

Guardianship and Administration Bill 2018

Introduction Print

EXPLANATORY MEMORANDUM

General

The Guardianship and Administration Bill 2018 repeals the **Guardianship and Administration Act 1986** and re-enacts with amendments a legislative framework that provides for: the meaning of *decision-making capacity* and how it is to be assessed; the appointment by VCAT of a guardian or an administrator for a person with a disability who does not have decision-making capacity, subject to appropriate limitations and safeguards; the appointment by VCAT of a supportive guardian or a supportive administrator to support a person with a disability to exercise decision-making capacity; the appointment by VCAT of an administrator for a missing person; and the retention of the Public Advocate as an independent statutory office to promote the rights and interests of persons with a disability.

Clause Notes

Part 1—Preliminary

- Clause 1 sets out the purposes of the Bill, which are—
- to re-enact with amendment the law relating to guardianship and administration; and
 - to repeal the **Guardianship and Administration Act 1986**; and
 - to make consequential amendments to various other Acts.

Clause 2 provides that the Bill comes into operation on a day or days to be proclaimed, or otherwise on 1 March 2020. The default commencement date is intended to allow for a reasonable implementation period of approximately 12 months from the estimated date of passage of the Bill.

Clause 3 sets out definitions that apply throughout the Bill.

Key definitions are set out below.

administration (missing person) order means an order of VCAT made under clause 105 of the Bill that appoints a person as an administrator in relation to one or more specified financial matters for a missing person. The criteria by which VCAT determines that a person is a missing person are set out in clause 105(3).

administration order means an order of VCAT made under clause 30 of the Bill that appoints a person as an administrator in relation to one or more specified financial matters for another person (the ***represented person***). Clause 30 allows VCAT to make an administration order provided that specified appointment criteria are met.

An administration order may be an urgent administration order, meaning an order that remains in force for a period no longer than 42 days.

An administration order does not include a supportive administration order.

administrator means a person appointed under either an administration order or an administration (missing person) order. It does not include a supportive administrator.

disability, in relation to a person, means a neurological impairment, intellectual impairment, mental disorder, brain injury, physical disability or dementia. This definition replaces the definition of ***disability*** in the **Guardianship and Administration Act 1986** and includes a reference to neurological impairment, which is intended to include a person with an autism spectrum disorder.

financial matter, in relation to a person, means any matter relating to a person's financial or property affairs. A financial matter includes any legal matter that relates to the financial or property affairs of the person. The definition provides a non-exhaustive list of examples of financial matters, such as paying expenses for the person or their dependants, and making money available to the person for their own expenditure.

guardian, other than in clause 50(2)(a), means a person appointed under a guardianship order under clause 30. It does not include a supportive guardian.

The Public Advocate may be appointed as a guardian under a guardianship order if VCAT is satisfied that no other person fulfils the appointment requirements (see clause 33(1)).

The reference to a guardian in clause 50(2)(a) of the Bill refers to a person's capacity as a trustee, or as a guardian of a trust, and is not a reference to a guardian appointed by VCAT under a guardianship order.

guardianship order means an order of VCAT made under clause 30 that appoints a person as a guardian in relation to one or more specified personal matters for another person (the **represented person**). Clause 30 allows VCAT to make a guardianship order provided that specified appointment criteria are met.

A guardianship order may be an urgent guardianship order, meaning an order that remains in force for a period no longer than 42 days.

A guardianship order does not include a supportive guardianship order.

legal matter, in relation to a person, means the use of legal services for the person's benefit, or bringing or defending a legal proceeding or hearing in a court, tribunal or other body on behalf of the person. The bringing or defending of a legal proceeding includes settling a claim before or after a legal proceeding or hearing starts. The definition provides a non-exhaustive list of examples of legal matters, such as the use of legal services to obtain information about the person's legal rights.

The term **legal matter** is used in reference to both financial matters and personal matters, as defined in clause 3.

medical treatment decision has the same meaning as in the **Medical Treatment Planning and Decisions Act 2016**. Under that Act, a medical treatment decision means a decision to consent to, or refuse the commencement or continuation of, medical treatment or a medical research procedure. The terms *medical treatment* and *medical research procedure* are also defined under the **Medical Treatment Planning and Decisions Act 2016**.

Under the Bill, a medical treatment decision, other than a decision about a special medical procedure, is a personal matter in relation to which a guardian or supportive guardian may be appointed by VCAT.

personal matter, in relation to a person, means any matter relating to the person's personal or lifestyle affairs. A personal matter includes any legal matter that relates to the person's personal or lifestyle affairs. The definition provides a non-exhaustive list of examples of personal matters, such as where and with whom the person lives.

primary carer has the same meaning as in the **Medical Treatment Planning and Decisions Act 2016**. In that Act the term is defined to mean an adult who is in a care relationship with the person and has principal responsibility for the person's care. *Care relationship* has the same meaning as under the **Carers Recognition Act 2012**. Section 3(3) of the **Medical Treatment Planning and Decisions Act 2016** also relates to the definition of *primary carer* and provides that a person who is cared for in a health facility by another person is not, by reason only of that fact, to be regarded as being in the care of that other person and remains in the care relationship that the person was in immediately before being cared for in that health facility.

proposed represented person means a person in relation to whom an application has been made for a guardianship order or for an administration order.

proposed supported person means a person in relation to whom VCAT considers making a supportive guardianship order or a supportive administration order. Under clause 87, VCAT may make a supportive guardianship order or a supportive administration order after considering an application for such an order, or after considering an application for a guardianship order or administration order if satisfied that the person in relation to

whom the application is made does have the relevant decision-making capacity.

represented person means a person in relation to whom a guardianship order or an administration order has effect.

supported person means a person for whom a supportive guardianship order or a supportive administration order is made.

The Bill includes relevant definitions in relation to the appointment by VCAT of a supportive guardian or a supportive administrator, which are new types of appointments under the Bill. These appointments align with the meaning of **decision-making capacity** in clause 5, which provides that a person has decision-making capacity in relation to a matter if it is possible for the person to make the decision with practicable and appropriate support.

Under Part 4 of the Bill, VCAT may make—

- a **supportive guardianship order** that appoints a **supportive guardian** to support a person (the **supported person**) to make their own decisions about the personal matter or matters specified in the order; and
- a **supportive administration order** that appoints a **supportive administrator** to support a person (the **supported person**) to make their own decisions about the financial matter or matters specified in the order.

Subclause (2) expands the definition of **domestic partner**.

Subclause (3) makes clear that a reference in the definition of **relative** to a person's sibling includes a reference to an individual who was adopted by one or both of the person's parents.

Clause 4 sets out the meaning of the term **promote the personal and social wellbeing of a person**, which is used throughout the Bill. Without limiting the ways in which the personal and social wellbeing of a person may be promoted, it may occur by—

- recognising the inherent dignity of the other person; and
- respecting the person's individuality; and

- having regard to the other person's existing supportive relationships, religion, values and cultural and linguistic environment; and
- respecting the confidentiality of confidential information relating to the other person.

Clause 5 sets out the meaning of the term *decision-making capacity* and provides guidance on determining whether a person has decision-making capacity.

In furtherance of the primary object of the Bill (clause 7), the definition of *decision-making capacity* is intended to prevent arbitrary and unnecessary intrusions on a person's right to make their own decisions, and to participate in decisions that affect their life. The definition—

- provides that a person is presumed to have decision-making capacity unless there is evidence to the contrary; and
- sets out the elements that demonstrate when a person has decision-making capacity; and
- recognises that a person may understand information relevant to a decision if given the information in a way that is appropriate to the person's circumstances, such as by using modified language or visual aids; and
- lists other factors to be considered in determining whether or not a person has decision-making capacity, including—
 - a person may have decision-making capacity for some matters and not others; and
 - a lack of decision-making capacity may be temporary; and
 - it should not be assumed that a person does not have decision-making capacity for a matter on the basis of their appearance; and
 - it should not be assumed that a person does not have decision-making capacity merely because the person makes a decision that others think is unwise; and

- a person has decision-making capacity for a matter if it is possible for the person to make a decision with practicable and appropriate support. Examples of practicable and appropriate support include assisting a person to communicate their decision and using technology that alleviates the effects of the person's disability.

Clause 6 provides that, for the purposes of the Bill, when assessing whether a person has decision-making capacity, the person making the assessment must take reasonable steps to conduct the assessment at a time, and in an environment in which, the person's decision-making capacity can be assessed most accurately.

Clause 7 sets out the primary object of the Bill, which is to protect and promote the human rights and dignity of persons with a disability by—

- having regard to the United Nations Convention on the Rights of Persons with Disabilities, recognising the need to support persons with a disability to make, participate in and implement decisions that affect their lives; and
- if a guardianship order or administration order is made for a person with a disability, by—
 - enabling VCAT to set safeguards and appropriate limitations on the powers of guardians and administrators when making such orders; and
 - requiring VCAT to review regularly such orders; and
 - providing guidance for guardians and administrators when making decisions for represented persons under such orders.

Clause 8 Subclause (1) establishes general principles in furtherance of the primary object of the Bill (clause 7). A person exercising a power, carrying out a function, or performing a duty under the Bill must have regard to the following principles—

- a person with a disability who requires support to make decisions should be provided with practicable and appropriate support to enable the person, as far as practicable in the circumstances—
 - to make and participate in decisions affecting the person; and
 - to express the person's will and preferences; and
 - to develop the person's decision-making capacity (as described in clause 5 of the Bill);

This principle is not intended to only apply to someone with a formal supportive guardianship order or supportive administration order. It may also encompass a represented person.

- the will and preferences of a person with a disability should direct decisions affecting the person as far as practicable in the circumstances;
- powers, functions and duties should be exercised, carried out and performed in a way which is the least restrictive of a person's ability to decide and act as is possible in the circumstances.

Subclause (2) clarifies that the reference to a person exercising a power, carrying out a function or performing a duty under this Act includes VCAT.

Clause 9 establishes decision making principles in furtherance of the primary object of the Bill (clause 7). A person making a decision for a represented person (including an administrator for a missing person), must have regard to the following principles—

- the person should give all practicable and appropriate effect to the represented person's will and preferences, if known;
- if the person is not able to determine the represented person's will and preferences, the person should give effect as far as practicable in the circumstances to what the person believes the represented person's will and preferences are likely to be, based on all the information available, including information obtained by consulting the represented person's family, close friends and carers;

- if the person is not able to determine the represented person's likely will and preferences, the person should act in a manner which promotes the represented person's personal and social wellbeing;
- the represented person's will and preferences should only be overridden if it is necessary to do so to prevent serious harm to the represented person.

Part 2—The Public Advocate

Part 2 of the Bill replaces Part 3 of, and Schedule 3 to, the **Guardianship and Administration Act 1986**.

Clause 10 Subclause (1) continues the office of Public Advocate as established under section 14 of the **Guardianship and Administration Act 1986**.

Subclause (2) provides that the appointment of the Public Advocate is by the Governor in Council, on the recommendation of the Minister.

Clause 10 replaces section 14 of the **Guardianship and Administration Act 1986** and clause (1)(1)(a) of Schedule 3 to the **Guardianship and Administration Act 1986**.

Clause 11 sets out the terms and conditions of appointment of the Public Advocate. These include that the Public Advocate holds office for 7 years and is eligible for reappointment.

Subclause (2) makes clear that the Public Advocate, in relation to the office of Public Advocate, is not subject to the **Public Administration Act 2004**, other than Part 5 of that Act, which relates to the operation of public entities.

Clause 11 replaces clause 1(1)(b) to (d) of Schedule 3 to the **Guardianship and Administration Act 1986**.

Clause 12 provides for the resignation of the Public Advocate and sets out the other circumstances in which the Public Advocate ceases to hold office.

Subclause (2) allows the Governor in Council, on the recommendation of the Minister, to suspend the Public Advocate from office on particular grounds, including that the Public Advocate is unable to perform the duties of the office of Public

Advocate or has engaged in misconduct or has failed to disclose a material conflict of interest.

Within seven sitting days after a suspension, the Minister must lay before each House of Parliament a full statement of the grounds for suspension. The Public Advocate can only be removed from office by the Governor in Council following a suspension, if both Houses of Parliament make a declaration by resolution for removal within 7 sitting days of the statement of the grounds for suspension having been laid before Parliament. If the declaration by resolution for removal is not made in the required time, the Governor in Council must restore the Public Advocate to office.

Clause 12 replaces clause 1(2) to (6) of Schedule 3 to the **Guardianship and Administration Act 1986**.

Clause 13 allows for the appointment of an Acting Public Advocate during a temporary absence of the Public Advocate, or when the Public Advocate has been suspended from office under clause 12.

The Governor in Council may appoint an Acting Public Advocate, on the recommendation of the Minister.

The Minister is able to appoint an Acting Public Advocate if the person has previously been appointed by the Governor in Council, and has already taken the oath or made the affirmation required under clause 14. In these circumstances, the person is not required to take another oath or make another affirmation.

An Acting Public Advocate has all the powers and duties of the Public Advocate, and may exercise any of the functions of the Public Advocate.

Clause 13 replaces clause 2 of Schedule 3 to the **Guardianship and Administration Act 1986**.

Clause 14 provides that, before taking office, the Public Advocate and any Acting Public Advocate (who has not previously taken the oath) must take an oath or make an affirmation to be administered by the Speaker of the Legislative Assembly. The oath is that the Public Advocate or Acting Public Advocate will faithfully and impartially perform the duties of office.

Clause 14 replaces clause 3 of Schedule 3 to the **Guardianship and Administration Act 1986** but no longer requires the oath to refer to not divulging information, as this is covered by a new confidentiality provision in clause 20 of the Bill.

Clause 15 sets out the functions of the Public Advocate. The functions include—

- promoting the human rights of persons with a disability and the development of the ability of such persons to act independently;
- protecting persons with a disability from abuse, neglect and exploitation;
- undertaking systemic and individual advocacy for persons with a disability;
- managing and coordinating programs that promote the human rights of persons with a disability;
- encouraging the development and operation of programs, services and facilities for persons with a disability that: involve and engage persons with a disability in the provision of these services; develop the ability of persons with a disability to act independently; promote accessibility of services for use by persons with a disability; and minimise restrictions on the human rights of persons with a disability;
- promoting and facilitating informed public awareness and understanding by disseminating information about: the provisions of this Bill and any other legislation affecting persons with a disability or persons who may not have decision-making capacity; the role of VCAT and the Public Advocate; and services provided to persons with a disability;
- investigating, reporting and making recommendations to the Minister on any function conferred on the Public Advocate by this Bill or any other Act, such as such as the **Powers of Attorney Act 2014** and the **Medical Treatment Planning and Decisions Act 2016**; and

- any other function conferred on the Public Advocate by or under this or any other Act, such as the **Powers of Attorney Act 2014** and the **Medical Treatment Planning and Decisions Act 2016**.

Clause 15 replaces section 15 of the **Guardianship and Administration Act 1986**.

Clause 16 sets out the powers and duties of the Public Advocate. These include—

- acting as a guardian, if appointed by VCAT;
- making applications to VCAT for: the appointment of a guardian, supportive guardian, administrator or supportive administrator; and the rehearing or reassessment of such appointments;
- advocating for the human rights and interests of a person with a disability, including by making representations on behalf of the person and assisting in legal proceedings;
- giving advice about the provisions of the Bill and providing information for persons who are, or are proposed to be appointed, to a role under the Bill or as a supportive attorney under the **Powers of Attorney Act 2014**;
- providing information for persons who are, or are proposed to be, support persons or medical treatment decision makers (within the meaning of the **Medical Treatment Decisions and Planning Act 2016**);
- investigating any complaint or allegation that a person is under inappropriate guardianship or is being exploited or abused or is in need of guardianship;
- engaging a registered company auditor to carry out an inspection or an audit if required for the purposes of—
 - an investigation of any complaint or allegation that a person is under inappropriate guardianship, is being exploited or abused or is in need of guardianship; or
 - the provision of a report to VCAT;

- submitting a report to VCAT on any matter referred to the Public Advocate for a report by VCAT, including a report under clause 35, 48 or 51AH of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998**. These clauses allow VCAT to refer matters for report under the **Guardianship and Administration Act 2018**, the **Medical Treatment Planning and Decisions Act 2016** and the **Powers of Attorney Act 2014** respectively; and
- performing any other function and exercising and any other power conferred on the Public Advocate by this Bill or any other Act. Other Acts that confer functions and powers on the Public Advocate include the **Powers of Attorney Act 2014** and the **Medical Treatment Planning and Decisions Act 2016**.

Subclause (3) provides that if the Public Advocate is appointed as the guardian of a represented person, the person for the time being holding the office or performing the functions of the Public Advocate is the guardian of that represented person; and the Public Advocate must use the Public Advocate's best endeavours to find an appropriate person to be appointed as the guardian.

Clause 16 replaces section 16 of the **Guardianship and Administration Act 1986**.

Clause 17 sets out the Public Advocate's powers of inspection in relation to an institution. Subclause (7) defines *institution* to mean—

- a disability service provider, residential service, residential institution or residential treatment facility under the **Disability Act 2006**; and
- a designated public hospital under the **Health Services Act 1988**; and
- a mental health service provider under the **Mental Health Act 2014**; and
- a supported residential service under the **Supported Residential Services (Private Proprietors) Act 2010**.

Clause 17 empowers the Public Advocate to enter any premises on which an institution is situated and—

- inspect the premises; and
- see any person who is a resident of the premises or who is receiving any service from the institution; and
- make enquiries relating to the admission, care, detention, treatment or control of any such person; and
- inspect relevant documents, providing that medical records or personnel records can only be inspected with the consent of the person to whom the records relate.

A person in charge, and the members of staff or management, of an institution are required to provide the Public Advocate with reasonable assistance in relation to an inspection. Further to this, a person in charge, or a member of staff or management must not—

- unreasonably refuse or neglect to give assistance;
- refuse or fail to give full and true answers to the best of that person's knowledge to any questions asked by the Public Advocate; or
- assault, obstruct or threaten the Public Advocate.

Clause 17 replaces section 18A of the **Guardianship and Administration Act 1986**.

Clause 18 provides for the Public Advocate to employ employees under Part 3 of the **Public Administration Act 2004** in order to enable the Public Advocate to exercise the Public Advocate's powers, carry out the Public Advocate's functions and perform the Public Advocate's duties.

Clause 18 replaces section 17 of the **Guardianship and Administration Act 1986**.

Clause 19 sets out the Public Advocate's powers of delegation.

Subclause (1) provides that the Public Advocate may delegate to a Public Advocate employee any one or more of the following powers, duties or functions of the Public Advocate—

- a power, duty or function of the Public Advocate under the Bill and under any other Act, such as the **Medical Treatment Planning and Decisions Act 2016**, other than the power of delegation;
- any or all of the Public Advocate's powers and duties in the Public Advocate's capacity as a guardian;
- any or all of the Public Advocate's powers and duties in the Public Advocate's capacity as an attorney under an enduring power of attorney within the meaning of the **Powers of Attorney Act 2014**. This power of delegation applies despite section 25 of the **Powers of Attorney Act 2014**, which provides that an attorney is otherwise not empowered to delegate a power under an enduring power of attorney.

Subclause (2) provides that the Public Advocate may delegate the Public Advocate's powers and duties in the Public Advocate's capacity as guardian to an individual other than a Public Advocate employee, or to an organisation, but such a delegation requires approval from VCAT.

Clause 19 replaces section 18 of the **Guardianship and Administration Act 1986** but no longer requires VCAT approval to delegate powers and duties in the capacity as guardian to a Public Advocate employee.

Clause 20 sets out the confidentiality requirements applying to a person who is or has been the Public Advocate, an Acting Public Advocate or a Public Advocate employee.

A person who is or has been the Public Advocate, an Acting Public Advocate or a Public Advocate employee must not, directly or indirectly, make a record of, disclose or communicate to any other person, any information relating to the affairs of an individual person that is acquired in the exercise of a power, the carrying out of a function or the performance of a duty under the Bill, or under any other Act, which may identify the individual. This prohibition is subject to certain exceptions, which allow the disclosure of information in circumstances including where—

- it is necessary for the purposes of exercising a power, carrying out a function or performing a duty under the Bill or any other Act; or

- it is necessary for the purposes of a criminal proceeding; or
- it is necessary to enable a guardian, supportive guardian, relative or primary care to provide care and support to the individual; or
- the individual to whom the information relates consents.

Clause 21 sets out the annual reporting requirements of the Public Advocate. The requirements reflect the current annual reporting practice of the Public Advocate who is not required to table an annual report under the **Financial Management Act 1994** but whose annual report of operations has been granted ongoing Parliamentary Paper status since 2010.

Subclause (1) requires the Public Advocate, as soon as practicable in each year but not later than 30 September, to submit to the Minister a report containing a review of the operation of the Public Advocate during the 12 months ending on the preceding 30 June.

Subclause (2) requires the Minister to lay each annual report of the Public Advocate before each House of the Parliament within 14 sitting days of that House after it is received by the Minister.

Part 3—Guardianship orders and administration orders

Division 1—Application for guardianship orders and administration orders

Clause 22 allows a person to apply VCAT for a guardianship order for a person with a disability who is of or over 18 years of age, or who is under 18 but the order will take effect on the person turning 18.

Clause 22 replaces section 19(1) of the **Guardianship and Administration Act 1986** but no longer provides for the appointment of "plenary guardians" or "limited guardians". Under the Bill a guardian is appointed in relation to one or more specified personal matters.

Clause 23 allows a person to apply to VCAT for an administration order for a person with a disability who is of or over 18 years of age, or who is under 18 but the order will take effect on the person turning 18.

Subclause (2) allows an application for an administration order to be made for a person with a disability who is of or over 18 years of age who does not reside in Victoria, but who has property in Victoria.

Clause 23 replaces section 43(1) and (2) of the **Guardianship and Administration Act 1986**.

Clause 24 sets out the matters to be included in application for a guardianship order or administration order. The application is not limited to these matters. The note for this clause refers to section 67 of the **Victorian and Civil Tribunal Act 1998**, which sets out additional requirements in relation to making an application.

The matters include the name and contact details of any person who has a direct interest in the application, if known to the applicant. It is intended that the phrase "persons with a direct interest in the application" include the proposed represented person's relatives, a primary carer, close friends and any current attorney under an enduring power of attorney or supportive attorney appointed under the **Powers of Attorney Act 2014**.

The matters also include any support needs of the proposed represented person. The term "support needs" is intended to refer to any supports that might be necessary to enable the proposed represented person to attend and participate in the hearing, such as access requirements, transportation needs, alternative communication methods (e.g. ability to use a recognised sign language if the person has a hearing impediment, or use of electronic or pictorial/symbol communication if speech is impaired), and the possibility of using video link if the person is bedridden.

Clause 25 sets out the list of people who are the parties to a proceeding for an application for a guardianship under clause 22 or administration order under clause 23.

Clause 25 replaces section 19(2) and 43(3) of the **Guardianship and Administration Act 1986**.

Clause 26 sets out the list of people who are entitled to notice that the application for a guardian order or administration order has been made, and also notice of the hearing and any order made in the proceeding. This list is for the purposes of sections 72(1), 99(1) and 116(2) of the **Victorian Civil and Administrative Tribunal Act 1998**.

Clause 26 replaces sections 20 and 44 of the **Guardianship and Administration Act 1986**.

Clause 27 sets out what information must be contained in a notice of an application.

For a notice of application that is given to a party to the application, the notice must include a copy of the application and any information filed in support of the application.

This requirement is subject to clause 37A of Part 9 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998**. Clause 37A, which is inserted by clause 218 of this Bill, provides that a person may make an application to the principal registrar that any documents lodged in relation to a proceeding under the Bill not be disclosed to a specified person or class of persons.

For a notice of application that is given to a person who is not a party, but who is otherwise entitled to notice, the notice is not required to include information filed in support of the application.

Clause 28 requires VCAT to commence to hear an application made under clause 20 within 30 days after the day on which the application is received by VCAT, unless VCAT or the principal registrar under Division 5 of Part 4 of the **Victorian Civil and Administrative Tribunal Act 1998** (which deals with compulsory conferences and mediation) requires the parties to the application to attend a compulsory conference in relation to the application or refers the proceeding in relation to the application, or any part of it, for mediation.

Clause 28 replaces sections 21 and 45 of the **Guardianship and Administration Act 1986** but now refers to the compulsory conference and mediation processes at VCAT.

Clause 29 provides that the proposed represented person must attend a hearing in relation to a guardianship or administration application in person unless VCAT is satisfied that the person does not wish to attend the hearing in person, or the personal attendance of the person is impracticable or unreasonable, despite any arrangement that VCAT may make.

The note at the foot of clause 29(b) refers to section 100(1) of the **Victorian Civil and Administrative Tribunal Act 1998**, which provides that if VCAT thinks it appropriate, it may conduct proceeding by conference conducted using telephones, video links or other system of telecommunication.

In addition, in *Matsoukatidou v Yarra Ranges Council* [2017] VSC 61, Justice Bell found that the right to equality under the **Charter of Human Rights and Responsibilities Act 2006** obligates courts and tribunals to make adjustments and accommodations as are reasonably necessary and available to ensure the effective participation of the individual.

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

Clause 30 sets out when VCAT may make a guardianship order or an administration order.

Subclause (1) makes it clear that VCAT does not have to make a guardianship order or an administration order in response to an application.

If VCAT is satisfied that the person for whom the application was made will have decision-making capacity if given practicable and appropriate support, VCAT may appoint a supportive guardian or supportive administrator under clause 87 of the Bill.

VCAT may make a guardianship order or administration order but only if satisfied that—

- because of the proposed represented person's disability, the person does not have decision-making capacity in relation to, in the case of a guardianship order, the personal matter in relation to which the order is sought, or in the case of an administration order, the financial matter in relation to which the order is sought;

- the proposed represented person is in need of a guardian or administrator; and
- the guardianship order or administration order will promote the proposed represented person's personal and social wellbeing.

VCAT may make a combination of orders, for example, by appointing an administrator for a specified financial matter and a supportive guardian for a specified personal matter. VCAT may make no order under the Bill.

Clause 30(2) replaces sections 22(1) and (3), and 46(1) and (3), of the **Guardianship and Administration Act 1986** but applies the new concepts of decision-making capacity (defined in clause 5 of the Bill) and promoting the personal and social wellbeing of the proposed represented person, rather than their best interests. Disability is no longer a standalone element but linked to the person's decision-making capacity.

Clause 31 sets out the factors that VCAT must consider in determining whether or not a person is in need of a guardian or administrator under clause 30(2)(b).

These factors include whether decisions in relation to the personal or financial matter in relation to which the order is sought may more suitably be made by informal means or may reasonably be made through negotiation, mediation or similar means.

The clause directs VCAT to consider whether decisions could be made by more informal means to ensure that substitute decision-making appointments are made only after all other reasonable options have been considered. For example, certain types of minor, typical or routine decisions, such as a person's diet in a residential service or recreational activities, may be more appropriately made through informal means.

Clause 31 also directs VCAT to consider whether certain disagreements, such as between the carer and service providers, could be resolved through negotiation rather than through the appointment of a guardian.

Clause 31 replaces sections 22(2) and 46(2) of the **Guardianship and Administration Act 1986**.

Clause 32 sets out the details of persons eligible to be appointed as guardians and administrators.

Clause 32(1), which sets out the eligibility requirements to be appointed as a guardian, replaces section 23(1) of the **Guardianship and Administration Act 1986** but requires VCAT to consider whether the proposed guardian will act in accordance with the duties of a guardian set out in Division 4 of Part 3 of the Bill, rather than whether they will act in the person's best interests.

Clause 32(2), which sets out the eligibility requirements to be appointed as an administrator, replaces section 47(1) of the **Guardianship and Administration Act 1986** but requires VCAT to consider whether the proposed administrator will act in accordance with the duties in Division 7 of Part 3 of the Bill, rather than whether they will act in the person's best interests.

Clause 32(3) sets out factors that VCAT must consider in determining whether a person is suitable to act as a guardian or administrator. This subclause replaces sections 23(2) and 47(2) of the **Guardianship and Administration Act 1986** but includes a new focus on relationships that are important to the proposed represented person. In particular, the subclause requires VCAT to consider the desirability of appointing a person who is a relative of the proposed represented person, or who has a personal relationship with the proposed represented person, rather than a person with no such relationship (such as the Public Advocate in the case of a guardianship appointment or a professional trustee in the case of an administration appointment).

Clause 32(5) also directs VCAT not to assume without any evidence that a proposed represented person's relative, who is proposed as the guardian or administrator, is not suitable to be appointed just because the relative disagrees with another relative about a matter pertaining to the proposed represented person. Clause 32(5) replaces sections 23(3) and 47(3) of the **Guardianship and Administration Act 1986**.

Clause 32(6) also requires VCAT to consider a statement of wishes for a future guardian or administrator appointment that has been lodged under clause 35 of the Bill.

- Clause 33 sets out other matters pertaining to guardianship appointments.
- Subclause (1) enables VCAT to appoint the Public Advocate as guardian if satisfied that no other person fulfils the requirements for appointment as guardian. Despite anything to the contrary in subclause (1), subclause (2) allows VCAT to appoint joint guardians, including the Public Advocate or any other person, if each person fulfils the appointment requirements and VCAT considers it appropriate to do so.
- Clause 33 replaces sections 23(4) and (5) of the **Guardianship and Administration Act 1986**.
- Clause 34 sets out the matters that are to be specified in guardianship orders and administration orders.
- Clause 35 provides for the lodgement with VCAT of a formal statement of wishes for a future guardian and administration appointment.
- Subclause (1) lists the people who may lodge a statement, including any guardian or administrator, any supportive guardian, the primary carer or any relative for the represented person.
- Subclause (2) provides that a statement must set out the wishes of the person lodging the statement as to any future appointment of a guardian or administrator in relation to the represented person and the reasons for those wishes.
- Under clause 32(6) of the Bill, VCAT must consider the statement when deciding who to appoint as a guardian or administrator.
- A provision similar to clause 35 was not included in the **Guardianship and Administration Act 1986**.
- Clause 36 sets out the requirements for the making of an urgent guardianship order or an urgent administration order. The Bill renames the orders that were referred to as "temporary orders" under the **Guardianship and Administration Act 1986** as "urgent orders" and provides further guidance on when they may be made.
- Subclause (1) provides that VCAT may waive any of the requirements set out in clauses 24 (matters to be included in an application), 26 (who is entitled to notice), 27 (contents of notice) or 29 (participation in a hearing), and make an urgent order under clause 30, if satisfied on reasonable grounds that there is an

immediate risk of harm to the health, welfare or property of a proposed represented person if the order were not made.

Subclause (2) provides that the risk of harm referred to in subclause (1) may be caused by one or more factors, including abuse, exploitation or neglect of the proposed represented person and self-neglect by the proposed represented person.

Subclause (3) provides that a guardianship order or administration order that is an urgent order remains in force for the period specified in the order, being a period not exceeding 21 days and may be renewed once for a further period not exceeding 21 days.

Clause 36 replaces sections 33(1) and (2), and 60(1) and (2) of the **Guardianship and Administration Act 1986**.

Clause 37 provides that, as soon as practicable after making an urgent guardianship order or an urgent administration order (but within 42 days after making such an order), VCAT must hold a hearing to determine whether a guardianship order or an administration order (as the case requires) that is not an urgent order should be made.

Clause 37 replaces sections 33(3) and 60(3) of the **Guardianship and Administration Act 1986**.

Division 3—Powers of guardians

Clause 38 sets out the powers of a guardian.

Subclause (1) provides that a guardianship order appointing a guardian in relation to the represented person confers on the guardian—

- a power to make decisions about the personal matters in relation to the represented person that are specified in the order; and
- the power to sign and do anything that is necessary to give effect to any power or duty vested in the guardian; and
- the power to undertake legal proceedings under clause 40, if specified in the order.

VCAT may only specify the power to undertake legal proceedings under clause 40 if satisfied that the power is necessary or desirable for the purposes of promoting the represented person's personal and social wellbeing.

Subclause (3) makes it clear that a decision made, action taken, consent given or thing done by a guardian under a guardianship order has effect as if it had been made, taken, given or done by the represented person and the person had the decision-making capacity for the matter in relation to which the order was made.

Clause 38 replaces sections 24, 25 and 29 of the **Guardianship and Administration Act 1986** but no longer makes a distinction between "plenary guardians" and "limited guardians".

Guardians are appointed in relation to one or more specified personal matters.

- Clause 39 sets out the matters for which power cannot be given under a guardianship order. These matters include: the making or revoking of a will for the represented person; voting on behalf of the represented person at a Commonwealth or State or Territory election; managing the estate of the represented person on the death of the represented person or consenting to an unlawful act.

Clause 39 is based on section 26 of the **Powers of Attorney Act 2014**.

- Clause 40 sets out the power for guardians to undertake legal proceedings.

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

Subclause (2) provides that a guardian on whom the power to bring and defend actions and other legal proceedings is conferred is not required to be appointed a litigation guardian in accordance with rules of the relevant court or tribunal.

Subclause (3) provides that if a guardian undertakes a legal proceedings in accordance with subclause (1), the costs of the proceeding are to be paid out of the represented person's estate.

Subclause (4) provides that, despite subclause (3), a court or tribunal may order that a guardian is personally liable to pay for any costs of the legal proceeding if the guardian was negligent or engaged in misconduct.

Subclause (5) enables a court or tribunal to order that a person who is or was a guardian be reimbursed from the represented person's estate for any costs incurred by the person as a guardian in bringing or defending an action or other legal proceeding in accordance with subclause (1).

A provision similar to clause 40 was not included in the **Guardianship and Administration Act 1986**. A mirror provision in relation to administrators undertaking legal proceedings is in clause 51.

Division 4—Duties of guardians

Clause 41 sets out the duties of a guardian. A guardian must—

- act in accordance with the general principles set out in clause 8 and the decision-making principles set out in clause 9; and
- act as an advocate for the represented person; and
- encourage and assist the represented person to develop the person's decision-making capacity in relation to personal matters; and
- act in such a way so to protect the represented person from neglect, abuse or exploitation; and
- act honestly, diligently and in good faith; and
- exercise reasonable skill and care; and
- not use the position for profit; and
- avoid acting if there is or may be a conflict of interest; and
- not disclose confidential information gained as a guardian unless authorised to do so under the guardianship order or by law.

Subclause (2) provides that a guardian who has power to make medical treatment decisions for a represented person must comply with the **Medical Treatment Planning and Decisions Act 2016** in relation to those decisions.

Clause 41 replaces section 28 of the **Guardianship and Administration Act 1986**.

Clause 42 provides that if guardian is advised of the death of a represented person for whom the guardian is appointed, the guardian must report the death in writing to VCAT as soon as practicable.

Clause 42 replaces section 31 of the **Guardianship and Administration Act 1986**.

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

Clause 43 sets out the ability of VCAT to make orders in relation to proposed represented persons who are being unlawfully detained or at risk of harm.

Subclause (1) provides that clause 43 applies in relation to a proposed represented person in relation to whom—

- an application for a guardianship order has been made under clause 22; and
- VCAT has received information on oath or affirmation that the proposed represented person is being lawfully detained against the person's will or is likely to suffer serious damage to the person's physical, emotional or mental health or wellbeing unless immediate action is taken.

Subclause (2) enables VCAT by order to empower the Public Advocate, or some other person specified in an order, to visit the proposed represented person in the company of a police officer for the purpose of preparing a report for VCAT.

Subclause (3) enables VCAT to make an order enabling the proposed represented person to be taken to a place specified in the order for assessment and placement until the application under clause 22 is determined if, after receiving a report referred to in subclause (2), VCAT is satisfied that the person is likely to suffer serious damage to the person's physical, emotional or mental wellbeing unless immediate action is taken.

Subclause (4) provides that a police officer acting under an order made under subclause (2) 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.

Subclause (5) prohibits a person from delaying or obstructing a person who is acting under an order under clause 43. A breach of this prohibition attracts a penalty of 20 penalty units. The note at the foot of clause 43(5) clarifies that clause 193 relating to criminal liability of officers of bodies corporate, applies to an offence against this subclause.

Clause 43 replaces section 27 of the **Guardianship and Administration Act 1986**.

Clause 44 sets out the ability of a guardian to seek advice from VCAT on the scope of the guardianship order or the exercise of any power under the order.

After considering an application for advice, VCAT may approve or disapprove of any act proposed to be done by the guardian, give such advice as VCAT considers appropriate, or make any order it considers necessary.

Subclause (3) provides that action does not lie against a guardian for an act or thing done or omitted to be done by the guardian under an order or on the advice of VCAT made or given by VCAT under clause 44 unless in representing the facts to VCAT, the guardian has been guilty of fraud, wilful concealment or misrepresentation.

Clause 44 replaces section 30 of the **Guardianship and Administration Act 1986**.

Clause 45 sets out the ability of VCAT to order a represented person to comply with a guardian's decisions.

Subclause (1) enables VCAT to make an order specifying that a guardian or another specified person is empowered to take specified measures or actions to ensure that the represented person complies with the guardian's decisions in the exercise of the powers and duties conferred by the guardianship order.

Subclause (2) requires VCAT to hold a hearing to reassess an order made under subclause (1) as soon as practicable after making the order but within 42 days of making the order.

Subclause (3) makes it clear that a guardian or another person specified in an order made under subclause (1) is not liable to any action for false imprisonment or assault or any other action, liability, claim or demand arising out of the taking of a measure or action under the order if the guardian or other person took the measure or action in the belief that the measure or action will promote the personal and social wellbeing of the represented person.

Subclause (4) makes it clear that subclause (1) does not limit the powers of a guardian under clause 38.

Clause 45 replaces section 26 of the **Guardianship and Administration Act 1986**.

Division 6—Powers of administrators

The provisions in Division 6 dealing with the powers of administrators re-enact many of the provisions from the **Guardianship and Administration Act 1986**, which is repealed by this Bill.

Clause 46 sets out the powers of administrators.

Subclause (1) provides that an administration order appointing an administrator confers on the administrator the following—

- a power to make decisions about the financial matters in relation to the represented person specified in the order;
- a power to make gifts in accordance with clause 47;
- a power of investment in accordance with clause 48;
- a power to open the will of the represented person in accordance with clause 49;
- any other power that is specified in the order (noting that clauses 51 and 52 set out other powers which may be specified in an administration order);
- a power to sign and do anything necessary to give effect to any power or duty vested in the administrator (this provision replaces section 50(1) of the **Guardianship and Administration Act 1986**);

- a power to do all matters necessary or incidental to the performance of any power conferred on the administrator (this provision replaces section 58B(2)(p) of the **Guardianship and Administration Act 1986**).

Subclause (2) provides that VCAT can only specify an additional power if satisfied that the power is necessary or desirable for the purpose of promoting the personal and social wellbeing of the represented person.

Subclause (3) provides that, subject to and in accordance with the Bill and the administration order, 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 represented person's financial matters as effectually and in the same manner as the represented person could have done if the represented person had decision-making capacity. This subclause replaces section 58B(1)(c) of the **Guardianship and Administration Act 1986**.

Subclause (4) makes it clear that a decision made, action taken, consent given or thing done by an administrator under an administration order has effect as if it had been made, taken, given or done by the represented person and the person had the decision-making capacity for the matter in relation to which the order was made. This subclause replaces section 48(3) of the **Guardianship and Administration Act 1986**.

Clause 47 outlines the power of administrators to make gifts on behalf of a represented person, except as provided in any order of VCAT.

Subclause (2) makes it clear that a gift may be made by an administrator even if the gift is made to the administrator, or to a relative or close friend of the administrator or an organisation with whom the administrator has a connection. However, clause 61 of the Bill requires an administrator to account for such "interested" gifts, if these are of or over \$100.

Clause 47 replaces section 50A of the **Guardianship and Administration Act 1986**.

Clause 48 sets out the powers of investment of an administrator, which include re-depositing money in an authorised deposit-taking institution after the money becomes payable.

Clause 48 replaces section 51 of the **Guardianship and Administration Act 1986**.

Clause 49 enables an administrator, either before or after the death of a represented person, to open and read without order of VCAT any paper or writing deposited with the administrator that is purported or alleged to be the will of the represented person.

Clause 49 replaces section 58G of the **Guardianship and Administration Act 1986**.

Clause 50 provides for an administrator to exercise certain powers that are vested in a represented person.

Subclause (1) provides that an administrator may, on behalf and in the name of a represented person, exercise a power or give consent as the administrator thinks fit if—

- a 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;
- the power or consent is in the nature of a beneficial interest in the represented person; and
- it appears to the administrator to be for the benefit of the represented person that the power should be exercised or the consent given.

Subclause (2) provides that an administrator may, on behalf and in the name of a represented person, exercise a power or give consent as the administrator thinks fit if—

- the power is vested in a represented person in the represented person's capacity as a trustee or guardian of a trust, or the consent of a represented person to the exercise of a power is necessary in the represented person's capacity as a trustee or guardian of a trust; and
- the administrator believes that the power should be exercised or the consent given.

Subclause (3) provides that the exercise under this clause by an administrator 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**.

Clause 50 replaces section 58C of the **Guardianship and Administration Act 1986**.

Clause 51 sets out the power for administrators to undertake legal proceedings.

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

Subclause (2) provides that an administrator on whom the power to bring and defend actions and other legal proceedings is conferred is not required to be appointed a litigation guardian in accordance with rules of the relevant court or tribunal.

Subclause (3) provides that if an administrator undertakes a legal proceedings in accordance with subclause (1), the costs of the proceeding are to be paid out of the represented person's estate.

Subclause (4) provides that, despite subclause (3), a court or tribunal may order that an administrator is personally liable to pay for any costs of the legal proceeding if the administrator was negligent or engaged in misconduct.

Subclause (5) enables a court or tribunal to order that a person who is or was an administrator be reimbursed from the represented person's estate for any costs incurred by the person as an administrator in bringing or defending an action or other legal proceeding in accordance with subclause (1).

There is a similar provision in relation to guardians undertaking legal proceedings in relation to personal matters in clause 40.

Clause 51 replaces sections 47B(1) and (2) and 58B(2)(1) of the **Guardianship and Administration Act 1986**.

Clause 52 sets out other powers that may be specified by VCAT in an administration order, including any other relevant power in relation to a specified financial matter. As set out under clause 46(2), VCAT may only specify a power if satisfied that the power is necessary or desirable for the purposes of promoting the represented person's personal and social wellbeing.

Clause 52 replaces section 58B(2) of the **Guardianship and Administration Act 1986**.

Clause 53 makes clear matters for which power cannot be given under an administration order. These matters include: the making or revoking of a will for the represented person; voting on behalf of the represented person at a Commonwealth or State or Territory election; managing the estate of the represented person on the death of the represented person or consenting to an unlawful act.

Clause 53 is based on section 26 of the **Powers of Attorney Act 2014**.

Clause 54 makes it clear that on the death of a represented person, an order appointing an administrator for that represented person under this Bill lapses and the law relating to the administration of deceased person's estate applies accordingly.

Clause 54 replaces section 48(4) of the **Guardianship and Administration Act 1986**.

Division 7—Duties of administrators

Clause 55 sets out the duties of an administrator. An administrator must do all of the following—

- act in accordance with the general principles set out in clause 8 and the decision making principles set out in clause 9;
- act as an advocate for the represented person;
- encourage and assist the represented person to develop the person's decision-making capacity in relation to financial matters;
- act in such a way so to protect the represented person from neglect, abuse or exploitation;
- act honestly, diligently and in good faith;

- exercise reasonable skill and care;
- not use the position for profit unless permitted under clause 175 (remuneration of administrators) or otherwise authorised by law;
- avoid acting if there is or may be a conflict of interest unless authorised under this Bill, by order of VCAT or otherwise by law (a conflict of interest may be permitted under clauses 47(2) (gifts), 57(2) (transactions that are not conflict transactions) or 58 (permitted conflict transactions); and
- not disclose confidential information gained as an administrator unless authorised to do so under the administration order or by law.

Clause 55 replaces section 49 of the **Guardianship and Administration Act 1986**.

Clause 56 makes clear that, subject to and in accordance with this Act and the order appointing an administrator, 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 property and financial affairs of the represented person.

Clause 56 replaces section 58B(1)(b) of the **Guardianship and Administration Act 1986**.

Clause 57 sets out the details for conflict transactions.

Subclause (1) prohibits an administrator from entering into a transaction in the capacity as administrator if the transaction is one in which there is, or may be, a conflict between a duty of the administrator to the represented person and the interests of the administrator, or a relative, business associate or close friend of the administrator.

Subclause (2) sets out transactions that are not covered by the prohibited conflict transactions in subclause (1).

Clause 57 is a new provision based on section 64 of the **Powers of Attorney Act 2014**.

Clause 58 sets out details of permitted conflict transactions.

Subclause (1) provides that an administrator may enter into a conflict transaction prohibited under clause 57(1) if VCAT authorises the administrator at or before the time of the transaction to enter into the transaction, that kind of transaction or any transaction prohibited by clause 57(1).

Subclause (2) provides that VCAT may validate a transaction prohibited under clause 57(1).

Subclause (3) makes it clear that a transaction validated under subclause (2) is taken to be valid from the time it was entered into.

Clause 58 is a new provision based on section 65 of the **Powers of Attorney Act 2014**.

Clause 59 requires an administrator to keep accurate records and accounts of all dealings and transactions made for financial matters specified in the administration order.

Clause 59 is a new provision based on section 66 of the **Powers of Attorney Act 2014**.

Clause 60 Subclause (1) requires an administrator to keep the administrator's property separate from the represented person's property.

Subclause (2) provides that subclause (1) does not apply to property owned jointly by the administrator and the represented person.

Subclause (3) makes it clear that subclause (1) does not affect any other obligation imposed by law.

Clause 60 is a new provision based on section 69 of the **Powers of Attorney Act 2014**.

Clause 61 Subclause (1) enables VCAT, at the time it appoints an administrator under clause 30 or at any later time, to appoint a person to examine or audit the accounts of all dealings and transactions relating to the financial matters specified in the administration order for a fee approved by VCAT and paid from the estate.

Subclause (2) requires an administrator, on or as soon as practicable after the anniversary of the appointment of the administrator, to lodge with VCAT an account of the dealings and transactions relating to the financial matters specified in the administration order during the previous 12 months. This requirement is subject to any order of VCAT directing otherwise.

Subclause (3) provides that despite subclause (2), VCAT may require an administrator to lodge accounts at a time other than a time specified in subclause (2).

Subclause (4) sets out the details to be provided in an account lodged under subclause (2) or (3) including a full and true account of the assets and liabilities of the represented person in relation to the financial matters specified in the administration order and details of any gifts made by the administrator of the represented person's property with a total value of or over the prescribed amount or, if an amount is not prescribed, \$100, that is made to the administrator, a relative or close friend of the administrator or an organisation with which the administrator has a connection.

Subclause (5) requires a person appointed to examine or audit accounts to lodge with VCAT a report in relation to the accounts examined or audited and provides that the person may recommend in the report the disallowance of any items in the accounts.

Subclause (6) provides that VCAT must not make an order disallowing an item referred to in subclause (5) if VCAT is satisfied that the administrator acted in good faith and with reasonable care in the exercise of their powers.

Subclause (7) provides that if VCAT disallows an item referred to in subclause (5), the administrator is liable for the amount of the item disallowed.

Clause 61 replaces section 58(1) to (4) of the **Guardianship and Administration Act 1986**.

Clause 62 Subclause (1) requires an administrator to pay the person appointed under clause 61(1) to examine or audit accounts, an amount certified by that person as being the reasonable cost of examining or auditing the accounts.

Subclause (2) enables VCAT, on application by the administrator and with the consent of the person appointed under clause 61(1) to examine or audit accounts, to waive payment of the whole or part of the amount required to be paid under subclause (1).

Clause 62 replaces section 58(5) and (6) of the **Guardianship and Administration Act 1986**.

Clause 63 provides that, if an administrator is advised that a represented person for whom the administrator has been appointed has died, the administrator must report the death of the represented person to VCAT as soon as practicable.

Clause 63 replaces section 58AB of the **Guardianship and Administration Act 1986**.

Division 8—Other matters pertaining to administration orders

Clause 64 sets out the ability of an administrator to seek advice from VCAT on the scope of the administration order or the exercise of any power under the order.

After considering an application for advice, VCAT may approve or disapprove of any act proposed to be done by the administrator, give such advice as VCAT considers appropriate, or make any order it considers necessary.

Subclause (4) provides that action does not lie against an administrator for an act or thing done or omitted to be done by the administrator under an order or on the advice of VCAT made or given by VCAT under clause 64 unless in representing the facts to VCAT, the administrator has been guilty of fraud, wilful concealment or misrepresentation.

Clause 64 replaces section 55 of the **Guardianship and Administration Act 1986**.

Clause 65 sets out the ability of an administrator to seek advice from a professional adviser about the financial matters specified in the administration order. A professional adviser is someone who provides advice in relation to financial matters and includes a financial adviser, legal practitioner or accountant.

Subclause (2) makes it clear that an administrator is entitled to be reimbursed from the represented person's estate for any costs paid by the administrator for the professional advice.

A provision similar to clause 65 is not included in the **Guardianship and Administration Act 1986**.

Clause 66 provides that VCAT can open and read any paper or writing which is the will, a revoked will, a purported will or copy of a will of a represented person who does not have testamentary capacity, or a deceased person who was a represented person immediately before they died.

Clause 66 replaces section 54 of the **Guardianship and Administration Act 1986** and is consistent with section 134A of the **Powers of Attorney Act 2014**.

Clause 67 allows VCAT to make an order compelling a person who has possession or control of a will, a revoked will or a purported will of a represented person who does not have testamentary capacity to produce the document to VCAT to enable VCAT to open and read it in accordance with clause 66, or for VCAT to make the document available to the administrator in accordance with clause 68.

Clause 67 is a new provision based on section 134B of the **Powers of Attorney Act 2014**.

Clause 68 allows VCAT to provide a full or redacted copy of a will, a revoked will or a purported will of the represented person to an administrator if satisfied that the represented person does not have testamentary capacity.

Clause 68 is based on section 134C of the **Powers of Attorney Act 2014**.

Clause 69 requires VCAT, if it knows that a person has ceased to be a represented person, to give notice of this fact to the administrator as soon as practicable.

Until the administrator learns that a person has ceased to be a represented person or has died, the administrator may exercise all or any of the powers given to the administrator by the administration order.

Clause 69 replaces section 57(1) and (2) of the **Guardianship and Administration Act 1986**.

Clause 70 provides that on notice being given under clause 69(1), the former represented person, or the represented person's legal representative, is bound by, and may take advantage of, any act done on behalf of the represented person by the administrator within the powers conferred on the administrator by VCAT as if it had been done by the represented person and the represented person had decision-making capacity to do so.

Clause 70 replaces section 57(3) of the **Guardianship and Administration Act 1986**.

Clause 71 requires an administrator who has received notice that a person has ceased to be a represented person or has died—

- to pay to the former represented person or their personal representative any money with the administrator that is standing to the former represented person's credit; and
- to deliver to the former represented person or their personal representative, all property of the former represented person that is with the administrator, as well as any documents relating to that property.

The delivery of documents relating to the former represented person's property is subject to an order under clause 73.

Clause 73 allows VCAT to order that certain documents in the custody of an administrator relating to the property or financial affairs of a former represented person be withheld in certain circumstances.

Clause 71 replaces section 58D of the **Guardianship and Administration Act 1986**.

Clause 72 provides that, subject to an order made under clause 73, a person who has ceased to be a represented person, or the personal representative of such a person, is entitled, before or after obtaining the restoration of all or any part of the person's money or other property from the administrator—

- 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 dealings and transactions made for the financial matters specified in the administration order and make or cause to be made copies or extracts; and

- to be provided with copies of or extracts from any book, account, notice or document relating to the dealings and transactions made for the financial matters specified in the administration order and information relating to those dealings and transactions that is reasonable to request and that can be given by the administrator.

Clause 72 replaces section 58E of **Guardianship and Administration Act 1986**.

Clause 73 allows VCAT to order that a book, account, notice or document in the custody of an administrator relating to the property or financial affairs of a former represented person be withheld if VCAT is satisfied that—

- it is in the interests of the former represented person that the information, or part of the information contained in the book, account, notice or document remain confidential; or
- the book, account, notice or other document contains confidential information about another person.

A provision similar to clause 73 is not included in the **Guardianship and Administration Act 1986**.

Clause 74 allows an administrator, after public notice, to sell the personal effects of a former represented person that are in the possession of the administrator and that have not been claimed within two years after the date on which the person ceased to be a represented person. The proceeds of any such sale are to be paid into the Consolidated Fund.

Clause 74 replaces section 58F of the **Guardianship and Administration Act 1986**.

Clause 75 provides that a represented person (to the extent that a financial matter in relation to a represented person is subject to an administration order) is incapable of dealing with, transferring, alienating or charging the represented person's money or property or becoming liable under any contract without an order of VCAT or the written consent of the administrator.

Subclause (2) provides that any dealing, transfer, alienation or charge by any represented person in relation to a financial matter that is subject to an administration order is void and of no effect, and the money or property that is the subject of the dealing, transfer, alienation or charge is recoverable by the administrator in any court.

Subclause (3) makes clear that this clause does not make invalid any dealing, transfer, alienation or charge by a represented person made for adequate consideration with or to or in favour of any other person who proves that the other person acted in good faith and did not know or could not reasonably have known that the represented person was a represented person.

Subclause (4) provides that for the purpose of this clause, the acceptance of payment of the whole or any part of a debt is taken to be a dealing with property.

Clause 75 replaces section 52 of the **Guardianship and Administration Act 1986**.

Clause 76 Subclause (1) provides that a represented person and a beneficiary of a represented person have the same interest in any money or other property arising from or received in respect of any sale, mortgage or other listed disposition under the powers conferred by VCAT on an administrator which have not been applied under those powers as the represented person or those other persons would have had in the property the subject of the sale or other listed disposition if no sale, mortgage, exchange, partition or disposition had been made.

Subclause (2) provides that for the purposes of this clause, money arising from the compulsory acquisition or purchase under any Act of property of a represented person is taken to be money arising from the sale of that property under the powers given to an administrator under the administration order.

Subclause (3) provides that an administrator is not required to keep the proceeds of the sale or other disposition of property under this clause separate from the represented person's other assets.

Subclause (4) provides that money received by an administrator under this clause may be invested in any manner in which trust funds may be invested under the **Trustee Act 1958**.

Subclause (5) defines *beneficiary of a represented person*.

Clause 76 replaces section 53 and 53A of the **Guardianship and Administration Act 1986**.

Clause 77 Subclause (1) makes it clear that the account that is known as "The Guardianship and Administration Fund" and that was established in the Public Account under section 58AA of the **Guardianship and Administration Act 1986** continues in existence.

Subclause (2) provides that all annual fees prescribed under clause 194 that are paid in relation to an estate of a represented person and interest received from the investment of money in the Fund are to be paid into the Guardianship and Administration Fund.

Subclause (3) provides that money standing to the credit of the Guardianship and Administration Fund may be invested in any manner in which trust funds may be invested under the **Trustee Act 1958**.

Subclause (4) provides that the Guardianship and Administration Fund is to be used to meet the costs and expenses of VCAT in relation to proceedings under this Bill.

Clause 77 replaces section 58AA of the **Guardianship and Administration Act 1986**.

Clause 78 provides that a represented person or a person interested as a creditor, beneficiary, next of kin, guardian, nearest relative, primary carer or the Public Advocate or otherwise in a financial matter specified in the administration order may apply to VCAT on any matter arising out of any dealing or transaction in relation to the financial matter.

Subclause (2) provides that VCAT can make any order in relation to the application as the circumstances of the case may require.

Subclause (3) defines *next of kin*.

Clause 78 replaces section 56 of the **Guardianship and Administration Act 1986**.

Part 4—Supportive guardianship orders and supportive administration orders

Part 4 of the Bill contains provisions relating to supportive guardianship orders and supportive administration orders. A supportive guardian is a person appointed under a supportive guardianship order to support a person with a disability to make decisions in relation to personal matters. A supportive administrator is a person appointed under a supportive administration order to support a person with a disability to make decisions in relation to financial matters. A supportive guardian or supportive administrator does not make decisions on behalf of the supported person. In accordance with clause 5(4)(e) of the Bill, a person has decision-making capacity if it is possible for the person to make the decision with practicable and appropriate support, which may be provided by a supportive guardian or a supportive administrator.

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

- Clause 79 allows a person to apply to VCAT for a supportive guardianship order for a person with a disability who is of or over 18 years of age, or under 18 years of age but the order will take effect on the person turning 18.
- Clause 80 allows a person to apply to VCAT for a supportive administration order for a person with a disability who is of or over 18 years of age, or under 18 years of age but the order will take effect on the person turning 18. A person may also apply for a supportive administration order if the person with a disability has property in Victoria.
- Clause 81 sets out the matters to be included in an application for a supportive guardianship order or a supportive administration order. The application is not limited to these matters. The note for this clause refers to section 67 of the **Victorian and Civil Tribunal Act 1998**, which sets out additional requirements in relation to making an application.

The matters include the name and contact details of any person who has a direct interest in the application, if known to the applicant. It is intended that the phrase "persons with a direct interest in the application" include the proposed supported person's relatives, a primary carer, close friends and any current attorney under an enduring power of attorney or supportive attorney appointed under the **Powers of Attorney Act 2014**.

The matters also include any support needs of the proposed supported person. The term "support needs" is intended to refer to any supports that might be necessary to enable the proposed represented person to attend and participate in the hearing, such as access requirements, transportation needs, alternative communication methods (e.g. ability to use a recognised sign language if the person has a hearing impediment, or use of electronic or pictorial/symbol communication if speech is impaired), and the possibility of using video link if the person is bedridden.

- Clause 82 sets out the list of people who are the parties to a proceeding for an application for a supportive guardianship order under clause 79 or a supportive administration order under clause 80.
- Clause 83 sets out the list of people who are entitled to notice that the application for a supportive guardianship order or a supportive administration order has been made, and also notice of the hearing and any order made in the proceeding. This list is for the purposes of sections 72(1), 99(1) and 116(2) of the **Victorian Civil and Administrative Tribunal Act 1998**.
- Clause 84 sets out what information must be contained in a notice of an application for a supportive guardianship order or a supportive administration order.

For a notice of application that is given to a party to the application, the notice must include a copy of the application and any information filed in support of the application. This requirement is subject to clause 37A of Part 9 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998**. Clause 37A, which is inserted by clause 218 of this Bill, provides that a person may make an application to the principal registrar that any documents lodged in relation to a proceeding under the Bill not be disclosed to a specified person or class of persons.

For a notice of application that is given to a person who is not a party, but who is otherwise entitled to notice, the notice is not required to include information filed in support of the application.

Clause 85 provides that VCAT must commence to hear an application made under clause 79 or clause 80 within 30 days after the day on which the application is received by VCAT, unless VCAT or the principal registrar under Division 5 of Part 4 of the VCAT Act requires the parties to the application to attend a compulsory conference or refers the proceeding in relation to the application or any part of it for mediation.

Clause 86 provides that the proposed supported person must attend a hearing in relation to the supportive guardianship or supportive administration application in person unless VCAT is satisfied that the person does not wish to attend the hearing in person, or the personal attendance of the person is impracticable or unreasonable, despite any arrangement that VCAT may make.

The note at the foot of clause 86 refers to section 100 of the **Victorian Civil and Administrative Tribunal Act 1998** which provides that if VCAT thinks it appropriate, it may conduct a proceeding by conference conducted using telephones, video links or other system of telecommunication.

In addition, in *Matsoukatidou v Yarra Ranges Council* [2017] VSC 61, Justice Bell found that the right to equality under the **Charter of Human Rights and Responsibilities Act 2006** obligates courts and tribunals to make adjustments and accommodations as are reasonably necessary and available to ensure the effective participation of the individual.

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

Clause 87 allows VCAT to make a supportive guardianship order or a supportive administration order after having considered an application for such an order under Part 4 of the Bill, or an application for a guardianship or administration order made under Part 3 of the Bill.

VCAT may only make an order appointing a supportive guardian or a supportive administrator for a proposed supported person if VCAT is satisfied that—

- the person consents to the order; and

- if the person is given practicable and appropriate support, the person will have decision-making capacity in relation to the personal matter or financial matter in relation to which the supportive guardianship order or the supportive administration order may be made; and
- the supportive guardianship order or supportive administration order would promote the person's personal and social wellbeing.

In this clause, the reference to a ***proposed supported person*** means a person in relation to whom VCAT considers making a supportive guardianship order or supportive administration order under clause 87 and so includes a proposed represented person if VCAT determines not to make a guardianship or administration order.

Clause 88 sets out the details of persons eligible to be appointed as supportive guardians and supportive administrators.

Subclause (1) provides that VCAT may appoint as a supportive guardian or supportive administrator any individual of or over 18 years of age who consents to act as a supportive guardian or supportive administrator, if VCAT is satisfied that the person will act in accordance with the duties and obligations set out in clause 94 of the Bill, and is a suitable person to act as the supportive guardian or supportive administrator.

Subclause (2) sets out the matters that VCAT must consider in determining whether a person is suitable to act as the supportive guardian or supportive administrator for the purposes of subclause (1). These matters include—

- the will and preferences of the proposed supported person;
- the nature of the relationship between the proposed supportive guardian or supportive administrator, and the proposed supported person, in particular whether the relationship is characterised by trust;
- whether the person will be available and able to meet and communicate with the proposed supported person.

Clause 89 sets out the matters that must be specified in a supportive guardianship order or supportive administration order.

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

Clause 90 provides that VCAT may confer on a supportive guardian under a supportive guardianship order, or on a supportive administrator under a supportive administration order, any of the powers referred to in clauses 91, 92 and 93 of the Bill. The powers referred to in clauses 91, 92 and 93 relate to accessing and collecting information, communicating information and decisions, and giving effect to decisions.

VCAT may only specify a power if satisfied that the power will ensure that the practicable and appropriate support given by the supportive guardian or supportive administrator will enable the supported person to have decision-making capacity in relation to the relevant personal matters or financial matters.

Clause 91 enables VCAT to specify that a supportive guardian or supportive administrator has power to access, collect or obtain from any person any personal information about the supported person that is relevant to a supported decision and may lawfully be collected or obtained by the supported person. This section also permits the supportive guardian or supportive administrator to assist the supported person to access, collect or obtain such information.

Subclause (2) permits a holder of that information to disclose personal information about the supported person to the supportive guardian or supportive administrator.

The note at the foot of clause 91(2) refers to provisions in the **Disability Act 2006**, the **Health Records Act 2001** and the **Privacy and Data Protection Act 2014** that relate to disclosure of personal information to supportive guardians and supportive administrators.

Subclause (3) permits the supportive guardian or supportive administrator to disclose any information given to the supportive guardian or supportive administrator under subclause (1) for the purpose of anything that is relevant and necessary to the supportive guardian or supportive administrator carrying out their role, or any legal proceeding under this Act or any report of a legal proceeding under this Act, or any other lawful reason.

- Clause 92 enables VCAT to specify that a supportive guardian or supportive administrator has power to communicate any information about the supported person that is relevant to or necessary for the making of or giving effect to a supported decision, or to communicate or assist the supported person to communicate a supported decision of the supported person.
- Clause 93 enables VCAT to specify that a supportive guardian or supportive administrator has power to take any reasonable action or do anything that is reasonably necessary to give effect to a supported decision, other than a decision about a significant financial transaction.
- Subclause (2) defines *significant financial transaction*.
- Subclause (3) provides that for the purpose of the definition of *significant financial transaction* in subclause (2), paragraph (a) does not include making or continuing an investment of an amount of \$10 000 or less in total in one or more interest bearing accounts of an authorised deposit-taking institution.
- Clause 94 sets out the duties and obligations of a supportive guardian or a supportive administrator. The supportive guardian or supportive administrator must—
- act in accordance with the general principles set out in clause 8; and
 - act honestly, diligently, and in good faith; and
 - exercise reasonable skill and care; and
 - not use the position for profit; and
 - avoid acting where there is or may be a conflict and, if acting where there is a conflict of interest, ensure that the interests of the supported person are the primary consideration; and
 - discuss anything relating to a supported decision with the supported person in a way that the supported person can understand and that will assist the supported person to make the decision; and
 - must not assist the supported person, in the role of supportive guardian or supportive administrator to conduct any illegal activity; and

- must not coerce, intimidate or in any way unduly influence the supported person into a particular course of action.

Division 4—General

Clause 95 provides that a supportive guardian or supportive administrator is not entitled to receive any remuneration for acting in that role.

Clause 96 provides that a supportive guardianship order or supportive administration order ceases to have effect to the extent that it is inconsistent with any subsequent guardianship or administration order. However, subclause (2) permits VCAT to modify a supportive guardianship order or supportive administration order if an application is made for a subsequent guardianship or administration order in relation to the supported person or in the context of a rehearing or reassessment under Part 7 of the Bill.

Clause 97 sets out the ability of a supportive guardian or supportive administrator to seek advice from VCAT on the scope of the supportive guardianship order or supportive administration order, or the exercise of any power under an order.

After considering an application for advice, VCAT may approve or disapprove of any act proposed to be done by the supportive guardian or supportive administrator, give such advice as VCAT considers appropriate, or make any order it considers necessary.

Subclause (4) provides that action does not lie against a supportive guardian or supportive administrator for an act or thing done or omitted to be done under an order or on the advice of VCAT made or given by VCAT under clause 97 unless, in representing the facts to VCAT, the supportive guardian or supportive administrator has been guilty of fraud, wilful concealment or misrepresentation.

Clause 98 provides that, if a supportive guardian or supportive administrator is advised of the death of a supported person for whom they are appointed, the supportive guardian or supportive administrator must report the death of the supported person to VCAT in writing as soon as practicable.

Part 5—Administration (missing person) orders

Division 1—Application for administration (missing person) orders

Clause 99 allows a person to apply to VCAT for an order appointing an administrator in relation to a financial matter for a missing person who is of or over 18 years of age.

Clause 100 sets out the matters to be included in application for an administration (missing person) order. The application is not limited to these matters. The note for this clause refers to section 67 of the **Victorian and Civil Tribunal Act 1998**, which sets out additional requirements in relation to making an application.

The matters include the name and contact details of any person who has a direct interest in the application, if known to the applicant. It is intended that the phrase "persons with a direct interest in the application" include the missing person's relatives, a primary carer, close friends and any current attorney under an enduring power of attorney or supportive attorney appointed under the **Powers of Attorney Act 2014**.

Clause 101 sets out the list of people who are the parties to a proceeding for an application for an administration (missing person) order.

Clause 102 sets out the list of people who are entitled to notice that the application for an administration (missing person) order has been made, and also notice of the hearing and any order made in the proceeding. This list is for the purposes of sections 72(1), 99(1) and 116(2) of the **Victorian Civil and Administrative Tribunal Act 1998**.

Clause 103 sets out what information must be contained in a notice of an application for an administration (missing person) order.

For a notice of application that is given to a party to the application, the notice must include a copy of the application and any information filed in support of the application. This requirement is subject to clause 37A of Part 9 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998**. Clause 37A, which is inserted by clause 218 of this Bill, provides that a person may make an application to the principal registrar

that any documents lodged in relation to a proceeding under the Bill not be disclosed to a specified person or class of persons.

For a notice of application that is given to a person who is not a party, but who is otherwise entitled to notice, the notice is not required to include information filed in support of the application.

Clause 104 requires VCAT to commence to hear an application for an administration (missing person) order within 30 days after the day on which the application is received by VCAT unless VCAT or the principal registrar of VCAT—

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

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

Clause 105 sets out when VCAT may make an administration (missing person) order.

VCAT may decide not to make an administration (missing person) order.

VCAT may only make an administration (missing person) order if VCAT has determined that the person is a missing person who usually resides in Victoria, and is satisfied that—

- while the person is missing, there is, or is likely to be, a need for a decision to be made in relation to the person's financial matters; and
- the order would promote the missing person's personal and social wellbeing while that person is missing.

Subclause (3) provides that VCAT may determine that a person is a missing person if satisfied of a number of listed matters, including that it is not known whether the person is alive, reasonable efforts have been made to find the person, and friends and family have not had contact with the person for at least 90 days.

Subclause (4) makes it clear that VCAT cannot make an order under subclause (1) in relation to the property of a missing person if the property is subject to an order under section 24A or an application for an order in relation to uncared for property under section 24A of the **Administration and Probate Act 1958**.

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

Clause 106 provides that an administration (missing person) order that is not an urgent order is in force for the period specified in the order, being a period not exceeding 2 years.

An administration (missing person) order can be renewed once for a further period not exceeding two years if VCAT is satisfied that there is still the same basis for the order.

An urgent administration (missing person) order is in force for the period specified in the order being a period of no longer than 21 days. An urgent order can be renewed once for a further period not exceeding 21 days.

Nothing in this clause prevents a person applying for a new administration (missing person) order if the previous order has expired.

Clause 107 sets out the details of persons eligible to be appointed as an administrator for a missing person.

Clause 108 sets out the matters that must be specified in an administration (missing person) order.

Clause 109 sets out the requirements for the making of urgent administration (missing person) orders. The Bill renames the orders that were referred to as "temporary orders" under the **Guardianship and Administration Act 1986** as "urgent orders" and provides further guidance on when they may be made.

Subclause (1) provides that VCAT may waive any of the requirements set out in clause 100, clause 102 or clause 103 and make an urgent administration order under clause 105 if VCAT is satisfied on reasonable grounds that there is an immediate risk of harm to the property of a missing person if the order were not made.

Clause 100 sets out the matters to be included in an application to VCAT for an administration (missing person) order. Clause 102 sets out who is entitled to notice in relation to an application. Clause 103 sets out what should be included in a notice of an application.

Subclause (2) provides that, as soon as practicable after making an urgent administration (missing person) order (but within 42 days after making such an order), VCAT must hold a hearing to determine whether an administration (missing person) order that is not an urgent order should be made.

Division 3—Powers of administrators for missing persons

Clause 110 sets out the powers administrators for missing persons.

Subclause (1) provides that an administration (missing person) order confers on the administrator the following powers—

- a power to make decisions about the financial matters in relation to the missing person specified in the order;
- a power of investment in accordance with clause 111;
- a power to open the will of the missing person in accordance with clause 112;
- any other power that is specified in the order (noting that clauses 113 and 114 set out other powers which may be specified in an administration (missing person) order);
- a power to sign and do anything necessary to give effect to any power or duty vested in the administrator;
- a power to do all matters necessary or incidental to the performance of any power conferred on the administrator.

Subclause (2) provides that VCAT can only specify an additional power if satisfied that the power is necessary or desirable for the purpose of promoting the personal and social wellbeing of the represented person.

Subclause (3) provides that, subject to and in accordance with the Bill and the administration (missing person) order, the administrator may do all acts and exercise all powers in relation to the financial matters specified in the order in the name, and on behalf, of the missing person as effectually and in the same manner as the missing person may have done if the missing person were not missing and had the relevant decision-making capacity.

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

Clause 111 sets out the powers of investment of an administrator which includes re-depositing money in an authorised deposit-taking institution after the money becomes payable.

Clause 112 enables an administrator to open and read without order of VCAT any paper or writing deposited with the administrator that is purported or alleged to be the will of the missing person.

Clause 113 sets out the power of an administrator to undertake legal proceedings for a missing person.

Subclause (1) provides that VCAT may specify in an administration (missing person) order that the administrator has power to bring and defend an action or other legal proceeding in the name, and on behalf, of the missing person if the action or other legal proceeding is in relation to a financial matter specified in the order.

Subclause (2) provides that an administrator on whom the power to bring and defend actions and other legal proceedings is conferred is not required to be appointed a litigation guardian in accordance with rules of the relevant court or tribunal.

Subclause (3) provides that if an administrator undertakes a legal proceeding in accordance with subclause (1), the costs of the proceeding are to be paid out of the missing person's estate.

Subclause (4) provides that, despite subclause (3), a court or tribunal may order that an administrator is personally liable to pay for any costs of the legal proceeding if the administrator was negligent or engaged in misconduct.

Subclause (5) enables a court or tribunal to order that a person who is or was an administrator be reimbursed from the missing person's estate for any costs incurred by the person as an administrator in bringing or defending an action or other legal proceeding in accordance with subclause (1).

Clause 114 sets out other powers that may be specified by VCAT in an administration (missing person) order, including any other relevant power in relation to a specified financial matter. As set out under clause 110(2), VCAT may only specify a power if satisfied that the power is necessary or desirable for the purposes of promoting the missing person's personal and social wellbeing.

Clause 115 makes clear matters for which power cannot be given under an administration (missing person) order. These matters include: the making or revoking of a will for the missing person; voting on behalf of the missing person at a Commonwealth or State or Territory election; managing the estate of the missing person on the death of the missing person or consenting to an unlawful act.

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

Clause 116 sets out the duties of an administrator under an administration (missing person) order. An administrator must take actions that the administrator considers are necessary or desirable for—

- the payment of the debts and engagements of, and otherwise for the benefit of, the missing person; and
- the maintenance and benefit of dependants of the missing person; and
- the care and management of the property of the missing person.

An administrator must also—

- act in accordance with the decision making principles set out in clause 9; and
- act as an advocate for the missing person; and
- act honestly, diligently and in good faith; and
- exercise reasonable skill and care; and
- not use the position for profit unless permitted under clause 175 or otherwise authorised by law; and
- avoid acting if there is or may be a conflict of interest unless authorised under this Bill, by order of VCAT or otherwise by law (a conflict of interest may be permitted under clause 118(2) or 119); and
- not disclose confidential information gained as an administrator unless authorised to do so under the administration order or by law.

Clause 117 provides that, subject to and in accordance with this Bill and the administration (missing person) order, it is the duty of the administrator to take possession and care of, recover, collect preserve and administer the property and estate of the missing person and generally to manage the property and financial affairs of the missing person.

Clause 118 prohibits an administrator from entering into a transaction in the capacity as administrator if the transaction is one in which there is, or may be, a conflict between a duty of the administrator to the missing person and the interests of the administrator, or a relative, business associate or close friend of the administrator.

Subclause (2) provides for a number of exceptions to the obligation to avoid conflict transactions, including a transaction providing for the maintenance of a dependant of the missing person made in accordance with clause 114(n).

Clause 119 provides for permitted conflict transactions for an administrator for a missing person, despite the prohibition on conflict transactions outlined in clause 118(1).

Subclause (1) provides that an administrator may enter into a conflict transaction prohibited under clause 118(1) if VCAT authorises the administrator at or before the time of the transaction to enter into the transaction, that kind of transaction or any transaction prohibited by clause 118(1).

Subclause (2) provides that despite clause 118(1), VCAT may validate a transaction prohibited under clause 118(1).

Subclause (3) makes clear that a transaction validated under subclause (2) is taken to be valid from the time it is entered into.

Clause 120 requires an administrator to keep accurate records and accounts of all dealings and transactions made for financial matters specified in the administration (missing person) order.

Clause 121 requires an administrator to keep the administrator's property separate from the missing person's property, unless the property is jointly owned by the missing person and the administrator.

Subclause (3) makes clear that subclause (1) does not affect any other obligation imposed by law.

Clause 122 Subclause (1) enables VCAT, at the time it appoints an administrator under clause 105 or at any later time, to appoint a person to examine or audit the accounts of all dealings and transactions relating to the financial matters specified in the administration order for a fee approved by VCAT and paid from the missing person's estate.

Subclause (2) requires an administrator, on or as soon as practicable after the anniversary of the appointment of the administrator to provide to VCAT an account of the dealings and transactions relating to the financial matters specified in the administration (missing person) order during the previous 12 months.

Subclause (3) provides that despite subclause (2), VCAT may require an administrator to lodge accounts at a time other than a time specified in subclause (2).

Subclause (4) sets out the details to be provided in an account lodged under subclauses (2) or (3) including a full and true account of the assets and liabilities of the missing person in relation to the financial matters specified in the administration (missing person) order and of all receipts and disbursements in

relation to those financial matters made during the previous 12 months.

Subclause (5) requires a person appointed to examine or audit accounts to lodge with VCAT a report in relation to the accounts examined or audited and provides that the person may recommend in the report the disallowance of any items in the accounts.

Subclause (6) provides that VCAT must not make an order disallowing an item referred to in subclause (5) if VCAT is satisfied that the administrator acted in good faith and with reasonable care in the exercise of their powers.

Subclause (7) provides that if VCAT disallows an item referred to in subclause (5), the administrator is liable for the amount of the item disallowed.

Clause 123 Subclause (1) requires an administrator to pay the person appointed under clause 122(1) to examine or audit accounts, an amount certified by that person as being the reasonable cost of examining or auditing the accounts.

Subclause (2) enables VCAT, on application by the administrator and with the consent of the person appointed under clause 122(1) to examine or audit accounts, to waive payment of the whole or part of the amount required to be paid under subclause (1).

Clause 124 requires an administrator for a missing person to notify VCAT in writing as soon as practicable after the administrator becomes aware that the missing person is alive (either in Victoria or elsewhere) or has died. This is because the administration (missing person) order is made on the basis that it is not known whether the missing person was alive, which also involves proof that it is not known that the missing person is dead.

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

Clause 125 sets out the ability of an administrator to seek advice from VCAT on the scope of the administration (missing person) order or the exercise of any power under the order.

After considering an application for advice, VCAT may approve or disapprove of any act proposed to be done by the administrator, give such advice as VCAT considers appropriate, or make any order it considers necessary.

Subclause (4) provides that action does not lie against an administrator for an act or thing done or omitted to be done by the administrator under an order or on the advice of VCAT made or given by VCAT under clause 125 unless in representing the facts to VCAT, the administrator has been guilty of fraud, wilful concealment or misrepresentation.

Clause 126 sets out the ability of an administrator to seek advice from a professional adviser about the financial matters specified in the administration (missing person) order. A professional adviser is someone who provides advice in relation to financial matters and includes a financial adviser, legal practitioner or accountant.

Subclause (2) makes it clear that an administrator is entitled to be reimbursed from the missing person's estate for any costs paid by the administrator for the professional advice.

Clause 127 provides that VCAT may open and read any paper or writing which is purported or alleged to be the will of the missing person.

Clause 128 allows VCAT to compel a person who has possession or control of a will, revoked will or purported will of a missing person to produce the document to VCAT to enable VCAT to open and read it in accordance with clause 127 or for VCAT to make the document available to the administrator in accordance with clause 129.

Clause 129 allows VCAT to provide a full or redacted copy of a will, a revoked will or a purported will of the missing person to an administrator if VCAT is satisfied that it is reasonable to in the circumstances, taking into account whether it will assist the administrator to make decisions about the financial matters specified in the administration (missing person) order and whether the administrator is also a beneficiary under the will.

Clause 130 provides that if VCAT knows that a person has ceased to be a missing person, VCAT must give notice of that fact to the administrator as soon as practicable.

Subclause (2) provides that until the administrator learns that a person has ceased to be a missing person, an administrator may exercise all or any of the powers given to the administrator by administration (missing person) order.

Clause 131 provides that on and after notice being given under clause 130(1), the person who was a missing person or that person's personal representative (as the case requires) is bound by, and may take advantage of, any act done on behalf of the missing person by the administrator within the powers conferred on the administrator by VCAT as if it had been done by the missing person and that person had decision making capacity.

Clause 132 requires an administrator who has receive notice that a person has ceased to be a missing person or has died to—

- pay to the former missing person or their personal representative any money with the administrator that is standing to the former missing person's credit; and
- deliver to the former missing person or their personal representative, all property of the missing person that is with the administrator, as well as any documents relating to that property.

The delivery of documents relating to the former missing person's property is subject to an order under clause 134.

Clause 134 allows VCAT to order that certain documents in the custody of an administrator relating to the property or financial affairs of a former missing person be withheld in certain circumstances.

Clause 133 provides that, subject to an order under clause 134, a person who has ceased to be a missing person (or their personal representative) is entitled, before or after obtaining the restoration of all or any part of the person's money or property from an administrator, to inspect accounts and related documents in the custody of the administrator, and to be provided with copies of document in relation to the dealings and transactions made for financial matters specified in the administration (missing person) order and other relevant information that is reasonable to request and can be given by the administrator.

Clause 134 allows VCAT to order that delivery of, or access to, documents held by an administrator be withheld in certain circumstances.

Clause 134 allows VCAT to order that a book, account, notice or document in the custody of an administrator relating to the property or financial affairs of a former missing person be withheld if VCAT is satisfied that—

- it is in the interests of the former missing person that the information, or part of the information contained in the book, account, notice or document remain confidential; or
- the book, account, notice or other document contains confidential information about another person.

A provision similar to clause 134 is not included in the **Guardianship and Administration Act 1986**.

Clause 135 allows an administrator, after public notice, to sell the personal effects of a former missing person that are in the possession of the administrator and that have not been claimed within two years after the date on which the person ceased to be a missing person. The proceeds of any such sale are to be paid into the Consolidated Fund.

Clause 136 Subclause (1) provides that a missing person and a beneficiary of a missing person have the same interest in any money or other property arising from or received in respect of any sale, mortgage or other listed disposition under the powers conferred by VCAT on an administrator which have not been applied under those powers as the missing person or those other persons would have had in the property the subject of the sale or other listed disposition if no sale, mortgage, exchange, partition or disposition had been made.

Subclause (2) provides that for the purposes of this clause, money arising from the compulsory acquisition or purchase under any Act of property of a missing person is taken to be money arising from the sale of that property under the powers given to an administrator under the administration (missing person) order.

Subclause (3) provides that an administrator is not required to keep the proceeds of the sale or other disposition of property under this section separate from the missing person's other assets.

Subclause (4) provides that money received by an administrator under this clause may be invested in any manner in which trust funds may be invested under the **Trustee Act 1958**.

Subclause (5) defines *beneficiary of a missing person* for the purposes of clause 136.

Clause 137 allows a creditor or other interested person listed in subclause (1) to apply to VCAT on any matter arising out of any dealing or transaction in relation to that financial matter.

Subclause (2) provides that VCAT may make such order in relation to the application which VCAT considers appropriate.

Subclause (3) defines *next of kin* for the purposes of clause 137.

Clause 138 allows VCAT to revoke an administration (missing person) order on application by the person who was the missing person or on application by the administrator or another person if satisfied that the missing person is alive, or dead or may be presumed to be dead.

Subclause (2) requires VCAT to revoke an administration (missing person) order if—

- the Supreme Court, on being satisfied of the death of the missing person, whether by direct evidence or on presumption of death, makes a grant of probate of the missing person's will or administration of the missing person's estate under section 7 of the **Administration and Probate Act 1958**; or
- the registrar of probates, on being satisfied of the death of the missing person, whether by direct evidence or on presumption of death, makes a grant of probate of the missing person's will or administration of the missing person's estate under section 12 of the **Administration and Probate Act 1958**; or
- if the presumption of death has been successfully invoked in relation to the missing person for the purpose of any other proceeding before a court in Victoria or elsewhere in Australia; or
- if any part of the estate of the missing person becomes subject to an order under section 24A of the **Administration and Probate Act 1958**.

Clause 139 makes it clear that Part 5 is not intended to exclude or limit the operation of the **Administration and Probate Act 1958**.

Part 6—Special medical procedures

The **Medical Treatment Planning and Decisions Act 2016** amended the **Guardianship and Administration Act 1986** so that all medical treatment decisions (including dental treatment decisions) are now covered by the **Medical Treatment Planning and Decisions Act 2016**, with the exception of "special medical procedures". Section 57 of the **Medical Treatment Planning and Decisions Act 2016** provides that the medical treatment decision making process set out in that Act does not apply to special medical procedures.

Special medical procedures require VCAT approval. The authorisation process for special medical procedures is set out in Part 6 of the Bill. The Bill allows VCAT to consent to a special medical procedure where a patient does not have decision-making capacity to consent, and has not otherwise given an instructional directive in relation to the procedure under the **Medical Treatment and Planning Decisions Act 2016**, subject to the authorisation process set out in clause 145.

Clause 140 sets out the definitions for Part 6.

Medical treatment decision maker has the same meaning as in the **Medical Treatment Planning and Decisions Act 2016**. Section 55 of the **Medical Treatment Planning and Decisions Act 2016** defines *medical treatment decision maker* as a person appointed as *medical treatment decision maker* under the **Medical Treatment Planning and Decisions Act 2016**, or if a medical treatment decision maker was not appointed, a guardian appointed under the Bill. If there is no appointed medical treatment decision maker and no guardian, the medical treatment decision maker will be the first of the following: the spouse or domestic partner; the primary carer; the adult child; a parent; an adult sibling.

Patient means a person with a disability who is of or over the age of 18 years and does not have decision-making capacity in relation to the giving of consent to the carrying out of a special medical procedure.

Clause 5 sets out the definition of *decision-making capacity* for the purposes of the Bill.

Special medical procedure is defined as: any procedure that is intended or likely to have the effect of rendering permanently infertile the person on whom its carried out; a termination of pregnancy; any removal of tissue for the purposes of transplantation to another person; or any other medical treatment within the meaning of the **Medical Treatment and Planning Decisions Act 2016** that is prescribed to be a special medical procedure for the purposes of Part 6 of the Bill.

Clause 141 provides that, subject to clause 145, VCAT may consent to the carrying out of a special medical procedure.

Clause 145 sets out the process VCAT is required to undertake in order to consent to a special medical procedure.

This clause replaces section 39 of the **Guardianship and Administration Act 1986** (as amended by the **Medical Treatment and Planning Decisions Act 2016**).

Clause 142 provides that consent to the special medical procedure has effect as if the patient were capable of giving consent and the procedure had been carried out with that consent.

This clause replaces section 40 of the **Guardianship and Administration Act 1986** (as amended by the **Medical Treatment and Planning Decisions Act 2016**).

Clause 143 provides that a the medical treatment decision maker for the patient, or any person whom VCAT determines to have a special interest in the affairs of the patient, may make an application for the consent of VCAT to the carrying out of any special medical procedure on a patient. The patient in relation to such an application is a party and VCAT must give notice of the application, hearing, any order and directions or advisory opinions in relation to the application to the Public Advocate and others whom it considers to have a special interest in the affairs of the patient.

This clause replaces section 42B of the **Guardianship and Administration Act 1986** (as amended by the **Medical Treatment and Planning Decisions Act 2016**).

Clause 144 requires VCAT to begin to hear an application for consent to a special medical procedure within 30 days after receiving the application.

This clause replaces section 42D of the **Guardianship and Administration Act 1986**.

Clause 145 sets out the process VCAT must undertake before it can consent to a special medical procedure.

Subclause (1) provides that VCAT may consent to a special medical procedure if VCAT is satisfied that: the patient has not given an instructional directive (within the meaning of the **Medical Treatment and Planning Decisions Act 2016**) in relation to the special medical procedure; the patient does not have decision-making capacity in relation to giving consent; the patient is not likely to have decision-making capacity in relation to the giving of consent within a reasonable time; and the patient would consent to the carrying out of the special medical procedure if the patient had decision-making capacity in relation to giving consent.

Subclause (2) sets out the steps that VCAT must follow in determining whether the patient would consent to the carrying out of the special medical procedure if the patient had decision-making capacity in accordance with subclause (1)(d)—

- first, if the patient has given a valid and relevant values directive (within the meaning of the Medical Treatment Planning and Decisions Act 2016), VCAT must consider the values directive;
- next, VCAT must take into account any other relevant preferences that the patient has expressed and the circumstances in which those circumstances were expressed;
- if VCAT is unable to identify any relevant preferences referred to in the above 2 dot points, VCAT must give consideration to the patient's values, whether expressed other than by way of a values directive or inferred from the patient's life;

- VCAT must also consider the likely effects and consequences of the special medical procedure and whether there are any alternatives, including refusing the procedure that would be more consistent with the patient's preferences and values.

Subclause (3) provides that, if VCAT is unable to apply the process required by subclause (2) because it is not possible to ascertain or apply the patient's preferences or values, VCAT may consent to the carrying out of the special medical procedure if—

- VCAT is satisfied that the special medical procedure will promote the personal and social wellbeing of the patient, having regard to the need to respect the patient's individuality; and
- VCAT has considered the likely effects and consequences of the procedure, including the likely effectiveness of the procedure and whether there are any alternatives (including refusing the special medical procedure) that would better promote the patient's personal and social wellbeing.

Subclause (4) provides that, in the case of subclause (2) or (3), VCAT must also consult any other person who VCAT reasonably believes the patient would want to be consulted in the circumstances.

This clause replaces section 42E of the **Guardianship and Administration Act 1986** and is intended to mirror the authorisation process set out in section 61 of the **Medical Treatment Planning and Decisions Act 2016**.

Clause 146 enables VCAT to authorise the medical treatment decision maker to consent to the continuation of a special medical procedure or to the carrying out of any further special medical procedure of a similar nature. This authority may only be conferred on the medical treatment decision maker if that person so requests or consents. VCAT may impose conditions on this authority, give directions as to its use or revoke the authority at any time.

This clause replaces section 42F of the **Guardianship and Administration Act 1986** (as amended by the **Medical Treatment and Planning Decisions Act 2016**).

Clause 147 provides that a registered medical practitioner must not carry out a special medical procedure on a patient unless VCAT, or the medical treatment decision maker with authority to consent under clause 146, has consented to that procedure. It is an offence to contravene this clause and attracts a penalty of imprisonment for 2 years or 240 penalty units or both.

Subclause (2) provides a defence for a registered medical practitioner to a criminal offence, or to liability for unprofessional conduct or professional misconduct, or in any civil proceeding or for a contravention of any code of conduct. The defence applies to a registered medical practitioner who, in good faith and without negligence, carries out, or supervises the carrying out of, a special medical procedure on a patient in the belief on reasonable grounds that the requirements of Part 6 of the Bill have been complied with.

This clause replaces section 42G of the **Guardianship and Administration Act 1986** (as amended by the **Medical Treatment and Planning Decisions Act 2016**).

Clause 148 provides that a registered medical practitioner must not carry out a special medical procedure under Part 6 if the patient has refused consent to the procedure under an instructional directive within the meaning of the **Medical Treatment and Planning Decisions Act 2016**.

This clause replaces section 41 of the **Guardianship and Administration Act 1986** (as amended by the **Medical Treatment and Planning Decisions Act 2016**).

Clause 149 makes it an offence for a person who is not authorised to give consent to the continuation of a special medical procedure or a further special medical procedure to purport to give consent unless the person knows that the person is authorised under clause 146 to give such consent or the person believes on reasonable grounds that the person is authorised under clause 147 to give such consent. This offence attracts 20 penalty units.

Clause 148 replaces section 42 of the **Guardianship and Administration Act 1986** (as amended by the **Medical Treatment and Planning Decisions Act 2016**).

Part 7—Rehearings and reassessment of orders

Division 1—Rehearings

Clause 150 provides for rehearings in the guardianship and administration jurisdiction of VCAT.

Subclause (1) deals with an application for rehearing. It provides that, where the VCAT has made an order under the Act (other than an urgent order appointing a guardian or an administrator), an application may be brought for a rehearing of the application to which the order relates. An application may be brought by the Public Advocate and any person who was a party to an application in relation to which VCAT may an order under the Bill. This clause encompasses rehearings in relation to guardianship orders, administration orders, administration (missing person) orders, supportive guardianship orders and supportive administrative orders.

Subclause (2) provides that a person entitled to notice (other than an urgent order appointing a guardian or an administrator) but who was not a party to the original application may bring an application for a rehearing only with leave of the VCAT.

Clause 150 replaces section 60A(1) to (3A) of the **Guardianship and Administration Act 1986**.

Clause 151 provides that if VCAT makes an order on a reassessment under clause 167 conducted on VCAT's own initiative, a party to the reassessment or a person entitled to notice of the reassessment may, if VCAT gives leave, apply to VCAT for a rehearing of the reassessment.

Clause 167 provides that on completing a reassessment VCAT may amend, vary, continue or replace the order subject to any conditions or requirements it considers necessary or revoke the order.

Clause 152 Subclause (1) provides that an application for rehearing or for leave to apply for a rehearing of an application or a reassessment must be brought within 28 days after the day of the order.

Subclause (2) provides that, if written reasons are requested under section 117 of the VCAT Act following the making of an order, the day on which the written reasons are given to the party is taken to be the day that the order is made for the purposes of

clause (1) and the 28 day time limit begins to run from the date the written reasons are provided.

Clause 152 replaces section 60A(4) and (5) of the **Guardianship and Administration Act 1986**.

Clause 153 provides that a person cannot apply for a rehearing of—

- an application in relation to which an order was made by the President of VCAT. This restriction has been made because there is no member of VCAT more senior than the President to conduct the rehearing. However, if the President makes an order, a party may still appeal to the Court of Appeal on a question of law under section 148 of the VCAT ACT; or
- an application for a rehearing; or
- an application for leave to apply for a rehearing of an application; or
- an application for leave to apply for a rehearing of a reassessment.

Clause 153 replaces section 60A(6) of the **Guardianship and Administration Act 1986**.

Clause 154 sets out who are the parties to a rehearing.

The following persons are parties to a rehearing—

- in the case of rehearing referred to in clause 150, the applicant and a party to the original application; and
- in the case of the rehearing of a reassessment referred to clause 151, the applicant and a party to the reassessment; and
- any other person whom VCAT orders to be joined as a party.

Clause 154 replaces section 60B of the **Guardianship and Administration Act 1986**.

Clause 155 provides that the following persons are entitled to notice of a rehearing: in the case of rehearing referred to in clause 150, a person who was entitled to notice of the original application; in the case of the rehearing of a reassessment referred to in clause 151, a person who was entitled to notice of the reassessment; any person VCAT directs be given notice.

Clause 162 sets out who is entitled to notice of a reassessment.

This clause replaces section 60B of the **Guardianship and Administration Act 1986**.

Clause 156 provides that the proposed represented person, represented person, proposed supported person or supported person (as the case requires) must attend a hearing in relation to an application for a rehearing under Division 1 of Part 7 in person unless VCAT is satisfied that the person does not wish to attend the hearing in person; or the presence of the person at the hearing is impracticable or unreasonable, despite any arrangement that VCAT may make.

The note at the foot of clause 156(b) refers to section 100 of the VCAT Act which provides that if VCAT thinks it appropriate, it may conduct proceeding by conference conducted using telephones, video links or other system of telecommunication.

In addition, in *Matsoukatidou v Yarra Ranges Council* [2017] VSC 61, Justice Bell found that the right to equality under the **Charter of Human Rights and Responsibilities Act 2006** obligates courts and tribunals to make adjustments and accommodations as are reasonably necessary and available to ensure the effective participation of the individual.

Clause 157 sets out the functions and powers of VCAT in determining an application for rehearing.

Subclause (1) provides that on an application under clause 150 or clause 151, VCAT must rehear the matter and has all the functions and powers that VCAT had with respect to the matter at first instance. At first instance also includes the reassessment, in the case of an application for a rehearing of a reassessment.

Subclause (2) provides that in determining a rehearing VCAT may affirm or vary the order at first instance, or set aside the order at first instance and make another order in substitution.

This clause replaces section 60C of the **Guardianship and Administration Act 1986**.

Clause 158 sets out the effect of a first instance order pending a rehearing.

Subclause (1) provides that, subject to subclause (2), the making of an application for a rehearing does not affect the operation of the original order or prevent the taking of action to enforce the order.

Subclause (2) provides that VCAT may stay the operation of the order or part of the order pending the determination of the application for rehearing.

This clause replaces section 60D of the **Guardianship and Administration Act 1986**.

Division 2—Reassessment of orders

Clause 159 outlines when VCAT is required to conduct a reassessment.

Subclauses (1) and (2) state that VCAT must conduct a reassessment of a guardianship order, a supportive guardianship order, an administration order, a supportive administration order or an administration (missing person) order, within 12 months after making the order or in any case, at least once within each 3 year period after making the order. This does not apply if unless VCAT orders otherwise.

Subclause (3) provides that a reassessment under this clause may be conducted on VCAT's own initiative or on the application of any person.

Clause 159 replaces section 61(1) to (3) of the **Guardianship and Administration Act 1986**.

Clause 160 provides that a person applying to VCAT for a reassessment must include in the application: the name and contact details of the represented person, supported person or missing person, as the case requires; the type of order to which the application relates; details of the reason for making the application; the name and contact details of the guardian, administrator, supportive guardian or supportive administrator, as the case requires; the name and contact details of the applicant and any person who has a direct interest in the application (if known to the applicant); and any support needs of the represented person or supported person.

It is intended that the phrase "persons with a direct interest in the application" may include the represented person's or supported person's or missing person's relatives, a primary carer, close friends and any current attorney under an enduring power of attorney or supportive attorney appointed under the **Powers of Attorney Act 2014**.

The term "support needs" is intended to refer to any supports that might be necessary to enable to the represented person or the supported person to attend and participate in the hearing, such as access requirements, transportation needs, alternative communication methods (e.g. ability to use a recognised sign language if the person has a hearing impediment, or use of electronic or pictorial/symbol communication if speech is impaired), and the possibility of using video link if the person is bedridden.

The application is not limited to these matters.

Clause 161 sets out the parties to a reassessment.

This clause replaces section 61(4) of the **Guardianship and Administration Act 1986**.

Clause 162 sets out the list of people who are entitled to notice of a reassessment.

Clause 162 replaces section 62 of the **Guardianship and Administration Act 1986**.

Clause 163 sets out what information must be contained in a notice of an application for a reassessment.

For a notice of application that is given to a party to the application, the notice must include a copy of the application and any information filed in support of the application.

This requirement is subject to clause 37A of Part 9 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998**. Clause 37A, which is inserted by clause 218 of this Bill, provides that a person may make an application to the principal registrar that any documents lodged in relation to a proceeding under the Bill not be disclosed to a specified person or class of persons.

For a notice of application that is given to a person who is not a party, but who is otherwise entitled to notice, the notice is not required to include information filed in support of the application.

Clause 164 outlines the process for a reassessment if VCAT conducts a reassessment on its own initiative. VCAT conducts reassessments on its own initiative in accordance with clause 159(2), which requires VCAT, unless ordered otherwise, to conduct a reassessment within 12 months after making the order or in any case, at least once within each 3 year period after making the order.

Subclause (1) provides that, before conducting a reassessment on its own initiative, VCAT must determine whether to conduct a hearing in relation to the reassessment or to reassess the relevant order on the papers.

Subclause (2) provides that, in determining whether or not to conduct a hearing under subclause (1), VCAT must take reasonable steps to contact the represented person or supported person (as the case requires) to ascertain whether the person wishes VCAT to conduct a hearing or to reassess the relevant order on the papers.

Subclause (3) provides that, if VCAT determines to conduct a hearing in relation to a reassessment on its own initiative, VCAT must give notice of the reassessment, at least 7 days before the proposed day of the hearing, to the parties and the following persons—

- the spouse or domestic partner of the represented person, supported person or missing person, if any;
- the primary carer of the represented person or supported person, if any;
- the nearest relative available (other than the spouse or domestic partner) of the represented person, supported person or missing person, if any;
- any person VCAT determines to have an interest in the reassessment.

Subclause (4) provides that if VCAT does not propose to amend, vary or replace the relevant order, and intends to conduct the reassessment on the papers, VCAT may give notice to the parties and each person specified in subclause (3) that the party or person has 14 days after the date of the notice to request, in writing, a hearing of the reassessment.

Subclause (5) provides that, if any of the parties or persons to whom a notice is given under subclause (4) requests a hearing within 14 days after the date of the notice, VCAT must give at least 7 days' notice of the hearing to each of the parties and persons.

Subclause (6) provides that if none of the parties or persons to whom a notice is given under subclause (4) requests a hearing within 14 days after the date of the notice, VCAT is not required to hold a hearing of the reassessment.

Subclause (7) provides that, VCAT may, in a notice under subclause (4) or (5), advise that a person to whom the notice is given (other than a party) is not required to attend the hearing if that person does not have any matters to raise with VCAT in relation to the reassessment.

Clause 163 replaces section 62(2A) to (3) of the **Guardianship and Administration Act 1986** but requires VCAT, in determining whether to hold a hearing, to take reasonable steps to contact the person to whom the reassessment relates to ascertain their wishes.

Clause 165 provides that the represented person or supported person (as the case requires) must personally attend a hearing in relation to a reassessment under Division 2 of Part 7 unless VCAT is satisfied that: the person does not wish to attend the hearing; or the personal attendance of the person at the hearing is impracticable or unreasonable, despite any arrangement that VCAT may make.

The note at the foot of clause 165(b) refers to section 100 of the **Victorian Civil and Administrative Tribunal Act 1998** which provides that if VCAT thinks it appropriate, it may conduct proceeding by conference conducted using telephones, video links or other system of telecommunication.

In addition, in *Matsoukatidou v Yarra Ranges Council* [2017] VSC 61, Justice Bell found that the right to equality under the **Charter of Human Rights and Responsibilities Act 2006** obligates courts and tribunals to make adjustments and accommodations as are reasonably necessary and available to ensure the effective participation of the individual.

Clause 166 provides that, in the course of conducting a reassessment, VCAT must consider whether the person appointed at first instance as guardian, administrator, supportive guardian, supportive administrator or administrator for a missing person, has complied with the required duties for the role. Clause 41 sets out the duties for guardians. Clause 55 sets out the duties for administrators. Clause 94 sets out the duties for supportive guardians and supportive administrators. Clause 116 sets out the duties for administrators for missing persons.

Clause 167 provides for the orders that VCAT may make on completing a reassessment.

Subclause (1) provides that VCAT may by order: amend, vary, continue or replace the order subject to any conditions or requirements VCAT considers necessary; or revoke the order.

Subclause (2) provides that if the Public Advocate is appointed as guardian at first instance, then the appointment may only be retained on reassessment if VCAT is satisfied that no other person fulfils the requirements for appointment as guardian.

Clause 167 replaces section 63 of the **Guardianship and Administration Act 1986**.

Part 8—Interstate orders

Clause 168 outlines the application of this Part.

This Part applies to a guardianship order, a supportive guardianship order, an administration order or a supportive administration order made under a corresponding law of a participating State in relation to a person who resides in the participating State and proposes entering Victoria or has property situated in Victoria. The Part also applies to an administration (missing person) order made under a corresponding law of a participating State in relation to a person who has property situated in Victoria.

This clause replaces section 63A of the **Guardianship and Administration Act 1986**, but includes reference to supportive guardianship orders, supportive administration orders and administration (missing person) orders.

Clause 169 outlines definitions used for the purposes of Part 8.

This clause replaces section 63B of the **Guardianship and Administration Act 1986**.

Clause 170 provides for the process for declaring laws of another State or a Territory to be corresponding laws for the purposes of Part 8.

Subclause (1) provides that the Governor in Council, on the recommendation of the Minister may declare that a law of another State or of a Territory of the Commonwealth is a corresponding law for the purposes of this Part, by publishing an Order in the Government Gazette.

Subclause (2) provides that an Order under subclause (1) may include a declaration that an order under that law is substantially similar to a guardianship order, supportive guardianship order, supportive administration order, administration order or administration (missing person) order for the purposes of this Part.

This clause replaces section 63C of the **Guardianship and Administration Act 1986** and includes reference to supportive guardianship orders, supportive administration orders and administration (missing person) orders.

Clause 171 states that the Minister may make an agreement with a Minister responsible for administering a corresponding law about any matter in connection with the administration of Part 8 or a corresponding law.

This clause replaces section 63D of the **Guardianship and Administration Act 1986**.

Clause 172 outlines the process for registration of interstate orders in Victoria.

Subclause (1) allows for VCAT to register an interstate order. VCAT may register the order on the application of a guardian, supportive guardian, administrator or supportive administrator in a participating State or Territory or the Public Advocate.

Subclause (2) provides that if the guardian in a participating State or Territory is a person who holds an equivalent position to the Public Advocate, VCAT may appoint the Public Advocate as the guardian of the represented person in this State if no other person fulfils the requirements of clause 32 for appointment as the

guardian of that person. Clause 32 outlines the circumstances in which VCAT may make a guardianship or administration order.

Subclause (3) provides that on registration of an interstate order, VCAT must notify the determining body that made the order that the order has been registered.

Subclause (4) states that an interstate order registered under Part 8 has the same force and effect according to its terms as a guardianship order, supportive guardianship order, administration order, supportive administration order or administration (missing person) order (as the case requires) made under this Bill.

Subclause (5) states that an order made under this Bill is not revoked in Victoria if that order is registered in a participating State or Territory.

This clause replaces section 63E of the **Guardianship and Administration Act 1986** but includes references to supportive guardianship orders, supportive administration orders and administration (missing person) orders.

Clause 173 outlines the process for reassessment of interstate orders in Victoria.

Subclause (1) allows for a registered interstate order to be reassessed by VCAT in accordance with Division 2 of Part 7. This does not apply to an administration (missing person order).

Subclause (2) provides that VCAT may make any order that it is authorised to make under Division 2 of Part 7 in relation to an interstate order that has been registered, including an order appointing a new guardian, supportive guardian, administrator or supportive administrator.

Subclause (3) requires VCAT to notify the determining body that made the interstate order as soon as practicable after VCAT makes an order under subclause (2).

Subclause (4) provides that an order made by VCAT under subclause (2) has no effect in the participating State or Territory in which the interstate order was made.

Subclause (5) states that the revocation, amendment or variation of an interstate order by a determining body after the order is registered has no effect in Victoria.

This clause replaces section 63F of the **Guardianship and Administration Act 1986** but includes reference to supportive guardianship orders, supportive administration orders and administration (missing person) orders.

Clause 174 states that nothing in Part 8 affects the operation of section 12 of the **State Trustees (State Owned Company) Act 1994**. Section 12 of the **State Trustees (State Owned Company) Act 1994** provides for State Trustees Limited to enter into reciprocal arrangements with proper officers in other States to facilitate the administration of estates of represented persons where assets are outside the State, with incidental amendments.

This clause replaces section 63G of the **Guardianship and Administration Act 1986**, but has similar effect.

Part 9—General provisions

Clause 175 provides that an administrator, other than a person who carries on a business of, or including, the administration of estates, is not entitled to remuneration from the estate of the represented person or missing person for acting as administrator unless otherwise ordered by VCAT.

Subclause (2) provides that the remuneration to which a person who carries on a business of, or including, the administration of estates is entitled must be either in accordance with any remuneration scale fixed by rules made under the VCAT Act, or as determined by VCAT.

Subclause (3) provides that despite subclause (2), the remuneration determined by VCAT in relation to a licensed trustee company must not exceed the limit on fees that may be charged by a licensed trustee company under Chapter 5D of the Commonwealth Corporations Act. A *licensed trustee company* has the same meaning as in section 601RAA of the Corporations Act.

Subclause (4) provides that VCAT may request an administrator to provide VCAT with any account in the administrator's custody in relation to dealings and transactions relating to the financial matters specified in the administration order or administration (missing person) order for the purpose of VCAT examining those accounts and determining whether the administrator has complied with the requirements of the Bill, any order made by VCAT or

any approval or specification made by VCAT in relation to remuneration under this clause.

Subclause (5) provides that VCAT may require an administrator to pay to the estate of the represented person or missing person any remuneration or other reward paid or deducted from the estate that is specified by VCAT.

This clause replaces section 47A of the **Guardianship and Administration Act 1986**.

Clause 176 relates to the payment of costs and expenses incurred by administrators.

Subclause (1) provides that a court or tribunal, including VCAT, may order that the costs incurred by an administrator arising from the administrator's dealings and transactions relating to the financial matters specified the administration order or administration (missing person) order, be paid out of, or reimbursed from, the estate of the represented person or the missing person, whether or not the appointment is no longer in force or is revoked or set aside.

Subclause (2) provides that an order referred to in subclause (1) may be made on an application under clause 64 or 125 or otherwise. Clause 64 allows an administrator to seek advice from VCAT, and clause 125 allows an administrator for a missing person to seek advice from VCAT. For the purpose of an order as to an administrator's costs that is made on application under these clauses, a reference in clause 64 or 125 to an administrator is taken to include a reference to a person whose appointment as an administrator has been revoked or set aside.

This clause replaces section 47B(3) and (4) of the **Guardianship and Administration Act 1986**.

Clause 177 sets out the process for resolution of disputes between persons appointed as guardians or administrators. The clause applies if VCAT appoints more than one guardian, more than one administrator, or both a guardian and an administrator for the same represented person. The clause also applies if VCAT appoints more than one administrator for the same missing person.

The clause requires a guardian or administrator to consult any other guardian or administrator for the same represented person, or missing person, as the case requires, in relation to any overlap in the exercise of the guardian's or administrator's powers.

If there is disagreement between the appointed persons about their respective powers, they must first seek to resolve the disagreement by informal means or by mediation. If the disagreement continues, the appointed persons must seek advice from VCAT about how to resolve the disagreement.

In the case of a disagreement between a guardian and an administrator for the same represented person, unless otherwise agreed by the appointed persons, or as directed by VCAT, a decision of the guardian prevails over a decision of an administrator to the extent of any inconsistency in the exercise of their overlapping powers. The administrator must take any necessary steps to ensure that the guardian's decision is implemented in these circumstances, unless the administrator reasonably believes that doing so is likely to seriously deplete the represented person's estate. In such a case, the administrator must seek advice from VCAT about how to resolve the disagreement.

A provision similar to clause 177 was not included in the **Guardianship and Administration Act 1986**.

Clause 178 provides that a guardian or administrator may apply to VCAT for an order to enforce a decision of the guardian or administrator that has not been recognised or given effect to by another specified person.

Subclause (1) allows a guardian or administrator to apply to VCAT for an enforcement order in relation to a decision or act that the guardian or administrator claims is an exercise of the guardian's or administrator's powers but is not recognised as such, or given effect to, by another specified person.

Subclause (2) provides that the specified person referred to in subclause (1) is entitled to notice of the application.

Subclause (3) allows VCAT to make an order that the specified person referred to in subclause (1) recognise or give effect to the decision or act of the guardian or administrator if satisfied that—

- the relevant decision or act is an exercise of the guardian's or administrator's powers; and

- the specified person has failed or refused to recognise or give effect to the decision or act; and
- the enforcement order will promote the personal and social wellbeing of the represented person or missing person for whom the guardian or administrator is appointed.

The note at the foot of clause 178 notes that section 133 of the VCAT Act provides that it is an offence not to comply with an order of VCAT.

Clause 179 allows a Court, meaning the Supreme Court, the County Court or the Magistrates' Court, in any civil proceeding before it, to consider whether a party needs to have a guardian, administrator, supportive guardian or supportive administrator appointed, and allows the Court to refer the issue to VCAT for determination.

Subclause (2) provides that, if a Court refers an issue to VCAT under subclause (1), then the referral is to be treated as if it were an application to VCAT for the making of the relevant order and 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.

Subclause (3) provides that, if in any civil proceedings before a Court it is adjudged or ordered that money be paid to a person with a disability, the money is to be paid into court, and unless the Court otherwise orders, is to be paid out to the administrator, if any, for that person, or to State Trustees.

Subclause (4) provides that, if any money is paid into court before or after the commencement of this section, and the money is being held in court on behalf of a person with a disability, the Court may direct that the money be paid out to the administrator, if any, for that person, or to State Trustees.

Subclause (5) provides that if the Court adjudges or orders that property be delivered up or transferred to a person with a disability, the Court may order that the property be delivered up or transferred to the administrator, if any, for the person, or to State Trustees, and the Court may give directions for the service of the order on that administrator or State Trustees as it thinks fit.

Subclause (6) provides that if an order under subclause (5) is served on an administrator or State Trustees, the administrator or State Trustees must accept delivery or transfer of the property to which the order relates and the acceptance of the property is a sufficient discharge to the person delivering or transferring the property.

Subclause (7) requires the administrator or State Trustees, as the case requires, to give a copy of any order made under this clause to VCAT and the Public Advocate.

Subclause (8) provides that an order of the Court that money be paid out to an administrator, if any, for a person, or to State Trustees, has effect as if it were an administration order (within the meaning of this Bill).

This clause replaces section 66 of the **Guardianship and Administration Act 1986**.

Clause 180 provides that the setting aside of an administration order, or an administration (missing person) order, by an order of a court or VCAT does not affect the validity of previous actions of an administrator. This is subject to any order to the contrary by the court or VCAT making the setting aside order.

This clause replaces section 67 of the **Guardianship and Administration Act 1986**.

Clause 181 allows the Supreme Court or VCAT to order a guardian or administrator to compensate the represented person or missing person for whom they are appointed for a loss caused by the guardian or administrator by contravening the Bill when acting as guardian or administrator.

The clause applies even if—

- the guardian or administrator is convicted of an offence in relation to the guardian's or administrator's contravention; or
- the represented person or missing person has died, in which case compensation is payable to the estate of the represented person or missing person; or
- the order appointing the guardian or administrator is no longer in force or is revoked or set aside.

Clause 181 is based on section 77 of the **Powers of Attorney Act 2014**.

Clause 182 allows the Supreme Court or VCAT to relieve an administrator or guardian who is, or may be, personally liable for a contravention of the Bill from all or part of that personal liability if the Court or VCAT considers that the administrator or guardian has acted honestly and reasonably and ought fairly to be excused for the contravention.

Clause 182 is based on section 74 of the **Powers of Attorney Act 2014**.

Clause 183 outlines who may apply to the Supreme Court or to VCAT for an order for compensation under clause 181. These persons are: the represented person or a person who has ceased to be a represented person; a former missing person; the personal representative of a represented person, former represented person or former missing person; an executor or administrator (within the meaning of the **Administration and Probate Act 1958**) of the represented person's or missing person's estate; the Public Advocate; the nearest relative of the represented person or missing person; or any other person that the Supreme Court or VCAT determines to have a special interest in the affairs of the represented person or missing person.

Clause 183 is based on section 78 of the **Powers of Attorney Act 2014**.

Clause 184 outlines the time limits for an application for compensation under clause 181 where the represented person or missing person, or the guardian or administrator, has died.

Subclause (1) provides that if the represented person or missing person, or the guardian or administrator, has died, then an application for an order for compensation must be made within 6 months after that death. If the represented person or missing person, and the guardian or administrator, have died, then an application for an order for compensation must be made within 6 months after the first death.

Subclause (2) provides that the Supreme Court or VCAT may extend the time for making an application for compensation under clause 181.

Clause 184 is based on section 79 of the **Powers of Attorney Act 2014**.

Clause 185 allows VCAT to refer an application for compensation under clause 181 to the Supreme Court.

Clause 185 is based on section 80 of the **Powers of Attorney Act 2014**.

Clause 186 provides that no compensation is payable by the State in relation to any damage, loss or injury sustained by a person by reason of an act or omission of a guardian or an administrator under the Bill.

This clause replaces section 70 of the **Guardianship and Administration Act 1986**

Clause 187 provides that all courts and persons acting judicially must take judicial notice of the signature of any person who is or has been the Public Advocate or Acting Public Advocate, and of the fact that that person is or was the Public Advocate or Acting Public Advocate, as the case requires.

This clause replaces section 73 of the **Guardianship and Administration Act 1986**.

Clause 188 creates new offences for guardians to dishonestly use a guardianship order. It is intended that the clause create offences that are consistent with offences for attorneys to dishonestly use an enduring power of attorney under section 135(3) of the **Powers of Attorney Act 2014**.

Subclause (1) prohibits a guardian from dishonestly using the guardianship order to obtain financial advantage for the guardian or another person. The penalty for this offence is level 6 imprisonment (5 years maximum) or 600 penalty units or both.

Subclause (2) prohibits a guardian from dishonestly using the guardianship order to cause loss to the represented person or another person. The penalty for this offence is level 6 imprisonment (5 years maximum) or 600 penalty units or both.

Clause 189 creates new offences for administrators to dishonestly use an administration order. It is intended that the clause create offences that are consistent with offences for attorneys to dishonestly use an enduring power of attorney under section 135(3) of the **Powers of Attorney Act 2014**.

Subclause (1) prohibits an administrator from dishonestly using the administration order to obtain financial advantage for the administrator or another person. The penalty for this offence for a natural person is level 6 imprisonment (5 years maximum) or 600 penalty units or both. The penalty for this offence for a body corporate is 2300 penalty units.

Subclause (2) prohibits an administrator from dishonestly using the administration order to cause loss to the represented person or another person. The penalty for this offence for a natural person is level 6 imprisonment (5 years maximum) or 600 penalty units or both. The penalty for this offence for a body corporate is 2300 penalty units.

The note at the foot of this clause notes that clause 193, which sets out the criminal liability of officers of bodies corporate, applies to an offence against subclause (1) or (2).

Clause 190 creates new offences for administrators for missing persons to dishonestly use an administration (missing person) order.

Subclause (1) prohibits an administrator from dishonestly using the administration (missing person) order to obtain financial advantage for the administrator or another person. The penalty for this offence for a natural person is level 6 imprisonment (5 years maximum) or 600 penalty units or both. The penalty for this offence for a body corporate is 2300 penalty units.

Subclause (2) prohibits an administrator from dishonestly using the administration (missing person) order to cause loss to the missing person or another person. The penalty for this offence for a natural person is level 6 imprisonment (5 years maximum) or 600 penalty units or both. The penalty for this offence for a body corporate is 2300 penalty units.

The note at the foot of this clause notes that clause 193, which sets out the criminal liability of officers of bodies corporate, applies to an offence against subclause (1) or (2).

Clause 191 creates new offences for supportive guardians to dishonestly use a supportive guardianship order. It is intended that the clause create offences that are consistent with offences for supportive attorneys to dishonestly use a supportive attorney appointment under section 136(2) of the **Powers of Attorney Act 2014**.

Subclause (1) prohibits a supportive guardian from dishonestly using the supportive guardianship order to obtain financial advantage for the supportive guardian or another person. The penalty for this offence is level 6 imprisonment (5 years maximum) or 600 penalty units or both.

Subclause (2) prohibits a supportive guardian from dishonestly using the supportive guardianship order to cause loss to the supported person or another person. The penalty for this offence is level 6 imprisonment (5 years maximum) or 600 penalty units or both.

Clause 192 creates new offences for supportive administrators to dishonestly use a supportive administration order. It is intended that the clause create offences that are consistent with offences for supportive attorneys to dishonestly use a supportive attorney appointment under section 136(2) of the **Powers of Attorney Act 2014**.

Subclause (1) prohibits a supportive administrator from dishonestly using the supportive administration order to obtain financial advantage for the supportive administrator or another person. The penalty for this offence is level 6 imprisonment (5 years maximum) or 600 penalty units or both.

Subclause (2) prohibits a supportive administrator from dishonestly using the supportive administration order to cause loss to the supported person or another person. The penalty for this offence is level 6 imprisonment (5 years maximum) or 600 penalty units or both.

Clause 193 provides that if a body corporate commits an offence against a provision specified in subclause (2), an officer of the body corporate also commits an offence against the provision if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.

Subclause (2) specifies that subclause (1) applies to the following provisions—

- clause 43(5), which prohibits a person from delaying or obstructing a person who is acting under a special order of VCAT in relation to a proposed represented person who is unlawfully detained or at risk of harm;

- clause 189(1) and (2), which set out the offences for an administrator to use an administration order dishonestly; and
- clause 190(1) and (2), which set out the offences for an administrator for a missing person to use an administration (missing person) order dishonestly.

Subclause (3) provides that, in determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to—

- what the officer knew or ought reasonably to have known, about the commission of the offence by the body corporate; and
- whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
- what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
- any other relevant matter.

Subclause (4) provides that an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged. If the officer does rely on such a defence, the officer bears the same burden of proof that the body corporate would bear. This provision is not intended to limit any other defence available to the officer.

Subclause (5) provides that an officer of a body corporate may commit an offence against a provision set out in subclause (2) whether or not the body corporate has been prosecuted or found guilty of an offence against that provision.

Subclause (6) contains definitions of *body corporate* and *officer* for the purposes of the clause.

Clause 194 provides power for the Governor in Council to make regulations under the Bill.

In relation to any regulations for or with respect to annual fees to be paid in relation to estates which are the subject of an administration order—

- subclause (3) provides that such regulations may prescribe fees in relation to a particular class or classes of estates, may prescribe different fees in relation to different classes of estates, and may authorise VCAT to waive fees in particular cases or classes of cases; and
- subclause (4) requires that, prior to the Governor in Council making such regulations, the Minister must advise the Governor in Council that the Minister has consulted with the President of VCAT and is of the opinion that the fees to be charged in the proposed regulations will not result in an amount of fees being collected in any year that will exceed the amount required to meet the costs and expenses of VCAT in relation to proceedings under the Bill in that year.

Clause 194 replaces section 82 of the **Guardianship and Administration Act 1986**.

Clause 195 provides a time-limited power for the Governor in Council to make regulations containing provisions of a transitional nature, arising as a result of the enactment of the Bill. The clause expires on the second anniversary of the day on which the clause comes into operation.

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

Clause 196 provides for definitions used in Part 10 of the Bill.

Part 10 provides for the repeal of the **Guardianship and Administration Act 1986**, and for savings and transitional provisions as a result of the repeal of that Act and the commencement of the **Guardianship and Administration Act 2018**.

Commencement day means the day on which section 197 of the **Guardianship and Administration Act 2018** comes into operation. Section 197 provides for the repeal of the **Guardianship and Administration Act 1986**.

The *new Act* means the **Guardianship and Administration Act 2018**.

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

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

Clause 197 provides for repeal of the old Act.

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

Subclause (3) provides for interpretation of Acts and other documents on and after the repeal of the old Act. On or after the repeal of the old Act, a reference to the old Act in any Act (other than the new Act or regulations under the new Act), regulations, subordinate instruments or other documents, is to be construed as a reference to the new Act, unless the contrary intention appears.

Subclause (4) clarifies that nothing in Part 10 of the Bill limits or otherwise affects the operation of the **Interpretation of Legislation Act 1984**.

Clause 198 sets out what the effect of the repeal of the old Act is on guardianship orders made under the old Act.

Subclause (1) provides that, despite the repeal of the old Act, a guardianship order made under the old Act, including a temporary guardianship order, that is in force when the old Act is repealed, remains in force for the period specified in the guardianship order unless a court or VCAT revokes or sets aside the guardianship order before the end of that period. The subclause also provides that—

- the provisions of the old Act continue to apply to the guardian and represented person, and not the provisions of the new Act. This is subject to anything contrary in Part 10 of the Bill, for example, clause 198(2) of the Bill sets out provisions of the new Act that do apply to a guardian appointed under the old Act; and

- the powers and duties of the guardian are the powers and duties conferred on the guardian under the old Act; and
- if an alternative guardian appointed under the old Act takes over the office of guardian before the guardianship order is revoked or set aside, the alternative guardian has the same powers and duties as the guardian had immediately before the guardian's death, absence or incapacity.

Subclause (2) provides that, on or after the repeal of the old Act, the following provisions of the new Act do apply in relation to a guardianship order made under the old Act that is still in force—

- section 177 of the new Act, which deals with the resolution of disputes between guardians and administrators;
- section 178 of the new Act, which allows a guardian to apply to VCAT for an enforcement order in relation to a decision or act of the guardian;
- sections 181 to 186 of the new Act, which allow VCAT or the Supreme Court to order a guardian to compensate the represented person for a loss caused by the guardian. These compensation provisions apply as if the contravention relevant to those provisions were a contravention of a provision under the old Act that occurred after the repeal of the old Act;
- section 188 of the new Act, which sets out offences for a guardian to dishonestly use a guardianship order.

Subclause (3) provides that, on or after the repeal of the old Act, a temporary guardianship order made under the old Act may be renewed once under the old Act for a further period of 21 days. However, VCAT must hold a hearing to determine whether a guardianship order should be made under the new Act within 42 days of making the temporary order under the old Act.

Clause 199 sets out what the effect of the repeal of the old Act is on administration orders made under the old Act.

Subclause (1) provides that, despite the repeal of the old Act, an administration order made under the old Act, including a temporary administration order, that is in force when the old Act

is repealed, remains in force for the period specified in the administration order unless a court or VCAT revokes or sets aside the administration order before the end of that period. The subclause also provides that—

- the provisions of the old Act continue to apply to the administrator and represented person, and not the provisions of the new Act. This is subject to anything contrary in Part 10 of the Bill, for example, clause 199(2) of the Bill sets out provisions of the new Act that do apply to an administrator appointed under the old Act; and
- the powers and duties of the administrator are the powers and duties conferred on the administrator under the old Act.

Subclause (2) provides that, on or after the repeal of the old Act, the following provisions of the new Act do apply in relation to an administration order made under the old Act that is still in force—

- section 51(3), (4) and (5) of the new Act, if the administration order made under the old Act conferred on the administrator the power to bring and defend legal actions and other legal proceedings. Section 51(3), (4) and (5) of the new Act makes provision for the payment of costs of the legal proceedings;
- Division 8 of Part 3 of the new Act, which sets out other matters pertaining to administration orders, including actions that can be taken by an administrator and by a former represented person or their personal representative when an administration order comes to an end;
- section 177 of the new Act, which deals with the resolution of disputes between guardians and administrators;
- section 178 of the new Act, which allows an administrator to apply to VCAT for an enforcement order in relation to a decision or act of the administrator;

- sections 181 to 186 of the new Act, which allow VCAT or the Supreme Court to order an administrator to compensate the represented person for a loss caused by the administrator. These compensation provisions apply as if the contravention relevant to those provisions were a contravention of a provision under the old Act that occurred after the repeal of the old Act; and
- section 189 of the new Act, which sets out offences for an administrator to dishonestly use an administration order.

Subclause (3) provides that, on or after the repeal of the old Act, a temporary administration order made under the old Act may be renewed once under the old Act for a further period of 21 days. However, VCAT must hold a hearing to determine whether an administration order should be made under the new Act within 42 days of making the temporary order under the old Act.

Clause 200 sets out what the effect of the repeal of the old Act is on administration orders made under the old Act in respect of the estate of a missing person.

Subclause (1) provides that, despite the repeal of the old Act, an administration order made under the old Act in respect of the estate of a missing person, including a temporary administration order, that is in force when the old Act is repealed, remains in force for the period specified in the administration order unless a court or VCAT revokes or sets aside the administration order before the end of that period. The subclause also provides that—

- the provisions of the old Act continue to apply to the administrator and missing person, and not the provisions of the new Act. This is subject to anything contrary in Part 10 of the Bill, for example, clause 200(2) of the Bill sets out provisions of the new Act that do apply to an administrator appointed under the old Act; and
- the powers and duties of the administrator are the powers and duties conferred on the administrator under the old Act.

Subclause (2) provides that, on or after the repeal of the old Act, the following provisions of the new Act do apply in relation to an administration order made under the old Act in respect of the estate of a missing person that is still in force—

- section 113(3), (4) and (5) of the new Act, if the administration order made under the old Act conferred on the administrator the power to bring and defend legal actions and other legal proceedings. Section 113(3), (4) and (5) of the new Act makes provision for the payment of costs of the legal proceedings;
- Division 5 of Part 5 of the new Act, which sets out other matters pertaining to administration (missing person) orders, including actions that can be taken by an administrator and by a former missing person or their personal representative when an administration order comes to an end;
- section 177 of the new Act, which deals with the resolution of disputes between guardians and administrators;
- section 178 of the new Act, which allows an administrator to apply to VCAT for an enforcement order in relation to a decision or act of the administrator;
- sections 181 to 186 of the new Act, which allow VCAT or the Supreme Court to order an administrator to compensate the missing person for a loss caused by the administrator. These compensation provisions apply as if the contravention relevant to those provisions were a contravention of a provision under the old Act that occurred after the repeal of the old Act;
- section 190 of the new Act, which sets out offences for an administrator for a missing person to dishonestly use an administration (missing person) order.

Subclause (3) provides that, on or after the repeal of the old Act, a temporary administration order made under the old Act in respect of the estate of a missing person may be renewed once under the old Act for a further period of 21 days. However, VCAT must hold a hearing to determine whether an administration (missing person) order should be made

under the new Act within 42 days of making the temporary order under the old Act.

Clause 201 sets out what the effect of the repeal of the old Act is on applications made under the old Act for guardianship orders and administration orders.

Subclause (1) provides that an application that was made under the old Act for a guardianship order but that is not determined at the time the old Act is repealed, is taken to be an application made under the new Act for a guardianship order, and must be determined by VCAT in accordance with the new Act.

Subclause (2) provides that an application that was made under the old Act for an administration order but that is not determined at the time the old Act is repealed, is taken to be an application made under the new Act for an administration order, and must be determined by VCAT in accordance with the new Act.

Subclause (3) provides that an application that was made under the old Act for an administration order in respect of the estate of a missing person but that is not determined at the time the old Act is repealed, is taken to be an application made under the new Act for an administration (missing person) order, and must be determined by VCAT in accordance with the new Act.

Clause 202 sets out what the effect of the repeal of the old Act is on an application made under the old Act for VCAT (described as the Tribunal under the old Act) to consent to the carrying out of a special medical procedure that is not determined at the time the old Act is repealed. The clause provides that such applications must be determined in accordance with Part 6 of the new Act. The clause further provides that—

- on or after the repeal of the old Act, a consent given by the Tribunal under the old Act to the carrying out of a special medical procedure is taken to be a consent given by VCAT under the new Act; and
- on or after the repeal of the old Act, an authority conferred by the Tribunal on the patient's medical treatment decision maker to consent to the continuation of the special medical procedure or to the carrying out of any further special medical procedure of a similar

nature, is taken to be conferred by VCAT under the new Act.

Clause 203 sets out what the effect of the repeal of the old Act is on the rehearing of orders made under the old Act. The clause provides that, despite the repeal of the old Act, a rehearing of an order made under the old Act continues to be subject to the provisions of the old Act and not the new Act. In particular, on or after the repeal of the old Act—

- a person may apply under the old Act for a rehearing of an order made under the old Act, or for leave to apply for a rehearing, within 28 days after the order under the old Act was made; and
- any application for a rehearing, or for leave to apply for a rehearing, of an order made under the old Act that is not determined before the old Act is repealed must be determined by VCAT in accordance with the old Act; and
- in conducting a rehearing of an order made under the old Act, VCAT has the same powers and functions as it had with respect to the matter at first instance under the old Act; and
- any order made by VCAT as a result of the rehearing is taken to be an order made under the old Act, and, as such, clauses 198, 199 and 200 of this Part of the Bill apply to these orders.

Clause 204 sets out what the effect of the repeal of the old Act is on the reassessment of orders made under the old Act.

The clause provides that a reassessment of an order made under the old Act that is not determined at the time the old Act is repealed must be conducted in accordance with the new Act. However, unlike for a reassessment of an order made under the new Act, VCAT is not to consider whether the guardian or administrator appointed at first instance has performed duties in compliance with the new Act. Further, on completing the reassessment of the order made under the old Act, VCAT must revoke the order, and may make an order under the new Act.

Clause 205 sets out what the effect of the repeal of the old Act is on the administration of Part 6A of the old Act, which provides for the recognition of interstate orders made under corresponding laws of other Australian states and territories.

Subclause (1) provides that on and after the repeal of the old Act, a Ministerial agreement made under the old Act about any matter in connection with the administration of Part 6A of the old Act or a corresponding law, is taken to be an agreement referred to in section 171 of the new Act.

Subclause (2) provides that on and after the repeal of the old Act, an interstate order that the Tribunal has registered under the old Act is taken to be an interstate order registered by VCAT under the new Act.

Clause 206 provides that VCAT may make orders of a transitional nature.

Subclause (1) permits VCAT to make any order of a transitional nature it considers appropriate to resolve any difficulty that arises in a proceeding because of the operation of Part 10.

Subclause (2) allows VCAT to make such an order on the application of any party to the proceeding or on its own initiative.

Part 11—Amendment of Victorian Civil and Administrative Tribunal Act 1998 and other Acts

Division 1—Victorian Civil and Administrative Tribunal Act 1998

Clause 207 amends paragraph (d) of the definition of *proceeding* in section 3 of the **Victorian Civil and Administrative Tribunal Act 1998** to reflect the new Act title and to update the cross reference to the correct Part of the new Act. The amended paragraph provides that a proceeding in VCAT includes a rehearing of reassessment under Part 7 of the **Guardianship and Administration Act 2018**.

Clause 208 amends section 42(2) of the **Victorian Civil and Administrative Tribunal Act 1998** to reflect the new Act title and to update the cross reference to the correct Part of the new Act. The amended section 42(2) provides that, for the avoidance of doubt, VCAT's jurisdiction under Part 7 of the **Guardianship and Administration Act 2018** (Rehearings and reassessments of orders) is original jurisdiction, not review jurisdiction.

Clause 209 inserts a new paragraph into section 146(4)(c) of the **Victorian Civil and Administrative Tribunal Act 1998**, which deals with rights of access to VCAT proceeding files. The amended section provides that rights of access to proceeding files conferred by the section are also subject to any determination by the principal registrar of VCAT under clause 37A of Part 9 of Schedule 1, which is inserted by clause 218 of the Bill.

Clause 210 amends the heading to Part 9 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** to reflect the new Act title. Part 9 of Schedule 1 sets out variations from Parts 3 and 4 of the **Victorian Civil and Administrative Tribunal Act 1998** for certain proceedings under certain enabling enactments, including under the **Guardianship and Administration Act 2018**.

Clause 211 amends clause 31 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** to reflect the new Act title and the terminology used in the new Act, and to update cross references to the correct Part of the new Act.

Amended clause 31(1) provides that section 64(2)(a) of the **Victorian Civil and Administrative Tribunal Act 1998**, which sets out how VCAT is to be constituted for proceedings, does not apply to a proceeding under the **Guardianship and Administration Act 2018**, other than a proceeding for an urgent guardianship order or urgent administration order referred to in clause 36 of the Bill, or for an administration (missing person) order or urgent administration (missing person) order under Part 5 of the Bill.

Amended clause 31(2) provides that, for the purposes of a proceeding for an urgent order under section 36 of the **Guardianship and Administration Act 2018**, VCAT is to be constituted by a presidential member, or a member who is an Australian lawyer, sitting alone.

Amended clause 31(3) provides that, for the purposes of a reading under Division 1 of Part 7 of the **Guardianship and Administration Act 2018**, VCAT is to be constituted by—

- a senior member or presidential member, if the order at first instance was made by the Tribunal constituted by an ordinary member;

- a presidential member, if the order at first instance was made by the Tribunal constituted by a senior member;
- a judicial member, if the order at first instance was made by the Tribunal constituted by a Deputy President;
- a Vice President, if the order at first instance was made by the Tribunal constituted by more than one member (except where one or more of the members was a Vice President);
- the President, if the order at first instance was made by the Tribunal constituted by a Vice President (whether with or without others).

Clause 212 amends clause 32 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998**, to reflect the new Act title and the terminology used in the new Act, and to update cross references to the correct Part of the new Act.

Amended clause 32(1) provides that, despite section 72(3) of the **Victorian Civil and Administrative Tribunal Act 1998**, which allows VCAT to make an order that service be dispensed with, VCAT cannot make an order dispensing with service of a copy of an application under the **Guardianship and Administration Act 2018** on the Public Advocate.

Amended clause 32(2) provides that VCAT must inform the Public Advocate if it makes an order under section 72(3) of the **Victorian Civil and Administrative Tribunal Act 1998** dispensing with service of a copy of an application under the **Guardianship and Administration Act 2018** for a guardianship order or an administration order on the person in respect of whom the application is made, including in relation to an urgent order.

Amended clause 32(3) provides that clause 32(2) does not apply to an application for an administration (missing person) order under **Part 5 of the Guardianship and Administration Act 2018**.

Clause 213 amends clause 33 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** to reflect the new Act title. The amended clause provides that that the Public Advocate may intervene at any time, and is entitled to be joined as a party in a proceeding under the **Guardianship and Administration Act 2018**.

Clause 214 amends clause 34 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** to reflect the new Act title. The amended clause provides that, section 74(2)(d) of the **Victorian Civil and Administrative Tribunal Act 1998** does not apply to a proceeding under the **Guardianship and Administration Act 2018**. Section 74(2)(d) provides that an applicant who withdraws an application cannot make a further application in relation to the same facts and circumstances without the leave of VCAT.

Clause 215 amends clause 35 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** to reflect the new Act title. The amended clause allows VCAT to refer any matter relating to a proceeding under the **Guardianship and Administration Act 2018** to a government department, public authority, service provider, the Public Advocate or a guardian or administrator appointed under that Act for investigation and report.

Clause 216 amends clause 36 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** to reflect the new Act title. Amended clause 36 provides that a hearing or order of VCAT in a proceeding under the **Guardianship and Administration Act 2018** is not invalidated or affected only because of a failure to give notice to—

- a represented person if VCAT has dispensed with the requirement for notice and notified the Public Advocate; or
- any other person.

Clause 217 amends clause 37(1) and (4) of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** to reflect the new Act title and terminology used in the new Act, and to update the cross reference to the correct Part of the new Act.

Amended clause 37(1) provides that, unless VCAT orders otherwise, a person must not publish or broadcast or cause to be published or broadcast any report of a proceeding under the **Guardianship and Administration Act 2018** that identifies, or could reasonably lead to the identification of, a party to the proceeding.

Amended clause 37(4) provides that clause 37 does not apply to an application for an administration (missing person) order under Part 5 of the **Guardianship and Administration Act 2018**.

Clause 218 inserts a new clause into Part 9 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998**. New clause 37A allows a person to make an application to the principal registrar of VCAT that documents lodged in relation to a proceeding under the **Guardianship and Administration Act 2018** not be disclosed to a specified person or class of person. The principal registrar must determine any such application fairly and according to the merits of the application.

Clause 219 amends clause 38 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** to reflect the new Act title. The amended clause 38 provides that sections 112 to 115 of the **Victorian Civil and Administrative Tribunal Act 1998**, which deal with settlement offers made during a proceeding, do not apply to a proceeding under the **Guardianship and Administration Act 2018**.

Clause 220 amends Schedule 2 to the **Victorian Civil and Administrative Tribunal Act 1998**, which sets out the subject matters in respect of which VCAT can make rules under section 157 of that Act, to allow VCAT to make rules with respect to a scale of remuneration to which persons who carry on a business of, or including, the administration of estates may be entitled to under the **Guardianship and Administration Act 2018**.

Division 2—Amendments to other Acts

Clause 221 provides that on the coming into operation of an item in Schedule 1 to the Bill, the Act specified in the heading to that item is amended as set out in the item.

Clause 222 provides that Part 11 of the Bill and Schedule 1 to the Bill are repealed on 1 March 2021. The note at the foot of clause 218 clarifies that the repeal of Part 11 and Schedule 1 does not affect the continuing operation of the amendments made by that Part or the Schedule (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Schedule 1—Consequential amendments

1 Administration and Probate Act 1958

- Item 1.1 amends sections 50(1)(a) and 51 of the **Administration and Probate Act 1958** to insert the new Act title and to update cross references to the correct sections in the new Act.

Sections 50(1)(a) and 51 of the **Administration and Probate Act 1958** refer to section 53 of the **Guardianship and Administration Act 1986**. Section 53 of the **Guardianship and Administration Act 1986** provides protection from ademption, which occurs when a beneficiary under a will does not receive the gift in the will because the item or asset has been disposed of prior to death. Section 53 provides protection for assets dealt with by an administrator appointed VCAT.

Item 1.1 amends the sections in the **Administration and Probate Act 1958** to refer to section 76 of the **Guardianship and Administration Act 2018**, which replaces section 53, and to section 136 of the **Guardianship and Administration Act 2018**, which sets an equivalent provision to section 76 in relation to assets dealt with by an administrator under an administration (missing person) order.

2 Appeal Costs Act 1998

- Item 2.1 amends section 3(2)(a) and (b) of the **Appeals Costs Act 1998** to reflect the new Act title.

3 Associations Incorporation Reform Act 2012

- Item 3.1 amends section 78(2)(c)(iii) of the **Associations Incorporation Reform Act 2012** to reflect the new Act title.

4 Australian Consumer Law and Fair Trading Act 2012

- Item 4.1 amends section 47(1)(a)(ii), 48(6)(b) and 92(1)(g) of the **Australian Consumer Law and Fair Trading Act 2012** to reflect the new Act title.

5 Building Act 1993

- Item 5.1 amends section 25AE(1)(c)(iii), 80D(3)(b)(iii), 83B(1)(e) and 171F(1)(g) of the **Building Act 1993** to reflect the new Act title.
- Item 5.2 amends section 90(3) of the **Building Act 1993** to reflect the new Act title and the terminology used in the new Act to describe administration appointments. Item 5.2 substitutes "administrator of the estate of the adjoining owner under the **Guardianship and Administration Act 1986**" with "administrator for the adjoining owner under the **Guardianship and Administration Act 2018**".

6 Business Licensing Authority Act 1998

- Item 6.1 amends clause 3(1)(c) in the Schedule to reflect the new Act title.

7 Child Wellbeing and Safety Act 2005

- Item 7.1 amends section 41(H)(1)(j) of the **Child Wellbeing and Safety Act 2005** to reflect the new Act title.

8 Conveyancers Act 2006

- Item 8.1 amends section 5(h) of the **Conveyancers Act 2006** to reflect the new Act title.

9 Coptic Orthodox Church (Victoria) Property Trust Act 2006

- Item 9.1 amends section 8(d) of the **Coptic Orthodox Church (Victoria) Property Trust Act 2006** to reflect the new Act title.

10 County Court Act 1958

- Item 10 amends sections of the **County Court Act 1958** to reflect the new Act title, to update terminology and to update cross references to the correct sections in the new Act.
- Item 10.1 amends section 39B(5) of the **County Court Act 1958** by substituting "the Tribunal within the meaning of the **Guardianship and Administration Act 1986** and the Public Advocate appointed under that Act" with "VCAT and the Public Advocate within the meaning of the **Guardianship and Administration Act 2018**".

Item 10.2 substitutes section 39B(6) of the **County Court Act 1958** with the following subsection—

"(6) An order of the Court under this section that money be paid out to an administrator has effect as if it were an administration order under the **Guardianship and Administration Act 2018** and, subject to the order of the Court, the administrator has all the powers and duties set out in Divisions 6, 7 and 8 of Part 3 of that Act."

The substituted subsection is intended to have the same effect as the existing subsection.

Item 10.3 amends section 39C(6) of the **County Court Act 1958** by substituting for "section 66 of the **Guardianship and Administration Act 1986**" with "section 179 of the **Guardianship and Administration Act 2018**".

11 Crimes Act 1958

Item 11.1 amends the definition of *trustee* in section 175(1) of the **Crimes Act 1958** to reflect the new Act title.

12 Disability Act 2006

Item 12.1 amends section 3(1) of the **Disability Act 2006** to reflect the new Act title and to update terminology.

Item 12.2 amends section 39(4) of the **Disability Act 2006**, which allows for information sharing for specified purposes to the extent that is reasonably required in connection with the performance of a duty or the exercise of a power or function under the **Disability Act 2006** or any other Act.

Item 12.2 inserts 2 new paragraphs after section 39(4)(cc) to include references to a supportive administrator acting under a supportive administration order within the meaning of the **Guardianship and Administration Act 2018**, and a supportive guardian acting under a supportive guardianship order within the meaning of the **Guardianship and Administration Act 2018**. This insertion will allow information to be shared with a supportive administrator and supportive guardian as permitted in section 39 of the **Disability Act 2006**. This amendment is consistent with amendments to section 39(4) of the **Disability Act 2006** made by the **Powers of Attorney Act 2014**, to insert a

reference to a supportive attorney, and made by the **Medical Treatment Planning and Decisions Act 2016**, to insert references to a medical treatment decision maker and a support person.

Item 12.3 amends section 144(2) of the **Disability Act 2006** to reflect the new Act title.

Item 12.4 amends section 200 of the **Disability Act 2006** to reflect the new Act title and to update terminology used in the new Act. The item substitutes "in respect of whom a guardianship order in force under the **Guardianship and Administration Act 1986**" with "in relation to whom a guardianship order under the **Guardianship and Administration Act 2018** has effect".

13 Duties Act 2000

Item 13.1 amends the definition of *guardian* in section 57G(1) in the **Duties Act 2000** to reflect the new Act title and terminology used in the new Act.

14 Estate Agents Act 1980

Item 14 amends sections 14(5)(da), 16(1)(da), 22(1)(c) and 31E(1)(c) of the **Estate Agents Act 1980** to reflect the new Act title.

15 Family Violence Protection Act 2008

Item 15.1 amends the definition of *guardian* in section 4 of the **Family Violence Protection Act 2008** to reflect the new Act title.

Item 15.2 amends the note at the foot of sections 64(1) and 112 to insert the new Act title and to update cross references to the correct sections in the new Act.

Item 15.3 amends the definition of *authorised representative* in section 144ND(3) to update the description of an administrator to refer to an administrator appointed in an administration order made under the **Guardianship and Administration Act 2018**. This description of an administrator does not therefore refer to an administrator appointed in an administration (missing person) order made under the new Act.

16 First Home Owners Grant Act 2000

- Item 16.1 amends the definition of *guardian* in section 3(1) of the **First Home Owners Grant Act 2000** to update the description of an administrator to refer to an administrator appointed in an administration order made under the **Guardianship and Administration Act 2018**. This description of an administrator does not therefore refer to an administrator appointed in an administration (missing person) order made under the new Act.

17 Fundraising Act 1998

- Item 17.1 amends sections 19A(1)(c), 24B(1)(a)(iii) and 34(1)(f)(i)(C) of the **Fundraising Act 1998** to reflect the new Act title.

18 Gambling Regulation Act 2003

- Item 18.1 amends sections 3.4.24(3)(a)(iv), 7.3.15(1)(b) and 7.3.17(c) of the **Gambling Regulation Act 2003** to reflect the new Act title.

19 Health Records Act 2001

- Item 19 amends section 85 of the **Health Records Act 2001**.

Items 19.1 and 19.2 amend section 85(2), which sets out who can make a request for, or exercise a right of access to, health information under the **Health Records Act 2001** on behalf of an individual. The items insert two new paragraphs after section 85(2)(a)(iii) to include references to a supportive administrator acting under a supportive administration order within the meaning of the **Guardianship and Administration Act 2018**, and a supportive guardian acting under a supportive guardianship order within the meaning of the **Guardianship and Administration Act 2018**. This insertion will allow a supportive administrator or a supportive guardian to make a request for, or to exercise a right of access to, health information under the **Health Records Act 2001**, when this is authorised by the supportive administration order or supportive guardianship order. This amendment is consistent with amendments to section 85(2) of the **Health Records Act 2001** made by the **Powers of Attorney Act 2014**, to insert a reference to a supportive attorney, and made by the **Medical Treatment Planning and Decisions Act 2016**, to insert a reference to a support person.

Item 19.3 amends sections 85(4) and 85(6)(d) of the **Health Records Act 2001** to reflect the new Act title.

20 Health Services Act 1988

Item 20.1 amends the definitions of *Public Advocate* and *resident's guardian* in section 3(1) of the **Health Services Act 1988** to reflect the new Act title and terminology used in the new Act.

21 Housing Act 1983

Item 21.1 amends paragraph (c) of the definition of *personal details* in section 142C(2) of the **Housing Act** to reflect the new Act title.

22 Human Services (Complex Needs) Act 2009

Item 22.1 amends the definition of *Public Advocate* in section 3 of the **Human Services (Complex Needs) Act 2009** to reflect the new Act title.

Item 22.2 amends section 21(b)(i) of the **Human Services (Complex Needs) Act 2009** to reflect the new Act title.

23 Independent Broad-based Anti-corruption Commission Act 2011

Item 23.1 amends sections 25(1)(f) and 27(1)(f) of the **Independent Broad-based Anti-corruption Commission Act 2011** to reflect the new Act title.

24 Juries Act 2000

Item 24.1 amends clause 3(d) in Schedule 2 to the **Juries Act 2000** to reflect the new Act title.

25 Land Act 1958

Item 25.1 amends section 110(3) of the **Land Act 1958** to reflect the new Act title.

Item 25.1 amends section 110(4) of the **Land Act 1958** to reflect the new Act title and to clarify that the reference to an administrator in this section means an administrator appointed in an administration order under the **Guardianship and Administration Act 2018**. This description of an administrator does not therefore refer to an administrator appointed in an administration (missing person) order made under the new Act.

Item 25.3 amends section 353(5) of the **Land Act 1958** to reflect the new Act title and to clarify that the reference to an administrator in this section means an administrator appointed in an administration order under the **Guardianship and Administration Act 2018**. This description of an administrator does not therefore refer to an administrator appointed in an administration (missing person) order made under the new Act.

26 Land Tax Act 2005

Item 26.1 amends paragraph (a)(i) of the definition of *concessional trust* in section 3(1) of the **Land Tax Act 2005** to reflect the new Act title.

27 Limitation of Actions Act 1958

Item 27.1 substitutes a new section 3(3) of the **Limitation of Actions Act 1958** to remove the reference to a "protected person" within the meaning of the **Guardianship and Administration Act 1986**, as this term is not used in the new Act, and to update the reference to a "represented person" to have the meaning set out in the new Act.

Item 27.2 substitutes new definitions of *guardian* and *represented person* in section 27J(4) of the **Limitation of Actions Act 1958** to remove the references to a "protected person" within the meaning of the **Guardianship and Administration Act 1986**, as this term is not used in the new Act, and to reflect the new Act title.

28 Liquor Control Reform Act 1998

Item 28.1 amends sections 66(c) and 85(a)(ii) of the **Liquor Control Reform Act 1998** to reflect the new Act title.

Item 28.2 amends section 80(1)(b) of the **Liquor Control Reform Act 1998** to reflect the new Act title and clarify that the reference to an administrator the administrator in this section means an administrator appointed in an administration order under the **Guardianship and Administration Act 2018**. This description of an administrator does not therefore refer to an administrator appointed in an administration (missing person) order made under the new Act.

29 Magistrates Court Act 1989

Item 29.1 substitutes section 101A(5) and (6) of the **Magistrates Court Act 1989** to reflect the new Act title, to update terminology and to update cross references to the correct sections in the new Act.

New section 101A(6) provides that an order of the Court under this section that money be paid out to an administrator has effect as if it were an administration order under the **Guardianship and Administration Act 2018** and, subject to the order of the Court, the administrator has all the powers and duties set out in Divisions 6, 7 and 8 of Part 3 of that Act. This substituted subsection is intended to have the same effect as the existing subsection.

Item 29.2 amends section 101B(6) of the **Magistrates Court Act 1989** by substituting for "section 66 of the **Guardianship and Administration Act 1986**" with "section 179 of the **Guardianship and Administration Act 2018**". This reflects the new Act title and updates the cross reference to the correct section in the new Act.

30 Marine Safety Act 2010

Item 30.1 amends section 298A of the **Marine Safety Act 2010** to reflect the new Act title.

31 Medical Treatment Planning and Decisions Act 2016

Item 31.1 amends the definitions of *Public Advocate* and *special medical procedure* in section 3(1) of the **Medical Treatment Planning and Decisions Act 2016** to reflect the new Act title and to update a cross reference to the correct section in the new Act.

Item 31.2 amends the note at the foot of sections 12(3)(c)(i), 57(2) and 64 of the **Medical Treatment Planning and Decisions Act 2016** to update the cross reference to the correct Part of the new Act.

Item 31.3 amends section 55(2) of the **Medical Treatment Planning and Decisions Act 2016** to reflect the new Act title.

32 Mental Health Act 2014

- Item 32.1 amends the definitions of *guardian* and *Public Advocate* in section 3(1) of the **Mental Health Act 2014** to reflect the new Act title and the terminology used in the new Act.
- Item 32.2 amends section 75(1)(c) of the **Mental Health Act 2014** to reflect the new Act title.

33 Motor Car Traders Act 1986

- Item 33.1 amends 13(4)(k), (6)(1)(i), 28(1)(c) and 33(1)(c) of the **Motor Car Traders Act 1986** to reflect the new Act title.

34 Owners Corporation Act 2006

- Item 34.1 amends sections 179(b), 186(a) and 187(1)(c) of the **Owners Corporation Act 2006** to reflect the new Act title.

35 Parliamentary Budget Officer Act 2017

- Item 35.1 amends section 11(e) of the **Parliamentary Budget Officer Act 2017** to reflect the new Act title.

36 Partnership Act 1958

- Item 36.1 amends section 39(a) of the **Partnership Act 1958** to reflect the new Act title and to clarify that the reference in this section to the administrator of a partner who is found to be mentally ill, means an administrator appointed in an administration order under the **Guardianship and Administration Act 2018**. This description of an administrator does not therefore refer to an administrator appointed in an administration (missing person) order made under the new Act.

37 Personal Safety Intervention Orders Act 2010

- Item 37.1 amends the definition of *guardian* in section 4 of the **Personal Safety Intervention Orders Act 2010** to reflect the new Act title.
- Item 37.2 amends the note at the foot of sections 46(1) and 89(1) of the **Personal Safety Intervention Orders Act 2010** to reflect the new Act title and to update the cross references to the correct sections of the new Act.

38 Powers of Attorney Act 2014

- Item 38.1 amends the definitions of *administration order* and *guardianship order* in section 3(1) of the **Powers of Attorney Act 2014** to reflect the new Act title.
- Item 38.2 amends the definition of *Public Advocate* in section 3(1) of the **Powers of Attorney Act 2014** to reflect the new Act title and the terminology used in the new Act.
- Item 38.3 amends section 123(4)(e)(i) of the **Powers of Attorney Act 2014** to reflect the new Act title and the terminology used in the new Act.
- Item 38.4 repeals section 123(4)(e)(ii) of the **Powers of Attorney Act 2014**. This section refers to any alternative guardian appointed under the **Guardianship and Administration Act 1986**. The new Act does not provide for the appointment of an alternative guardian.
- Item 38.5 substitutes new sections 123(4)(e)(iii) and (iv) of the **Powers of Attorney Act 2014** to reflect the new Act title and to—
- clarify that the reference in section 123(4)(e)(iii) to the administrator of a principal, means an administrator appointed in an administration order under the **Guardianship and Administration Act 2018**, and not an administrator appointed in an administration (missing person) order made under the new Act; and
 - provide that the reference in section 123(4)(e)(iv) to the primary carer of a principal, means a primary carer within the meaning of the **Medical Treatment Planning and Decisions Act 2016**.

39 Privacy and Data Protection Act 2014

- Item 39.1 amends section 28 of the **Privacy and Data Protection Act 2014**.

Items 39.1 and 39.2 amend section 28(2), which sets out who can make a request for, or exercise a right of access to, personal information under the **Privacy and Data Protection Act 2014** on behalf of an individual. The items insert two new paragraphs after section 28(2)(a)(iii) to include references to a supportive administrator acting under a supportive administration order within the meaning of the **Guardianship and Administration Act 2018**, and a supportive guardian acting under a supportive guardianship

order within the meaning of the **Guardianship and Administration Act 2018**. This insertion will allow a supportive administrator or a supportive guardian to make a request for, or to exercise a right of access to, personal information under the **Privacy and Data Protection Act 2014**, when this is authorised by the supportive administration order or supportive guardianship order. This amendment is consistent with amendments to section 28(2) of the **Privacy and Data Protection Act 2014** made by the **Powers of Attorney Act 2014**, to insert a reference to a supportive attorney.

Item 39.3 amends paragraph (a)(iv) of the definition of *authorised representative* in section 28(6) of the **Privacy and Data Protection Act 2014** to reflect the new Act title.

40 Professional Standards Act 2003

Item 40.1 amends clause 5(1)(e) of Schedule 2 to the **Professional Standards Act 2003** to reflect the new Act title.

41 Property Law Act 1958

Item 41.1 amends section 30(1) of the **Property Law Act 1958** to reflect the new Act title and terminology used in the new Act.

Item 41.2 amends section 30(2) of the **Property Law Act 1958** to reflect the new Act title and terminology used in the new Act.

Item 41.3 amends section 171(9) of the **Property Law Act 1958** to reflect the new Act title.

42 Public Health and Wellbeing Act 2008

Item 42.1 amends section 138(3)(b) of the **Public Health and Wellbeing Act 2008** as a consequence of the enactment of the **Medical Treatment Planning and Decisions Act 2016**. The amendment replaces the outdated reference to a person responsible under the **Guardianship and Administration Act 1986** with a reference to a medical treatment decision maker under the **Medical Treatment Planning and Decisions Act 2016**.

43 Road Safety Act 1986

Item 43.1 amends the definition of *authorised representative* in section 90I in the **Road Safety Act 1986** to reflect the new Act title.

44 Rooming House Operators Act 2016

Item 44.1 amends sections 17(1)(d), 18(1)(b)(iii) and 41(1)(c) of the **Rooming House Operators Act 2016** to reflect the new Act title.

45 Second-Hand Dealers and Pawnbrokers Act 1989

Item 45.1 amends sections 6(1)(a), 10(1)(a) and 18(1)(c) of the **Second-Hand Dealers and Pawnbrokers Act 1989** to reflect the new Act title.

46 Sentencing Act 1991

Item 46.1 amends the definition of *applicant* in section 105(1) of the **Sentencing Act 1991** to reflect the new Act title.

47 Severe Substance Dependence Treatment Act 2010

Item 47.1 amends the definitions of *guardian* and *Public Advocate* in section 4 of the **Severe Substance Dependence Treatment Act 2010** to reflect the new Act title and the terminology used in the new Act.

Item 47.2 amends section 6(2) of the **Severe Substance Dependence Treatment Act 2010** to reflect the new Act title.

48 Sex Offenders Registration Act 2004

Item 48.1 amends the definition of *guardian* in section 3(1) of the **Sex Offenders Registration Act 2004** to reflect the new Act title.

49 Sex Work Act 1994

Item 49.1 amends sections 37(1)(g), 47(1)(g), 47A(1)(c), 51(1)(g) and 53(1)(f) of the **Sex Work Act 1994** to reflect the new Act title.

50 State Trustees (State Owned Company) Act 1994

Item 50.1 amends section 3 of the **State Trustees (State Owned Company) Act 1994**.

Paragraph (a) repeals the definition of *protected person*, as this terminology is not used in the new Act.

Paragraph (b) amends the definition of *represented person* to refer to a represented person within meaning of the **Guardianship and Administration Act 2018** for whom State Trustees is appointed as administrator under that Act.

Item 50.2 amends section 12(5) of the **State Trustees (State Owned Company) Act 1994**.

Paragraph (a) amends section 12(5) to reflect the new Act title.

Paragraph (b) amends paragraph (d) of section 12(5) by substituting "Divisions 3 and 3A of Part 5" with "Divisions 6, 7, and 8 of Part 3" to update the cross reference to the correct Divisions and Part in the new Act.

Item 50.3 amends section 13(1)(d) and 14(2)(c)(i) of the **State Trustees (State Owned Company) Act 1994** to reflect the new Act title.

Item 50.4 repeals section 14(2)(c)(ii) of the **State Trustees (State Owned Company) Act 1994**, as the term "protected person" is not used in the new Act.

Item 50.5 amends section 17(1) and (2) of the **State Trustees (State Owned Company) Act 1994** by omitting the words "protected person", as this term is not used in the new Act.

Item 50.6 substitutes new section 19(a)(i) in the **State Trustees (State Owned Company) Act 1994** to reflect the new Act title and to clarify that the section refers to an administration order under the new Act that appoints State Trustees as administrator for a person, and is not a reference to an administration (missing person) order.

Item 50.7 repeals section 19(a)(ii) and (b)(ii), as the term "protected person" is not used in the Bill.

Paragraph (b) repeals section 19(b)(ii), as the term "protected person" is not used in the new Act.

51 Supported Residential Services (Private Proprietors) Act 2010

- Item 51.1 amends the definitions of *Public Advocate*, *resident's administrator* and *resident's guardian* in section 3(1) of the **Supported Residential Services (Private Proprietors) Act 2010** to reflect the new Act title and the terminology used in the new Act.
- Item 51.2 amends section 35(1)(a)(ii), (b)(ii) and (2)(b) of the **Supported Residential Services (Private Proprietors) Act 2010** to reflect the new Act title.
- Item 51.3 amends the note at the foot of section 45(1) of the **Supported Residential Services (Private Proprietors) Act 2010** to reflect the new Act title.

52 Supreme Court Act 1986

- Item 52.1 substitutes section 51A(5) and (6) of the **Supreme Court Act 1989** to reflect the new Act title, to update terminology and to update cross references to the correct sections in the new Act.
- New section 51A(6) provides that an order of the Court under this section that money be paid out to an administrator has effect as if it were an administration order under the **Guardianship and Administration Act 2018** and, subject to the order of the Court, the administrator has all the powers and duties set out in Divisions 6, 7 and 8 of Part 3 of that Act. This substituted subsection is intended to have the same effect as the existing subsection.
- Item 52.2 amends section 113(1) of the **Supreme Court Act 1986** by substituting for "section 66 of the **Guardianship and Administration Act 1986**" with "section 179 of the **Guardianship and Administration Act 2018**". This reflects the new Act title and updates the cross reference to the correct section in the new Act.
- Item 52.3 amends section 113B(1) of the **Supreme Court Act 1986** to reflect the new Act title and update the cross reference to the correct section in the new Act.
- Item 52.4 substitutes a new section 113B(2) of the **Supreme Court Act 1986** to reflect the new Act title and the terminology used by the new Act.

53 The Uniting Church in Australia Act 1977

Item 53.1 amends section 15(1)(d) of **The Uniting Church in Australia Act 1977** to reflect the new Act title.

54 Transport Accident Act 1986

Item 54.1 amends the definitions of *administration order* and *administrator* in section 3(1) of **Transport Accident Act 1986** to reflect the new Act title.

55 Trustee Act 1958

Item 55.1 amends section 41(9)(a) of the **Trustee Act 1958** to reflect the new Act title.

56 Trustee Companies Act 1984

Item 56.1 amends section 14(2) of the **Trustee Companies Act 1984** to reflect the new Act title.

Item 56.2 amends section 17(1)(c) of the **Trustee Companies Act 1984** to reflect the new Act title.

57 Unclaimed Money Act 2008

Item 57.1 amends section 87(2)(c) and (3)(a)(iii) of the **Unclaimed Money Act 2008** to reflect the new Act title.

58 Victims of Crime Assistance Act 1996

Item 58.1 substitutes a new definition of *guardian* in section 3(1) of the **Victims of Crime Assistance Act 1996** to reflect the new Act title.

Item 58.2 amends section 25(4) of the **Victims of Crime Assistance Act 1996** to reflect the new Act title.

Item 58.3 amends section 70A(4) of the **Victims of Crime Assistance Act 1996** by substituting "section 66 of the **Guardianship and Administration Act 1986**" with "section 178 of the **Guardianship and Administration Act 2018**" to reflect the new Act title and to update the cross reference to the correct section of the new Act.

59 Victoria Police Act 2013

Item 59.1 amends the definition of *personal representative* in paragraph (b) of section 246 of the **Victoria Police Act 2013** to reflect the new Act title.

Item 59.2 amends clauses 2(b) and 7(b) of in Schedule 1 to the **Victoria Police Act 2013** to reflect the new Act title.

60 Victorian Inspectorate Act 2011

Item 60.1 amends section 22(1)(g) of the **Victorian Inspectorate Act 2011** to reflect the new Act title.

61 Wills Act 1997

Item 61.1 substitutes a new section 21C(d) of the **Wills Act 1997** to reflect the new Act title and the terminology used in the new Act.

62 Workplace Injury Rehabilitation and Compensation Act 2013

Item 62.1 amends section 310(3)(a) of the **Workplace Injury Rehabilitation and Compensation Act 2013** to reflect the new Act title and the terminology used in the new Act.