, as follows—

- (a) step 1 is to determine whether the relevant research project is approved by the relevant human research ethics committee—see section 42Q;
- (b) step 2 is to determine whether the patient is likely to recover the capacity to consent to the procedure within a reasonable time—see section 42R;
- (c) step 3 is to seek the consent of the person responsible for the patient, which only applies where allowed by section 42R—see section 42S;

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- (d) step 4 is procedural authorisation, which only applies where allowed by section 42R and the person responsible cannot be ascertained or contacted—see section 42T.
- (3) Steps 2, 3 and 4 referred to in sub-section (2) do not apply to the carrying out of a medical research procedure under section 42A.
Note: Section 42A provides for the carrying out of a medical research procedure without consent in emergency situations.
- (4) This Division also provides that—
 - (a) the Tribunal has jurisdiction in various circumstances—see sections 42V, 42W and 42X;
 - (b) offences may be committed by registered practitioners who fail to comply with the Division—see section 42Y;
 - (c) registered practitioners who comply with the Division are protected from civil and criminal liability—see section 42Z.
- (5) This Division is subject to section 41, which prohibits the carrying out of medical treatment if a refusal of that treatment is in force under the **Medical Treatment Act 1988**.

42Q. Step 1—Approval of relevant research project

- (1) Step 1 is to determine whether the relevant research project has been approved by the relevant human research ethics committee.

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- (2) A medical research procedure must not be carried out on a patient if the relevant research project has not been approved by the relevant human research ethics committee.
 - (3) A medical research procedure must be carried out in accordance with the relevant human research ethics committee approval, including any conditions of that approval.

42R. Step 2—Is patient likely to recover within a reasonable time?

- (1) Step 2 is to determine whether the patient is likely to be capable, within a reasonable time, of giving consent to the carrying out of a medical research procedure.
 - (2) The reasonable time is the time by which, given the nature of the relevant research project, the procedure would need to be performed on the patient, having regard to—
 - (a) the medical or physical condition of the patient; or
 - (b) the stage of treatment or care; or
 - (c) other circumstances specific to the patient.
 - (3) If a patient is likely to be capable, within a reasonable time as determined in accordance with sub-section (2), of giving consent to the carrying out of a medical research procedure, a registered practitioner must not carry out, or supervise the carrying out of, the procedure under the authority of a consent under section 42S or procedural authorisation under section 42T.
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- (4) If a patient is not likely to be capable, within a reasonable time as determined in accordance with sub-section (2), of giving consent to the carrying out of a medical research procedure, a registered practitioner may carry out, or supervise the carrying out of, the procedure under the authority of a consent under section 42S or procedural authorisation under section 42T.
- (5) Before, or as soon as practicable after, carrying out, or supervising the carrying out of, the medical research procedure, the registered practitioner must state his or her belief that, at the time of the procedure, the patient is or was not likely to be capable of giving consent within a reasonable time and the reason for that belief in writing in the patient's clinical records.

Note: This section does not apply to a medical research procedure under section 42A—see section 42P(3).

42S. Step 3—Consent of person responsible

- (1) Step 3 is to seek the consent of the person responsible for the patient to the carrying out of the medical research procedure on the patient.

Note: This section does not apply to a medical research procedure under section 42A—see section 42P(3).

- (2) The person responsible may consent to the carrying out of a medical research procedure on the patient.

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- (3) The person responsible may only consent to the carrying out of the procedure if he or she believes that the carrying out of the procedure would not be contrary to the best interests of the patient.
 - (4) The consent must be consistent with the requirements for consent, if any, specified in the relevant human research ethics committee approval for the relevant research project or the conditions of that approval.

42T. Step 4—Procedural authorisation

- (1) Step 4 is procedural authorisation for the carrying out of the medical research procedure on the patient, which applies only if the person responsible for the patient cannot be ascertained or contacted.

Note: This section does not apply to a medical research procedure under section 42A—see section 42P(3).

- (2) A registered practitioner may carry out, or supervise the carrying out of, a medical research procedure on a patient without the consent under section 42S of the person responsible for the patient if—
 - (a) the patient is not likely to be capable, within a reasonable time as determined in accordance with section 42R(2), of giving consent to the carrying out of the procedure; and
 - (b) steps that are reasonable in the circumstances have been taken—
 - (i) to ascertain whether there is a person responsible and, if so, who that person is; and

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- (ii) if the person responsible is ascertained, to contact that person to seek his or her consent to the proposed procedure under section 42S—

but it has not been possible to ascertain whether there is a person responsible or who that person is or to contact that person; and

- (c) the practitioner believes on reasonable grounds that inclusion of the patient in the relevant research project, and being the subject of the proposed procedure, would not be contrary to the best interests of the patient; and
 - (d) the practitioner does not have any reason to believe that the carrying out of the procedure would be against the patient's wishes; and
 - (e) the practitioner believes on reasonable grounds that the relevant human research ethics committee has approved the relevant research project in the knowledge that a patient may participate in the project without the prior consent of the patient or the person responsible; and
 - (f) the practitioner believes on reasonable grounds that—
 - (i) one of the purposes of the relevant research project is to assess the effectiveness of the therapy being researched; and
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- (ii) the medical research procedure poses no more of a risk to the patient than the risk that is inherent in the patient's condition and alternative treatment; and
 - (g) the practitioner believes on reasonable grounds that the relevant research project is based on valid scientific hypotheses that support a reasonable possibility of benefit for the patient as compared with standard treatment.
 - (3) Before, or as soon as practicable after, the medical research procedure is carried out, the practitioner supervising the carrying out of the procedure (or, if there is no such person, the practitioner carrying out the procedure) must sign a certificate—
 - (a) certifying as to each of the matters set out in sub-section (2); and
 - (b) stating that the person responsible (if any) or the patient (if the patient gains or regains capacity) will be informed as required by sub-section (4).
 - (4) A registered practitioner involved in the relevant research project must inform the person responsible (if any) or the patient (if the patient gains or regains capacity) as soon as reasonably practicable of—
 - (a) the patient's inclusion in the relevant research project; and
 - (b) the option to refuse consent for the procedure to be continued and withdraw the patient from future participation in the project without compromising the patient's ability to
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receive any available alternative
treatment or care.

- (5) The registered practitioner supervising the carrying out of the procedure (or, if there is no such person, the registered practitioner carrying out the procedure) must—
- (a) forward a copy of the certificate referred to in sub-section (3) to the Public Advocate and the relevant human research ethics committee as soon as practicable (and in any event within 2 working days) after supervising the carrying out of, or carrying out, the procedure; and
 - (b) ensure that the certificate is kept in the patient's clinical records.
- (6) If—
- (a) the medical research procedure is a procedure extending over a period exceeding one month after a copy of the certificate is forwarded to the Public Advocate and the relevant human research ethics committee under sub-section (5); and
 - (b) the registered practitioner supervising the carrying out of the procedure (or, if there is no such person, the registered practitioner carrying out the procedure) believes on reasonable grounds that—
 - (i) the requirements of sub-sections (2)(b) and (8) (if applicable) have been met but the person responsible has not been able to be ascertained or contacted; and
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- (ii) the patient has not gained or regained the capacity to consent—
the practitioner must, at intervals of not more than one month while the procedure continues, sign a certificate, and forward a copy to the Public Advocate and the relevant human research ethics committee, certifying that each of the matters set out in sub-section (2) continue to apply.
- (7) The registered practitioner supervising the carrying out of the procedure (or, if there is no such person, the registered practitioner carrying out the procedure) must ensure that each certificate under sub-section (6) is kept in the patient's clinical records.
- (8) If a medical research procedure is being carried out on a patient under the authority of this section, steps that are reasonable in the circumstances must continue to be taken (as the case requires)—
- (a) to ascertain whether there is a person responsible and, if so, who that person is; and
 - (b) if the person responsible is ascertained, to contact that person to seek his or her consent to the proposed procedure.

Note: If the person responsible is contacted and is willing and able to make a decision (see section 37), section 42S applies. If the patient gains or regains capacity to consent, his or her consent must be sought, as he or she will no longer be a person to which this Division applies.

42U. Best interests

- (1) In this Division, for the purposes of determining whether a medical research procedure would or would not be contrary to the best interests of a patient, the following matters must be taken into account—
 - (a) the wishes of the patient, so far as they can be ascertained; and
 - (b) the wishes of any nearest relative or any other family members of the patient; and
 - (c) the nature and degree of any benefits, discomforts and risks for the patient in having or not having the procedure; and
 - (d) any other consequences to the patient if the procedure is or is not carried out; and
 - (e) any other prescribed matters.
- (2) For the purposes of sub-section (1)(b), if the patient—
 - (a) is likely to be capable of giving consent to the carrying out of a medical research procedure, but not within a reasonable time as determined in accordance with section 42R(2); and
 - (b) objects to—
 - (i) a relative referred to in paragraphs (a) to (g) of the definition of "nearest relative" in section 3(1); or

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- (ii) another family member (other than the patient's spouse or domestic partner)—

being involved in decisions concerning the patient that would include a medical research procedure being carried out on the patient—

that relative or family member is taken not to be the nearest relative or a family member of the patient.

42V. Applications to Tribunal

- (1) An application may be made to the Tribunal in relation to any matter, question or dispute under this Division relating to the best interests of a patient.
- (2) An application may be made by—
 - (a) a person responsible; or
 - (b) a person who, in the opinion of the Tribunal, has a special interest in the affairs of the patient, including a registered practitioner (if any).
- (3) Despite sub-section (2)(b), a registered practitioner who is involved in the relevant research project cannot apply to the Tribunal in relation to a refusal of the person responsible for a patient to consent under section 42S to the carrying out of a medical research procedure on the patient.
- (4) If an application is made under this section, the patient is a party to the proceeding.

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- (5) The Tribunal must give notice of an application, of the hearing of the application and of any order of the Tribunal in respect of the application to—
 - (a) the Public Advocate; and
 - (b) any other person whom the Tribunal considers has a special interest in the affairs of the patient.
- (6) On an application under this section, the Tribunal—
 - (a) may make an order that for matters relating to medical research procedures, either generally or of a particular kind, a person specified in the order is to be the person responsible;
 - (b) may appoint a person as guardian of the patient generally or for matters relating to medical research procedures;
 - (c) may vary a guardianship order to make provision for matters relating to medical research procedures;
 - (d) may revoke, suspend or vary an instrument appointing a person as the enduring guardian to the extent that the instrument relates to medical research procedures;
 - (e) may make an order that any proposed medical research procedure is or is not contrary to the best interests of the patient;

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- (f) may make any orders or give any directions it considers necessary to resolve any conflict between persons relating to the best interests of a patient;
- (g) may make a declaration as to the validity or effect of any decision relating to medical research procedures;
- (h) may give an advisory opinion in relation to the best interests of a patient;
- (i) may make any other orders it considers to be in the best interests of the patient.

42W. Person responsible may seek advice

- (1) The person responsible for a patient may apply to the Tribunal for directions or an advisory opinion on any matter or question relating to the scope or exercise of his or her authority to consent to a medical research procedure on behalf of the patient.
- (2) The Tribunal must give notice to any person whom the Tribunal considers has a special interest in the affairs of the patient of the application, of the hearing of the application and of any order, directions or advisory opinion of the Tribunal in respect of the application.
- (3) The Tribunal may—
 - (a) give any directions or advisory opinion it considers necessary;
 - (b) make any order it considers necessary.
- (4) The Tribunal of its own motion may direct, or give an advisory opinion to, the person responsible for a patient in respect of any matter.

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- (5) An action does not lie against the person responsible for a patient on account of an act or thing done or omitted to be done by that person in accordance with any order, directions or advisory opinion of the Tribunal made or given under this section unless in representing the facts to the Tribunal that person has been guilty of fraud, wilful concealment or misrepresentation.

42X. Guidelines for medical research procedures

The Tribunal may—

- (a) in consultation with the Public Advocate and the Secretary to the Department of Justice; and
- (b) with the approval of the Governor in Council—

issue and make available to members of the public guidelines to assist the person responsible for a patient in determining whether or not to consent to medical research procedures in respect of the patient.

42Y. Offences

- (1) Subject to section 42A, a registered practitioner must not carry out, or supervise the carrying out of, a medical research procedure on a patient unless—
- (a) the carrying out of the procedure is allowed by section 42R and either the person responsible for the patient has given consent under section 42S or the procedure is authorised under section 42T; or

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(b) the carrying out of the procedure is otherwise authorised by law.

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

(2) A registered practitioner must not sign a certificate under section 42T(3) or (6) that the practitioner knows to be false.

Penalty: 120 penalty units.

(3) A registered practitioner must not carry out, or supervise the carrying out of, a medical research procedure on a patient unless the relevant research project has been approved by the relevant human research ethics committee.

Penalty: 240 penalty units.

42Z. Protection of registered practitioner

(1) A registered practitioner who, in good faith, carries out, or supervises the carrying out of, a medical research procedure on a patient in accordance with this Division in reliance on—

(a) a consent given by another person whom the registered practitioner believed on reasonable grounds was authorised to give such consent; or

(b) a purported consent given by another person whom the registered practitioner believed on reasonable grounds was authorised to give such consent but was not so authorised—

is not—

(c) guilty of assault or battery; or

(d) guilty of professional misconduct; or

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- (e) liable in any civil proceedings for assault or battery; or
 - (f) guilty of an offence against section 42Y(1).
- (2) A registered practitioner who, in good faith, carries out, or supervises the carrying out of, a medical research procedure on a patient in accordance with this Division without the consent of another person and in the belief on reasonable grounds that the requirements of this Division have been complied with is not—
- (a) guilty of assault or battery; or
 - (b) guilty of professional misconduct; or
 - (c) liable in any civil proceedings for assault or battery; or
 - (d) guilty of an offence against section 42Y(1).
- (3) Nothing in this section affects any duty of care owed by a registered practitioner to a patient.¹

10. Consequential amendments

- (1) For section 60A(6)(b) of the Principal Act **substitute—**
- "(b) an application under section 42V (except an application in respect of which an order is made under section 42V(6)(b) appointing a guardian generally); or".
- (2) At the end of section 80 of the Principal Act **insert—**
- "(2) Sub-section (1) does not apply to a contravention of section 42Q(2).

Note: Section 42Y(3) creates an offence relating to the matters covered in section 42Q(2)."

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(3) After section 82(1)(ca) of the Principal Act **insert—**

"(cab) prescribing any procedure—

(i) to be a medical research procedure for the purposes of this Act; or

(ii) not to be a medical research procedure for the purposes of this Act; and

(cac) prescribing any matters to be taken into account in determining whether a medical research procedure would or would not be contrary to the best interests of a person to whom Part 4A applies; and".

11. New section 88 inserted

After section 87 of the Principal Act **insert—**

'88. Medical research procedures

- (1) This Act, as in force immediately before the commencement day, continues to apply on and after that day in relation to any consent or conferral of authority to consent to the carrying out of a special procedure, being a procedure carried out for the purposes of medical research, given by the Tribunal that was in force immediately before that day.
- (2) Despite anything to the contrary in paragraph (e) of section 42T(2), a registered practitioner is taken to have complied with that paragraph if he or she believes on reasonable grounds that the relevant human research ethics committee has given approval for the relevant research project before the commencement day in the knowledge that a patient may participate in the project without the prior consent of the patient.

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(3) In this section—

"commencement day" means the day on which section 11 of the **Guardianship and Administration (Further Amendment) Act 2006** comes into operation.'

12. Consequential amendment of Mental Health Act 1986

- (1) In section 83(1) of the **Mental Health Act 1986**, after "special procedure" **insert** "or medical research procedure".
- (2) At the foot of section 83(1) of the **Mental Health Act 1986 insert**—

"Note: Part 4A of the **Guardianship and Administration Act 1986** applies to the carrying out of a special procedure or medical research procedure on persons who are incapable of giving consent to that procedure."

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PART 3—MISCELLANEOUS AMENDMENTS

13. Definition

In section 3(1) of the Principal Act, in the definition of "guardian", after "means" **insert** "(except in section 58C(2))".

14. Delegation by Public Advocate

In section 18(1) of the Principal Act—

- (a) for "other than—" **substitute** "other than this power of delegation.";
- (b) paragraphs (a) and (b) are **repealed**.

15. Guardianship orders—wishes of proposed represented person

In the Principal Act—

- (a) after section 22(2)(a) **insert**—
 - "(ab) the wishes of the proposed represented person, so far as they can be ascertained; and";
- (b) in section 23(2)(a), after "person" **insert** ", so far as they can be ascertained".

16. Appointment of enduring guardian

(1) In section 35A(2)(c) of the Principal Act—

- (a) after "execution of the instrument" **insert** "by each of the appointor, the proposed enduring guardian and the proposed alternative enduring guardian (if any)";
- (b) for sub-paragraph (iii) **substitute**—
 - "(iii) both of whom have witnessed the execution of the instrument by the appointor, the proposed enduring guardian or the proposed alternative enduring guardian (as the case requires)

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in the presence of that person and each other; and".

(2) After section 35A(2) of the Principal Act **insert**—

"(2A) For the avoidance of doubt, it is not necessary—

- (a) for the same persons to witness the execution of the instrument by the appointor, the proposed enduring guardian and the proposed alternative enduring guardian (if any); or
- (b) for the appointor, the proposed enduring guardian and the proposed alternative enduring guardian to execute the instrument at the same time or in the presence of each other."

17. Appointment of administrator—wishes of proposed represented person

(1) For section 46(2) of the Principal Act **substitute**—

"(2) In determining whether or not a person is in need of an administrator of her or his estate, the Tribunal must consider—

- (a) 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; and
- (b) the wishes of the person in respect of whom the application is made, so far as they can be ascertained."

(2) In section 47(2)(a) of the Principal Act, after "person" **insert** ", so far as they can be ascertained".

18. New section 47B inserted

After section 47A of the Principal Act **insert—**

"47B. Payment of costs and expenses to administrator or former administrator from estate

- (1) If, in any proceeding, a court or tribunal orders that an administrator pay any costs of the proceeding, the court or tribunal may order that the administrator pay, or be reimbursed for, all or part of those costs from the estate administered by the administrator.
- (2) In any proceeding, a court or tribunal may order that an administrator be reimbursed for all or part of the administrator's costs of the proceeding from the estate administered by the administrator.
- (3) A court or tribunal may order that the costs incurred in administering an estate by a person appointed as an administrator (including the costs of any proceeding) may be paid out of, or reimbursed from, the estate, whether or not the appointment has been revoked or quashed.
- (4) An order referred to in sub-section (3) may be made on an application under section 55 or otherwise, and for that purpose, a reference in section 55 to an administrator is taken to include a reference to a person whose appointment as an administrator has been revoked or quashed."

19. Application for rehearing

After section 60A(3) of the Principal Act **insert**—

"(3A) If the Tribunal makes an order on a reassessment under section 61 conducted on the Tribunal's own initiative, a party or a person entitled to notice of the reassessment may apply to the Tribunal for a rehearing of the reassessment, if the Tribunal gives leave.".

20. New section 60B substituted

For section 60B of the Principal Act **substitute**—

"60B. Parties and notice

- (1) In addition to any other parties, the following are parties to a rehearing—
 - (a) in the case of the rehearing of an application referred to in section 60A(1)—a party to the proceeding on that application;
 - (b) in the case of the rehearing of a reassessment referred to in section 60A(3A)—a party to the reassessment.
- (2) The following are entitled to notice of an application for a rehearing—
 - (a) in the case of the rehearing of an application referred to in section 60A(1)—a person who was entitled to notice of the making of that application;
 - (b) in the case of the rehearing of a reassessment referred to in section 60A(3A)—a person who was entitled to notice of the reassessment.".

21. New section 67 inserted

After section 66 of the Principal Act **insert—**

'67. Effect of setting aside administration order on previous actions of administrator

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

22. New section 86A inserted

After section 86 of the Principal Act **insert—**

"86A. Enduring guardians

An appointment of an enduring guardian made under this Act that was in force immediately before the commencement of sections 16 and 24 of the **Guardianship and Administration (Further Amendment) Act 2006** is not invalid on or after that commencement only because—

- (a) it was not executed in accordance with section 35A as amended by section 16 of the **Guardianship and Administration (Further Amendment) Act 2006**; or
- (b) it is not in the form of Form 1 in Schedule 4 as amended by section 24 of the **Guardianship and Administration (Further Amendment) Act 2006**."

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- (b) that the appointor appeared to understand the effect of this instrument.

.....
(Signature of witness authorised to witness the signing of statutory declarations) (date)

.....
(Signature of other witness) (date)";

- (c) after—

"I, (insert name, address and occupation of proposed guardian) accept appointment as a guardian under this instrument and undertake to exercise the powers conferred honestly and in accordance with the provisions of the **Guardianship and Administration Act 1986**.

.....
(Signature of proposed guardian) (date)"

insert—

"CERTIFICATE OF WITNESSES

We (insert names, addresses and occupations of at least 2 witnesses) certify—

- (a) that the proposed guardian has signed this instrument freely and voluntarily in our presence;
and
(b) that the proposed guardian appeared to understand the effect of this instrument.

.....
(Signature of witness authorised to witness the signing of statutory declarations) (date)

.....
(Signature of other witness) (date)";

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(d) after—

"(If applicable:) I, (insert name, address and occupation of proposed alternative guardian) accept appointment as an alternative guardian under this instrument and undertake to exercise the powers conferred honestly and in accordance with the provisions of the **Guardianship and Administration Act 1986**.

.....
(Signature of proposed alternative guardian) (date)"

insert—

"CERTIFICATE OF WITNESSES

We (insert names, addresses and occupations of at least 2 witnesses) certify—

- (a) that the proposed alternative guardian has signed this instrument freely and voluntarily in our presence; and
- (b) that the proposed alternative guardian appeared to understand the effect of this instrument.

.....
(Signature of witness authorised to witness the signing of statutory declarations) (date)

.....
(Signature of other witness) (date)";

(e) **omit—**

"CERTIFICATE OF WITNESSES

We (insert names, addresses and occupations of at least 2 witnesses) certify—

- (a) that the appointor, the proposed guardian and the proposed alternative guardian (if any) have signed this instrument freely and voluntarily in our presence; and

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Endnotes

ENDNOTES

- † *Minister's second reading speech—
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Legislative Council: 9 February 2006*

The long title for the Bill for this Act was "to amend the **Guardianship and Administration Act 1986** regarding consent to medical research procedures and for other purposes, to make consequential amendments to the **Mental Health Act 1986** and for other purposes."