

# Guardianship and Protected Estates Legislation Amendment Act 2002 No 119

[2002-119]



New South Wales

## Status Information

### Currency of version

Repealed version for 12 December 2002 to 21 July 2003 (accessed 28 November 2024 at 19:43)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Repeal**

The Act was repealed by the [Statute Law \(Miscellaneous Provisions\) Act 2003 No 40](#), Sch 3 with effect from 22.7.2003.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Guardianship and Protected Estates Legislation Amendment Act 2002 No 119



New South Wales

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# Guardianship and Protected Estates Legislation Amendment Act 2002 No 119



New South Wales

An Act to amend the *Guardianship Act 1987*, the *Protected Estates Act 1983* and the *Administrative Decisions Tribunal Act 1997* to make provision for the Administrative Decisions Tribunal to hear and determine appeals against, or to review, certain decisions and orders relating to guardianship matters and the management of estates of protected persons; to make further provision with respect to the functions of the Protective Commissioner; and for other purposes.

## 1 Name of Act

This Act is the *Guardianship and Protected Estates Legislation Amendment Act 2002*.

## 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

## 3 Amendment of *Guardianship Act 1987 No 257*

The *Guardianship Act 1987* is amended as set out in Schedule 1.

## 4 Amendment of *Protected Estates Act 1983 No 179*

The *Protected Estates Act 1983* is amended as set out in Schedule 2.

## 5 Amendment of *Administrative Decisions Tribunal Act 1997 No 76*

The *Administrative Decisions Tribunal Act 1997* is amended as set out in Schedule 3.

## 6 Amendment of *Defamation Act 1974 No 18*

The *Defamation Act 1974* is amended as set out in Schedule 4.

## Schedule 1 Amendment of *Guardianship Act 1987*

(Section 3)

### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

**ADT** means the Administrative Decisions Tribunal established by the *Administrative Decisions Tribunal Act 1997*.

**[2] Section 25M Tribunal may commit estate of protected person to management**

Omit section 25M (2). Insert instead:

- (2) Despite section 68 (1), an order under subsection (1) (a) does not authorise the person appointed as manager to interfere in any way with the estate concerned unless:
- (a) such directions of the Supreme Court as are relevant to the management of the estate have been obtained, or
  - (b) the Protective Commissioner has, under section 30 (3) of the *Protected Estates Act 1983*, authorised the person to exercise functions in respect of the estate.

**[3] Section 25M (3)**

Insert “or authorisation by the Protective Commissioner” after “the Court”.

**[4] Section 67 Appeals to the Supreme Court**

Insert “(whether under this or any other Act)” after “before the Tribunal” in section 67 (1).

**[5] Section 67 (1A)**

Insert after section 67 (1):

- (1A) A person who has appealed to the ADT under section 67A against a decision of the Guardianship Tribunal may not appeal to the Supreme Court under this section in respect of the same decision. However, the person may appeal to the Supreme Court under this section if the appeal under section 67A is withdrawn with the approval of the ADT for the purpose of enabling the Supreme Court to deal with the matter.

**[6] Section 67A**

Insert after section 67:

**67A Appeals to ADT**

- (1) An appeal may be made to the ADT against a decision of the Guardianship Tribunal under any of the following provisions:

- (a) section 6K,
  - (b) section 6MA,
  - (c) section 14,
  - (d) section 25C,
  - (e) section 25E,
  - (f) section 25H,
  - (g) section 25P,
  - (h) section 25U,
  - (i) section 28.
- (2) An appeal to the ADT under this section may be made by a person who was a party to the proceedings (whether as provided by section 3F or otherwise) in which the decision of the Guardianship Tribunal was made.
- (3) If any such person has appealed to the Supreme Court under section 67 against a decision of the Guardianship Tribunal, the person may not appeal to the ADT under this section in respect of the same decision. However, the person may appeal to the ADT under this section if the appeal under section 67 is withdrawn with the approval of the Supreme Court for the purpose of enabling the ADT to deal with the matter.
- (4) An appeal under this section is an external appeal within the meaning of the *Administrative Decisions Tribunal Act 1997*.

**[7] Section 68 Decisions of Tribunal**

Insert after section 68 (1B):

- (1BA) If the decision concerned is made under a provision referred to in section 67A (1), the Tribunal must also, when providing reasons for the decision in accordance with subsection (1B), advise each party to the proceedings that the decision may be appealed against under section 67A to the ADT.

**[8] Section 80A**

Insert after section 80:

**80A Review by ADT of guardianship decisions of Public Guardian**

- (1) An application may be made to the ADT for a review of a decision of the Public

Guardian that:

- (a) is made in connection with the exercise of the Public Guardian's functions under this Act as a guardian, and
  - (b) is of a class of decision prescribed by the regulations for the purposes of this section.
- (2) An application under this section may be made by:
- (a) the person to whom the decision relates, or
  - (b) the spouse of the person, or
  - (c) the person who has the care of the person to whom the decision relates, or
  - (d) any other person whose interests are, in the opinion of the ADT, adversely affected by the decision.

**[9] Section 107A**

Insert after section 107:

**107A Evidentiary certificates in relation to persons under guardianship**

A certificate issued by the Public Guardian stating that, on a specified date or during a specified period, a specified person was or was not subject to a guardianship order is admissible in any legal proceedings under this or any other Act and is evidence of the matters so certified.

**[10] Schedule 3 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Guardianship and Protected Estates Legislation Amendment Act 2002*, to the extent that it amends this Act

**[11] Schedule 3**

Insert at the end of the Schedule (with appropriate Part and clause numbers):

**Part Provisions consequent on enactment of *Guardianship and Protected Estates Legislation Amendment Act 2002***

**Application of amendments**

Subject to the regulations, an amendment made to this Act by the *Guardianship and*

*Protected Estates Legislation Amendment Act 2002* does not apply to or in respect of any decision or order made under this Act before the commencement of the amendment.

## **Schedule 2 Amendment of Protected Estates Act 1983**

(Section 4)

### **[1] Section 4 Definitions**

Insert in alphabetical order in section 4 (1):

**ADT** means the Administrative Decisions Tribunal established by the *Administrative Decisions Tribunal Act 1997*.

**MHRT** means the Mental Health Review Tribunal constituted under the *Mental Health Act 1990*.

### **[2] Section 4 (1), definition of “Tribunal”**

Omit the definition.

### **[3] Section 4 (3)**

Omit the subsection.

### **[4] Section 5 Protective Commissioner and other officers**

Omit section 5 (3), (8) and (9).

### **[5] Sections 16, 17, 18, 19, 20, 21 and 36**

Omit “Tribunal” wherever occurring. Insert instead “MHRT”.

### **[6] Section 21 Appeals to Court against management orders**

Insert after section 21 (2):

(2A) If the person to whom the order relates has appealed to the ADT under section 21A against the order, the person may not appeal to the Court under this section against the same order. However, the person may appeal to the Court under this section if the appeal under section 21A is withdrawn with the approval of the ADT for the purpose of enabling the Court to deal with the matter.

### **[7] Sections 21A and 21B**

Insert after section 21:

**21A Appeals to ADT against estate management orders made by Magistrate or MHRT**

- (1) An appeal may be made to the ADT against an order by a Magistrate or the MHRT under this Division that the estate of a person be subject to management under this Act.
- (2) An appeal to the ADT under this section may be made by:
  - (a) the person to whom the order relates, or
  - (b) any other person who was a party to the proceedings in which the order was made.
- (3) If the person to whom the order relates has appealed to the Court under section 21 against the order, the person may not appeal to the ADT under this section against the same order. However, the person may appeal to the ADT under this section if the appeal under section 21 is withdrawn with the approval of the Court for the purpose of enabling the ADT to deal with the matter.
- (4) An appeal under this section is an external appeal within the meaning of the *Administrative Decisions Tribunal Act 1997*.

**21B Notice of reasons for orders and appeal rights**

- (1) If a Magistrate or the MHRT makes an order under this Division that the estate of a person be subject to management under this Act, the Magistrate or MHRT must, if requested to do so by any party to the proceedings (including the person to whom the order relates), provide the party with formal written reasons for the order as soon as practicable after making the order.
- (2) In providing those reasons, the Magistrate or MHRT must also advise the party concerned that the order may be appealed against to the ADT under section 21A.

**[8] Section 23A Protected person cannot deal with estate committed to management**

Insert after section 23A (5):

- (6) An application may be made to the ADT for a review of the Protective Commissioner's decision under subsection (5) whether or not to approve of the giving or withdrawal of an authorisation under this section.
- (7) An application for review under subsection (6) may be made by:
  - (a) the person managing the protected person's estate, or
  - (b) the protected person, or



- (c) the spouse of the protected person, or
- (d) any other person who, in the opinion of the ADT, has a genuine interest in the matter to which the Protective Commissioner's decision relates.

**[9] Section 28A**

Insert after section 28:

**28A Review by ADT of decisions by Protective Commissioner under this Division**

- (1) An application may be made to the ADT for a review of a decision of the Protective Commissioner that:
  - (a) is made in connection with the exercise of the Protective Commissioner's functions under this Division, and
  - (b) is of a class of decision prescribed by the regulations for the purposes of this section.
- (2) Subsection (1) does not apply if the decision by the Protective Commissioner was made in accordance with a direction given by the Court to the Protective Commissioner.
- (3) An application under this section may be made by:
  - (a) the protected person in respect of whose estate the decision was made, or
  - (b) the spouse of the protected person, or
  - (c) any other person whose interests are, in the opinion of the ADT, adversely affected by the decision.

**[10] Section 30**

Omit the section. Insert instead:

**30 Protective Commissioner may authorise and direct functions of managers**

- (1) If a person is appointed by the Court under section 22 as manager of the estate of a protected person, the Protective Commissioner may, by order:
  - (a) authorise the person appointed as manager to have such functions in respect of the estate as the Protective Commissioner may specify (being functions of the same kind as those specified in section 24 (2) in respect of an estate committed to management by the Protective Commissioner but without the limitation referred to in section 24 (3)), and

- (b) give such directions with respect to the exercise of those functions as the Protective Commissioner thinks fit.
- (2) An order by the Protective Commissioner under subsection (1) is subject to the regulations or to any direction by the Court.
- (3) If a person is appointed by the Guardianship Tribunal under section 25M (1) (a) of the *Guardianship Act 1987* as manager of the estate of a protected person, the Protective Commissioner may, by order:
  - (a) authorise the person appointed as manager to have such functions in respect of the estate as the Protective Commissioner may specify (being functions of the same kind as those specified in section 24 (2) in respect of an estate committed to management by the Protective Commissioner but without the limitation referred to in section 24 (3)), and
  - (b) give such directions with respect to the exercise of those functions as the Protective Commissioner thinks fit.
- (4) An order by the Protective Commissioner under subsection (3) is subject to the regulations or to any order of the Guardianship Tribunal.

**[11] Section 30A**

Insert after section 30:

**30A Review by ADT of decisions by Protective Commissioner in relation to managers**

- (1) An application may be made to the ADT for a review of a decision by the Protective Commissioner under section 30 in relation to the functions of a person appointed as manager of the estate of a protected person.
- (2) Subsection (1) does not apply if the decision by the Protective Commissioner was made in accordance with a direction given by the Court to the Protective Commissioner.
- (3) An application under this section may be made by:
  - (a) the person appointed as manager, or
  - (b) any other person who, in the opinion of the ADT, has a genuine interest in the matter to which the Protective Commissioner's decision relates.

**[12] Section 31 Security in respect of management**

Insert “, including security comprising the assets of the protected person,” after “security” in section 31 (1).

**[13] Section 31 (5)**

Insert after section 31 (4):

- (5) Any amount lodged with the Protective Commissioner as security under this section may, subject to any order of the Court, be invested by the Protective Commissioner in any investment in which a trustee may invest trust funds in accordance with the [Trustee Act 1925](#).

**[14] Sections 31A and 31B**

Insert after section 31:

**31A Managers may lodge estate funds with Protective Commissioner**

- (1) The manager of the estate of a protected person may, subject to any order of the Court under this Division, lodge with the Protective Commissioner any money that comprises the whole or part of the estate of the protected person.
- (2) Any such money lodged with, and held by, the Protective Commissioner is referred to as **estate funds**.
- (3) The Protective Commissioner may invest estate funds in the same manner as money in the trust fund may be invested under Part 4.
- (4) Accordingly:
  - (a) Part 4 applies to and in respect of the investment of any estate funds by the Protective Commissioner, and
  - (b) references in that Part to money in the trust fund are taken to include references to any estate funds.

**31B Financial plans**

- (1) The Protective Commissioner may prepare a financial plan in respect of the estate of a protected person (including an estate that is not managed by the Protective Commissioner).
- (2) In the case of an estate that is not managed by the Protective Commissioner, a financial plan may be prepared by the Protective Commissioner but only with the agreement of the manager of the estate.
- (3) The Protective Commissioner may, in accordance with section 8, charge a fee for the preparation of a financial plan under this section.

**[15] Section 33**

Omit the section. Insert instead:

**33 Orders by Court as to management of estates of protected persons**

- (1) The Court may make such orders as it thinks fit in relation to the administration and management of the estates of protected persons.
- (2) The Court may also make such orders as it thinks fit in connection with authorising, directing, supervising and enforcing the exercise of the functions of managers under this Act.

**[16] Section 50 Protected person and relatives to be consulted**

Omit section 50 (1). Insert instead:

- (1) Before the Protective Commissioner takes any action in respect of the estate of a protected person, the Protective Commissioner must determine whether the action is of such a nature that the protected person or the relatives of the protected person should be consulted in relation to the action.

**[17] Section 57 Application of money in reserve fund**

Insert after section 57 (b):

- (c) payment of any costs not ordered by a court to be charged against a particular estate or otherwise not properly chargeable against a particular estate,
- (d) payment of any costs not ordered by a court to be charged against a particular estate but otherwise properly chargeable against a particular estate where there are insufficient funds in the particular estate to meet the costs,
- (e) payment of any costs incurred by the Protective Commissioner in obtaining any kind of advice or in any legal proceedings to which the Protective Commissioner is or is made a party where the costs are such that, because of general interest and the importance of the subject-matter of the advice or proceedings, they should not, in the opinion of the Protective Commissioner, be charged against a particular estate.

**[18] Section 70 Power to carry orders and directions into effect**

Insert "or Protective Commissioner" after "the Court" where firstly occurring in section 70 (1).

**[19] Section 70 (1)**

Omit “directs for giving effect to any order”.

Insert instead “or Protective Commissioner directs for giving effect to any order or direction”.

**[20] Section 70 (2)**

Insert “or direction” after “order”.

**[21] Section 70 (3)**

Omit the subsection.

**[22] Section 70A**

Insert after section 70:

**70A Failure to comply with directions of Protective Commissioner**

A person must not fail to comply with any direction that is given to the person by the Protective Commissioner in accordance with the Protective Commissioner’s functions under this Act.

Maximum penalty: 100 penalty units.

**[23] Section 77 Costs may be paid out of estate**

Omit “where the Protective Commissioner exercises the jurisdiction and powers of the Court under Division 4 of Part 3” from section 77 (3).

Insert instead “under section 30”.

**[24] Section 79**

Omit the section. Insert instead:

**79 Directions by Protective Commissioner as to visitors**

The Protective Commissioner may:

(a) by order, direct an authorised officer under the *Mental Health Act 1990* or any other specified person:

(i) to visit a protected person (other than a protected person who is a patient),  
and

(ii) to report in writing to the Protective Commissioner on the state of mind,

bodily health and general condition of the protected person and on the care and treatment of the protected person, and

- (b) by order, direct that such information as the Protective Commissioner thinks necessary be given to the person directed to visit the protected person as to the nature and extent of the assets of the protected person and as to the orders made under this Act in respect of the person, and
- (c) order that any fees and expenses arising in connection with the visit be paid out of the estate of the protected person.

**[25] Section 79A**

Insert after section 79:

**79A Evidentiary certificates in relation to financial management orders**

A certificate issued by the Protective Commissioner stating that, on a specified date or during a specified period, the estate of a specified person was or was not subject to management under this Act is admissible in any legal proceedings under this or any other Act and is evidence of the matters so certified.

**[26] Section 80A**

Insert after section 80:

**80A Proceedings for offences**

Proceedings for an offence under this Act are to be disposed of summarily.

**[27] Section 82 Rules of Court**

Omit section 82 (3).

**[28] Schedule 1 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Guardianship and Protected Estates Legislation Amendment Act 2002*, to the extent that it amends this Act

**[29] Schedule 1**

Insert after Part 2:

**Part 3 Provisions consequent on enactment of [Guardianship](#)**

## and Protected Estates Legislation Amendment Act 2002

### 7 Application of amendments

Subject to the regulations, an amendment made to this Act by the *Guardianship and Protected Estates Legislation Amendment Act 2002* does not apply to or in respect of any decision or order made under this Act before the commencement of the amendment.

### Schedule 3 Amendment of **Administrative Decisions Tribunal Act 1997**

(Section 5)

#### [1] Section 4 Definitions

Omit the definitions of **Appeal Panel** and **appealable decision** from section 4 (1).

Insert instead:

**Appeal Panel** of the Tribunal means:

- (a) in relation to an external appeal—an Appeal Panel of the Tribunal constituted in accordance with section 22, or
- (b) in relation to an internal appeal—an Appeal Panel of the Tribunal constituted in accordance with section 24.

#### [2] Section 4 (1)

Insert in alphabetical order:

**decision-maker**, in relation to an external appeal, means the person or body that made the decision that is the subject of the appeal.

**external appeal** means an appeal referred to in Part 1A of Chapter 7.

**internal appeal** means an appeal made under Part 1 of Chapter 7 against a decision of the Tribunal.

#### [3] Section 4 (3)

Insert “or a decision that is subject to an external appeal” after “a reviewable decision”.

#### [4] Section 22 Constitution of the Tribunal for particular proceedings (including Appeal Panel for external appeals)

Insert “(other than the functions of an Appeal Panel)” after “its functions” in section 22 (1).

**[5] Section 22 (1A) and (1B)**

Insert after section 22 (1):

(1A) In exercising its functions in relation to an external appeal (other than an external appeal referred to in subsection (1B)), the Tribunal is to be constituted by an Appeal Panel consisting of at least 3 members assigned by the President to the Panel for the purpose of the proceedings.

(1B) In exercising its functions in relation to an external appeal made under section 67A of the *Guardianship Act 1987* or section 21A of the *Protected Estates Act 1983*, the Tribunal is to be constituted by an Appeal Panel consisting of:

(a) 1 presidential judicial member, and

(b) 1 other judicial member, and

(c) 1 non-judicial member, appointed on the recommendation of the Minister administering the *Guardianship Act 1987*, who has experience in dealing with persons who have a disability (as referred to in section 3 (2) of that Act).

**[6] Section 22 (2)**

Insert “(including proceedings in relation to an external appeal)” after “particular proceedings”.

**[7] Section 22 (3) (b1)**

Insert after section 22 (3) (b):

(b1) if the proceedings concern the hearing of an external appeal—the nature and status of the decision-maker who made the decision concerned,

**[8] Section 22 (3A)**

Insert after section 22 (3):

(3A) There may be more than one sitting of an Appeal Panel constituted under this section at the same time.

**[9] Section 22 (4)**

Omit “The provisions”.

Insert instead “Except in relation to an external appeal referred to in subsection (1B), the provisions”.



**[10] Section 22 (5)**

Insert “in relation to an internal appeal” after “Tribunal”.

**[11] Section 24 Appeal Panel of the Tribunal (internal appeals)**

Omit section 24 (1). Insert instead:

- (1) In exercising its functions in relation to an internal appeal, the Tribunal is to be constituted by an Appeal Panel consisting of at least 3 members assigned by the President to the Panel for the purpose of the proceedings.

**[12] Section 24 (2) and (3)**

Insert “constituted under this section” after “Appeal Panel” wherever occurring.

**[13] Section 67 Parties to proceedings before Tribunal**

Insert after section 67 (2):

- (2A) The parties to proceedings before the Tribunal for an external appeal are as follows:
- (a) any person who, being entitled to do so under an Act, has appealed to the Tribunal against the decision concerned (***the appellant***),
  - (b) any person who has been made a party to the proceedings in accordance with subsection (4) or the rules of the Tribunal,
  - (c) if the Attorney General intervenes in the proceedings under section 69—the Attorney General,
  - (d) any person specified by or under any other Act as a party to the proceedings.
- (2B) In the case of an external appeal, the decision-maker is entitled to be a party to the proceedings but cannot (unless the decision-maker agrees) be made a party to any such appeal.
- (2C) The rules of the Tribunal may, in respect of an external appeal, make provision for the parties to any such appeal (including the designation of a respondent or other person to assist the Tribunal in the proceedings).

**[14] Section 67 (3)**

Omit “In an appeal”. Insert instead “In an internal appeal”.

**[15] Section 67 (4)**

Omit the subsection. Insert instead:

(4) The Tribunal may, by order, make a person who is not a party to proceedings for:

- (a) an original decision, or
- (b) a review of a reviewable decision, or
- (c) an external appeal,

a party to the proceedings, either of its own motion or on the written application of the person, if the Tribunal is satisfied that the interests of the person are likely to be affected by the original decision or are affected by the reviewable decision or the decision that is the subject of the external appeal.

**[16] Section 68 Tribunal may decide persons whose interests affected by a decision**

Omit “this Act” from section 68 (1). Insert instead “this or any other Act”.

**[17] Section 68 (3)**

Insert “(other than a decision that is the subject of external appeal)” after “a decision”.

**[18] Section 69 Intervention by Attorney General**

Insert “or for an external appeal” after “reviewable decision” in section 69 (2).

**[19] Section 71 Representation of parties**

Insert after section 71 (4):

(4A) Without limiting subsections (1) and (4), the Tribunal may:

- (a) in the case of an external appeal made under section 67A of the *Guardianship Act 1987*—appoint any person the Tribunal thinks fit to represent a party to the proceedings who:
  - (i) is a protected person within the meaning of that Act, or
  - (ii) is a person in respect of whom a guardianship order (within the meaning of that Act) has been made or in respect of whom an application for such an order has been refused, and
- (b) in the case of an external appeal made under section 21A of the *Protected Estates Act 1983*—appoint any person the Tribunal thinks fit to represent a party to the proceedings who is a protected person within the meaning of that Act.

**[20] Section 72 Notice of application to be served on other parties**

Insert after section 72 (2):

(3) A reference in this section:

(a) to an application includes a reference to an external appeal that is made to the Tribunal, and

(b) to an applicant includes a reference to the person who makes any such appeal.

**[21] Section 72A**

Insert before section 73:

**72A Interpretation**

A reference in this Part (other than section 89):

(a) to an application includes a reference to an external appeal that is made to the Tribunal, and

(b) to an applicant includes a reference to the person who makes any such appeal.

**[22] Section 90 Rules may provide for practice and procedure**

Omit “on appeal” in section 90 (2) (b).

Insert instead “in relation to internal appeals and external appeals”.

**[23] Chapter 7, heading**

Omit “**from decisions of Tribunal**”.

**[24] Chapter 7, Part 1, heading**

Omit “**appeal rights**”. Insert instead “**appeals**”.

**[25] Section 112 Appealable decisions of the Tribunal**

Insert “(including any such decision made in relation to an external appeal)” after “Panel” in section 112 (3).

**[26] Section 113 Right to appeal against appealable decisions of the Tribunal**

Insert “under this Part” after “appeal” wherever occurring in section 113 (2)-(4).

**[27] Chapter 7, Part 1A**

Insert after section 118:

## Part 1A External appeals

### Note—

Chapter 6 also contains procedural provisions in relation to external appeals.

### 118A Conferral of jurisdiction to hear and determine external appeals

- (1) The Tribunal has jurisdiction under an Act to hear and determine an appeal against a decision or a class of decisions (referred to in this Part as an **appealable decision**) if the Act:
  - (a) provides that an appeal may be made to the Tribunal against any such decision (or class of decisions) made by the decision-maker:
    - (i) in the exercise of functions conferred or imposed by or under the Act, or
    - (ii) in the exercise of any other functions of the decision-maker identified by the Act, and
  - (b) specifies that any such appeal made under the Act is an external appeal within the meaning of this Act.

### Note—

External appeals to the Tribunal may be made under the following provisions:

section 67A of the *Guardianship Act 1987*

section 21A of the *Protected Estates Act 1983*

- (2) A provision of an Act that provides that a decision-maker's decision may be appealed against to the Tribunal extends to:
  - (a) a decision made by a person to whom the function of making the appealable decision has been delegated, or
  - (b) if the provision specifies the decision-maker by reference to the holding of a particular office or appointment—a decision by any person for the time being acting in, or performing any of the duties of, the office or appointment, or
  - (c) a decision made by any other person authorised to exercise the function of making the appealable decision.

### 118B Grounds for external appeals and time and procedure for making appeals

- (1) An external appeal may be made:

- (a) as of right, on any question of law, or
  - (b) by leave of the Appeal Panel hearing the appeal, on any other grounds.
- (2) An external appeal must be made:
- (a) within 28 days after the decision-maker provides, in accordance with the Act under which the external appeal is made, the party with written reasons for the appealable decision, or
  - (b) within such further time as the Appeal Panel may allow.
- (3) An external appeal is to be made in the manner prescribed by the rules of the Tribunal.
- (4) Subject to any interlocutory order made by the Appeal Panel, an external appeal does not affect the operation of the appealable decision or prevent the taking of action to implement the decision.

#### **118C Appeal Panel to determine external appeals**

- (1) The Appeal Panel hearing an external appeal is to determine the appeal and make such orders as it thinks appropriate in the light of its decision.
- (2) The orders that may be made by the Appeal Panel on any such appeal include, but are not limited to, any of the following:
- (a) an order affirming or setting aside the decision the subject of the external appeal,
  - (b) an order remitting the matter to be heard and decided again by the person or body that made the decision, either with or without the hearing of further evidence, in accordance with the directions of the Appeal Panel,
  - (c) an order made in substitution for the decision the subject of the external appeal.
- (3) A decision of the Appeal Panel in relation to an external appeal takes effect on the date on which it is given or such later date as may be specified in the decision.
- (4) The Appeal Panel is to cause a copy of its decision and the reasons in writing for that decision to be served on each party to the appeal.

#### **118D References of questions of law to Supreme Court**

- (1) An Appeal Panel determining an external appeal may, of its own motion or at the request of a party, refer a question of law arising in the appeal to the Supreme Court for the opinion of the Court.

- (2) The Supreme Court has jurisdiction to hear and determine any question of law referred to it under this section.
- (3) If a question of law arising in an external appeal has been referred to the Supreme Court under this section, the Appeal Panel is not:
  - (a) to give a decision in the appeal to which the question is relevant while the reference is pending, or
  - (b) to proceed in a manner, or make a decision, that is inconsistent with the opinion of the Supreme Court on the question.

**[28] Section 119 Right of appeal to Supreme Court**

Omit “(whether in proceedings under Part 1 or otherwise)” from section 119 (1).

**[29] Section 126 Publication of names or identification of persons involved in certain proceedings**

Insert after section 126 (1A) (b):

- (b1) proceedings in relation to an external appeal made under section 67A of the *Guardianship Act 1987* or section 21A of the *Protected Estates Act 1983*,
- (b2) proceedings in relation to a reviewable decision made under the *Guardianship Act 1987* or the *Protected Estates Act 1983*,

**[30] Section 138 Notices, service and lodgment of documents**

Insert “or other decision-maker” after “administrator” in section 138 (1) (c).

**[31] Schedule 2 Composition and functions of Divisions**

Insert “(other than in relation to an external appeal)” after “enactments” in clause 2 (1) of Part 4.

**[32] Schedule 2, Part 4, clause 2 (1)**

Insert in alphabetical order:

*Guardianship Act 1987*

*Protected Estates Act 1983*

**[33] Schedule 5 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Guardianship and Protected Estates Legislation Amendment Act 2002*, to the extent that it amends this Act

## **Schedule 4 Amendment of *Defamation Act 1974***

(Section 6)

### **Section 17P**

Insert after section 17O:

#### **17P Matters arising under *Protected Estates Act 1983***

There is a defence of absolute privilege for a publication of a report to the Protective Commissioner under section 79 of the *Protected Estates Act 1983*.