

Western Australia

LEGISLATIVE COUNCIL

Guardianship and Administration Amendment Bill 1999

A Bill for

**An Act to amend the *Guardianship and Administration Act 1990* and
for related purposes.**

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Guardianship and Administration
Amendment Act 1999*.

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3. The Act amended

5 The amendments in this Act are to the *Guardianship and Administration Act 1990**.

[* Reprinted as at 21 April 1997.

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 110.]

10 **4. Section 3 amended**

(1) Section 3(1) is amended in the definition of “determination” as follows:

(a) after paragraph (g) by deleting “and”;

(b) after paragraph (h) by inserting —

15

“

(i) a decision under section 15A; and

(j) a decision under section 17C;

”.

20

(2) Section 3(1) is amended after the definition of “member” by inserting —

“

“mental disability” includes an intellectual disability, a psychiatric condition, an acquired brain injury and dementia;

25

”.

5. Section 6 amended

After section 6(6) the following subsections are inserted —

“

- 5 (7) Except when a person has been appointed under
subsection (8) to be the acting deputy president, a
member who is a Registrar of the Supreme Court (or if
there are 2 or more such members, the member to be
first appointed as Registrar) is to act as deputy
10 president during the illness, unavailability or absence
of the deputy president and while so acting may
perform the functions of the deputy president.
- 15 (8) The Chief Justice may appoint a person qualified to be
appointed as deputy president to be the acting deputy
president during the illness, unavailability or absence
of the deputy president and while so appointed that
person may perform the functions of the deputy
president.

”.

6. Section 15A amended

20 Section 15A is amended by inserting before “misconceived” —
“ frivolous, vexatious, ”.

7. Section 17A amended

- (1) Section 17A(1) is amended by deleting “under Division 1”.
- 25 (2) Section 17A(2) is amended by deleting “within 10 days of the
date of the determination.” and inserting instead —

“

within 28 days of the date of the determination or, if
the Full Board considers there is good reason for

making the request outside that time, such further time as the Full Board allows.

”.

8. Section 45 amended

5 Section 45(2) is amended as follows:

- (a) after paragraph (c) by deleting “and”;
- (b) after paragraph (d) by deleting the full stop and inserting instead a semicolon and the following paragraphs —

“

- 10 (e) decide what education and training the represented person is to receive;
- (f) decide with whom the represented person is to associate;
- 15 (g) as the next friend of the represented person, commence, conduct or settle any legal proceedings on behalf of the represented person, except proceedings relating to the estate of the represented person; and
- 20 (h) as the guardian *ad litem* of the represented person, defend or settle any legal proceedings taken against the represented person, except proceedings relating to the estate of the represented person.

”.

25 **9. Section 64 amended**

- (1) Section 64(1)(a) is amended by deleting “mental disorder, intellectual handicap, or other mental disability” and inserting instead —

“ a mental disability, ”.

(2) Section 64(4) is repealed.

10. Section 70 amended

Section 70(2) is repealed and the following subsections are inserted instead —

5

“

(2) Without limiting the generality of subsection (1), an administrator acts in the best interests of a represented person if he acts as far as possible —

10

(a) as an advocate for the represented person in relation to the estate;

(b) in such a way as to encourage the represented person to live in the general community and participate as much as possible in the life of the community;

15

(c) in such a way as to encourage and assist the represented person to become capable of caring for himself and of making reasonable judgments in respect of matters relating to his person;

20

(d) in such a way as to protect the represented person from financial neglect, abuse or exploitation;

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(e) in consultation with the represented person, taking into account, as far as possible, the wishes of that person as expressed, in whatever manner, or as gathered from the person's previous actions;

30

(f) in the manner that is least restrictive of the rights, while consistent with the proper protection, of the represented person;

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- 5
- (g) in such a way as to maintain any supportive relationships the represented person has; and
 - (h) in such a way as to maintain the represented person's familiar cultural, linguistic and religious environment.

- 10
- (3) Nothing in subsection (2)(a) shall be read as authorizing an administrator to act contrary to the *Legal Practitioners Act 1893*.
 - (4) Nothing in subsection (2) shall be read as restricting the functions of an administrator at common law or under any written law.

”.

11. Section 90 amended

15 Section 90 is amended by deleting “confirm the order or may” and inserting instead —

“

, as it considers necessary in the best interests of the represented person, confirm the order or

”.

20 **12. Section 102 amended**

Section 102 is amended in the definition of “donee” by inserting after “attorney” —

“

25 and may, in accordance with section 104B(2), include a substitute donee

”.

13. Section 104 amended

Section 104(2)(b) is amended by deleting “executed by the person or persons appointed to be the donee of the power.” and inserting instead —

5

“

executed by —

(i) the person or persons appointed to be the donee of the power; and

10

(ii) where applicable, the person or persons appointed to be the substitute donee of the power.

”.

14. Section 104B inserted

After section 104A the following section is inserted —

15

“

104B. Substitute donees

(1) A person creating an enduring power of attorney may, in the instrument creating the power of attorney, appoint a person to be a substitute donee of the power.

20

(2) Subject to this Act, a substitute donee referred to in subsection (1) becomes the donee of the power only on, or during, the occurrence of events or circumstances specified in the instrument.

”.

15. Section 106 amended

(1) Section 106(2)(b) is amended by deleting “mental disorder or other mental disability,” and inserting instead —

“ a mental disability, ”.

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(2) Section 106(7) is repealed.

16. Section 107 amended

Section 107(1) is amended as follows:

(a) after paragraph (b) by deleting “and”;

5 (b) after paragraph (c) by deleting the full stop and inserting instead —

“

; and

10 (d) shall, if the donee becomes bankrupt, report that bankruptcy to the Board.

”.

17. Section 109 amended

(1) Section 109(1)(c) is amended by deleting “or appointing a substitute donee of the power.” and inserting instead —

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“

, appointing a substitute donee of the power or confirming that a person appointed to be the substitute donee of the power has become the donee.

20

”.

(2) Section 109(3) is amended by inserting after “under this section” —

“

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or upon receiving a report of a donee’s bankruptcy under section 107(1)(d)

”.

18. Section 119 amended

(1) Section 119(2) is amended as follows:

- (a) by deleting “, subject to subsection (3),”;
- (b) by deleting “nearest relative of the person” and inserting
instead —
“ person referred to in subsection (3) ”.

(2) Section 119(3) is repealed and the following subsections are inserted instead —

“

(3) For the purposes of subsection (2), the person who may consent to treatment is the first in order of priority of the following persons —

- (a) a guardian of the person needing the treatment;
- (b) the spouse of the person needing the treatment;
- (c) a person who, on a regular basis, provides or arranges for domestic services and support to the person needing the treatment but does not receive remuneration for doing so;
- (d) a person who is the nearest relative (other than the spouse) of the person needing the treatment and who maintains a close personal relationship with the person needing the treatment;
- (e) any other person who maintains a close personal relationship with the person needing treatment; or
- (f) a person prescribed in the regulations.

(3a) For the purposes of subsection (3) a person is to be regarded as maintaining a close personal relationship with the person needing the treatment if the relationship is maintained through frequent personal

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contact and a personal interest in the welfare of the person needing the treatment.

”.

5 (3) Section 119(4) is amended by deleting the definition of “urgent treatment” and inserting instead —

“

“**urgent treatment**” means treatment that in the opinion of the practitioner concerned is urgently needed —

- 10 (a) to save the life of the person needing the treatment;
- (b) to prevent serious damage to the health of the person needing the treatment; or
- 15 (c) to prevent the person needing the treatment from suffering or continuing to suffer significant pain or distress.

”.

19. Schedule 1 amended

Schedule 1 is amended by deleting clause 2 of Part A.

20 **20. Schedule 3 amended**

(1) Schedule 3 is amended in Form 1 by inserting after item 1 —

“

1a. I APPOINT G.H. of
(or G.H. of and I.J. of jointly)
25 (or G.H. of and I.J. of jointly
and severally) to be my attorney(s) in substitution of C.D. (or C.D.
and/or E.F.) on (or during) the occurrence of the following events
or circumstances —

30

.....
.....

”.

(2) Schedule 3 is amended in Form 2 as follows:

(a) by deleting “the donee(s) of the power of attorney created by” and inserting instead —

“ attorney under paragraph 1 or 1a of ”;

5

(b) by deleting from “Signed” to the end of the Form and inserting instead —

“

Signed:

(Attorney appointed under paragraph 1
of the Enduring Power of Attorney)

or

(Attorney appointed under paragraph 1a
of the Enduring Power of Attorney)

”.

21. Transitional and validation

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(1) A person appointed before the commencement day under an enduring power of attorney (as defined in section 102) as the donee of the power in substitution of another donee on or during the occurrence of certain events or circumstances —

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(a) is, from the commencement day, to be regarded as having been appointed a substitute donee under section 104B; and

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(b) any act of that person under that power of attorney before the commencement day is to be regarded as having been as valid as if section 104B had been in operation at that time and the person had been appointed a substitute donee under it.

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(2) Nothing in subsection (1) affects any decision of —

- (a) the Board under section 109; or
- (b) a court or other tribunal,

5 and to the extent that subsection (1) conflicts or is inconsistent with such a decision, that decision prevails.

(3) In subsection (1) —

“commencement day” means the day on which this Act comes into operation;

10 **“section”** means a section of the *Guardianship and Administration Act 1990*.

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