

CAPACIDAD JURÍDICA Y DISCAPACIDAD

Proyecto a cargo de FUTUEX
(Fundación Tutelar de Extremadura),
Fundación Aequitas y Fundación
Academia Europea de Yuste, en el
marco del Congreso Permanente
sobre Discapacidad y Derechos
Humanos bajo la autoría de:
Rafael de Lorenzo García
Blanca Entrena Palomero
Almudena Castro-Girona Martínez
Miguel Ángel Cabra de Luna
José Javier Soto Ruiz (Dirección)

Francisco J. Bariffi Artigue
Agustina Palacios Rizzo (Recopilación y
coordinación)

Prólogo: Francisco Vañó Ferre

CUADERNO DE TRABAJO N°15

AUSTRALIA







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**(Un estudio de Derecho Privado Comparado a la luz de
la Convención Internacional sobre los Derechos de las
Personas con Discapacidad)**

CUADERNO DE TRABAJO N° 15 / AUSTRALIA



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**EN CUANTO A TUTELA Y CURATELA UN
PREMISA IMPRESCINDIBLE:**

TANTA PROTECCIÓN COMO SEA NECESARIA , CON TANTA AUTONOMÍA COMO SEA POSIBLE.

Francisco Vañó Ferre

Diputado por Toledo y Portavoz de la Comisión para las Políticas Integrales de la Discapacidad.

La evolución en el tratamiento de las diversas discapacidades ha hecho que estas experimenten grandes cambios, tanto en las distintas patologías como diferentes ámbitos, pero sin llegar a hacer efectiva la igualdad de oportunidades.

Por otro lado la firma por España de la Convención de Naciones Unidas a favor de las Personas con Discapacidad y la ratificación de su protocolo nos compromete a llevar a cabo una actualización de la legislación española adaptándola a los principios de la misma.

Es necesaria una adecuada divulgación para su implantación por tanto resulta imprescindible que todos los profesionales de los distintos ámbitos se impliquen.

Uno de los aspectos esenciales es el régimen de la capacidad jurídica. Dos conceptos: capaci-

dad y capacidad de obrar, es necesario empezar por una reforma legal de los procedimientos y los mecanismos de protección

Ha llegado la hora de hacer accesibles los derechos que las personas con discapacidad tienen, igual que el resto de los ciudadanos, pero que debido a la rigidez de legislaciones antiguas y en casos como este, obsoletas, impiden el disfrute de los mismos. Tenemos los mismos derechos pero no podemos acceder a ellos y disfrutarlos en igualdad de condiciones al resto.

Una de las áreas que mas necesita de esa adaptación y actualización es todo lo referente, en nuestro Código Civil, a las figuras del Tutor y al Curador. Se trata de compaginar Protección y Autonomía. Hay que proporcionar la protección necesaria para cualquier actividad de la vida diaria que sea necesaria sin restarle a la persona con discapacidad toda la capacidad de autonomía en aquellos aspectos en el que pueda ser protagonista de su vida y decidir por si mismos, coloquialmente hablando, hacer «un traje a medida de cada persona».

El trabajo que se está llevando a cabo con la recopilación de toda la legislación comparada de los países mas avanzados por un grupo de expertos, es paso previo, necesario e imprescindible para que dicho estudio cristalice en soluciones eficaces en la transposición de la Convención a nuestro ordenamiento jurídico con garantía de

conseguir unos buenos resultados que sirvan de soluciones al déficit de ciudadanía que todavía tienen estas personas. Por otra parte para que tenga una garantía de aplicación en nuestro ordenamiento jurídico por el grado de experiencia contrastada en otros países.

Este trabajo de recopilación va a ser de gran utilidad para la modificación y adaptación legislativa de estas Figuras, teniendo en cuenta la gran cantidad de matices que por su complejidad se plantean en su puesta al día.

En la Comisión Permanente de las Políticas Integrales de la Discapacidad del Congreso de los Diputados también se están llevando a cabo trabajos previos a dicha transposición. Los miembros de la misma somos conscientes de la enorme complejidad que lleva consigo dicha incorporación transversal en la que hay que matizar, adaptar, cambiar o reescribir artículos del Código Civil. Por ello consideramos necesario.

Por un lado mediante las Comparecencia de diferentes Expertos en el tema, que nos ilustren al respecto dándonos una visión pormenorizada con detalles interesantes y matices que se nos escapan y que nos ilustran de cara a nuestro trabajo legislativo .

Por otro la lectura y consulta de este estudio comparado nos sitúe en una posición de afrontar con la debida garantía de disponer de elementos suficiente de juicio, para entre todos conseguir



ese fin último, de que las personas con discapacidad puedan acceder al disfrute de todos los derechos en igualdad de condiciones con la mayor autonomía posible y con la máxima protección necesaria.

Francisco Vañó Ferre

AUSTRALIA

1) Breve descripción del sistema legal

A) Sistema de gobierno

Australia es una democracia parlamentaria que pertenece a la Mancomunidad Británica de Naciones (*Commonwealth*) por lo que mantiene una vinculación política y jurídica con la Corona Británica. A tal punto que La Reina Isabel II es jefa del Estado australiano y utiliza el título formal de Reina de Australia, cumpliendo un rol diferente al que ejerce en otros reinos de la Mancomunidad.

Desde un punto de vista territorial Australia, se constituye como una federación dividida en seis estados, dos territorios continentales y otros territorios menores. Cada estado cuenta con legislación propia por lo que a los efectos del presente estudio, se han seleccionado aquellos que concentran las principales ciudades y densidades poblacionales del país, esto es, Victoria y Nueva Gales del Sur.



El modelo de Federalismo australiano se adhiere a los principios del modelo original de los Estados Unidos de América, aunque no tomó de éste el sistema presidencialista. La constitución australiana, que data de 1901, define las responsabilidades del Gobierno Federal, que incluyen las relaciones y comercio exterior, la defensa y la inmigración. El sistema de competencias se rige por el principio de reserva por medio del cual los gobiernos de los estados y territorios son responsables de todas las cuestiones no asignadas al *Commonwealth*.

B) Sistema Judicial

El carácter federal australiano supone la existencia de dos grandes niveles judiciales, es decir, justicia federal y justicia local en donde, salvo contadas excepciones, poseen un ámbito de competencia *ratione materiae* diferente. La administración de justicia es principalmente local integrada por diversas instancias hasta llegar a los tribunales supremos locales. Asimismo existen tribunales federales con competencia sobre leyes de carácter nacional.

La máxima instancia judicial es el Tribunal Supremo de Australia que actúa con última instancia de apelación sobre todas las resoluciones de tribunales inferiores tanto locales como federales. Asimismo el Tribunal Supremo de Aus-

tralia tiene una importante labor como máximo intérprete de la constitucionalidad de las leyes y de los actos de gobierno.

C) Sistema legal

La Constitución Nacional y las leyes federales rigen por encima de cualquier ley estatal que sea incompatible. En la práctica, los dos niveles de gobierno, el central y el federal, cooperan en muchos aspectos en los que los estados y territorios son formalmente responsables, como en el caso de la educación, el transporte, la salud, la agricultura y la seguridad.

Como parte del *Commonwealth* el sistema jurídico australiano se base en el *common law* inglés aunque las competencias legislativas de los parlamentos regionales ha generado un importante volumen de derecho escrito (*statutory law*) que se publica en Leyes (*Acts*) o reglamentos (*Regulations*).

En el ámbito de la discapacidad el gobierno federal ha sancionado en 1992 una ley marco contra la discriminación por motivo de discapacidad (*Disability Discrimination Act 1992*) que regula las principales aéreas como educación, transporte, empleo, y salud. En materia de derecho privado la regulación se ha generado casi exclusivamente en los parlamentos regionales.

2)Concepto de discapacidad y de persona con discapacidad

FEDERAL (Legislación común)

Ley sobre Discriminación por Discapacidad de 1992 (*Disability Discrimination Act 1992*)

4. Intepretación (Interpretation)

(1) In this Act, unless the contrary intention appears:

(...)

disability, in relation to a person, means:

(a) total or partial loss of the person's bodily or mental functions; or

(b) total or partial loss of a part of the body; or

(c) the presence in the body of organisms causing disease or illness; or

(d) the presence in the body of organisms capable of causing disease or illness; or

(e) the malfunction, malformation or disfigurement of a part of the person's body; or

(f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or

(g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;

and includes a disability that:

- (h) presently exists; or
- (i) previously existed but no longer exists; or
- (j) may exist in the future; or
- (k) is imputed to a person.(...)

5. Discriminación por discapacidad (Disability discrimination)

(1) For the purposes of this Act, a person (discriminator) discriminates against another person (aggrieved person) on the ground of a disability of the aggrieved person if, because of the aggrieved person's disability, the discriminator treats or proposes to treat the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person without the disability.

(2) For the purposes of subsection (1), circumstances in which a person treats or would treat another person with a disability are not materially different because of the fact that different accommodation or services may be required by the person with a disability.

6. Discriminación indirecta por discapacidad (Indirect disability discrimination)

For the purposes of this Act, a person (discriminator) discriminates against another person (aggrieved person) on the ground of a disability

of the aggrieved person if the discriminator requires the aggrieved person to comply with a requirement or condition:

(a) with which a substantially higher proportion of persons without the disability comply or are able to comply; and

(b) which is not reasonable having regard to the circumstances of the case; and

(c) with which the aggrieved person does not or is not able to comply.

7. Discriminación por discapacidad – dispositivos terapéuticos y paliativos, y ayudas complementarias (Disability discrimination—palliative and therapeutic devices and auxiliary aids)

For the purposes of this Act, a person (discriminator) discriminates against another person with a disability (aggrieved person) if the discriminator treats the aggrieved person less favourably because of the fact that the aggrieved person is accompanied by, or possesses:

(a) a palliative or therapeutic device; or

(b) an auxiliary aid;

that is used by the aggrieved person, or because of any matter related to that fact, whether or not it is the discriminator’s practice to treat less favourably any person who is accompanied by, or is in possession of, and is the user of:

(c) such a palliative or therapeutic device; or

(d) such an auxiliary aid.

8. Discriminación por discapacidad – intérpretes, lectores y asistentes (*Disability discrimination—interpreters, readers and assistants*)

For the purposes of this Act, a person (discriminator) discriminates against another person with a disability (aggrieved person) if the discriminator treats the aggrieved person less favourably because of the fact that the aggrieved person is accompanied by:

- (a) an interpreter; or
- (b) a reader; or
- (c) an assistant; or
- (d) a carer;

who provides interpretive, reading or other services to the aggrieved person because of the disability, or because of any matter related to that fact, whether or not it is the discriminator's practice to treat less favourably any person who is accompanied by:

- (e) an interpreter; or
- (f) a reader; or
- (g) an assistant; or
- (h) a carer.

9. Discriminación por discapacidad – perros guía, perros de asistencia auditiva, y animales entrenados (*Disability discrimination—guide dogs, hearing assistance dogs and trained animals*)

(1) For the purposes of this Act, a person (discriminator) discriminates against a person with:

- (a) a visual disability; or
- (b) a hearing disability; or
- (c) any other disability;

(aggrieved person) if the discriminator treats the aggrieved person less favourably because of the fact that the aggrieved person possesses, or is accompanied by:

- (d) a guide dog; or
- (e) a dog trained to assist the aggrieved person in activities where hearing is required, or because of any matter related to that fact; or
- (f) any other animal trained to assist the aggrieved person to alleviate the effect of the disability, or because of any matter related to that fact;

whether or not it is the discriminator's practice to treat less favourably any person who possesses, or is accompanied by, a dog or any other animal.

(2) Subsection (1) does not affect the liability of a person with a disability for damage to property caused by a dog or other animal trained to assist the person to alleviate the effect of the disability or because of any matter related to that fact.

ESTATAL (Nueva Gales del Sur)

Ley de Salud Mental de 2007 (*Mental Health Act 2007 No 8*)

4. Definiciones (Definitions)

(1) In this Act:

(...)

mental illness means a condition that seriously impairs, either temporarily or permanently, the mental functioning of a person and is characterised by the presence in the person of any one or more of the following symptoms:

- (a) delusions,
- (b) hallucinations,
- (c) serious disorder of thought form,
- (d) a severe disturbance of mood,
- (e) sustained or repeated irrational behaviour indicating the presence of any one or more of the symptoms referred to in paragraphs (a)–(d).

mentally disordered person—see section 15.

mentally ill person—see section 14.

14. Persona con enfermedad mental (Mentally ill persons)

(1) A person is a mentally ill person if the person is suffering from mental illness and, owing to that illness, there are reasonable grounds for believing that care, treatment or control of the person is necessary:

- (a) for the person's own protection from serious harm, or

(b) for the protection of others from serious harm.

(2) In considering whether a person is a mentally ill person, the continuing condition of the person, including any likely deterioration in the person's condition and the likely effects of any such deterioration, are to be taken into account.

15. Persona con desorden mental (Mentally disordered persons)

A person (whether or not the person is suffering from mental illness) is a mentally disordered person if the person's behaviour for the time being is so irrational as to justify a conclusion on reasonable grounds that temporary care, treatment or control of the person is necessary:

(a) for the person's own protection from serious physical harm, or

(b) for the protection of others from serious physical harm.

16. Algunas palabras con conductas no son indicativas de enfermedad o desorden mental (Certain words or conduct may not indicate mental illness or disorder)

(1) A person is not a mentally ill person or a mentally disordered person merely because of any one or more of the following:

(a) the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular political opinion or belief,

(b) the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular religious opinion or belief,

(c) the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular philosophy,

(d) the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular sexual preference or sexual orientation,

(e) the person engages in or refuses or fails to engage in, or has engaged in or refused or failed to engage in, a particular political activity,

(f) the person engages in or refuses or fails to engage in, or has engaged in or refused or failed to engage in, a particular religious activity,

(g) the person engages in or has engaged in a particular sexual activity or sexual promiscuity,

(h) the person engages in or has engaged in immoral conduct,

(i) the person engages in or has engaged in illegal conduct,

(j) the person has developmental disability of mind,

(k) the person takes or has taken alcohol or any other drug,

(l) the person engages in or has engaged in anti-social behaviour,

(m) the person has a particular economic or social status or is a member of a particular cultural or racial group.

(2) Nothing in this Part prevents, in relation to a person who takes or has taken alcohol or any other drug, the serious or permanent physiological, biochemical or psychological effects of drug taking from being regarded as an indication that a person is suffering from mental illness or other condition of disability of mind.

Ley de tutela de 1987 (*Guardianship Act 1987 No 257*)

3. Definiciones (Definitions)

(1) In this Act:

(...)

person in need of a guardian means a person who, because of a disability, is totally or partially incapable of managing his or her person.

person under guardianship means a person who has a guardian within the meaning of this Act. (...)

ESTATAL (Victoria)

Ley de Discapacidad de 2006 (*Disability Act 2006 No. 23 of 2006*)

3. Definiciones (Definitions)

(1) In this Act—

(...)

disability in relation to a person means—

(a) a sensory, physical or neurological impairment or acquired brain injury or any combination thereof, which—

(i) is, or is likely to be, permanent; and

(ii) causes a substantially reduced capacity in at least one of the areas of self-care, self-management, mobility or communication; and

(iii) requires significant ongoing or long term episodic support; and

(iv) is not related to ageing; or

(b) an intellectual disability; or

(c) a developmental delay;

(...)

intellectual disability, in relation to a person over the age of 5 years, means the concurrent existence of—

(a) significant sub-average general intellectual functioning; and

(b) significant deficits in adaptive behaviour—each of which became manifest before the age of 18 years;

Ley de Salud Mental de 1986 (Mental Health Act 1986 No. 59 of 1986)

8. Criterios para el tratamiento involuntario (Criteria for involuntary treatment)

(1) The criteria for the involuntary treatment of a person under this Act are that—

(a) the person appears to be mentally ill; and

(b) the person's mental illness requires immediate treatment and that treatment can be obtained by the person being subject to an involuntary treatment order; and

(c) because of the person's mental illness, involuntary treatment of the person is necessary for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public; and

(d) the person has refused or is unable to consent to the necessary treatment for the mental illness; and

(e) the person cannot receive adequate treatment for the mental illness in a manner less restrictive of his or her freedom of decision and action.

(1A) Subject to subsection (2), a person is mentally ill if he or she has a mental illness, being a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory.

(2) A person is not to be considered to be mentally ill by reason only of any one or more of the following—

(a) that the person expresses or refuses or fails to express a particular political opinion or belief;

(b) that the person expresses or refuses or fails to express a particular religious opinion or belief;

(c) that the person expresses or refuses or fails to express a particular philosophy;

(d) that the person expresses or refuses or fails to express a particular sexual preference or sexual orientation;

(e) that the person engages in or refuses or fails to engage in a particular political activity;

(f) that the person engages in or refuses or fails to engage in a particular religious activity;

(g) that the person engages in sexual promiscuity;

(h) that the person engages in immoral conduct;

(i) that the person engages in illegal conduct;

(j) that the person is intellectually disabled;

(k) that the person takes drugs or alcohol;

(l) that the person has an antisocial personality;

(m) that the person has a particular economic or social status or is a member of a particular cultural or racial group.

(3) Subsection (2)(k) does not prevent the serious temporary or permanent physiological, biochemical or psychological effects of drug or alcohol taking from being regarded as an indication that a person is mentally ill.

Ley de tutela y administración de 1986
(Guardianship and Administration Act
1986 No. 58 of 1986)

3. Definiciones (Definitions)

(1) In this Act—

(...)

disability, in relation to a person, means intellectual impairment, mental disorder, brain injury, physical disability or dementia; (...)

3) Régimen general de capacidad jurídica

ESTATAL (Nueva Gales del Sur)

Ley de Menores (Contratos y Propiedades) de 1970 (*Minors (Property and Contracts) Act 1970 No 60*)

6. Definiciones (Definitions)

(1) In this Act, unless the context or subject matter otherwise indicates or requires:

Civil act means:

- (a) a contract,
- (b) an election to rescind or determine a contract for fraud, mistake, breach or otherwise,
- (c) a disposition of property,
- (d) a disclaimer,
- (e) an acknowledgment of receipt of property,
- (f) a discharge or acquittance,
- (g) an exercise of a power under a contract or under a settlement, will or other instrument,
- (h) an assent or consent to, acquiescence in, or acknowledgment or waiver of, any matter by

a person affecting the person's rights or obligations under a contract or relating to property,

(i) a release of any cause of action,

(j) a grant of any leave or licence,

(k) an election in relation to rights under a will or other instrument, or in relation to conversion as between realty and personalty, or

(l) an act done:

(i) in relation to the formation,

(ii) in relation to becoming or ceasing to be a member or officer, or

(iii) as a member or officer:

of a partnership, or of an association, company or society, whether a corporation or not,

(m) without limiting the generality of the foregoing, any act relating to contractual or proprietary rights or obligations or to any chose in action:

whether having effect at law or in equity.

Disposition of property includes:

(a) a conveyance, transfer, assignment, appointment, settlement, mortgage, delivery, payment, lease, bailment, reconveyance or discharge of mortgage,

(b) the creation of a trust,

(c) the release or surrender of any property, and

(d) the grant of a power in respect of property: whether having effect at law or in equity.

Minor means a person under the age of 18 years; and minority has a corresponding meaning.

Minor participant, in relation to a civil act, means a person who, while the person is a minor, participates in the civil act.

Party, in relation to a civil act, includes a person who does, makes, accepts, suffers or joins in the civil act; and participate and participant have corresponding meanings.

Property includes real and personal property and any estate or interest in property real or personal, and money, and any debt, and any cause of action for damages (including damages for personal injury), and any other chose in action, and any other right or interest.

(2) The making of a will, whether in exercise of a power of appointment or otherwise, or the revocation of a will, is not a civil act and is not a disposition of property for the purposes of this Act.

(3) Where a person participates in a civil act while a minor and by this Act the civil act is or becomes presumptively binding on the person:

(a) the civil act is, at and after the time of the person's participation, as binding on the person and the person's personal representative and has effect as if the person were not under the disability of infancy at the time of the person's participation, and

(b) except where other provision is made by this Act, the civil act is binding and has effect

as mentioned in paragraph (a) in favour of all persons.

(...)

8. Actos civiles (Civil acts generally)

A person is not under the disability of infancy in relation to a civil act in which the person participates when aged eighteen years or upwards and after the commencement of this Act.

9. Mayoría de edad (Full age generally)

(1) After the commencement of this Act:

(a) for the purposes of any rule of law, and
(b) except so far as the context otherwise requires, for the purposes of:

(i) any Act, whether passed before or after the commencement of this Act, and

(ii) any instrument made under an Act, whether the instrument is made before or after the commencement of this Act:

a person aged eighteen years or upwards on the commencement of this Act or who attains the age of eighteen years after the commencement of this Act:

(c) is of full age and adult,

(d) is sui juris, subject however to the law relating to mental illness, and

(e) is not under any disability or incapacity of infancy.

(2) Subsection (1) does not affect the construction of words which:

(a) are contained in:

(i) any matter (whether in writing or not) constituting or evidencing a civil act in which any person participates before the commencement of this Act, or

(ii) the will of a person dying before the commencement of this Act, and

(b) refer to infancy or adulthood, to full age, to incapacity or capacity, or to disability or ability, or refer to a person being or not being sui juris, or make any similar reference:

except so far as the context otherwise requires.

(3) Subsection (1) does not affect:

(a) the construction of any reference to «the adult male basic wage», the «adult female basic wage», or any similar expression in any Act or in any instrument made under an Act,

(b) the construction of any Act, or of any instrument made under an Act, so far as the Act or instrument gives rise to any liability for fine or imprisonment or other punishment for an offence, or

(c) the power to make any order under Part 3 of the Guardianship Act 1987 or the construction or operation of an order made under that Part.

ESTATAL (Victoria)

Ley de Mayoría de Edad de 1977 (*Age of Majority Act 1977 No. 9075 of 1977*)

3. Personas de 18 años o más que tiene plena capacidad jurídica (Persons of age of eighteen years or more to have full legal capacity)

(1) Subject to this section for all the purposes of the laws of the State—

(a) a person who, on or after the day of commencement of this Act attains the age of eighteen years, attains full age and full capacity on attaining that age;

(b) a person, who on the day of commencement of this Act is of or over the age of eighteen years, but under the age of twenty-one years, attains full age and full capacity on that day;

(c) the expression minor means a person not of full age.

(2) This section shall not apply so as to affect the operation or construction of any reference in any Act, proclamation, regulation, by-law, local law, rule or instrument to be an age expressed in years.

(3) This section shall not affect any deficiency of juristic competence or capacity that is attributable to insanity, or mental infirmity, or any other factor as distinct from age.

(4) Where a beneficiary under a will or instrument of trust, who is sui juris, is by law

entitled (either individually or in concert with other persons) to require the disposition of property subject to a trust before the time fixed under the provisions of the trust, that right shall be exercisable by a person who has not attained the age of twenty-one years only in respect of a will or instrument of trust executed on or after the commencement of this Act.

4) Régimen legal de incapacitación o limitación de la capacidad de obrar de las personas con discapacidad

A) De los tratamientos médicos y del ingreso involuntario

ESTATAL (Victoria)

**Ley de Tutela y Administración de 1986
(*Guardianship and Administration Act 1986 No. 58 of 1986*)**

Tratamientos médicos

36. Personas a las cuales se les aplica la presente Parte (Persons to whom Part applies)

(1) In this Part, patient means a person with a disability who—

(a) is of or over the age of 18 years; and

(b) is incapable of giving consent, within the meaning of subsection (2), to the carrying out of a special procedure, a medical research procedure or medical or dental treatment, whether or not the person is a represented person.

(2) For the purposes of paragraph (b) of the definition of patient in subsection (1), a person is incapable of giving consent to the carrying out of a special procedure, a medical research procedure or medical or dental treatment if the person—

(a) is incapable of understanding the general nature and effect of the proposed procedure or treatment; or

(b) is incapable of indicating whether or not he or she consents or does not consent to the carrying out of the proposed procedure or treatment.

37. Persona responsible (Person responsible)

(1) In this Part, person responsible, in relation to a patient and in relation to a proposed medical research procedure or proposed medical or dental treatment, means the first person listed below who is responsible for the patient and who, in the circumstances, is reasonably available and willing and able to make a decision under this Part—

(a) a person appointed by the patient under section 5A of the Medical Treatment Act 1988;

(b) a person appointed by the Tribunal to make decisions in relation to the proposed procedure or treatment;

(c) a person appointed under a guardianship order with power to make decisions in relation to the proposed procedure or treatment;

(d) a person appointed by the patient (before the patient became incapable of giving consent) as an enduring guardian with power to make decisions in relation to the proposed procedure or treatment;

(e) a person appointed in writing by the patient (being the person appointed last in time before the patient became incapable of giving consent) to make decisions in relation to medical research procedures that include the proposed procedure or medical or dental treatment which includes the proposed treatment;

(f) the patient's spouse or domestic partner;

(g) the patient's primary carer;

(h) the patient's nearest relative within the meaning of paragraphs (a) to (g) of the definition of nearest relative in section 3.

(2) The circumstances in which a person is to be regarded as having the care of a patient include, but are not limited to, the case where the person, other than wholly or substantially on a commercial basis, regularly—

(a) provides domestic services and support to the patient; or

(b) arranges for the patient to be provided with domestic services and support.

(3) A patient who is cared for in an institution (such as a hospital, community residential unit, residential care service, supported residential service or State funded residential care service within the meaning of the Health Services Act 1988) at which he or she is cared for by some other 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 of the person in whose care he or she was immediately before being cared for in that institution.

(4) For the purposes of this section, a reference to the spouse or domestic partner of a patient—

(a) is a reference to a spouse or domestic partner who is not under guardianship and with whom the patient has a close and continuing relationship; and

(...)

(5) If the person responsible for a patient is an agent appointed under section 5A of the Medical Treatment Act 1988, the powers the person may exercise as an agent under that Act are in addition to the powers the person may exercise under this Act.

(6) For the purposes of subsection (1)(h), if the patient—

(a) is likely to be capable, within a reasonable time, of giving consent to the carrying out of a special procedure or medical or dental treatment; and

(b) objects to a relative referred to in paragraphs (a) to (g) of the definition of nearest relative in section 3(1) being involved in decisions concerning a special procedure to be carried out on the patient or the patient's medical or dental treatment—

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

(7) For the purposes of subsection (1)(h), if the patient—

(a) is likely to be capable of giving consent to the carrying out of a medical research procedure, but not within a reasonable time as determined in accordance with section 42R(2); and

(b) objects to a relative referred to in paragraphs (a) to (g) of the definition of «nearest relative» in section 3(1) being involved in decisions concerning the patient that would include a medical research procedure being carried out on the patient—

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

38. Interés superior (Best interests)

(1) In this Part, for the purposes of determining whether any special procedure or any medical or

dental treatment would be in the best interests of the patient, the following matters must be taken into account—

(a) the wishes of the patient, so far as they can be ascertained; and

(b) the wishes of any nearest relative or any other family members of the patient; and

(c) the consequences to the patient if the treatment is not carried out; and

(d) any alternative treatment available; and

(e) the nature and degree of any significant risks associated with the treatment or any alternative treatment; and

(f) whether the treatment to be carried out is only to promote and maintain the health and well-being of the patient; and

(g) any other matters prescribed by the regulations.

(2) For the purposes of subsection (1)(b), if the patient—

(a) is likely to be capable, within a reasonable time, of giving consent to the carrying out of a special procedure or medical or dental treatment; and

(b) objects to—

(i) a relative referred to in paragraphs (a) to (g) of the definition of nearest relative in section 3(1); or

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

being involved in decisions concerning a special procedure to be carried out on the patient or the patient's medical or dental treatment— that relative or family member is taken not to be the nearest relative or a family member of the patient.

Consentimiento (Consent)

39. Personas que pueden consentir un tratamiento médico o de otro tipo (Persons who may consent to medical or other treatment)

(1) Subject to Divisions 4 and 5, consent to the carrying out of a special procedure or medical or dental treatment on a patient may be given—

(a) in the case of a special procedure or any medical or dental treatment, by the Tribunal; or

(b) in the case of any medical or dental treatment, by the person responsible for the patient.

(2) Division 6 contains provisions for the giving of consent in relation to the carrying out of a medical research procedure on a patient.

40. Efecto del consentimiento (Effect of consent)

A consent given in accordance with this Part in respect of the carrying out of a special procedure, a medical research procedure or any medical or

dental treatment on a patient has effect as if—

(a) the patient had been capable of giving consent to the carrying out of the procedure or treatment; and

(b) the procedure or treatment had been carried out with the consent of the patient.

41. Rechazo a un tratamiento médico en virtud de la Ley de Tratamiento Médico de 1988 (Refusal of medical treatment under the Medical Treatment Act 1988)

A registered practitioner must not carry out any medical or dental treatment, medical research procedure or special procedure, (including any emergency treatment) under this Part that is medical treatment within the meaning of the Medical Treatment Act 1988 if a refusal of that treatment is in force in accordance with that Act.

42. Consentimiento ilegal a un tratamiento médico o de otro tipo como delito (Unlawful consent to medical or other treatment an offence)

A person must not—

(a) purport to give consent to the continuation of a special procedure or a further special procedure under section 42F, or to a medical research procedure or to any medical or dental treatment on behalf of a patient; or

(b) represent to a registered practitioner that he or she is authorised to give such consent—

knowing that he or she is not authorised to give such consent or without reasonable grounds for believing that he or she is authorised to give such consent.

Penalty:20 penalty units.

Tratamiento de emergencia (Emergency treatment)

42A. Tratamiento médico o dental de emergencia (Emergency medical or dental treatment)

(1) A registered practitioner may carry out, or supervise the carrying out of, a special procedure, a medical research procedure or medical or dental treatment on a patient without consent under this Part or authorisation under section 42T if the practitioner believes on reasonable grounds that the procedure or treatment is necessary, as a matter of urgency—

(a) to save the patient's life; or

(b) to prevent serious damage to the patient's health; or

(c) in the case of a medical research procedure or medical or dental treatment, to prevent the patient from suffering or continuing to suffer significant pain or distress.

(2) A registered practitioner who, in good faith, carries out, or supervises the carrying out, of a special procedure, a medical research procedure or medical or dental treatment in the belief on reasonable grounds that the requirements of this Division and, in the case of a medical research procedure, section 42Q have been complied with is not—

- (a) guilty of assault or battery; or
- (b) guilty of professional misconduct; or
- (c) liable in any civil proceedings for assault or battery; or
- (d) guilty of an offence against section 42G(1) or 42Y(1).

(3) Nothing in this Division affects any duty of care owed by a registered practitioner to a patient.

Admisiones de pacientes

Ley de Salud Mental de 1986 (*Mental Health Act 1986 No. 59 of 1986*)

8. Criterios para el tratamiento involuntario (Criteria for involuntary treatment)

(1) The criteria for the involuntary treatment of a person under this Act are that—

- (a) the person appears to be mentally ill; and
- (b) the person's mental illness requires immediate treatment and that treatment can be

obtained by the person being subject to an involuntary treatment order; and

(c) because of the person's mental illness, involuntary treatment of the person is necessary for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public; and

(d) the person has refused or is unable to consent to the necessary treatment for the mental illness; and

(e) the person cannot receive adequate treatment for the mental illness in a manner less restrictive of his or her freedom of decision and action.

(1A) Subject to subsection (2), a person is mentally ill if he or she has a mental illness, being a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory.

(2) A person is not to be considered to be mentally ill by reason only of any one or more of the following—

(a) that the person expresses or refuses or fails to express a particular political opinion or belief;

(b) that the person expresses or refuses or fails to express a particular religious opinion or belief;

(c) that the person expresses or refuses or fails to express a particular philosophy;

(d) that the person expresses or refuses or fails

to express a particular sexual preference or sexual orientation;

(e) that the person engages in or refuses or fails to engage in a particular political activity;

(f) that the person engages in or refuses or fails to engage in a particular religious activity;

(g) that the person engages in sexual promiscuity;

(h) that the person engages in immoral conduct;

(i) that the person engages in illegal conduct;

(j) that the person is intellectually disabled;

(k) that the person takes drugs or alcohol;

(l) that the person has an antisocial personality;

(m) that the person has a particular economic or social status or is a member of a particular cultural or racial group.

(3) Subsection (2)(k) does not prevent the serious temporary or permanent physiological, biochemical or psychological effects of drug or alcohol taking from being regarded as an indication that a person is mentally ill.

9. Solicitud y recomendación de tratamiento involuntario (Request and recommendation for involuntary treatment)

(1) The documents required to initiate the involuntary treatment of a person are—

(a) a request in the prescribed form and containing the prescribed particulars; and

(b) a recommendation in the prescribed form

by a registered medical practitioner following a personal examination of the person.

(2) A request may be signed before or after a recommendation is made.

(3) A registered medical practitioner must not make a recommendation under subsection (1) unless he or she considers that—

(a) the criteria in section 8(1) apply to the person; and

(b) an involuntary treatment order should be made for the person.

(4) A request and recommendation have effect for 72 hours following the examination of the person by the registered medical practitioner who made the recommendation.

(5) While they have effect, a request and recommendation made in accordance with this section are sufficient authority for a person referred to in subsection (6) to—

(a) arrange for the assessment of the person to whom the recommendation relates by a registered medical practitioner employed by an approved mental health service or a mental health practitioner; or

(b) take the person to whom the recommendation relates to an appropriate approved mental health service.

(6) The persons who may take action under subsection (5) are—

(a) the person making the request; or

(b) a person authorised by the person making the request; or

(c) a prescribed person.

9A. Autorización de traslado (Authority to transport)

(1) Despite anything to the contrary in section 9, a person in respect of whom a request is made in accordance with section 9(1)(a) may be taken to an appropriate approved mental health service without a recommendation being made under section 9(1)(b) if—

(a) a registered medical practitioner is not available within a reasonable period to consider making a recommendation despite all reasonable steps having been taken to secure the attendance of one; and

(b) a mental health practitioner considers that—

(i) the criteria in section 8(1) apply to the person; and

(ii) the person should be taken to an approved mental health service for examination by a registered medical practitioner for the purpose of making a recommendation; and

(c) the mental health practitioner completes an authority to transport in the prescribed form containing the prescribed particulars.

(2) A person who has made a request under section 9(1)(a) in respect of a person must not

complete an authority to transport that person under subsection (1)(c).

(...)

10. Detención de una persona con enfermedad mental en ciertas circunstancias (Apprehension of mentally ill persons in certain circumstances)

(1) A member of the police force may apprehend a person who appears to be mentally ill if the member of the police force has reasonable grounds for believing that—

(a) the person has recently attempted suicide or attempted to cause serious bodily harm to herself or himself or to some other person; or

(b) the person is likely by act or neglect to attempt suicide or to cause serious bodily harm to herself or himself or to some other person.

(1A) A member of the police force is not required for the purposes of subsection (1) to exercise any clinical judgment as to whether a person is mentally ill but may exercise the powers conferred by this section if, having regard to the behaviour and appearance of the person, the person appears to the member of the police force to be mentally ill.

(2) For the purpose of apprehending a person under subsection (1) a member of the police force may with such assistance as is required—

(a) enter any premises; and

(b) use such force as may be reasonably necessary.

(3) A member of the police force exercising the powers conferred by this section may be accompanied by a registered medical practitioner or a mental health practitioner.

(4) A member of the police force must, as soon as practicable after apprehending a person under subsection (1), arrange for—

(a) an examination of the person by a registered medical practitioner; or

(b) an assessment of the person by a mental health practitioner.

(5) The mental health practitioner may assess the person, having regard to the criteria in section 8(1) and—

(a) advise the member of the police force to—

(i) arrange for an examination of the person by a registered medical practitioner; or

(ii) release the person from apprehension under this section; or

(b) complete an authority to transport the person to an approved mental health service in accordance with section 9A(1).

(6) If the mental health practitioner assesses the person and advises the member of the police force to arrange for an examination of the person by a registered medical practitioner the member of the police force must do so as soon as practicable.

(7) If the mental health practitioner assesses

the person and advises the member of the police force to release the person from apprehension under this section the member must do so unless the member arranges for a personal examination of the person by a registered medical practitioner.

(8) If an arrangement is made under this section to have a person examined by a registered medical practitioner, a registered medical practitioner may examine the person for the purposes of section 9.

(9) Nothing in this section limits—

(a) any other powers of a registered medical practitioner or mental health practitioner in relation to that person under this Act; or

(b) any other powers of a member of the police force in relation to that person.

11. Personas incapaces de cuidar de sí mismas (Persons incapable of caring for themselves)

(1) Where a member of the police force or any other person has reasonable grounds for believing that a person who appears to be mentally ill is because of mental illness incapable of caring for herself or himself the member of the police force or that other person may give the information upon oath to a magistrate.

(2) A magistrate may upon that information authorize and direct a member of the police force

accompanied by a registered medical practitioner to visit and examine that person.

(3) An authorization and direction under subsection (2) is to be in the form of a special warrant in the prescribed form.

(4) A member of the police force acting under a special warrant may with such assistance as is required—

(a) enter any premises; and

(b) use such force as may be reasonably necessary to enable the registered medical practitioner to examine that person.

12. Órdenes de tratamiento involuntario –personas en la comunidad (Involuntary treatment orders—persons in the community)

(1) This section applies if—

(a) a request and recommendation have been made for a person; and

(b) a registered medical practitioner employed by an approved mental health service or a mental health practitioner has assessed the person in accordance with the request and recommendation.

(2) The practitioner must—

(a) take the person, or arrange for the person to be taken, to an appropriate approved mental health service; or

(b) make an involuntary treatment order for the person.

(3) The practitioner must have regard to the criteria in section 8(1) in deciding what action to take under subsection (2).

(4) An involuntary treatment order under this section must be in the prescribed form and contain the prescribed particulars.

(5) If the practitioner makes an involuntary treatment order for a person but does not consider that—

(a) the criteria in section 8(1) apply to the person; or

(b) an involuntary treatment order should be made for the person—

the practitioner must notify the authorised psychiatrist of the appropriate approved mental health service as soon as practicable.

(6) At any time after an involuntary treatment order is made for a person under this section, but before the authorised psychiatrist examines the person under section 12AC, a registered medical practitioner employed by an approved mental health service or a mental health practitioner may take the person, or arrange for the person to be taken, to an appropriate approved mental health service if the practitioner considers it necessary to do so.

(7) If a person is taken to an approved mental health service under subsection (6), the involuntary treatment order is sufficient authority for the detention of the person in the

approved mental health service until the authorised psychiatrist examines him or her under section 12AC.

12AA Órdenes de tratamiento involuntario –personas en un centro de salud mental aprobado (Involuntary treatment orders—persons in approved mental health services)

(1) This section applies if—

(a) a request and recommendation have been made for a person; and

(b) the person has been taken to, or is in, an approved mental health service.

(2) A registered medical practitioner employed by the approved mental health service or a mental health practitioner must make an involuntary treatment order for the person.

(3) An involuntary treatment order under this section must be in the prescribed form and contain the prescribed particulars.

(4) An involuntary treatment order made for a person in accordance with this section is sufficient authority for the detention of the person in an approved mental health service.

(5) A registered medical practitioner employed by the approved mental health service or a mental health practitioner may release a person from detention under subsection (4) to await the examination by the authorised psychiatrist

under section 12AC if the practitioner has—

(a) had regard to the criteria in section 8(1);
and

(b) consulted with the authorised psychiatrist.

(6) If the practitioner makes an involuntary treatment order for a person but does not consider that—

(a) the criteria in section 8(1) apply to the person; or

(b) an involuntary treatment order should be made for the person—

the practitioner must notify the authorised psychiatrist of the appropriate approved mental health service as soon as practicable.

(7) At any time after an involuntary treatment order is made for a person under this section for a person who is not detained in an approved mental health service, but before the authorised psychiatrist examines the person under section 12AC, a registered medical practitioner employed by an approved mental health service or a mental health practitioner may take the person, or arrange for the person to be taken, to an appropriate approved mental health service if the practitioner considers it necessary to do so.

(8) If a person is taken to an approved mental health service under subsection (7), the involuntary treatment order is sufficient authority for the detention of the person in the approved mental health service until the

authorised psychiatrist examines him or her under section 12AC.

12AB. Tratamiento interino bajo una orden de tratamiento involuntario (Interim treatment under involuntary treatment order)

(1) This section applies to a person who is subject to an involuntary treatment order at any time before he or she is examined by the authorised psychiatrist under section 12AC.

(2) If a registered medical practitioner employed by the approved mental health service considers that—

(a) the person requires any treatment immediately; and

(b) the person is unable to consent to that treatment; and

(c) the treatment required is of such a nature that it would not be in the best interests of the person to await examination by the authorised psychiatrist under section 12AC—

the practitioner may on behalf of the person consent to the treatment being carried out until the authorised psychiatrist examines the person under section 12AC

12AC. Examen por parte de un psiquiatra autorizado (Examination by authorised psychiatrist)

(1) If an involuntary treatment order is made for a person, the authorised psychiatrist must examine the person—

(a) if section 12(5) or 12AA(6) applies—as soon as practicable after the order is made, but in any case within 24 hours after the order is made; or

(b) otherwise—within 24 hours after the order is made.

(2) On examining the person under subsection (1)—

(a) if the authorised psychiatrist considers that the criteria in section 8(1) do not apply to the person—the authorised psychiatrist must discharge the person from the order;

(b) if the authorised psychiatrist is satisfied that the criteria in section 8(1) apply to the person—the authorised psychiatrist must confirm the order.

(3) If the authorised psychiatrist confirms an involuntary treatment order under subsection (2)(b), he or she may make a community treatment order under section 14 for the person.

(4) If the authorised psychiatrist confirms the involuntary treatment order under subsection (2)(b) but does not make a community treatment order under subsection (3)—

(a) the person is to be detained in the approved mental health service; and

(b) if the person is not currently in the approved mental health service, the authorised psychiatrist

may take the person, or arrange for the person to be taken, to the approved mental health service.

(5) The authorised psychiatrist may confirm an involuntary treatment order without making a community treatment order only if he or she is satisfied that the treatment required for the person cannot be obtained through the making of a community treatment order.

(6) A registered medical practitioner who has made a recommendation under section 9 in respect of a person must not examine the person under this section.

12AD. Tratamiento a pacientes involuntarios (Treatment for involuntary patients)

(1) An involuntary patient is to be given treatment for his or her mental illness.

(2) If an involuntary patient refuses to consent to necessary treatment or is unable to consent to treatment for his or her mental illness, consent in writing may be given by the authorised psychiatrist.

12AE. Notificación al tutor (Notification of guardian)

If a person becomes an involuntary patient, the authorised psychiatrist must ensure that any guardian of the person is notified that the person has become an involuntary patient and

the grounds for the person becoming an involuntary patient.

12A. Solicitud para continuar con la detención y el tratamiento a paciente involuntario (Application to continue detention and treatment of involuntary patient)

(1) This section applies to a person who is detained in an approved mental health service under an involuntary treatment order that has been confirmed under section 12AC.

(2) If the authorised psychiatrist for the approved mental health service in which a person to whom this section applies is detained considers that—

(a) the person no longer satisfies the criteria in section 8(1); and

(b) the person appears to have a mental disorder; and

(c) having regard to the person's recent behaviour, the person, if not continued to be detained and treated, would cause serious physical harm to himself or herself; and

(d) treatment for the mental disorder can be obtained in the approved mental health service—

the authorised psychiatrist, despite discharging the person from the order under section 37(1), may apply in writing to the chief psychiatrist for approval of the continued detention and

treatment of the person for a period not exceeding 3 months.

(3) Before making an application under this section the authorised psychiatrist—

(a) must consider the relevant characteristics of the person's behaviour, including its nature, duration and frequency and its impact on the person; and

(b) may consult any person, including—

(i) any member of the family of the person or his or her primary carer or guardian;

(ii) any registered medical practitioner or other person who is or has been involved in the provision of treatment to the person.

(4) On the making of an application under this section the authorised psychiatrist may authorise the continued detention and treatment of the person until the application is determined.

(5) The chief psychiatrist must advise the Secretary as soon as practicable of the making of an application under this section.

14. Órdenes de tratamiento social (Community treatment orders)

(1) At any time, an authorised psychiatrist may make a community treatment order for a person who is subject to an involuntary treatment order if the authorised psychiatrist is satisfied that—

(a) the criteria in section 8(1) apply to the person; and

(b) the treatment required for the person can be obtained through the making of a community treatment order.

(2) A community treatment order is an order requiring the person to obtain treatment for their mental illness while not detained in an approved mental health service.

(3) A community treatment order—

(a) must specify the duration of the order, which must not exceed 12 months; and

(b) may specify where the person must live, if this is necessary for the treatment of the person's mental illness.

(4) If an authorised psychiatrist makes a community treatment order for a person, the authorised psychiatrist must—

(a) inform the person that the order has been made; and

(b) give the person a copy of the order; and

(c) inform the person of the grounds on which the authorised psychiatrist decided to make the order.

(5) On the expiry (other than by revocation) of a community treatment order, or a person's discharge from a community treatment order, the person's involuntary treatment order is taken to expire and, consequently, the person ceases to be an involuntary patient.

(6) Despite subsection (5), the person does not cease to be an involuntary patient if a restricted

involuntary treatment order or hospital transfer order is made for the person.

14A. Vigilancia de personas bajo una orden de tratamiento social (Monitoring persons on community treatment orders)

(1) The supervising medical practitioner of a person subject to a community treatment order must assess the person at regular intervals.

(2) In assessing the person, the supervising medical practitioner must consider whether—

(a) the criteria in section 8(1) still apply to the person; and

(b) the treatment required for the person can still be obtained under the order.

(3) If the supervising medical practitioner does not consider that—

(a) the criteria in section 8(1) still apply to the person; or

(b) the treatment required for the person can still be obtained under the order—

the supervising medical practitioner must notify the monitoring psychiatrist as soon as practicable.

(4) If the supervising medical practitioner notifies the monitoring psychiatrist under subsection (3), the monitoring psychiatrist must examine the person subject to the order as soon as practicable.

(5) In this section—

monitoring psychiatrist of a person subject

to a community treatment order, means the monitoring psychiatrist specified in the person's treatment plan;

supervising medical practitioner of a person subject to a community treatment order, means the supervising medical practitioner specified in the person's treatment plan.

14B. Prórroga de una orden de tratamiento social (Extension of community treatment orders)

(1) The authorised psychiatrist may extend a community treatment order for a period not exceeding 12 months if the authorised psychiatrist—

(a) examines the person subject to the order; and

(b) is satisfied that—

(i) the criteria in section 8(1) still apply to the person; and

(ii) the treatment required for the person can be obtained through the extension of the order.

(2) The extension takes effect from the time the authorised psychiatrist makes the extension.

(3) There is no limit to the number of times a community treatment order may be extended under subsection (1).

(4) For the avoidance of doubt, a community treatment order cannot be extended after it has expired.

(5) If an authorised psychiatrist extends a person's community treatment order, the authorised psychiatrist must—

(a) inform the person that the order has been extended; and

(b) give the person a copy of the extension; and

(c) inform the person of the grounds on which the authorised psychiatrist decided to extend the order.

14C. Variación de una orden de tratamiento social (Variation of community treatment orders)

(1) The authorised psychiatrist may vary a community treatment order at any time.

(2) If the authorised psychiatrist does so, he or she must—

(a) inform the person that the order has been varied; and

(b) give the person a copy of the order as varied; and

(c) inform the person of the grounds on which the authorised psychiatrist decided to vary the order.

14D. Revocación de una orden de tratamiento social (Revocation of community treatment orders)

(1) The authorised psychiatrist may revoke a community treatment order if satisfied on reasonable grounds that—

(a) the criteria in section 8(1) still apply to the person subject to the order; and

(b) the treatment required for the person cannot be obtained under the order.

(2) The authorised psychiatrist may also revoke a community treatment order if—

(a) the authorised psychiatrist is satisfied on reasonable grounds that the person subject to the order has not complied with the order or the person's treatment plan; and

(b) reasonable steps have been taken, without success, to obtain compliance with the order or plan; and

(c) the authorised psychiatrist is satisfied on reasonable grounds that there is a significant risk of deterioration in the person's mental or physical condition because of the non-compliance.

(3) If the authorised psychiatrist revokes a community treatment order—

(a) the authorised psychiatrist must make reasonable efforts to inform the person that the order has been revoked and that the person must go to an approved mental health service; and

(b) the person remains an involuntary patient under the person's involuntary treatment order and is taken to be absent without leave from an approved mental health service.

ESTATAL (Nueva Gales del Sur)

Ley de tutela de 1987 (*Guardianship Act 1987 No 257*)

Tratamiento médico y dental (Medical and dental treatment)

34. Aplicación de la presente Parte (Application of Part)

- (1) This Part applies to a patient:
 - (a) who is of or above the age of 16 years, and
 - (b) who is incapable of giving consent to the carrying out of medical or dental treatment.
- (2) In the event of an inconsistency between the provisions of this Part and the provisions of the Mental Health Act 2007, the provisions of the Mental Health Act 2007 prevail.

35. Delitos (Offences)

- (1) A person must not carry out medical or dental treatment on a patient to whom this Part applies unless:
 - (a) consent for the treatment has been given in accordance with this Part, or
 - (b) the carrying out of the treatment is authorised by this Part without any such consent, or
 - (c) the treatment is carried out in accordance with an order made by the Supreme Court in the exercise of its jurisdiction with respect to the guardianship of persons.

Maximum penalty:

- in the case of special treatment or treatment in the course of a clinical trial (on conviction on indictment)—imprisonment for 7 years, or

• in the case of minor or major treatment (on summary conviction)—imprisonment for 1 year or 10 penalty units, or both.

(1A) Subsection (1) (c) does not apply in the case of special treatment that is special treatment of the kind referred to in paragraph (a) of the definition of special treatment in section 33 (1) or special treatment prescribed by the regulations for the purposes of this subsection.

(2) This section does not limit the operation of any other Act or law under which minor treatment may be carried out on a person without that person's consent.

36. Quién puede dar consentimiento (Who may give consent)

(1) Consent to the carrying out of medical or dental treatment on a patient to whom this Part applies may be given:

(a) in the case of minor or major treatment—by the person responsible for the patient, or

(b) in any case—by the Tribunal.

(2) The guardian of a patient may also consent to the carrying out of continuing or further special treatment if the Tribunal has previously given consent to the carrying out of the treatment and has authorised the guardian to give consent to the continuation of that treatment or to further treatment of a similar nature.

37. Cuando el tratamiento puede ser llevado a cabo sin dicho consentimiento (When treatment may be carried out without any such consent)

(1) Medical or dental treatment may be carried out on a patient to whom this Part applies without consent given in accordance with this Part if the medical practitioner or dentist carrying out or supervising the treatment considers the treatment is necessary, as a matter of urgency:

- (a) to save the patient's life, or
- (b) to prevent serious damage to the patient's health, or
- (c) except in the case of special treatment—to prevent the patient from suffering or continuing to suffer significant pain or distress.

(2) Minor treatment may (subject to subsection (3)) also be carried out on a patient to whom this Part applies without any consent given in accordance with this Part if:

- (a) there is no person responsible for the patient, or
- (b) there is such a person but that person either cannot be contacted or is unable or unwilling to make a decision concerning a request for that person's consent to the carrying out of the treatment.

(3) The medical practitioner or dentist carrying out, or supervising the carrying out of, minor

treatment in accordance with subsection (2) is required to certify in writing in the patient's clinical record that:

(a) the treatment is necessary and is the form of treatment that will most successfully promote the patient's health and well-being, and

(b) the patient does not object to the carrying out of the treatment.

(...)

40. Consentimiento otorgado por personas responsables por el paciente (Consents given by persons responsible for patients)

(1) Any person may request a person responsible for a patient to whom this Part applies for that person's consent to the carrying out of medical or dental treatment on the patient.

(2) Such a request shall specify:

(a) the grounds on which it is alleged that the patient is a patient to whom this Part applies,

(b) the particular condition of the patient that requires treatment,

(c) the alternative courses of treatment that are available in relation to that condition,

(d) the general nature and effect of each of those courses of treatment,

(e) the nature and degree of the significant risks

(if any) associated with each of those courses of treatment, and

(f) the reasons for which it is proposed that any particular course of treatment should be carried out.

(3) In considering such an application, the person responsible for the patient shall have regard to:

(a) the views (if any) of the patient,

(b) the matters referred to in subsection (2), and

(c) the objects of this Part.

(4) The regulations may make provision for the manner and form in which:

(a) requests under this section shall be made, and

(b) consents under this section shall be given.

(...)

Consentimiento otorgado por un Tribunal
(Consents given by the Tribunal)

42. Solicitud al Tribunal (Applications to the Tribunal)

(1) Any person may apply to the Tribunal for consent to the carrying out of medical or dental treatment on a patient to whom this Part applies.

(2) Such an application shall specify:

(a) the grounds on which it is alleged that the patient is a patient to whom this Part applies,

(b) the particular condition of the patient that requires treatment,

(c) the alternative courses of treatment that are available in relation to that condition,

(d) the general nature and effect of each of those courses of treatment,

(e) the nature and degree of the significant risks (if any) associated with each of those courses of treatment, and

(f) the reasons for which it is proposed that any particular course of treatment should be carried out.

(3) Whenever such an application is made for consent to the carrying out of medical or dental treatment and the treatment cannot be carried out without that consent, the Tribunal may, by order:

(a) direct the person who is to carry out the treatment not to start the treatment, or

(b) if the treatment has already started—direct the person who is carrying out the treatment to discontinue it,

until the Tribunal has determined the application.

(4) A person who, without lawful excuse, fails to comply with such an order is guilty of an offence.

Maximum penalty (subsection (4)): 5 penalty units.

43. Notificación de la solicitud (Service of applications)

(1) The applicant for consent shall, as soon as practicable after the application has been made, cause a copy of the application (on which is endorsed a notice specifying the time, date and place set down for the hearing of the application) to be served on:

- (a) the patient, and
- (b) the person who is proposing that medical or dental treatment be carried out on the patient, and
- (c) each person responsible for the patient who can reasonably be located.

(d) (Repealed)

(2) Failure to serve a copy of an application in accordance with this section does not vitiate the decision of the Tribunal on the application.

44. Potestad del Tribunal de otorgar consentimiento (Tribunal may give consent)

(1) If, after conducting a hearing into an application for consent to the carrying out of medical or dental treatment on a patient to whom this Part applies, the Tribunal is satisfied that it is appropriate for the treatment to be carried out, it may consent to the carrying out of the treatment.

(2) In considering such an application, the Tribunal shall have regard to:

- (a) the views (if any) of:

- (i) the patient,
 - (ii) the person who is proposing that medical or dental treatment be carried out on the patient,
 - (iii) any persons responsible for the patient, and
 - (iv) (Repealed)
- (b) the matters referred to in section 42 (2), and
- (c) the objects of this Part.

(3) Nothing in this section requires the Tribunal to consider an application relating to a patient if it is not satisfied that the applicant has a sufficient interest in the health and well-being of the patient.

45. Limitaciones a la facultad del Tribunal de otorgar consentimiento (Restrictions on Tribunal's power to give consent)

(1) The Tribunal must not give consent to the carrying out of medical or dental treatment on a patient to whom this Part applies unless the Tribunal is satisfied that the treatment is the most appropriate form of treatment for promoting and maintaining the patient's health and well-being.

(2) However, the Tribunal must not give consent to the carrying out of special treatment unless it is satisfied that the treatment is necessary:

- (a) to save the patient's life, or

(b) to prevent serious damage to the patient's health,

or unless the Tribunal is authorised to give that consent under subsection (3).

(3) In the case of:

(a) special treatment of a kind specified in paragraph (b) of the definition of that expression in section 33 (1), or

(b) prescribed special treatment (other than special treatment of a kind specified in paragraph (a) of that definition),

the Tribunal may give consent to the carrying out of the treatment if it is satisfied that:

(c) the treatment is the only or most appropriate way of treating the patient and is manifestly in the best interests of the patient, and

(d) in so far as the National Health and Medical Research Council has prescribed guidelines that are relevant to the carrying out of that treatment—those guidelines have been or will be complied with as regards the patient.

45A. Consentimiento del tutor del paciente con autorización judicial para continuar con los ulteriores tratamientos (Consents to continuing or further special treatment by a patient's guardian with authority of the Tribunal)

(1) The Tribunal may, when giving consent to the carrying out of special treatment on a

patient to whom this Part applies, confer on the guardian of the patient authority to consent:

- (a) to the continuation of the treatment, or
- (b) to the carrying out on the patient of further special treatment of a similar nature.

(2) The Tribunal may only confer such an authority at the request or with the consent of the guardian.

(3) The Tribunal may at any time:

- (a) impose conditions or give directions as to the exercise of such an authority, or
- (b) revoke such an authority.

(4) If the guardian has an authority conferred under this section, any person may request the guardian for the guardian's consent to the carrying out of the relevant treatment.

(5) In considering a request, a guardian must have regard to:

- (a) the views (if any) of the patient, and
- (b) the objects of this Part.

Experimentaciones médicas (Clinical trials)

45AA. Potestad del Tribunal de aprobar experimentaciones médicas (Tribunal may approve clinical trials)

(1) The Tribunal may approve, in accordance with this section, a clinical trial as a trial in which patients to whom this Part applies may participate.

(2) The Tribunal may give an approval under this section only if it is satisfied that:

(a) the drugs or techniques being tested in the clinical trial are intended to cure or alleviate a particular condition from which the patients suffer, and

(b) the trial will not involve any known substantial risk to the patients (or, if there are existing treatments for the condition concerned, will not involve material risks greater than the risks associated with those treatments), and

(c) the development of the drugs or techniques has reached a stage at which safety and ethical considerations make it appropriate that the drugs or techniques be available to patients who suffer from that condition even if those patients are not able to consent to taking part in the trial, and

(d) having regard to the potential benefits (as well as the potential risks) of participation in the trial, it is in the best interests of patients who suffer from that condition that they take part in the trial, and

(e) the trial has been approved by a relevant ethics committee and complies with any relevant guidelines issued by the National Health and Medical Research Council.

(3) The fact that a clinical trial will or may involve the giving of placebos to some of the participants in the trial does not prevent the

Tribunal from being satisfied that it is in the best interests of patients that they take part in the trial.

(4) The Tribunal's approval of a clinical trial under this section does not operate as a consent to the participation in the trial of any particular patient to whom this Part applies. The appropriate consent must be obtained under Division 3 or 4 before any medical or dental treatment in the course of the trial is carried out on the patient.

(5) In this section:

ethics committee means:

(a) for so long as there is any relevant Institutional Ethics Committee registered by the Australian Health Ethics Committee established under the National Health and Medical Research Council Act 1992 of the Commonwealth—an Institutional Ethics Committee so registered, or

(b) in the absence of such a committee, an ethics committee established by:

(i) an area health service or a public hospital,
or

(ii) a university, being an ethics committee concerned, wholly or partly, with medical research,
or

(iii) the National Health and Medical Research Council.

45AB. Consentimiento para participar en experimentaciones médicas en casos individuales (Consent for participation in clinical trials in individual cases)

(1) If the Tribunal is satisfied as to the matters specified in section 45AA (2) in relation to a clinical trial, it may, by order, determine:

(a) that the function of giving or withholding consent for the carrying out of medical or dental treatment on patients in the course of the trial is to be exercised by the persons responsible for the patients (in which case Division 3 applies), or

(b) that the Tribunal is to exercise that function itself (in which case Division 4 applies).

(2) Before making a determination referred to in subsection (1) (a), the Tribunal must be satisfied that the form for granting consent and the information available about the trial provide sufficient information to enable the persons responsible to decide whether or not it is appropriate that the patients should take part in the trial.

46. Efectos del consentimiento (Effect of consent)

(1) Subject to subsections (2) and (3), a consent given under this Part in respect of the carrying out of medical or dental treatment on a patient to whom this Part applies has effect:

(a) as if the patient had been capable of giving consent to the carrying out of the treatment, and

(b) as if the treatment had been carried out with the patient's consent.

(2) A consent given by a person responsible for, or the guardian of, the patient has no effect:

(a) if the person carrying out or supervising the proposed treatment is aware, or ought reasonably to be aware, that the patient objects to the carrying out of the treatment, or

(b) if the proposed treatment is to be carried out for any purpose other than that of promoting or maintaining the health and well-being of the patient.

(3) A consent given by the guardian of the patient has effect despite any objection made by a patient to the carrying out of the treatment if the guardian has consented to that treatment in accordance with the authority of the Tribunal under section 46A.

(4) For the purposes of this section, an objection by a patient to the carrying out of proposed medical or dental treatment is to be disregarded if:

(a) the patient has minimal or no understanding of what the treatment entails, and

(b) the treatment will cause the patient no distress or, if it will cause the patient some distress, the distress is likely to be reasonably tolerable and only transitory.

(5) Nothing in this Part precludes the Tribunal, a person responsible or a guardian from giving consent to the carrying out on a patient to whom this Part applies of medical or dental

treatment specifically excluded from the definition of that expression in section 33 (1). This section applies to any such consent as if that treatment were not excluded from that definition.

46A. Potestad del tutor de anular la objeción del paciente a un tratamiento autorizado por el Tribunal (Power of guardian to override patient's objection to treatment when authorised by the Tribunal)

(1) The Tribunal may confer on the guardian of a patient to whom this Part applies authority to override the patient's objection to the carrying out on the patient of major or minor treatment.

(2) The Tribunal may confer such an authority only at the request or with the consent of the guardian and only if it is satisfied that any such objection will be made because of the patient's lack of understanding of the nature of, or reason for, the treatment.

(3) The Tribunal may at any time:

(a) impose conditions or give directions as to the exercise of such an authority, or

(b) revoke such an authority.

(4) The guardian may exercise such an authority only if satisfied that the proposed treatment is manifestly in the best interests of the patient.

Ley de Salud Mental de 2007 (*Mental Health Act 2007 No 8*)

Detención y tratamiento involuntario de pacientes con enfermedad mental

18. Cuando una persona puede ser detenida en un centro de salud mental (When a person may be detained in mental health facility)

(1) A person may be detained in a declared mental health facility in the following circumstances:

(a) on a mental health certificate given by a medical practitioner or accredited person (see section 19),

(b) after being brought to the facility by an ambulance officer (see section 20),

(c) after being apprehended by a police officer (see section 22),

(d) after an order for an examination and an examination or observation by a medical practitioner or accredited person (see section 23),

(e) on the order of a Magistrate or bail officer (see section 24),

(f) after a transfer from another health facility (see section 25),

(g) on a written request made to the authorised medical officer by a primary carer, relative or friend of the person (see section 26).

(2) A person may be detained, under a provision of this Part, in a health facility that is not a declared mental health facility if it is necessary to do so to provide medical treatment or care to the person for a condition or illness other than a mental illness or other mental condition.

(3) In this Act, a reference to taking to and detaining in a mental health facility includes, in relation to a person who is at a mental health facility, but not detained in the mental health facility in accordance with this Act, the detaining of the person in the mental health facility.

(...)

27. Pasos requeridos para una evaluación médica durante una detención en un centro de salud mental (Steps for medical examination requirements for ongoing detention in mental health facility)

The following steps must be taken in relation to a person who is detained in a mental health facility under this Division:

(a) Step 1 Initial examination by authorised medical officer

An authorised medical officer must examine the person as soon as practicable (but not later than 12 hours) after the person arrives at the facility or after the person is detained after being a voluntary patient.

The person must not be detained after the examination unless the officer certifies that, in the officer's opinion, the person is a mentally ill person or a mentally disordered person.

(b) Step 2 Examination by second medical practitioner

The authorised medical officer must cause the person to be examined by another medical practitioner as soon as possible after giving the certificate in step 1. The second examiner must be a psychiatrist if the authorised medical officer is not a psychiatrist.

The second examiner must notify the authorised medical officer in the form prescribed by the regulations if of the opinion that the person is a mentally ill person or a mentally disordered person or if not able to form such an opinion.

(c) Step 3 Examination by third medical practitioner if second examiner does not find person to be mentally ill or mentally disordered

If the second examiner is not of the opinion that the person is a mentally ill person or a mentally disordered person, the authorised medical officer must cause the person to be examined by a medical practitioner who is a psychiatrist, as soon as practicable after being notified of that opinion.

The third examiner must notify the authorised medical officer in the form prescribed by the regulations if of the opinion that the person is a mentally ill person or a mentally disordered person.

(d) Step 4 Mental health inquiry or discharge

An authorised medical officer must bring the person before a Magistrate for a mental health inquiry if:

(i) the person is found to be a mentally ill person by an authorised medical officer on initial examination in step 1, and to be a mentally ill person or a mentally disordered person on examination in step 2 or step 3, or

(ii) the person is found to be a mentally disordered person by an authorised medical officer on initial examination in step 1, and to be a mentally ill person on examination in step 2 or step 3.

The person must be brought before a Magistrate as soon as practicable after the authorised medical officer is notified of the relevant finding of the second or third examiner.

If the third examiner does not find that the person is a mentally ill person or a mentally disordered person, the person must not be detained after the third examination.

(e) Step 5 Mentally disordered persons

If a person is found to be a mentally disordered person by an authorised medical officer on initial examination in step 1, and is found to be a mentally disordered person on examination in step 2 or step 3, the person may be detained in the mental health facility as a mentally disordered person.

28. Obligaciones del profesional para la evaluación médica (Obligations of examining medical practitioners)

(1) An authorised medical officer or other medical practitioner who examines a person detained in a mental health facility under this Division may take into account his or her own observations and any other available evidence that he or she considers reliable and relevant in forming an opinion as to whether the person is a mentally ill person or a mentally disordered person.

(2) A medical practitioner on whose certificate or request a person has been admitted to a mental health facility must not examine the person under section 27.

29. Tratamiento de personas detenidas en un centro de salud mental (Treatment of persons detained in mental health facilities)

A person who authorises the administration of any medication to a person detained in a mental health facility under this Division:

(a) must have due regard to the possible effects of the administration of the medication, and

(b) must prescribe the minimum medication, consistent with proper care, to ensure that the person is not prevented from communicating

adequately with any other person who may be engaged to represent the person at a mental health inquiry.

(...)

31. Detención limitada de personas con desorden mental (Limited detention of mentally disordered persons)

(1) A person detained as a mentally disordered person under step 5 in section 27 (e) must not be detained in a mental health facility for a continuous period of more than 3 days (not including weekends and public holidays).

(2) If an authorised medical officer of a mental health facility is of the opinion that an assessable person has ceased to be a mentally ill person but is a mentally disordered person, the person must not be further detained in the facility for a continuous period of more than 3 days (not including weekends and public holidays).

(3) An authorised medical officer must examine a mentally disordered person detained in a mental health facility at least once every 24 hours.

(4) The person must not be further detained in the mental health facility if, on any such examination, the authorised medical officer is of the opinion that the person is not a mentally disordered person or a mentally ill person or that other care of a less restrictive kind, that is

consistent with safe and effective care, is appropriate and reasonably available to the person.

(5) A person must not be admitted to and detained in a mental health facility on the grounds that the person is a mentally disordered person on more than 3 occasions in any 1 calendar month.

Órdenes de tratamiento social (Community treatment orders)

51. Órdenes de tratamiento social (Community treatment orders)

(1) A community treatment order authorising the compulsory treatment in the community of a person may be made by the Tribunal or a Magistrate.

(2) The following persons may apply for a community treatment order for the treatment of a person:

(a) the authorised medical officer of a mental health facility in which the affected person is detained or is a patient under this Act,

(b) a medical practitioner who is familiar with the clinical history of the affected person,

(c) any other person prescribed by the regulations.

(3) An application may be made about a person who is detained in or a patient in a mental health

facility or a person who is not in a mental health facility.

(4) An application may be made about a person who is subject to a current community treatment order.

(5) A community treatment order may be made in the following circumstances and may replace an existing order:

- (a) following a mental health inquiry,
- (b) on a review of a patient by the Tribunal,
- (c) on an application otherwise being made to the Tribunal.

52. Notificación de la solicitud (Notice of applications)

(1) The applicant for a community treatment order must notify the affected person in writing of the application.

(2) The notice of the application is to include a copy of the proposed treatment plan for the affected person.

(3) If the affected person is not detained in a mental health facility, the application must be heard not earlier than 14 days after the notice is given.

(4) Subsection (3) does not apply to an application for a further community treatment order in respect of an affected person who is the subject of a current community treatment order.

53. Determinación de solicitudes de órdenes de tratamiento social (Determination of applications for community treatment orders)

(1) A Magistrate or the Tribunal is, on an application for a community treatment order, to determine whether the affected person is a person who should be subject to the order.

(2) For that purpose, the Magistrate or Tribunal is to consider the following:

(a) a treatment plan for the affected person proposed by the declared mental health facility that is to implement the proposed order,

(b) if the affected person is subject to an existing community treatment order, a report by the psychiatric case manager of the person as to the efficacy of that order,

(c) a report as to the efficacy of any previous community treatment order for the affected person,

(d) any other information placed before the Magistrate or Tribunal.

(3) The Magistrate or Tribunal may make a community treatment order for an affected person if the Magistrate or Tribunal determines that:

(a) no other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to the person and that the affected person would benefit from the order as the least restrictive alternative consistent with safe and effective care, and

(b) a declared mental health facility has an appropriate treatment plan for the affected person and is capable of implementing it, and

(c) if the affected person has been previously diagnosed as suffering from a mental illness, the affected person has a previous history of refusing to accept appropriate treatment.

(3A) If the affected person has within the last 12 months been the subject of a community treatment order, the Tribunal is not required to make a determination under subsection (3) (c) but must be satisfied that the person is likely to continue in or to relapse into an active phase of mental illness if the order is not granted.

(4) A Magistrate may not make a community treatment order unless the Magistrate is of the opinion that the person is a mentally ill person.

(5) For the purposes of this section, a person has a previous history of refusing to accept appropriate treatment if the following are satisfied:

(a) the affected person has previously refused to accept appropriate treatment,

(b) when appropriate treatment has been refused, there has been a relapse into an active phase of mental illness,

(c) the relapse has been followed by mental or physical deterioration justifying involuntary admission to a mental health facility (whether or not there has been such an admission),

(d) care and treatment following involuntary

admission resulted, or could have resulted, in an amelioration of, or recovery from, the debilitating symptoms of a mental illness or the short-term prevention of deterioration in the mental or physical condition of the affected person.

(6) The Tribunal or Magistrate must not specify a period longer than 12 months as the period for which a community treatment order is in force.

(7) In determining the duration of a community treatment order, the Tribunal or Magistrate must take into account the estimated time required:

(a) to stabilise the condition of the affected person, and

(b) to establish, or re-establish, a therapeutic relationship between the person and the person's psychiatric case manager.

54. Requisitos de planificación de tratamiento en las órdenes de tratamiento social (Requirements for treatment plans under community treatment orders)

A treatment plan for an affected person is to consist of the following:

(a) in general terms, an outline of the proposed treatment, counselling, management, rehabilitation or other services to be provided to implement the community treatment order,

(b) in specific terms, the method by which,

the frequency with which, and the place at which, the services would be provided for that purpose.

55. Posibilidad de autorizar una orden de tratamiento social en ausencia del la persona afectada (Community treatment order may be made in absence of affected person)

A Magistrate or the Tribunal may make a community treatment order in the absence of the affected person, if the person has been given notice of the application under this Part.

56. Forma y duración de las órdenes de tratamiento social (Form and duration of community treatment orders)

(1) A community treatment order is to:

(a) nominate the declared mental health facility that is to implement the treatment plan for the affected person, and

(b) require the affected person to be present, at the reasonable times and places specified in the order to receive the medication and therapy, counselling, management, rehabilitation and other services provided in accordance with the treatment plan.

(2) A community treatment order ceases to have effect at the end of the period specified in the order or, if no period is specified, 12 months after the order is made.

(3) A community treatment order has no effect while an affected person is detained in a mental health facility (otherwise than under this Part), or is a voluntary patient.

(4) The fact that an affected person is the subject of proceedings before the Tribunal does not, unless the Tribunal otherwise orders, affect the operation or duration of the community treatment order.

(5) The time for which a community treatment order is in force does not cease to run during any period in which this section provides that it has no effect.

57. Deberes y funciones de la persona afectada y del centro de salud mental (Duties and functions of affected person and mental health facility)

(1) The affected person must comply with the community treatment order.

(2) The director of community treatment of the declared mental health facility implementing a treatment plan under a community treatment order may take all reasonable steps to have medication administered, and services provided, in accordance with the order.

(3) Medication may be administered to an affected person for the purposes of a community treatment order without the person's consent if it is administered without the use of more force

than would be required if the person had consented to its administration.

(4) The director of community treatment of a declared mental health facility implementing a treatment plan under a community treatment order must provide to the affected person particulars of the kind and dosages of medication that are being administered, or have recently been administered, to the person, if requested to do so by:

- (a) the affected person, or
- (b) the primary carer of the affected person, or
- (c) if the affected person consents, another person who would be entitled to apply for a community treatment order in relation to the person.

(5) A person implementing a treatment plan under a community treatment order may enter the land (but not the dwelling) on which an affected person's residence is situated without the person's consent for the purpose of implementing the community treatment order.

(...)

61A. Examen médico de las personas afectadas detenidas (Medical examination of detained affected persons)

(1) An authorised medical officer must medically examine each affected person detained in a mental health facility to determi-

ne whether the person's continued detention in the facility is necessary.

(2) The medical examinations are to be carried out at intervals of not more than 3 months.

62. Alta y detención de personas afectadas (Discharge and detention of affected persons)

(1) An affected person detained in a declared mental health facility under this Division must be discharged from the facility:

(a) if the authorised medical officer determines that the person is not a mentally ill person or a mentally disordered person or is of the opinion that other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to the person, or

(b) if the authorised medical officer decides at any time that it is appropriate to do so.

(2) An authorised medical officer may do all necessary things to cause a person to be detained in a mental health facility under Part 2 at the end of the term of a community treatment order if the officer considers the person to be a mentally ill person.

(3) Any such person is taken to be detained in the mental health facility under section 19 when the authorised medical officer takes action to detain the person.

B) De los poderes permanentes de representación (Enduring powers of attorney)

ESTATAL (Victoria)

Ley sobre Instrumentos de 1958 (Instruments Act 1958 No. 6279 of 1958)

115. ¿Qué es un poder de representación permanente? (What is an enduring power of attorney?)

(1) By an enduring power of attorney, an adult person (donor) may—

(a) authorise one or more persons (attorneys) to do anything on behalf of the donor that the donor can lawfully authorise an attorney to do; and

(b) provide conditions and limitations on, and instructions about, the exercise of the power.

(2) Despite any rule of law to the contrary, an enduring power of attorney is not revoked by the subsequent legal incapacity of the donor of the power.

(...)

117. ¿Cuándo comienza el poder de representación? (When is the attorney's power exercisable?)

(1) A donor may specify in an enduring power of attorney a time from which, circumstance in which, or occasion on which, a power is exercisable.

(2) If the enduring power of attorney does not specify a time from which, circumstance in which, or occasion on which, a power becomes exercisable, the power becomes exercisable once the enduring power of attorney is made.

118. ¿Cuando tiene el otorgante capacidad para realizar un poder permanente de representación? (When does a donor have capacity to make an enduring power of attorney?)

(1) A donor may make an enduring power of attorney only if the donor understands the nature and effect of the enduring power of attorney.

(2) Understanding the nature and effect of the enduring power of attorney includes understanding the following matters—

(a) that the donor may, in the power of attorney, specify conditions or limitations on, or instructions about, the exercise of the power to be given to the attorney;

(b) when the power is exercisable;

(c) that once the power is exercisable, the attorney has the same powers as the donor had (when not under a legal incapacity) to do anything for which the power is given subject to any limitations or restrictions on exercising the power included in the enduring power of attorney;

(d) that the donor may revoke the enduring power of attorney at any time the donor is capable of making an enduring power of attorney;

(e) that the power the attorney is given continues even if the donor subsequently ceases to have legal capacity;

(f) that at any time that the donor is not capable of revoking the enduring power of attorney, the donor is unable to effectively oversee the use of the power.

(...)

123. ¿Cuáles son los requisitos formales para establecer un poder permanente de representación? (What are the formal requirements for making an enduring power of attorney?)

(1) An enduring power of attorney must be in the approved form.

(2) An enduring power of attorney must be signed—

(a) by the donor of the power; or

(b) by direction, and in the presence, of the donor of the power, by an eligible person.

(3) The power of attorney must be signed and dated by 2 adult witnesses in the presence of the donor and each other.

(4) The witnesses must be in accordance with section 125.

(5) The enduring power of attorney must contain a certificate signed by each witness in accordance with section 125A.

(...)

125F. Papel del representante cuando se designa un tutor (Role of attorney where guardian appointed)

(1) An enduring power of attorney does not authorise the attorney to make a decision about the medical treatment of the donor of the power.

(2) If a decision made by a guardian or enduring guardian within the meaning of the Guardianship and Administration Act 1986 in the exercise of a power as guardian or enduring guardian conflicts with a decision made by an attorney under an enduring power of attorney, the decision of the guardian or enduring guardian prevails.

125G. Papel del representante cuando se designa un administrador (Role of attorney where administrator appointed)

If the Tribunal makes an administration order under the Guardianship and Administration Act 1986 in respect of the person who is the donor of an enduring power of attorney, the attorney may exercise power under the enduring power of attorney only to the extent authorised by the Tribunal.

ESTATAL (Nueva Gales del Sur)

**Ley de Poderes de Representación
(*Powers of Attorney Act 2003 No 53*)**

Incapacidad y poderes permanentes de representación (Incapacity and enduring powers of attorney)

17. Incapacidad mental inicial (Initial mental incapacity)

(1) Subject to this Act, a power of attorney is not ineffective only because any act within the scope of the power is of such a nature that it was beyond the understanding of the principal through mental incapacity at the time the power is given.

(2) However, a power of attorney does not authorise an attorney to do any such act unless it is authorised by or under this Act.

18. La incapacidad mental sobreviniente no afecta la validez de los actos que comprende el representado (Supervening mental incapacity does not affect validity of acts principal understands)

A power of attorney is effective to the extent that it concerns any act within its scope that is of such a nature that is not beyond the understanding of the principal through mental incapacity at the time of the act.

19. Creación del poder de representación permanente (Creation of enduring power of attorney)

(1) An instrument that creates a power of attorney creates an enduring power of attorney for the purposes of this Act if:

(a) the instrument is expressed to be given with the intention that it will continue to be effective even if the principal lacks capacity through loss of mental capacity after execution of the instrument, and

(b) execution of the instrument by the principal is witnessed by a person who is a prescribed witness (not being an attorney under the power), and

(c) there is endorsed on, or annexed to, the instrument a certificate by that person stating that:

(i) the person explained the effect of the instrument to the principal before it was signed, and

(ii) the principal appeared to understand the effect of the power of attorney, and

(iii) the person is a prescribed witness, and

(iv) the person is not an attorney under the power of attorney, and

(v) the person witnessed the signing of the power of attorney by the principal.

(2) In this section:

prescribed witness means:

- (a) a registrar of the Local Court, or
- (b) a barrister or solicitor of a court of any State or Territory of the Commonwealth, or
- (c) a licensee under the Conveyancers Licensing Act 2003, or an employee of the NSW Trustee and Guardian or a trustee company within the meaning of the Trustee Companies Act 1964, who has successfully completed a course of study approved by the Minister, by order published in the Gazette, for the purposes of this paragraph, or
- (d) a legal practitioner duly qualified in a country other than Australia, instructed and employed independently of any legal practitioner appointed as an attorney under the instrument, or
- (e) any other person (or person belonging to a class of persons) prescribed by the regulations for the purposes of this paragraph.

20. El poder permanente de representación no confiere poder hasta que el representante acepta la designación (Enduring power of attorney does not confer authority until attorney accepts appointment)

(1) An enduring power of attorney does not operate to confer any authority on an attorney until the attorney has accepted the appointment by signing the instrument creating the power.

(2) If more than one attorney is appointed by an enduring power of attorney, the power of

attorney operates to confer authority only in relation to such of the attorneys who accept their appointments as provided by subsection (1).

(3) An attorney may accept the appointment at the time the instrument creating the enduring power of attorney is executed or at any time after it is executed.

21. Efectos de los poderes permanentes de representación (Effect of enduring power of attorney)

(1) Subject to this Act, an act done by an attorney that is within the scope of the power conferred by an enduring power of attorney and that is of such a nature that it is beyond the understanding of the principal through mental incapacity at the time of the act is as effective as it would have been had the principal understood the nature of the act at that time.

(2) This section does not save a power of attorney from being or becoming ineffective by reason of any matter other than mental incapacity of the principal arising after the execution of the instrument creating the power.

(3) This section applies only if and to the extent that a contrary intention is not expressed in the instrument creating the power and has effect subject to the terms of the instrument creating the power.

22. Efectos en los testamentos de regalos otorgados por el representante en virtud de un poder de representación permanente (Effect of adempments of testamentary gifts by attorney under enduring power of attorney)

(1) Any person who is named as a beneficiary (a named beneficiary) under the will of a deceased principal who executed an enduring power of attorney has the same interest in any surplus money or other property arising from any sale, mortgage, charge or disposition of any property or other dealing with property by the attorney under the power of attorney as the named beneficiary would have had in the property the subject of the sale, mortgage, charge, disposition or dealing, if no sale, mortgage, charge, disposition or dealing had been made.

(2) The surplus money or other property arising as referred to in subsection (1) is taken to be of the same nature as the property sold, mortgaged, charged, disposed of or dealt with.

(3) Except as provided by subsection (4), money received for equality of partition and exchange, and all fines, premiums and sums of money received on the grant or renewal of a lease where the property the subject of the partition, exchange, or lease was real estate of a deceased principal are to be considered as real estate.

(4) Fines, premiums and sums of money

received on the grant or renewal of leases of property of which the deceased principal was tenant for life are to be considered as the personal estate of the deceased principal.

(5) This section has effect subject to any order of the Supreme Court made under section 23.

(6) A person is named as a beneficiary under a will for the purposes of this section if:

(a) the person is referred to by name in the will as being a beneficiary, or

(b) the person answers a description of a beneficiary, or belongs to a class of persons specified as beneficiaries, under the will.

(7) This section does not apply to any person to whom section 83 of the NSW Trustee and Guardian Act 2009 applies.

23. Potestad del Tribunal Supremo de emitir órdenes confirmando o modificando lo señalado en el artículo 22 (Supreme Court may make orders confirming or varying operation of section 22)

(1) On the application of a named beneficiary referred to in section 22 (1) or such other person as the Supreme Court considers has a proper interest in the matter, the Supreme Court may:

(a) make such orders and direct such conveyances, deeds and things to be executed and done as it thinks fit in order to give effect to section 22, or

(b) if it considers that the operation of section 22 (1) and (2) would result in one or more named beneficiaries gaining an unjust and disproportionate advantage, or suffering an unjust and disproportionate disadvantage, of the kind not contemplated by the will of the deceased principal—make such other orders as the Court thinks fit to ensure that no named beneficiary gains such an advantage or suffers such a disadvantage.

(2) An order made by the Supreme Court under subsection (1) (b):

(a) may provide that it has effect as if it had been made by a codicil to the will of the deceased principal executed immediately before his or her death, and

(b) has effect despite anything to the contrary in section 22.

(3) An application under subsection (1) must be made within 6 months from the date of the grant or resealing in this State of probate of the will or letters of administration unless the Supreme Court, after hearing such of the persons affected as the Supreme Court thinks necessary, extends the time for making the application.

(4) An extension of time granted under subsection (3) may be granted:

(a) on such conditions as the Supreme Court thinks fit, and

(b) whether or not the time for making an application under this section has expired.

24. Efecto de la disposición de hogar familiar compartido por los cónyuges bajo un poder de representación permanente en casos de sucesión ab-intestato (Effect of disposal of home shared by spouses under enduring power of attorney in cases of intestacy)

(1) This section applies to a spouse of a principal (the interested spouse) under an enduring power of attorney who dies intestate (the deceased principal) leaving the spouse and issue (within the meaning of section 61D of the Probate and Administration Act 1898), but only if:

(a) the attorney under the power of attorney sold or otherwise disposed of the principal's interest in a dwelling house (the former shared home) that was occupied by the deceased principal and deceased principal's spouse as their, or the spouse's, only or principal residence at the time of the sale or disposal, and

(b) the spouse would have had the right to require the administrator of the deceased principal's estate to hold that interest in the former shared home in trust for the spouse under section 61D of the Probate and Administration Act 1898 if:

(i) the interest had not been sold or otherwise disposed of, and

(ii) the former shared home had continued to be their, or the spouse's, only or principal residence at the time of the deceased principal's death, and

(c) the deceased principal did not have an interest in another dwelling house that was occupied by the deceased principal and the spouse as their, or the spouse's, only or principal residence at the time of the deceased principal's death in respect of which the spouse has a right under section 61D of the Probate and Administration Act 1898 to require the administrator of the deceased principal's estate to hold that interest in trust for the spouse.

(2) For the purposes of subsection (3):

the disposal value of the interest in a former shared home of an interested spouse is the amount for which the interest in the shared home was sold or otherwise disposed of under the power of attorney.

the shortfall is any amount by which the value of the share of the deceased principal's estate to which an interested spouse would, but for this subsection, have been entitled under section 61B (3) (b) and (c) of the Probate and Administration Act 1898 is less than the disposal value of the spouse's interest in the former shared home.

(3) If the value of the deceased principal's estate after excluding the value of household chattels (the nett value of the estate):

(a) is greater than the disposal value of the spouse's interest in the former shared home:

(i) the share of the spouse under section 61B (3) of that Act is taken to be increased by the

amount of the shortfall up to a maximum of the nett value of the estate, and

(ii) the share of the issue under section 61B (3) of that Act is taken to be correspondingly reduced, or

(b) is equal to or less than the disposal value of the spouse's interest in the former shared home:

(i) the share of the spouse under section 61B (3) of that Act is taken to be the value of the whole estate (including household chattels), and

(ii) the issue are taken not to be entitled to a share of the deceased principal's estate under section 61B (3) of that Act.

(4) Nothing in this section affects the operation of section 61B (3) of the Probate and Administration Act 1898 in relation to an interested spouse if the value of the share of the deceased principal's estate to which the spouse is entitled under section 61B (3) (b) and (c) of that Act is equal to or greater than the disposal value of the spouse's interest in the former shared home.

(5) This section applies despite anything to the contrary in the Probate and Administration Act 1898.

5) Instituciones de guarda y protección de las personas con discapacidad

***A) De las órdenes judiciales de tutela
(Guardianship orders)***

ESTATAL (Victoria)

***Ley de Tutela y Administración de 1986
(Guardianship and Administration Act
1986 No. 58 of 1986)***

**19. Procedencia de una orden de tutela
(Application for guardianship order)**

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

- (a) a plenary guardian; or
- (b) a limited guardian—

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

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

- (a) the person in respect of whom the application is made; and
- (b) the person proposed as guardian.

20. Quienes deben ser notificados de la solicitud (Who is entitled to notice of an application?)

Each of the following is entitled to notice of the making of an application for a guardianship

order, notice of the hearing of the application and notice of any order made by the Tribunal in respect of the application—

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

- (i) the applicant; or
- (ii) the person proposed as guardian; or
- (iii) a person referred to in paragraph (d);

(b) the primary carer of the person in respect of whom the application is made;

(c) the Public Advocate;

(d) any administrator of the estate of the person in respect of whom the application is made .

21. Fecha de la audiencia (Date for hearing)

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

Designación del tutor (Appointment of guardian)

22. Orden de tutela (Guardianship order)

(1) If the Tribunal is satisfied that the person in respect of whom an application for an order appointing a guardian is made—

(a) is a person with a disability; and

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

(c) is in need of a guardian—

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

(2) In determining whether or not a person is in need of a guardian, the Tribunal must consider—

(a) whether the needs of the person in respect of whom the application is made could be met by other means less restrictive of the person's freedom of decision and action; and

(ab) the wishes of the proposed represented person, so far as they can be ascertained; and

(b) the wishes of any nearest relatives or other family members of the proposed represented person; and

(c) the desirability of preserving existing family relationships.

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

(4) The Tribunal cannot make an order appointing a plenary guardian unless it is satisfied that a limited guardianship order

would be insufficient to meet the needs of the person in respect of whom the application is made.

(5) Where the Tribunal makes an order appointing a limited guardian in respect of a person the order made must be that which is the least restrictive of that person's freedom of decision and action as is possible in the circumstances.

23. Personas que pueden ser tutores (Persons eligible as guardians)

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

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

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

(c) is a suitable person to act as the guardian of the proposed represented person.

(2) In determining whether a person is suitable to act as the guardian of a represented person, the Tribunal must take into account—

(a) the wishes of the proposed represented person, so far as they can be ascertained; and

(b) the desirability of preserving existing family relationships; and

(c) the compatibility of the person proposed

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

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

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

(4) Where it appears to the Tribunal that—

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

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

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

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

(a) each person fulfils the requirements of subsection (1); and

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

Poderes y deberes del tutor (Powers and duties of guardian)

24. Poderes de la plena tutela (Authority of plenary guardian)

(1) A guardianship order appointing a plenary guardian confers on the plenary guardian in respect of the represented person all the powers and duties which the plenary guardian would have if he or she were a parent and the represented person his or her child.

(2) Without limiting subsection (1) an order appointing a plenary guardian confers on the person named as plenary guardian the power—

(a) to decide where the represented person is to live, whether permanently or temporarily; and

(b) to decide with whom the represented person is to live; and

(c) to decide whether the represented person should or should not be permitted to work and, if so—

(i) the nature or type of work; and

(ii) for whom the represented person is to work; and

- (iii) matters related thereto; and
- (d) except as otherwise provided in Part 4A, to consent to any health care that is in the best interests of the represented person; and
- (e) to restrict visits to a represented person to such extent as may be necessary in his or her best interests and to prohibit visits by any person if the guardian reasonably believes that they would have an adverse effect on the represented person.

(3) (...)

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

25. Poderes de la tutela parcial (Authority of limited guardian)

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

(...)

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

26. Poder para aplicar una orden de tutela (Power to enforce guardianship order)

(1) If, having regard to the circumstances of the case, the Tribunal considers it appropriate to do so the Tribunal may—

(a) when making a guardianship order under Division 2 or 4, specify in the order; or

(b) at any time while a guardianship order under Division 2 or 4 is in force, make an order specifying—

that the person named as plenary guardian or limited 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.

(1A) If the Tribunal makes an order under subsection (1) empowering a guardian or a specified person to take such measures or actions as are specified in the order, the Tribu-

nal must hold a hearing to reassess that order as soon as practicable after the making of that order but within 42 days of making that order.

(2) Where a guardian or other person specified in the order under subsection (1) takes any measure or action specified in the order in the belief that—

(a) the measure or action is in the best interests of the represented person; and

(b) it is reasonable to take that measure or action in the circumstances—

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

(3) Subsection (1) does not limit section 24 or 25.

27. Poderes especiales en relación con personas con discapacidad (Special powers in respect of persons with a disability)

(1) If the Tribunal has received information on oath that a person with a disability in respect of whom an application has been made under section 19—

(a) is being unlawfully detained against her or his will; or

(b) is likely to suffer serious damage to her or

his physical, emotional or mental health or well-being unless immediate action is taken—

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

(2) If after receiving a report under subsection (1) the Tribunal is satisfied that subsection (1)(a) or (1)(b) applies the Tribunal may make an order enabling the person with a disability to be taken to a place specified in the order for assessment and placement until the application under section 19 is heard.

(3) A member of the police force acting under an order made under subsection (1) may with such assistance as is necessary use such force as is reasonably necessary to enter the premises where the person with a disability is.

(4) A person must not delay or obstruct a person who is acting under an order under this section.

Penalty: 20 penalty units.

28. Ejercicio de la funciones del tutor (Exercise of authority by guardian)

(1) A guardian must act in the best interests of the represented person.

(2) Without limiting subsection (1), a guardian

acts in the best interests of a represented person if the guardian acts as far as possible—

(a) as an advocate for the represented person; and

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

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

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

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

29. Poderes complementarios del tutor (Ancillary powers of guardian)

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

30. Posibilidad del tutor de solicitar asesoría (Guardian may seek advice)

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

of any power by the guardian under the guardianship order.

(...)

(3) The Tribunal may—

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

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

(c) make any order it considers necessary.

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

31. Notificación de muerte del representado (Notice of death of represented person)

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

Órdenes judiciales provisionales (Temporary orders)

32. Aplicación de una orden provisional (Application for temporary order)

(1) Any person may apply to the Tribunal for

a temporary order appointing a guardian of a person in respect of whom an application could be made under section 19.

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

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

33. Orden provisional (Temporary order)

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

(a) is a person with a disability; and

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

(c) is in need of a guardian—

the Tribunal may make a temporary order appointing any person eligible to be appointed under section 23 as the plenary guardian or limited guardian of that person.

(2) A temporary order—

(a) remains in effect for such period not

exceeding 21 days as is specified in the order; and
(b) may be renewed once for a further period not exceeding 21 days.

(3) The Tribunal must hold a hearing to determine whether a guardianship order should be made under section 22 as soon as practicable after the making of a temporary order but within 42 days of making that order.

Designación de un tutor alternativo
(Appointment of alternative guardian)

34. Designación de un tutor alternativo (Appointment of alternative guardian)

(1) When making or reassessing a guardianship order, or at any time when a guardianship order is in force, the Tribunal may make an order appointing an alternative guardian if—

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

(b) the Tribunal is satisfied that the persons to whom notice of the hearing of a guardianship order is given under section 20 have had sufficient notice of the willingness of the person proposed as alternative guardian to act as alternative guardian.

(2) Section 23 (other than subsection (5))

applies to and in relation to the person proposed as alternative guardian as if that person were the proposed guardian.

**35. Poderes del tutor alternativo
(Authority of alternative guardian)**

(1) If an alternative guardian is appointed, the alternative guardian takes over the office of plenary guardian or limited guardian (as the case may be) without further proceedings immediately upon the death or during the period of absence or incapacity of the original guardian.

(2) The alternative guardian must notify the Tribunal in writing of the death, absence or incapacity of the original guardian and send to the Tribunal evidence of the death, absence or incapacity of the original guardian.

(3) Where an alternative guardian takes over the office of a guardian, the alternative guardian has the same powers and duties with respect to the represented person as the guardian had immediately before the guardian's death, absence or incapacity.

Designación de tutor permanente
(Appointment of enduring guardian)

**35A. Designación del tutor permanente
(Appointment of enduring guardian)**

(1) A person who is of or over the age of 18 years may, by instrument in writing, appoint a person to be his or her enduring guardian.

(1A) A person may, in the same instrument, also appoint a person to be an alternative enduring guardian.

(1B) An alternative enduring guardian takes the place of, and has the same powers as, the original enduring guardian if that person is incapable of acting as the enduring guardian or is absent for a period.

(2) An instrument to appoint an enduring guardian is effective if—

(a) it is in the form of, or to the effect of, Form 1 in Schedule 4; and

(b) it is endorsed with an acceptance in the form set out in Form 1 in Schedule 4 signed by the person appointed as the enduring guardian and the person appointed as the alternative enduring guardian (if any); and

(c) the execution of the instrument by each of the appointor, the proposed enduring guardian and the proposed alternative enduring guardian (if any) is attested by two witnesses—

(i) neither of whom is a party to the instrument nor a relative to a party to it; and

(ii) neither of whom is the person appointed as the enduring guardian or alternative enduring guardian (if any); and

(iii) both of whom have witnessed the execution

of the instrument by the appointor, the proposed enduring guardian or the proposed alternative enduring guardian (as the case requires) in the presence of that person and each other; and

(iv) one of whom is authorised by law to witness the signing of a statutory declaration.

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

(a) for the same persons to witness the execution of the instrument by the appointor, the proposed enduring guardian and the proposed alternative enduring guardian (if any); or

(b) for the appointor, the proposed enduring guardian and the proposed alternative enduring guardian to execute the instrument at the same time or in the presence of each other.

(3) A person is not eligible to be appointed as an enduring guardian or alternative enduring guardian unless he or she is of or over the age of 18 years.

(4) A person is not eligible to be appointed as an enduring guardian or alternative enduring guardian by another person if he or she is, in a professional or administrative capacity, directly or indirectly responsible for, or involved in, the care or treatment of or provides accommodation to that other person.

(5) If a person who was validly appointed as an enduring guardian or alternative enduring guardian becomes ineligible to be appointed

because of subsection (4), that person's appointment lapses.

**35B. Poderes del tutor permanente
(Authority of enduring guardian)**

(1) An instrument appointing an enduring guardian authorises the person appointed to exercise the powers of a guardian in relation to the matters specified in that instrument relating to his or her person or circumstances if, and only to the extent that, the appointor subsequently becomes unable by reason of a disability to make reasonable judgments in respect of any of those matters.

(2) If an instrument appointing an enduring guardian does not specify the matters in relation to which the person appointed may exercise the powers of a guardian, the instrument authorises that person to exercise the powers of a guardian under section 24 if, and only to the extent that, the appointor subsequently becomes unable by reason of a disability to make reasonable judgments in respect of any of the matters relating to his or her person or circumstances.

(3) An instrument appointing an enduring guardian confers on the guardian in respect of the appointor all the powers and duties which the guardian would have if he or she were a parent and the appointor his or her child to the extent that the instrument authorises the guardian to exercise such powers and duties.

(4) An enduring guardian cannot, on behalf of the appointor, consent to any special procedure.

(5) An enduring guardian must exercise his or her authority in accordance with section 28.

35C. Revocación de la designación por parte del solicitante (Revocation of appointment by appointor)

(1) If a person appoints an enduring guardian or alternative enduring guardian, any earlier appointment of an enduring guardian or alternative enduring guardian (as the case may be) is revoked.

(2) The appointor of an enduring guardian or alternative enduring guardian may, by instrument in writing, revoke the appointment.

(3) An instrument to revoke an appointment as enduring guardian or alternative enduring guardian is effective if—

(a) it is in the form of, or to the effect of, Form 2 in Schedule 4; and

(b) the execution of the instrument is attested by two witnesses—

(i) neither of whom is a party to the instrument nor a relative to a party to it; and

(ii) neither of whom is the person appointed as the enduring guardian or alternative enduring guardian (as the case may be); and

(iii) both of whom have witnessed the instrument in the presence of the appointor and each other; and

(iv) one of whom is authorised by law to witness the signing of a statutory declaration.

35D. Revocación de la designación por parte del Tribunal (Revocation of appointment by Tribunal)

(1) The Tribunal may, on an application under this section and after a hearing, revoke the appointment of an enduring guardian or alternative enduring guardian if—

(a) the enduring guardian or alternative enduring guardian seeks revocation of the appointment; or

(b) the Tribunal is satisfied that the enduring guardian or alternative enduring guardian—

(i) is not able or willing to act in that capacity; or

(ii) has, in that capacity, not acted in the best interests of the appointor or has acted in an incompetent or negligent manner.

(2) An application may be made by—

(a) the Public Advocate; or

(b) the enduring guardian or alternative enduring guardian; or

(c) the administrator of the appointor's estate; or

(d) any other person who the Tribunal is satisfied has an interest in the person or in the estate of the person in respect of whom the application is made.

(3) An appointment of an enduring guardian or alternative enduring guardian is not revoked if the appointor becomes a represented person.

**35E. Consejos o directivas del Tribunal
(Advice or direction of Tribunal)**

(1) An enduring guardian may apply to the Tribunal for an advisory opinion or directions on any matter or question relating to the scope of his or her appointment as such or the exercise of any power by the guardian under the instrument of appointment.

(2) The Tribunal may—

(a) give an advisory opinion or any directions it considers necessary;

(b) vary the effect of the instrument appointing the enduring guardian;

(c) suspend for a specified period the authority, either generally or in respect of a specific matter, of an enduring guardian under an instrument of appointment;

(d) make any order it considers necessary.

(3) The Tribunal of its own motion may direct, or give an advisory opinion to, an enduring guardian in respect of any matter.

(4) An action does not lie against an enduring guardian on account of an act or thing done or omitted to be done by the guardian in accordance with any order, directions or advisory opinion of the Tribunal made or given under this section

unless in representing the facts to the Tribunal the guardian has been guilty of fraud, wilful concealment or misrepresentation.

ESTATAL (Nueva Gales del Sur)

Ley de tutela de 1987 (*Guardianship Act 1987 No 257*)

9. Solicitud (Applications)

(1) An application for a guardianship order in respect of a person may be made to the Tribunal:

- (a) by the person,
- (b) (Repealed)
- (c) by the Public Guardian, or
- (d) by any other person who, in the opinion of the Tribunal, has a genuine concern for the welfare of the person.

(2) An application may not be made in respect of a person who is under the age of 16 years.

(3) An application shall specify the grounds on which it is alleged that the person is a person in need of a guardian.

10. Notificación de la solicitud (Service of applications)

(1) The applicant for a guardianship order in respect of a person must, as soon as practicable after the application has been made, cause a copy

of the application to be served on each party (other than the applicant) to the proceedings before the Tribunal in respect of the application.

(1A) The copy of the application so served must be endorsed with a notice specifying the time, date and place set down for hearing the application.

(2) Failure to serve a copy of an application in accordance with this section does not vitiate the decision of the Tribunal on the application.

11. Traslado de una persona en virtud de una orden del Tribunal (Removal of persons pursuant to order of the Tribunal)

(1) If an application for a guardianship order has been made with respect to a person:

(a) the Tribunal may, if it considers it to be appropriate in the circumstances of the case, make an order for the removal of the person from any premises, and

(b) an authorised officer or a member of the police force may, pursuant to the order, enter the premises, search the premises for the person and remove the person from the premises.

(2) An authorised officer or a member of the police force may, for the purposes of entering and searching premises and removing a person pursuant to an order in force under this section, use all reasonable force.

12. Autorización de búsqueda y traslado de personas (Power of search and removal of persons)

(1) An officer or a member of the police force may apply to an authorised officer within the meaning of the Law Enforcement (Powers and Responsibilities) Act 2002 for the issue of a search warrant if the officer or member of the police force has reasonable grounds for believing that there is in any premises a person who appears to be a person in need of a guardian and who:

(a) is being unlawfully detained against his or her will, or

(b) is likely to suffer serious damage to his or her physical, emotional or mental health or well-being unless immediate action is taken.

(2) An authorised officer within the meaning of the Law Enforcement (Powers and Responsibilities) Act 2002 to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an officer or member of the police force named in the warrant:

(a) to enter any premises specified in the warrant,

(b) to search the premises for the person, and

(c) to remove the person from the premises.

(3) Division 4 of Part 5 of the Law Enforcement (Powers and Responsibilities) Act 2002 applies

to a search warrant issued under this section.

(4) Without limiting the generality of section 71 of the Law Enforcement (Powers and Responsibilities) Act 2002, a member of the police force or a medical practitioner, or both:

(a) may accompany an officer executing a search warrant issued under this section, and

(b) may take all reasonable steps to assist the officer in the exercise of the officer's functions under this section.

(5) An officer named in a search warrant, or a member of the police force, may, for the purpose of removing a person pursuant to the warrant, use all reasonable force.

13. Cuidado de personas durante el procedimiento (Care of persons pending proceedings)

(1) If an officer or member of the police force removes a person from any premises under section 11 or 12, the officer or member of the police force shall forthwith place the person in the care of the Director-General at a place approved by the Minister for the purposes of this section.

(2) If a person has been removed from any premises under section 12 and placed in the care of the Director-General, the Director-General shall not keep the person in his or her care for more than 3 days unless the Director-General

has, before the expiration of that period, made an application for a guardianship order in respect of the person.

Órdenes de tutela (Guardianship orders)

14. Facultad del Tribunal de emitir una orden de tutela (Tribunal may make guardianship orders)

(1) If, after conducting a hearing into any application made to it for a guardianship order in respect of a person, the Tribunal is satisfied that the person is a person in need of a guardian, it may make a guardianship order in respect of the person.

(2) In considering whether or not to make a guardianship order in respect of a person, the Tribunal shall have regard to:

(a) the views (if any) of:

(i) the person, and

(ii) the person's spouse, if any, if the relationship between the person and the spouse is close and continuing, and

(iii) the person, if any, who has care of the person,

(b) the importance of preserving the person's existing family relationships,

(c) the importance of preserving the person's particular cultural and linguistic environments, and

(d) the practicability of services being provided to the person without the need for the making of such an order.

15. Limitaciones al Tribunal para emitir una orden de tutela (Restrictions on Tribunal's power to make guardianship orders)

(1) A guardianship order shall not be made in respect of a person:

(a) if the person is under the age of 16 years, or

(b) in the case of a person who is the subject of an order made by the Supreme Court, in the exercise of its jurisdiction with respect to the guardianship of persons—unless the Supreme Court consents to the making of the order.

(2) A temporary guardianship order shall not be made in circumstances in which it is practicable to make a continuing guardianship order appointing a person other than the Public Guardian as the guardian of the person under guardianship.

(3) A continuing guardianship order appointing the Public Guardian as the guardian of a person under guardianship shall not be made in circumstances in which such an order can be made appointing some other person as the guardian of the person.

(4) A plenary guardianship order shall not be made in circumstances in which a limited guardianship order would suffice.

16. Órdenes de tutela (Guardianship orders)

(1) A guardianship order:

(a) shall appoint a person who is of or above the age of 18 years as the guardian of the person of the person under guardianship,

(b) shall specify whether the order is continuing or temporary,

(c) shall specify whether the order is plenary or limited, and

(d) may be made subject to such conditions as the Tribunal considers appropriate to specify in the order.

(2) A limited guardianship order shall specify:

(a) the extent (if any) to which the guardian shall have custody of the person under guardianship, and

(b) which of the functions of a guardian the guardian shall have in respect of the person under guardianship.

(2A) A guardianship order may contain a statement to the effect that the order will not be reviewed under section 25 (2) (b) at the expiration of the period for which it has effect, but only if the Tribunal is satisfied that, in all the circumstances, it is in the best interests of the person who is the subject of the order that the order is not reviewed at the expiration of that period.

(3) Two or more guardians of a person may be

appointed under one or more limited guardianship orders, either jointly (each having the same functions) or separately (each having different functions). However, the Public Guardian is not to be appointed a joint guardian.

(4) A reference in this Act to the guardian of a person is:

(a) in the case of joint guardians, a reference to all of the guardians, and

(b) in the case of separate guardians, a reference to whichever of those guardians has the relevant function.

17. Tutores (Guardians)

(1) A person shall not be appointed as the guardian of a person under guardianship unless the Tribunal is satisfied that:

(a) the personality of the proposed guardian is generally compatible with that of the person under guardianship,

(b) there is no undue conflict between the interests (particularly, the financial interests) of the proposed guardian and those of the person under guardianship, and

(c) the proposed guardian is both willing and able to exercise the functions conferred or imposed by the proposed guardianship order.

(2) Subsection (1) does not apply to the appointment of the Public Guardian as the guardian of a person under guardianship.

(3) If, at the expiration of the period for which a temporary guardianship order has effect, the Tribunal is satisfied:

(a) that it is appropriate that a further guardianship order should be made with respect to the person under guardianship, and

(b) that there is no other person who it is satisfied is appropriate to be the person's guardian,

the Tribunal may, in accordance with this Division, make a continuing guardianship order appointing the Public Guardian as the guardian of the person.

(4) The Public Guardian shall be appointed as the guardian of a person the subject of a temporary guardianship order.

18. Plazos de las órdenes de tutela (Term of guardianship orders)

(1) A continuing guardianship order has effect:

(a) in the case of an initial order—for such period (not exceeding 1 year from the date when it was made) as the Tribunal may specify in the order, or

(b) in the case of an order that is renewed—for such period (not exceeding 3 years from the date when it was renewed) as the Tribunal may specify in the order.

(1A) Despite subsection (1), the Tribunal may

specify, in a continuing guardianship order, that the order has effect for a period not exceeding:

(a) in the case of an initial order—3 years, and

(b) in the case of an order that is renewed—5 years,

from the date on which it was made.

(1B) Subsection (1A) applies in relation to a guardianship order only if the Tribunal is satisfied that:

(a) the person the subject of the order has permanent disabilities, and

(b) it is unlikely that the person will become capable of managing his or her person, and

(c) there is a need for an order of longer duration than the relevant period specified in subsection (1).

(2) A temporary guardianship order has effect:

(a) in the case of an initial order—for such period (not exceeding 30 days from the date when it was made) as the Tribunal may specify in the order, or

(b) in the case of an order that is renewed—for such period (not exceeding 30 days from the date when it was renewed) as the Tribunal may specify in the order.

(3) A temporary guardianship order may be renewed only once.

19. Notificación de las órdenes al Defensor Público (Orders to be forwarded to the Public Guardian)

If the Tribunal makes a continuing guardianship order appointing a person other than the Public Guardian as a guardian, it shall cause a copy of the order to be forwarded to the Public Guardian.

20. Tutores alternativos (Alternative guardians)

(1) A continuing guardianship order (other than an order appointing the Public Guardian as a guardian) may appoint a person to be an alternative guardian of the person under guardianship.

(1A) Subsection (1) applies even if 2 or more persons are appointed (either jointly or separately, as referred to in section 16 (3)) guardians of the person concerned. However, if 2 or more guardians of a person are appointed separately (each having different functions), the guardianship order or orders concerned may appoint persons to be the alternative guardians of the person under guardianship in respect of those different functions.

(2) During the absence or incapacity of a guardian of a person under guardianship, the person's alternative guardian for the absent or incapacitated guardian has the functions of that guardian.

21. Relación entre el tutor y la persona bajo tutela (Relationship of guardians to persons under guardianship)

(1) Subject to any conditions specified in the order, the guardian of a person the subject of a plenary guardianship order:

(a) has custody of the person to the exclusion of any other person, and

(b) has all the functions of a guardian of that person that a guardian has at law or in equity.

(2) Subject to any conditions specified in the order, the guardian of a person the subject of a limited guardianship order:

(a) has custody of the person, to the exclusion of any other person, to such extent (if any) as the order provides, and

(b) has such of the functions of a guardian of that person's person, to the exclusion of any other person, as the order provides.

(2A) Subject to any conditions specified in the order, the guardian of a person the subject of a guardianship order (whether plenary or limited) has the power, to the exclusion of any other person, to make the decisions, take the actions and give the consents (in relation to the functions specified in the order) that could be made, taken or given by the person under guardianship if he or she had the requisite legal capacity.

(3) Section 49 of the Minors (Property and

Contracts) Act 1970 does not apply to a person the subject of a plenary guardianship order.

21A. Poder para ejecutar órdenes de tutela (Power to enforce guardianship orders)

(1) Without limiting section 16, a guardianship order may specify that:

- (a) the person appointed as guardian, or
- (b) another specified person or a person of a specified class of persons, or
- (c) a person authorised by the guardian (the authorised person),

is empowered to take such measures or actions as are specified in the order so as to ensure that the person under guardianship complies with any decision of the guardian in the exercise of the guardian's functions.

(2) If a person referred to in subsection (1) (a), (b) or (c) takes any measure or action specified in the order in the reasonable belief that:

- (a) he or she is empowered by the guardianship order to take the measure or action, and
- (b) the measure or action is in the best interest of the person under guardianship, and
- (c) it is necessary or desirable to take that measure or action in the circumstances,

the person concerned is not liable to any action, liability, claim or demand arising out of the taking of that measure or action.

**21B. Poder complementario del tutor
(Ancillary powers of guardian)**

A guardian may, on behalf of a person under guardianship, sign and do all such things as are necessary to give effect to any function of the guardian.

21C. Los actos del tutor tienen el efecto de actos realizados por la persona bajo tutela (Acts of guardian take effect as acts of person under guardianship)

A decision made, an action taken and a consent given by a guardian under a guardianship order have effect as if:

- (a) the decision had been made, the action taken and the consent given by the person under guardianship, and
- (b) that person had the legal capacity to do so (if the person would have had that legal capacity but for his or her disability).

22. Caducidad de las órdenes realizadas ante el Tribunal Supremo (Termination of Supreme Court orders)

On the making of a guardianship order in respect of a person the subject of an order made by the Supreme Court in the exercise of its jurisdiction with respect to the guardianship of persons, the order made by the Supreme Court shall cease to have effect.

22A. Muerte del tutor (Death of guardian)

(1) If the guardian of a person dies:

(a) any other person appointed as a guardian jointly with the deceased guardian (the surviving guardian) may exercise the functions that he or she exercised jointly with the deceased guardian (and, if there is more than one surviving guardian, the surviving guardians may exercise those functions jointly), or

(b) if there is no surviving guardian, the person's alternative guardian for the deceased guardian is taken to be the person's guardian, or

(c) if there is no surviving guardian or alternative guardian, the Public Guardian is taken to be the person's guardian.

(2) The provisions of this section apply until the relevant guardianship order is reviewed.

23. Órdenes de tutela sin efectos bajo ciertas circunstancias (Guardianship orders of no effect in certain circumstances)

A guardianship order does not have effect in relation to a person while the person is:

(a) (Repealed)

(b) the subject of a subsequent order made by the Supreme Court, in the exercise of its jurisdiction with respect to the guardianship of persons, appointing a guardian of that person's person.

B) De las órdenes judiciales de administración (Administration orders)

ESTATAL (Victoria)

Ley de Tutela y Administración de 1986 (Guardianship and Administration Act 1986 No. 58 of 1986)

43. Procedencia de una orden de administración (Application for administration order)

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

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

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

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

(b) the person proposed as administrator.

44. Quienes deben ser notificados de la solicitud (Who is entitled to notice of an application?)

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

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

(b) the primary carer (if any) of the person in respect of whom the application is made;

(c) the Public Advocate;

(d) any guardian of the person in respect of whom the application is made;

(e) any person who has advised the Tribunal of an interest in the person in respect of whom the application is made or in his or her estate.

45. Fecha de la audiencia (Date for hearing)

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

Designación del administrador (Appointment of administrator)

**46. Designación del administrador
(Appointment of administrator)**

(1) If the Tribunal is satisfied that—

(a) the person in respect of whom an application for an order appointing an administrator is made—

(i) is a person with a disability; and

(ii) is unable to make reasonable judgments in respect of the matters relating to all or any part of her or his estate by reason of the disability; and

(iii) is in need of an administrator of her or his estate; and

(b) in the case of an application in respect of a person who does not reside in Victoria, State Trustees has not been authorised under section 12 of the State Trustee (State Owned Company) Act 1994 to collect, manage, sell or otherwise dispose of or administer any property in Victoria which forms part of the estate of the person in respect of whom the application is made—

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

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

(a) whether the needs of the person in respect of whom the application is made could be met by other means less restrictive of the person's freedom of decision and action; and

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

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

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

47. Personas que pueden ser administradores (Persons eligible as administrators)

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

(...)

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

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

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

(iii) the person is a suitable person to act as the administrator of the estate of the proposed represented person; and

(iv) the person has sufficient expertise to administer the estate or there is a special relationship or other special reason why that person should be appointed as administrator.

(2) In determining whether a person is suitable to act as the administrator of the estate of a proposed represented person, the Tribunal must take into account—

(a) the wishes of the proposed represented person, so far as they can be ascertained; and

(b) the compatibility of the person proposed as administrator with the proposed represented person and with the guardian (if any) of the proposed represented person; and

(c) whether the person was a member of the Tribunal as constituted for a proceeding under this Act.

(2A) The Tribunal may appoint a person who was at any time a member of the Tribunal as constituted for a proceeding under this Act only if the Tribunal considers that in the circumstances it is appropriate for the person to act as an administrator.

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

(4) If the Tribunal makes an order—

(a) appointing State Trustees as administrator of the estate of a proposed represented person; and

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

the Tribunal must give State Trustees a copy of the order as soon as practicable after it is made.

47A. Honorarios del administrador profesional (Remuneration of professional administrator)

(1) An administrator other than an administrator who carries on a business of, or including, the administration of estates is not entitled to receive any fee, remuneration or other reward from the estate of a represented person for acting as administrator unless the Tribunal otherwise specifies in the administration order.

(2) The remuneration to which an administrator who carries on a business of, or including, the administration of estates is entitled is to be approved by the Tribunal.

47B. Pago de gastos y costos al administrador o antiguo administrador del patrimonio. (Payment of costs and expenses to administrator or former administrator from estate)

(1) If, in any proceeding, a court or tribunal orders that an administrator pay any costs of the proceeding, the court or tribunal may order that the administrator pay, or be reimbursed for, all or part of those costs from the estate administered by the administrator.

(2) In any proceeding, a court or tribunal may order that an administrator be reimbursed for all or part of the administrator's costs of the proceeding from the estate administered by the administrator.

(3) A court or tribunal may order that the costs incurred in administering an estate by a person appointed as an administrator (including the costs of any proceeding) may be paid out of, or reimbursed from, the estate, whether or not the appointment has been revoked or quashed.

(4) An order referred to in subsection (3) may be made on an application under section 55 or otherwise, and for that purpose, a reference in section 55 to an administrator is taken to include a reference to a person whose appointment as an administrator has been revoked or quashed.

Poderes y deberes del administrador (Powers and duties of administrator)

48. Poderes del administrador (Power of administrator)

(1) An administrator has the powers and

duties conferred by this Division and such of the powers and duties referred to in Division 3A as the Tribunal may specify in the order.

(...)

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

(4) Upon the death of a represented person any order appointing an administrator of that person's estate under this Act lapses and the law relating to the administration of a deceased person's estate applies accordingly.

49. Ejercicio de las funciones del administrador (Exercise of power by administrator)

(1) An administrator must act in the best interests of the represented person.

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

(a) in such a way as to encourage and assist the represented person to become capable of administering the estate; and

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

50. Poder complementario del administrador (Ancillary powers of administrator)

(1) An administrator may on behalf of a represented person sign and do all such things as are necessary to give effect to any power or duty vested in the administrator.

(2) This Act does not confer on an administrator the power to execute a will in the name of a represented person.

50A. Poder de realizar regalos (Power to make gifts)

(1) An administrator may make a gift of the represented person's property only if—

(a) the gift's value is not more than what is reasonable in all the circumstances and, in particular, the represented person's financial circumstances; and

(b) the gift is—

(i) to a relative or close friend of the represented person and is of a seasonal nature or for a special event (including, for example, a birth or marriage); or

(ii) a type of donation that the represented person made when he or she had the capacity to do so or might reasonably be expected to make.

(2) The administrator or a charity with which the administrator has a connection is not precluded from receiving such a gift.

(3) The administrator must notify (in writing) the Tribunal if the value of the gift, or total value of the gifts, of the represented person's property to the administrator, or a charity with which the administrator has a connection, is \$100 or more.

51. Poder de invertir (Powers of investment)

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

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

(b) may in the case of money deposited in an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth re-deposit it after it becomes payable; and

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

52. Limitación a la capacidad del representado de realizar contratos etc. (Restriction on powers of represented person to enter into contracts etc.)

(1) Where the Tribunal has made an administration order the represented person whilst a represented person or until the Tribunal revokes that order is, to the extent that the represented person's estate is under the control of the administrator, deemed incapable of dealing with, transferring, alienating or charging her or his money or property or any part thereof or becoming liable under any contract without the order of the Tribunal or the written consent of the administrator.

(2) Every dealing, transfer, alienation or charge by any represented person in respect of any part of the estate which is under the control of the administrator is void and of no effect, and the money or property the subject of the dealing, transfer, alienation or charge is recoverable by the administrator in any court of competent jurisdiction.

(3) This section does not render invalid any dealing, transfer, alienation or charge by any represented person made for adequate consideration with or to or in favour of any other person who proves that she or he acted in good faith and did not know or could not reasonably have known that the person was a represented person.

(4) For the purpose of this section the acceptance of payment of the whole or any part of a debt is deemed to be a dealing with property.

53. Prohibición de alterar los intereses de la persona representada por medio de venta o disposición de la propiedad (Interest of represented person in property not to be altered by sale or other disposition of property)

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

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

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

(4) Money received by an administrator under this section may be invested in any manner in which trust funds may be invested under the Trustee Act 1958.

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

54. El Tribunal puede abrir el testamento (Tribunal may open will)

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

55. Posibilidad del administrador de solicitar asesoramiento (Administrator may seek advice)

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

(2) Without limiting subsection (1), the jurisdiction of the Tribunal includes jurisdiction in the case of an administration by State Trustees

to approve, order or advise the commencement of proceedings by State Trustees acting in one capacity or on behalf of one represented person against State Trustees acting in another capacity or on behalf of another represented person.

(...)

(4) The Tribunal may—

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

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

(c) make any order it considers necessary.

(4A) The Tribunal may on its own initiative direct, or give an advisory opinion to, an administrator concerning any matter.

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

56. Solicitud al Tribunal por parte de un acreedor etc. (Application to the Tribunal by a creditor etc.)

(1) Any person interested as a creditor, beneficiary, next of kin, guardian, nearest relative, primary carer or the Public Advocate or otherwise

in any estate administered by an administrator may apply to the Tribunal upon any matter arising out of the administration of the estate by the administrator.

(...)

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

57. Autorización al administrador para actuar hasta que la notificación de descargo es recibida (Power to administrator to act until notice of discharge etc. Received)

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

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

(3) Upon notice being given under subsection (1) the represented person or the represented person's legal personal representative (as the case may be) is bound by and may take advantage of any act done on behalf of the represented person by the administrator within the powers conferred on the administrator by the Tribunal

as if it had been done by the represented person and the represented person had the legal capacity to do so.

58. Cuentas bancarias (Accounts)

(1) The Tribunal may, at the time that it appoints an administrator under section 46 or such later time as the Tribunal determines, appoint a person to examine or audit the accounts of the estate of a represented person for a fee approved by the Tribunal and paid from that estate.

(2) Unless the Tribunal otherwise directs, an administrator must lodge—

(a) if the Tribunal has appointed a person under subsection (1) to examine or audit accounts, with that person; or

(b) in any other case, with the Tribunal—
on, or as soon as practicable after, the anniversary of the appointment of the administrator in each year, accounts of the administration of the estate of a represented person providing a full and true account of the assets and liabilities of that estate and all receipts and disbursements in respect of that estate.

(2A) The Tribunal may require an administrator to lodge accounts at a time other than a time specified in subsection (2).

(2B) A person appointed under subsection (1) to examine or audit accounts must lodge with

the Tribunal a report in relation to the accounts examined or audited.

(2C) A report under subsection (2B) may recommend the disallowance of any item in the accounts.

(3) Where the Tribunal receives a report under subsection (2C) the Tribunal cannot make an order disallowing an item if the Tribunal is satisfied that the administrator acted in good faith and with reasonable care in the exercise of powers conferred on the administrator.

(4) Where any item is disallowed by the Tribunal the administrator is liable for the amount of the item disallowed.

(5) An administrator must, in respect of each estate administered by the administrator, pay to a person appointed under subsection (1) to examine or audit accounts an amount certified by that person as being the reasonable cost of examining or auditing the accounts.

(6) The Tribunal may upon an application by the administrator and with the consent of the person appointed under subsection (1) to examine or audit accounts waive payment of the whole or part of the amount required to be paid under subsection (5).

(...)

58AA. Fondo de Administración y Tutela (Guardianship and Administration Fund)

(1) There is to be established in the Public Account as part of the Trust Fund an account to be known as «The Guardianship and Administration Fund».

(2) There is to be paid into the Fund—

(a) all fees prescribed under section 58A that are paid in respect of estates which are the subject of an administration order; and

(b) interest received from the investment of money in the Fund.

(3) There is also to be paid into the Fund all money standing to the credit of the Guardianship and Administration Fund established by section 58(7) immediately before that provision was repealed.

(4) 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.

(5) The Guardianship and Administration Fund is to be used to meet the costs and expenses of the Tribunal in respect of proceedings under this Act.

(6) After this section commences, a reference in another Act or a statutory rule (within the meaning of the Subordinate Legislation Act 1994) to the Guardianship and Administration Fund established by section 58(7) of this Act is taken to be a reference to the Fund established by this section.

58AB. Notificación de la muerte del representado (Notice of death of represented person)

An administrator must notify the Tribunal in writing without delay if the represented person dies.

(...)

Poderes y deberes adicionales de los administradores (Additional powers and duties of administrators)

58B. Poderes y deberes en relación con las personas representadas (Powers and duties in relation to represented persons)

(1) Subject to and in accordance with this Act and the administration order appointing an administrator in each case—

(a) the administrator has the general care and management of the estate of the represented person; and

(b) it is the duty of the administrator to take possession and care of, recover, collect, preserve and administer the property and estate of the represented person and generally to manage the affairs of the represented person and to exercise all rights statutory or otherwise which the represented person might exercise if the represented person had legal capacity; and

(c) the administrator in the name and on behalf of the represented person may generally do all acts

and exercise all powers with respect to the estate as effectually and in the same manner as the represented person could have done if the represented person were not under a legal disability.

(2) Without limiting subsection (1), an administrator may in the name and on behalf of a represented person—

(a) collect, receive and recover income of and money due or which becomes due to and any compensation or damages for injury to the estate or person of the represented person; and

(b) invest any money in any security in which trustees may by law invest; and

(c) demise land at a rent and on conditions as the administrator thinks fit for any term not exceeding 5 years or, with the consent of the Tribunal, for any longer term; and

(d) exercise to the extent and in the manner the administrator thinks proper any power of leasing vested in the represented person; and

(e) surrender any lease, accept any lease, accept the surrender of any lease or renew any lease; and

(f) bring land under the Transfer of Land Act 1958; and

(g) sell, exchange, partition or convert into money any property; and

(h) mortgage or charge any property; and

(i) pay any debts and settle, adjust or compromise any demand made by or against the estate and discharge any encumbrance on the estate; and

(j) carry on so far as appears desirable any trade, profession or business which the represented person carried on; and

(k) agree to any alteration of the conditions of any partnership into which any represented person has entered or to a dissolution and distribution of the assets of the partnership; and

(l) bring and defend actions and other legal proceedings in the name of the represented person; and

(m) execute and sign deeds, instruments and other documents; and

(n) complete any contract for the performance of which the represented person was liable, or enter into any agreement terminating liability; and

(o) pay any sum for the maintenance of the represented person (and, in the event of his or her death, for funeral expenses) and for the maintenance of his or her spouse or domestic partner or any child, parent or other person dependent upon him or her and for the maintenance and education of his or her children as to the administrator seems expedient and reasonable; and

(p) do all matters necessary or incidental to the performance of any of the above-mentioned matters and apply any money from the estate which it is necessary to apply for the purposes of this Act.

(3) An administrator may if it seems to be expedient and reasonable—

(a) pay or cause to be paid to the represented person for the personal use of that person any amount of money standing to the credit of that person with the administrator; and

(b) give or cause to be given to the represented person for the personal use of that person any personal property which belongs to that person and is under the control of the administrator.

**58C. Ejercicio de ciertos poderes
(Exercise of certain powers)**

(1) If—

(a) a power is vested in a represented person for that person's own benefit or the consent of a represented person is necessary to the exercise of a power; and

(b) the power or consent is in the nature of a beneficial interest in the represented person; and

(c) it appears to the administrator to be for the benefit of the represented person that the power should be exercised or the consent given—

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

(2) If—

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

(b) it appears to the administrator that the power should be exercised or the consent given—the administrator may on behalf and in the name of the represented person exercise the power or give the consent in any manner the administrator thinks fit.

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

58D. Acción sobre una persona que deja de ser una persona representada (Action upon a person ceasing to be a represented person)

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

(a) pay or cause to be paid to that person or to that person's personal representative (as the case requires) all money standing to his or her credit with the administrator; and

(b) deliver to that person or to that person's personal representative (as the case requires) all property forming part of his or her estate and any documents relating to the estate.

(2) Any payment made under subsection (1) is subject to the satisfaction of any amount due to the administrator and all costs, expenses and liabilities incurred by the administrator in respect of the administration of that person's estate.

(3) The receipt of a person who has ceased to be a represented person or of that person's personal representative is an absolute discharge to an administrator despite any informality in the discharge or certification.

58E. Personas representadas legitimadas a revisar las cuentas bancarias (Represented person entitled to inspection of accounts)

Any person who has ceased to be a represented person or the personal representative of any

represented person is entitled, before or after obtaining the restoration of all or any part of the estate from an administrator—

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

(b) to have supplied to him or her or his or her legal practitioner or other authorised agent copies of or extracts from any book, account, notice or document; and

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

58F. Venta de efectos personales si nos reclamados dentro de los 2 años de la fecha de descargo. (Sale of personal effects if unclaimed within 2 years from date of discharge)

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

(2) The proceeds are to be paid into the Consolidated Fund.

**58G. Facultad de abrir testamento
(Power to open will)**

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

Órdenes provisionales (Temporary orders)

**59. Solicitud de orden provisional
(Application for temporary order)**

(1) Any person may apply to the Tribunal for a temporary order appointing an administrator of the estate of a person in respect of whom an application could be made under section 43.

(2) An application may be made under subsection (1) whether or not an application has been made to the Tribunal under section 43.

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

60. Orden provisional (Temporary order)

(1) If the Tribunal is satisfied that—

(a) the person in respect of whom an application has been made under section 59—

(i) is a person with a disability; and

(ii) is unable to make reasonable judgments in respect of the matters relating to all or any part of her or his estate by reason of the disability; and

(iii) is in need of an administrator of her or his estate; and

(b) in the case of an application in respect of a person who does not reside in Victoria, State Trustees has not been authorised under section 12 of the State Trustees (State Owned Company) Act 1994 to collect, manage, sell or otherwise dispose of or administer any property in Victoria which forms part of the estate of the person in respect of whom the application is made—

the Tribunal may make an order appointing any person who may be appointed under section 47(1) as an administrator of that person's estate.

(2) A temporary order—

(a) remains in effect for such period not exceeding 21 days as is specified in the order; and

(b) may be renewed once for a further period not exceeding 21 days.

(3) The Tribunal must hold a hearing to determine whether an administrator should be appointed under section 46 as soon as practica-

ble after the making of a temporary order but within 42 days of making that order.

ESTATAL (Nueva Gales del Sur)

Ley de tutela de 1987 (*Guardianship Act 1987 No 257*)

Órdenes de administración financiera
(financial management orders)

25D. Definiciones (Definitions)

In this Part:

financial management order means an order referred to in section 25E, and includes an interim financial management order.

protected person means a person whose estate (or part of whose estate) is subject to a financial management order that is in force.

25E. Potestad del Tribunal de emitir órdenes de administración financiera (Tribunal may make financial management orders)

(1) The Tribunal may, in accordance with this Part, order that the estate of a person be subject to management under the NSW Trustee and Guardian Act 2009.

(2) The Tribunal may exclude a specified part of the estate from the financial management order.

(3) (Repealed)

25F. Cuando puede emitirse una orden de administración financiera (When financial management order may be made)

The Tribunal may make a financial management order subject to and in accordance with this Part:

(a) in connection with its making a guardianship order under Part 3 in respect of the person concerned, or

(b) following (or in the course of) proceedings under Part 3 in respect of the person, being proceedings in which it decided not to make a guardianship order, or

(c) if an application for such an order has been made to it under section 25I in respect of the person (whether or not an application for a guardianship order has also been made in respect of the person), or

(d) following (or in the course of) proceedings under section 36 of the Powers of Attorney Act 2003 in respect of an enduring power of attorney given by the person, being proceedings in which it has decided not to make an order under that section.

25G. Motivos por los cuales procede una orden de administración financiera (Grounds for making financial management order)

The Tribunal may make a financial manage-

ment order in respect of a person only if the Tribunal has considered the person's capability to manage his or her own affairs and is satisfied that:

- (a) the person is not capable of managing those affairs, and
- (b) there is a need for another person to manage those affairs on the person's behalf, and
- (c) it is in the person's best interests that the order be made.

25H. Órdenes de administración financiera interinas (Interim financial management orders)

(1) Despite section 25G, the Tribunal may, in relation to any proceedings before it under Part 3 or this Part (including proceedings arising out of the operation of section 6K (3) or section 37 (1) of the Powers of Attorney Act 2003), make a financial management order for a specified period not exceeding 6 months (an interim financial management order), pending the Tribunal's further consideration of the capability of the person to whom the order relates to manage his or her own affairs.

(2) An interim financial management order may be made only in respect of a person:

- (a) who is under guardianship, or
- (b) who is the subject of an application under Part 3 or this Part.

(3) If the further consideration of the capability of the person to whom the interim financial order relates to manage his or her own affairs is not completed before the expiry of the period specified in the order, the order is taken to be revoked on that expiry.

25I. Solicitud al Tribunal de una orden de administración financiera (Application to Tribunal for a financial management order)

(1) An application for a financial management order may be made by:

- (a) the NSW Trustee, or
- (b) any person who, in the opinion of the Tribunal, has a genuine concern for the welfare of the person who is the subject of the application.

(2) An application must specify the grounds on which it is claimed that the person the subject of the application is not capable of managing his or her own affairs.

(3) As soon as practicable after making the application, the applicant must cause a copy of the application to be served on each party to the proceedings.

(4) The copy of the application so served must be endorsed with a notice specifying the time, date and place set down for hearing the application.

(5) A failure to serve a copy of the application

in accordance with this section does not vitiate a decision of the Tribunal on the application.

25J. Solicitudes posteriores (Subsequent applications)

(1) A person may be the subject of an application under section 25I whether or not the person has previously been the subject of such an application.

(2) The Tribunal may make a financial management order in respect of a person whose capability to manage his or her own affairs has previously been considered by the Tribunal even though there may have been no change in that capability since it was last considered by the Tribunal.

25K. Limitación al Tribunal de emitir una orden de administración financiera en ciertas circunstancias (Tribunal cannot make financial management order in certain circumstances)

(1) The Tribunal does not have jurisdiction to make a financial management order other than an interim financial management order in respect of a person if the question of the person's capability to manage his or her own affairs is before the Supreme Court.

(2) The Tribunal does not have jurisdiction to make any financial management order

(including an interim financial management order) in respect of a person if an order made under the NSW Trustee and Guardian Act 2009 or the Mental Health Act 2007 is in force in respect of any part of the person's estate.

25L. Potestad del Tribunal de remitir las actuaciones al Tribunal Supremo (Tribunal may refer proceeding to Supreme Court)

The Tribunal may, if it considers it appropriate to do so, and with the concurrence of the Supreme Court, refer a proceeding relating to a person's capability to manage his or her own affairs to that Court.

25M. Potestad del Tribunal de asignar bienes de la persona protegida a la administración (Tribunal may commit estate of protected person to management)

(1) If the Tribunal makes a financial management order in respect of the estate (or part of the estate) of a person, the Tribunal may, by order:

(a) appoint a suitable person as manager of that estate, or

(b) commit the management of that estate to the NSW Trustee.

(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 NSW Trustee has, under Division 2 of Part 4.5 of the NSW Trustee and Guardian Act 2009, authorised the person to exercise functions in respect of the estate.

(3) However, the person appointed as manager may take such action as may be necessary for the protection of the estate (including action specified by the Tribunal) pending the directions of the Court or authorisation by the NSW Trustee.

6)Capacidad jurídica de las personas con discapacidad para la realización de actos jurídicos

ESTATAL (Victoria)

Ley de tutela de 1987 (*Guardianship Act 1987 No 257*)

Adopción (Adoption)

31A. Definiciones (Definitions)

In this Part:

adoption information action means an action

that is required by the Adoption Act 2000 to be taken if a person with an entitlement to receive a birth certificate or prescribed information, or lodge a contact veto or advance notice request, under that Act is to receive the birth certificate or prescribed information or lodge the contact veto.

31B. Solicitudes (Applications)

An application may be made to the Tribunal by any person for directions as to adoption information actions that may be taken by that or another person on behalf of a person who has a disability and who is unable because of that disability to take any such action.

31C. Notificación de las solicitudes (Service of applications)

(1) The applicant for directions must, as soon as practicable after the application has been made, cause a copy of the application (on which is endorsed a notice specifying the time, date and place set down for the hearing of the application) to be served on:

- (a) the person who has a disability, and
- (b) the Public Guardian.

(2) Failure to serve a copy of an application in accordance with this section does not vitiate the decision of the Tribunal on the application.

31D. Potestad del Tribunal de emitir recomendaciones (Tribunal may give directions)

(1) After conducting a hearing into any application made under this Part, the Tribunal may give directions as to the adoption information actions that may be taken on behalf of the person with a disability.

(2) In considering such an application, the Tribunal is to have regard to:

- (a) the views (if any) of:
 - (i) the person with a disability, and
 - (ii) the applicant, and
- (b) the objects of the Adoption Act 2000.

(3) If the Tribunal gives a direction under this section, it is to cause a copy of the direction to be forwarded to the Public Guardian.

31E. Limitaciones a la potestad del Tribunal de emitir recomendaciones (Restrictions on Tribunal's power to give directions)

A direction is not to be given in respect of a person with a disability who is the subject of an order made by the Supreme Court, in the exercise of its jurisdiction with respect to the guardianship of persons, unless the Supreme Court consents to the making of the direction.

31F. Limitación de responsabilidad (Limitation of liability)

No proceedings lie against any person for or on account of any act, matter or thing done or omitted to be done by the person in good faith and in accordance with the direction given under this Part.

31G. Jurisdicción no afectada del Tribunal Supremo (Jurisdiction of the Supreme Court not affected)

Nothing in this Part limits the jurisdiction of the Supreme Court with respect to the guardianship of persons.

Ley sobre Derecho de Propiedad de 1958 (*Property Law Act 1958 No. 6344 of 1958*)

Capacidad en materia contractual

30. Transmisiones en nombre de pacientes (Conveyances on behalf of patients)

(1) Where a legal estate in land (whether settled or not) is vested in a patient within the meaning of the Mental Health Act 1986 in respect of whose estate an administrator is appointed under the Guardianship and Administration Act 1986, either solely or jointly with any other person or persons, the administrator shall, under an order of the Court, or under any statutory power, make or concur in

making all requisite dispositions for conveying or creating a legal estate in the name and on behalf of that patient.

(2) If land held on trust for sale is vested in a patient within the meaning of the Mental Health Act 1986 in respect of whom a guardian is appointed under the Guardianship and Administration Act 1986 either solely or jointly with any other person or persons, a new trustee shall be appointed in his place, or he shall be otherwise discharged from the trust, before the legal estate is dealt with under the trust for sale or under the powers vested in the trustees for sale.

(...)

33. Consentimiento para la ejecución de la venta de un fideicomiso (Consents to the execution of a trust for sale)

(1) If the consent of more than two persons is by the disposition made requisite to the execution of a trust for sale of land, then, in favour of a purchaser, the consent of any two of such persons to the execution of the trust or to the exercise of any statutory or other powers vested in the trustees for sale shall be deemed sufficient.

(2) Where the person whose consent to the execution of any such trust or power is expressed to be required in a disposition is not sui juris or

becomes subject to disability, his consent shall not, in favour of a purchaser, be deemed to be requisite to the execution of the trust or the exercise of the power; but the trustees shall, in any such case, obtain the separate consent of the parent or testamentary or other guardian of a minor or of the committee of a lunatic.

(3) This section shall apply whether the trust for sale is created before or after the commencement of this Act or by virtue of this Part.

(...)

171. Potestad del Tribunal de dictaminar el interés en beneficio de un paciente representado (Power for Court to settle the beneficial interests of a represented patient)

(1) The Court may direct a settlement to be made of the property of a represented patient or any part thereof or any interest therein, on such trusts and subject to such powers and provisions as the Court deems expedient, and in particular may give such directions—

(a) where the property has been acquired under a settlement, a will or an intestacy, or represents property so acquired; or

(b) where by reason of any change in the law of intestacy or of any change in circumstances since the execution by the represented patient of a testamentary disposition, or of any absence

of information at the time of such execution, or on account of the former management of the property or the expenditure of money in improving or maintaining the same or for any other special reason the Court is satisfied that any person might suffer an injustice if the property were allowed to devolve as undisposed of on the death intestate of the represented patient or under any testamentary disposition executed by him.

(2) The Court may direct the guardian or administrator of the represented patient, or any trustee for him, to execute any trust instrument, conveyance (including a disentailing assurance) or other instrument, and to do any other act or thing which may be required for giving effect to the settlement, in the name and on behalf of the represented patient and, for that purpose, may make a vesting order or appoint a person to convey; and any settlement approved by the Court shall be as effectual and binding on all persons interested as if the same had been made by the represented patient while of full capacity.

(3) This section shall apply whether or not the represented patient has executed a testamentary disposition and notwithstanding that it is not known whether he has executed such a disposition or not, but shall not apply when he is an infant.

(4) Any person who under the Administration and Probate Act 1958 has, or if that Act, or any

corresponding previous enactment, had not been passed would have had, a spes successionis (whether under any testamentary disposition which is known to exist or in the event of the intestacy of the represented patient) or an interest in the property of the represented patient or in any part thereof, as well as the guardian or administrator and any other person who may be authorized by rules made under this section, shall have power to apply to the Court for an order under this section.

(5) Subject to making due provision for the maintenance of the represented patient in accordance with his station in life, whether out of the capital or income of the property settled or other property or partly in one way and partly in another, and to providing, by means of a power of appointment or revocation, or otherwise, for the possibility of the represented patient recovering full capacity, the Court may, in making any order under this section, have regard to—

(a) the manner in which the property has been settled or dealt with on former occasions;

(b) in the case of land, the welfare of the labourers and other persons employed thereon, and the expediency of settling personal estate to devolve therewith;

(c) the continuation or provision of any pensions, and the application of any part of the income for charitable purposes;

(d) the provisions of any testamentary disposition of the represented patient;

(e) the expediency of providing for—

(i) jointures, portions and other annual or capital charges and powers to create the same;

(ii) discretionary trusts, trusts for effecting or maintaining policies of insurance, powers of appointment, sinking funds for making good loss by fire (in lieu of, or in addition to, insurance) or for any other purpose;

(iii) the extension of any statutory powers of investment, management or otherwise;

(iv) the manner in which any costs are to be raised and paid, whether out of the settled property or otherwise;

(v) any other matter or thing which, having regard to the nature of the settlement, or the property to be settled, and the management development, and enjoyment thereof, and to the persons who are to take, either successively or otherwise, the Court may consider material.

(6) In this section, testamentary disposition means an instrument executed by the represented patient while of full testamentary capacity, which, if unrevoked, might, on his death, be proved as a will or codicil; and the Court may act on such evidence as to the existence or absence of a testamentary disposition as it thinks fit.

(7) At any time before the death of the represented patient the Court may, as respects

any property remaining subject to the trusts of a settlement made under this section, on being satisfied that any material fact was not disclosed to the Court when the settlement was made, or on account of any substantial change in circumstances, by order vary the settlement in such manner as it thinks fit, and give any consequential directions.

(8) Rules of Court may be made for giving effect to the provisions of this section, and in particular for compelling information to be furnished respecting, and production of, testamentary dispositions, and the lodgment thereof in court, for prescribing what notices (if any) of the proceedings are to be served, for dispensing with such notices and, when necessary, for making representation orders.

(9) In this section represented patient means a patient within the meaning of the Mental Health Act 1986 who is a represented person within the meaning of the Guardianship and Administration Act 1986.

ESTATAL (Nueva Gales del Sur)

Ley de Procedimientos Civiles de 2005
(*Civil Procedure Act 2005 No 28*)

Personas incapacitadas (Persons under legal incapacity)

74. Definiciones y solicitudes (Definitions and application)

(1) In this Division:

manager, in relation to a protected person's estate, means the person having the management of the estate under the NSW Trustee and Guardian Act 2009.

protected person has the same meaning as it has in the NSW Trustee and Guardian Act 2009.

(2) This Division does not apply to claims made or compensation awarded under any of the following Acts:

(a) the Workers Compensation Act 1987,

(b) the Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987,

(c) the Workers' Compensation (Dust Diseases) Act 1942,

(d) the Workplace Injury Management and Workers Compensation Act 1998.

(3) This Division does not limit the operation of the Minors (Property and Contracts) Act 1970 or section 16 of the Infants' Custody and Settlements Act 1899.

75. Acuerdo sobre un reclamo realizado en nombre de, o en contra de, una persona incapacitada (Settlement of claim made on behalf of, or against, person under legal incapacity)

(1) This section applies to any claim, enfor-

ceable by proceedings in the court, that is made by or on behalf of, or against, a person under legal incapacity.

(2) If, before proceedings are commenced with respect to any such claim, an agreement for the compromise or settlement of the claim is made by or on behalf of the person under legal incapacity, the court may approve or disapprove the agreement.

(3) An agreement disapproved by the court does not bind the person under legal incapacity.

(4) An agreement approved by the court binds the person under legal incapacity as if he or she were of full capacity and (if it was made by some other person on his or her behalf) as if that other person had made the agreement as his or her agent.

76. Acuerdo sobre un proceso iniciado en nombre, o en contra de, una persona incapacitada (Settlement of proceedings commenced by or on behalf of, or against, person under legal incapacity)

(1) This section applies to proceedings commenced by or on behalf of, or against, any of the following persons:

- (a) a person under legal incapacity,
- (b) a person who, during the course of the proceedings, becomes a person under legal incapacity,

(c) a person whom the court finds, during the course of the proceedings, to be incapable of managing his or her own affairs.

(2) The court may make a finding referred to in subsection (1) (c) only on the basis of evidence given in the proceedings in which it is made, and such a finding has effect for the purpose only of those proceedings.

(3) Except with the approval of the court, there may not be:

(a) any compromise or settlement of any proceedings to which this section applies, or

(b) any acceptance of money paid into court in any such proceedings,

as regards a claim made by or on behalf of, or against, a person referred to in subsection (1).

(4) If an agreement for the compromise or settlement of any matter in dispute in any such proceedings is made by or on behalf of a person referred to in subsection (1), the court may approve or disapprove the agreement.

(5) An agreement disapproved by the court does not bind the person by whom or on whose behalf it was made.

(6) An agreement approved by the court binds the person by whom or on whose behalf it was made as if he or she were of full capacity and (if it was made by some other person on his or her behalf) as if that other person had made the agreement as his or her agent.

**77. Pago de dinero cobrado en representación de una persona incapacitada
(Payment of money recovered on behalf of person under legal incapacity)**

(1) This section applies to money recovered in any proceedings on behalf of any of the following persons:

- (a) a person under legal incapacity,
- (b) a person who, during the course of the proceedings, becomes a person under legal incapacity,

(c) a person whom the court has found, under section 76 (1) (c), to be incapable of managing his or her own affairs,

pursuant to a compromise, settlement, judgment or order in any proceedings.

(2) All money recovered on behalf of a person referred to in subsection (1) is to be paid into court.

(3) Despite subsection (2), the court may order that the whole or any part of such money not be paid into court but be paid instead to such person as the court may direct, including:

(a) if the person is a minor, to the NSW Trustee and Guardian, or

(b) if the person is a protected person, to the manager of the protected person's estate.

(4) Money paid into court under subsection (2) is to be paid to such person as the court may direct, including:

(a) if the person is a minor, to the NSW Trustee and Guardian, or

(b) if the person is a protected person, to the manager of the protected person's estate.

78. Solicitud de dinero por parte del Fideicomiso y Tutor de Nueva Gales del Sur (Application of money by NSW Trustee and Guardian)

(1) Subject to any order of the court, money paid under this Division to the NSW Trustee and Guardian on behalf of a minor is to be held and applied by the NSW Trustee and Guardian for the maintenance and education of, or otherwise for the benefit of, the minor.

(2) On the application of the NSW Trustee and Guardian, the Supreme Court may give directions to the NSW Trustee and Guardian as to the administration of any such money.

(3) If given effect to by the NSW Trustee and Guardian, any such direction exonerates the NSW Trustee and Guardian from any claim or demand by any other person.

79. Solicitud de dinero por parte del administrador de un patrimonio protegido de una persona (Application of money by manager of protected person's estate)

Subject to any order of the court, money paid under this Division to the manager of a protec-

ted person's estate is to be held and applied by the manager as part of that estate.

80. Directrices a los tutores de personas incapacitadas (Directions to tutor of person under legal incapacity)

On the application of the tutor for a person under legal incapacity, the Supreme Court may give directions with respect to the tutor's conduct of proceedings, whether before the Supreme Court or any other court, on behalf of that person.

7) Normativa general sobre discapacidad

FEDERAL (Legislación común)

- Disability Discrimination Act 1992 No.135
- Disability Discrimination Regulations 1996 No. 27
- Disability Services Act 1986 No.129
- Disability Services (Rehabilitation Services) Guidelines 2007
- Disability Standards for Accessible Public Transport 2002
- Disability Services Standards (FaCSIA) 2007
- Families, Community Services and Indigenous Affairs Legislation Amendment (Child Disability Assistance) Act 2007
- Social Security (Disability and Sickness

Support) Amendment Act 1991 No.141

- Veterans' Entitlements Amendment (Disability, War Widow and War Widower Pensions) Act 2007 No.167

- Mental Health And Related Services Assistance Act 1973 No.154

- Aged or Disabled Persons Care Act 1954 No.81

- Aged or Disabled Persons Homes Act 1974 No.115

- Aged or Disabled Persons Homes Regulations SR 1987 No 239

- Safety, Rehabilitation and Compensation Act 1992 - Guide to the Assessment of the Degree of Permanent Impairment (Second edition)

ESTATAL (Victoria)

- Disability Act 2006

- Disability Services Act 1991

- Intellectually Disabled Persons' Services Act 1986

- Guardianship and Administration Act 1986

- Mental Health Act 1986

- Intellectually Disabled Persons' Services Act 1986

- Crimes (Mental Impairment and Unfitness to be Tried) Act 1997

- Equal Opportunity Act 1995



ESTATAL (Nueva Gales del Sur)

- Anti-Discrimination Act 1977 No 48
- Disability Services Act 1993 No 3
- Guardianship Act 1987 No 257
- Mental Health Act 2007 No 8
- Mental Health (Forensic Provisions) Act 1990 No 10
- Powers of Attorney Act 2003 No 53



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