

**Reprint  
as at 12 November 2018**



## **Protection of Personal and Property Rights Act 1988**

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**Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Justice.**

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**An Act to provide for the protection and promotion of the personal and property rights of persons who are not fully able to manage their own affairs**

**1 Short Title and commencement**

- (1) This Act may be cited as the Protection of Personal and Property Rights Act 1988.
- (2) This Act shall come into force on 1 October 1988.

**2 Interpretation**

In this Act, unless the context otherwise requires,—

**attorney**, in relation to any person, means the holder of a power of attorney granted by that person

**child**, in relation to any person, means a daughter, son, stepdaughter, or stepson of that person

**court**,—

- (a) for the purposes of Part 9A has the meaning given to it by section 108A:
- (b) for any other purpose of this Act, means the Family Court

**manager** means a person appointed under section 31 as manager of any property; and includes a trustee corporation that is acting as manager for any person pursuant to section 32 or section 33; but does not include a person appointed under section 11 to administer any property

**medical practitioner** means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine

**parent**, in relation to any person (A), includes a step-parent; but, if A is under the age of 18 years, only if the step-parent shares responsibility for the day-to-day care of A with a parent of A

**person subject to a property order** includes a person for whom a trustee corporation is acting as manager pursuant to section 32 or section 33

**personal order** means an order made under section 10 or section 11 or section 12; and includes an interim order made under section 14

**property** means any real or personal property; and includes any interest in any property; and also includes any money, any business or undertaking, and any right or power exercisable in respect of any property

**property order** means an order made under section 31; and includes a temporary order made under section 30

**psychologist** means a health practitioner who is, or is deemed to be, registered with the Psychologists Board continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of psychology

**relative**, in relation to any person, means—

- (a) the spouse, civil union partner, or de facto partner of that person; and
- (b) a parent or grandparent of that person or of the spouse or other person referred to in paragraph (a); and
- (c) a child or grandchild of that person or of the spouse or other person referred to in paragraph (a); and
- (d) a brother or sister of that person, or of the spouse or other person referred to in paragraph (a), whether of the full-blood or of the half-blood; and
- (e) an aunt or uncle of that person, or of the spouse or other person referred to in paragraph (a);
- (f) a nephew or niece of that person, or of the spouse or other person referred to in paragraph (a)

**social worker** means a person employed under Part 5 of the State Sector Act 1988 in the department for the time being responsible for the administration of the Oranga Tamariki Act 1989 as a social worker

**trustee corporation** means the Māori Trustee, Public Trust, and every trustee company within the meaning of the Trustee Companies Act 1967

**welfare guardian** means a person appointed under section 12 as a welfare guardian.

Section 2 **court**: substituted, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 2 **court** paragraph (b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 2 **medical practitioner**: inserted, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2 **parent**: substituted, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 2 **psychologist**: inserted, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2 **relative** paragraph (a): substituted, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 2 **social worker**: substituted, on 1 April 1990, by section 36(5) of the Social Welfare (Transitional Provisions) Act 1990 (1990 No 26).

Section 2 **social worker**: amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 2 **social worker**: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 2 **trustee corporation**: amended, on 1 July 2009, pursuant to section 30(2)(a) of the Māori Trustee Amendment Act 2009 (2009 No 12).

Section 2 **trustee corporation**: amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

### 3 Act binds the Crown

This Act shall bind the Crown.

### 4 Legal capacity of persons subject to orders under this Act

Except as provided by or under this Act or any other enactment, the rights, privileges, powers, capacities, duties, and liabilities of any person subject to an order under this Act whether in a personal, official, representative, or fiduciary capacity, shall, for all the purposes of the law of New Zealand (whether substantive, procedural, evidential, or otherwise), be the same as those of any other person.

## Part 1 Personal rights

### 5 Presumption of competence

For the purposes of this Part, every person shall be presumed, until the contrary is proved, to have the capacity—

- (a) to understand the nature, and to foresee the consequences, of decisions in respect of matters relating to his or her personal care and welfare; and
- (b) to communicate decisions in respect of those matters.

### 6 Jurisdiction of court under this Part

- (1) Subject to subsection (2), a court shall have jurisdiction under this Part in respect of any person who is ordinarily resident in New Zealand and who—



- (a) lacks, wholly or partly, the capacity to understand the nature, and to foresee the consequences, of decisions in respect of matters relating to his or her personal care and welfare; or
  - (b) has the capacity to understand the nature, and to foresee the consequences, of decisions in respect of matters relating to his or her personal care and welfare, but wholly lacks the capacity to communicate decisions in respect of such matters.
- (2) Subject to section 12(3), no court has jurisdiction under this Part in respect of a person who has not attained the age of 18 years and who—
- (a) is not, and never has been, married or in a civil union; or
  - (b) is 16 years old or older and is not living, and never has lived, with another person as a de facto partner.
- (3) The fact that the person in respect of whom the application is made for the exercise of the court's jurisdiction has made or is intending to make any decision that a person exercising ordinary prudence would not have made or would not make given the same circumstances is not in itself sufficient ground for the exercise of that jurisdiction by the court.

Section 6(2): substituted, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

## **7 Persons who may apply for exercise of court's jurisdiction**

Any 1 or more of the following persons may apply to a court for the exercise of its jurisdiction under this Part:

- (a) a person who seeks the exercise of the court's jurisdiction in respect of himself or herself;
- (b) a relative or an attorney of the person in respect of whom the application is made;
- (c) a social worker;
- (d) a medical practitioner;
- (e) a representative of any group that is engaged, otherwise than for commercial gain, in the provision of services and facilities for the welfare of persons in relation to whom the court has jurisdiction in accordance with section 6;
- (f) where the exercise of the court's jurisdiction is sought in respect of any person who is a patient or a resident in any place that provides hospital care, rest home care, or residential disability care within the meaning of the Health and Disability Services (Safety) Act 2001, the principal manager of that place;
- (g) where the exercise of the court's jurisdiction is sought in respect of any person subject to a property order, the manager of that person's property;
- (h) any other person, with leave of the court.

Section 7(f): substituted, on 25 September 2008, by section 4 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

## **8 Primary objectives of court in exercise of jurisdiction under this Part**

The primary objectives of a court on an application for the exercise of its jurisdiction under this Part shall be as follows:

- (a) to make the least restrictive intervention possible in the life of the person in respect of whom the application is made, having regard to the degree of that person's incapacity:
- (b) to enable or encourage that person to exercise and develop such capacity as he or she has to the greatest extent possible.

## **9 Course to be followed by court**

- (1) In considering an application for the exercise of its jurisdiction under this Part, a court shall determine whether or not the person in respect of whom the application is made is a person in relation to whom it has jurisdiction under this Part in accordance with section 6.
- (2) If the court is satisfied that the person in respect of whom the application is made is a person in relation to whom it has jurisdiction under this Part in accordance with section 6, the court shall determine whether or not it should make an order under section 10 or section 11 or section 12, and (if so) what kind of order or orders, having regard to the primary objectives specified in section 8.

## **10 Kinds of order**

- (1) On an application for the exercise of a court's jurisdiction under this Part in respect of any person, the court may, subject to subsection (2), make any 1 or more of the following orders:
  - (a) *[Repealed]*
  - (b) an order that any parent of the person make suitable arrangements for the personal care of the person after the parent's death:
  - (c) an order that the arrangements made by any parent of the person for the personal care of the person after the parent's death be observed, or be varied in any particular specified in the order:
  - (d) an order that the person shall enter, attend at, or leave an institution specified in the order, not being a psychiatric hospital or a licensed institution under the Mental Health Act 1969:
  - (e) an order that the person be provided with living arrangements of a kind specified in the order:
  - (f) an order that the person be provided with medical advice or treatment of a kind specified in the order:

- (g) an order that the person be provided with educational, rehabilitative, therapeutic, or other services of a kind specified in the order:
  - (h) an order that the person shall not leave New Zealand without the permission of the court, or shall leave New Zealand only on conditions specified in the order:
  - (i) an order appointing a person named in the order as next friend or guardian *ad litem* for the person for the purposes of any proceedings in the District Court:
  - (j) an order under section 11 that a person named in the order administer any item of property specified in the order:
  - (k) an order under section 12 appointing a welfare guardian for the person.
- (2) No person (other than the person in respect of whom the application is made) shall be bound by a personal order unless that person is a party to the proceedings in which the order is made.
- (3) In any order made under any of paragraphs (a) to (i) of subsection (1), the court may specify a date by which the order is to be reviewed by the court; and, if it does so, the court shall also specify in the order the person or persons who is or are to be responsible for applying to the court for a review of the order before the specified date.
- (4) Where a court makes any personal order, it may also make such other orders and give such directions as may be necessary or expedient to give effect, or better effect, to the personal order.

Section 10(1)(a): repealed, on 28 March 2007, by section 11 of the Disabled Persons Employment Promotion Repeal Act 2007 (2007 No 11).

Section 10(1)(i): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## 11 Order to administer property

- (1) Where, on an application to a court for the exercise of its jurisdiction under this Part,—
- (a) the person in respect of whom the application is made is not subject to a property order; and
  - (b) the court considers that the making of a property order or the giving of a direction under section 64(3) would not be in accordance with section 8; and
  - (c) the court considers the making of an order under this section necessary in all the circumstances,—

the court may, subject to subsection (2), by order, appoint any person (but only 1 person) named in the order to administer, on behalf of the person in respect of whom the application is made, any property or income or benefit, belonging to the person or to which that person is or may become entitled, and specified in the order.

- (2) No order may be made under this section in respect of either—
- (a) any item of property that exceeds \$5,000 in value, or such other amount as is, from time to time, prescribed by Order in Council for the purposes of this paragraph; or
  - (b) any income or benefit in excess, in any one year, of \$20,000, or such other amount as is, from time to time, prescribed by Order in Council for the purposes of this paragraph.
- (3) Every person who administers any property, income, or benefit pursuant to an order made under this section shall do so in such a way as to enable or encourage the person for whom he or she is acting to exercise and develop such capacity as that person has to the greatest extent possible.
- (4) In any order made under this section, the court shall specify a date, being not later than 3 years after the date of the order, by which the person appointed to administer the property is required to apply to the court for a review of the order.
- (5) The provisions of subsections (3) to (7) of section 31, sections 37, 43, 44, 49, and 50 (so far as it relates to expenses), and paragraphs (a), (b), and (e) of section 52, so far as they are applicable and with any necessary modifications, shall apply to every person appointed to administer any property under this Act.

Section 11(2): substituted, on 28 July 1997, by section 2 of the Protection of Personal and Property Rights Amendment Act 1997 (1997 No 52).

Section 11(2)(a): amended, on 1 August 2007, by clause 3 of the Protection of Personal and Property Rights Order 2007 (SR 2007/196).

## **12 Court may appoint welfare guardian**

- (1) Subject to the succeeding provisions of this section, on an application for the exercise of a court's jurisdiction under this Part, the court may make an order appointing a welfare guardian for the person in respect of whom the application is made in relation to such aspect or aspects of the personal care and welfare of that person as the court specifies in the order.
- (2) A court shall not make an order under subsection (1) unless it is satisfied—
- (a) that the person in respect of whom the application is made wholly lacks the capacity to make or to communicate decisions relating to any particular aspect or particular aspects of the personal care and welfare of that person; and
  - (b) that the appointment of a welfare guardian is the only satisfactory way to ensure that appropriate decisions are made relating to that particular aspect or those particular aspects of the personal care and welfare of that person.
- (3) A court may make an order under subsection (1) in respect of a person of the kind referred to in section 6(2) if, but only if,—

- (a) no parent or guardian of that person is then living; or
  - (b) no parent or guardian of that person is in regular contact with that person, and the court is satisfied in all the circumstances that it would be in the interests of that person to appoint a welfare guardian for that person.
- (4) No person under the age of 20 years, and no body corporate, shall be appointed a welfare guardian under this section.
- (5) A court shall not appoint any person as a welfare guardian under this section unless it is satisfied—
- (a) that the proposed appointee is capable of carrying out the duties of a welfare guardian in a satisfactory manner, having regard to the needs of the person in respect of whom the application is made, and the relationship between that person and the proposed appointee; and
  - (b) that the proposed appointee will act in the best interests of the person in respect of whom the application is made; and
  - (c) that there is unlikely to be any conflict between the interests of the proposed appointee and those of the person in respect of whom the application is made; and
  - (d) the proposed appointee consents to the appointment.
- (6) The court shall not appoint more than 1 welfare guardian for any person unless, in the exceptional circumstances of the case, the court is satisfied that it would be in the interests of that person to do so.
- (7) So far as is practicable in the circumstances, a court shall ascertain the wishes of the person in respect of whom the application is made when determining whom to appoint as welfare guardian under this section.
- (8) In any order under this section, the court shall specify a date, being not later than 3 years after the date of the order, by which the welfare guardian is required to apply to the court for a review of the order.

Section 12(3): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

### **13 Court may make recommendations instead of order**

- (1) On an application for the exercise of a court's jurisdiction under this Part, the court may, instead of making any order under sections 10 to 12, make such recommendations as it thinks fit relating to the course of action that it considers should be followed by the parties or any of them or by the person in respect of whom the application is made.
- (2) In any case to which subsection (1) applies, the court shall formally dismiss the application but shall reserve leave to the parties and the person in respect of whom the application is made to apply to the court for directions relating to the implementation of any of the court's recommendations.
- (3) No recommendation made under this section shall be binding on any person.

**14 Interim orders**

- (1) On an application to a court for the exercise of its jurisdiction under this Part, the court may, either on the motion of the applicant or of its own motion, make an interim order under section 10 or section 11 or section 12, pending the final determination of the application.
- (2) Every party to the application, and the person in respect of whom the application is made, shall be given notice of any interim order made pursuant to this section, and shall be entitled to be heard on it.
- (3) No interim order made pursuant to this section shall continue in force for more than 6 months after the date on which it is made.
- (4) An interim order made pursuant to this section may be varied, discharged, or enforced in the same manner as if it were a final order of the Family Court.
- (5) After hearing the parties, and the person in respect of whom the application is made, on any interim order made pursuant to this section, or such of them as wish to be heard, the court may—
  - (a) make 1 but only 1 further interim order; or
  - (b) make a final order; or
  - (c) dismiss the application.

Section 14(4): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

**15 Orders by consent**

On an application for the exercise of a court's jurisdiction under this Part, the court may make any order under section 10 or section 11 or section 12 or section 14 with the consent of each party to the proceedings, if the court is satisfied that the person in respect of whom the application is made understands the nature and foresees the consequences of the order and consents to it.

**16 Persons subject to property order**

- (1) Where an application for the exercise of a court's jurisdiction under this Part is made in respect of any person subject to a property order, any order made by the court under section 10 or section 12 or section 14 shall be binding on the manager of that person's property; and, in the event of any conflict arising between the powers and duties of the manager under Part 4 and the terms of the personal order, the personal order shall prevail.
- (2) In any case to which subsection (1) applies, the manager may apply to a court for the variation, suspension, or discharge of the personal order, or for directions relating to its implementation.

**17 Expiry of orders**

- (1) Except as provided in subsections (2) and (3), a personal order shall expire—

- (a) on the date, or at the close of the period, specified in that behalf by the court in the order; or
- (b) if no such provision is made in the order,—
  - (i) on the expiry of a period of 12 months beginning with the date of the order; or
  - (ii) when the effect of the order is spent,—  
whichever is the earlier.
- (2) Subject to subsection (3), every personal order in which provision is made for the review of the order before a specified date shall expire on that date unless, on a review of the order, the court decides that it should continue beyond that date.
- (3) Where, in any case to which subsection (2) applies, an application for a review of the order is made but not determined before the specified date, the order shall remain in force pending the determination of the application.

## **Part 2**

### **Welfare guardians**

#### **18 Powers and duties of welfare guardian**

- (1) No court shall empower a welfare guardian, and no welfare guardian shall have power,—
  - (a) to make any decision relating to the entering into marriage or civil union by the person for whom the welfare guardian is acting, or to the dissolution of that person's marriage or civil union; or
  - (b) to make any decision relating to the adoption of any child of that person; or
  - (c) to refuse consent to the administering to that person of any standard medical treatment or procedure intended to save that person's life or to prevent serious damage to that person's health; or
  - (d) to consent to the administering to that person of electro-convulsive treatment; or
  - (e) to consent to the performance on that person of any surgery or other treatment designed to destroy any part of the brain or any brain function for the purpose of changing that person's behaviour; or
  - (f) to consent to that person's taking part in any medical experiment other than one to be conducted for the purpose of saving that person's life or of preventing serious damage to that person's health.
- (2) Subject to subsection (1), a welfare guardian shall have all such powers as may be reasonably required to enable the welfare guardian to make and implement decisions for the person for whom the welfare guardian is acting in respect of

each aspect specified by the court in the order by which the appointment of the welfare guardian is made.

- (3) In exercising those powers, the first and paramount consideration of a welfare guardian shall be the promotion and protection of the welfare and best interests of the person for whom the welfare guardian is acting, while seeking at all times to encourage that person to develop and exercise such capacity as that person has to understand the nature and foresee the consequences of decisions relating to the personal care and welfare of that person, and to communicate such decisions.
- (4) Without limiting the generality of subsection (3), a welfare guardian shall—
  - (a) encourage the person for whom the welfare guardian is acting to act on his or her own behalf to the greatest extent possible; and
  - (b) seek to facilitate the integration of the person for whom the welfare guardian is acting into the community to the greatest extent possible; and
  - (c) consult, so far as may be practicable,—
    - (i) the person for whom the welfare guardian is acting; and
    - (ii) such other persons, as are, in the opinion of the welfare guardian, interested in the welfare of the person and competent to advise the welfare guardian in relation to the personal care and welfare of that person; and
    - (iii) a representative of any group that is engaged, otherwise than for commercial gain, in the provision of services and facilities for the welfare of persons in respect of whom the court has jurisdiction in accordance with section 6, and that, in the opinion of the welfare guardian, is interested in the welfare of the person and competent to advise the welfare guardian in relation to the personal care and welfare of that person.
- (5) In addition to subsection (4)(c), where the person for whom the welfare guardian is acting is subject to a property order, the welfare guardian shall consult on a regular basis with the manager of that person's property to ensure that the interests of that person are not prejudiced through any breakdown in communication between the welfare guardian and the manager.
- (6) A welfare guardian may apply to a court for directions relating to the exercise of the powers of the welfare guardian, and the court may give such directions as it thinks fit.

Section 18(1)(a): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

## **19 Effect of welfare guardian's decisions, etc**

- (1) Every decision made by a welfare guardian in the exercise of the powers conferred by or under this Part, and everything done by a welfare guardian in implementation of any such decision, shall have the same effect as it would



have had if it had been made or done by the person for whom the welfare guardian is acting and that person had had full capacity to make or do it.

- (2) No person dealing with a welfare guardian in respect of any matter within the powers of the welfare guardian shall be concerned to inquire as to the concurrence or otherwise of the person for whom the welfare guardian is acting or of any other person, or be affected by notice that any such person has not concurred.

## **20 Liability of welfare guardian**

- (1) Subject to subsection (2), no action shall lie against a welfare guardian in respect of anything done or omitted to be done by the welfare guardian in the exercise of the powers conferred by or under this Act, unless it is shown that the welfare guardian acted in bad faith or without reasonable care.
- (2) A welfare guardian shall be personally liable in respect of any contract or arrangement entered into with, or liability incurred to, any person if the welfare guardian does not, before entering into the contract or arrangement or incurring the liability, disclose to that person that the welfare guardian is acting in that capacity.

## **21 Welfare guardian's expenses**

- (1) Subject to any order of a court made under subsection (2), all expenses reasonably incurred by a welfare guardian in the exercise of the powers and duties conferred by or under this Act shall be charged against, and payable out of, the property of the person for whom the welfare guardian is acting.
- (2) A court may order that any expenses incurred or to be incurred by a welfare guardian in the exercise of the powers and duties conferred by or under this Act shall be met, in whole or in part, out of a Crown Bank Account from money appropriated for the purpose by Parliament; and every such order shall have effect according to its tenor.

Section 21(2): amended, on 25 January 2005, pursuant to section 83(7) of the Public Finance Act 1989 (1989 No 44).

## **22 When welfare guardian ceases to hold office**

A welfare guardian shall cease to hold office—

- (a) if the person for whom the welfare guardian is acting dies; or
- (b) if the welfare guardian dies or is adjudged bankrupt or becomes a special patient or a committed patient under the Mental Health Act 1969 or becomes subject to a property order or becomes otherwise incapable of acting; or
- (c) if the personal order by which the welfare guardian was appointed expires in accordance with section 17 or is discharged by the court under section 86.

**23 Appointment of welfare guardian in event of non-compliance**

- (1) Where any person is required by a personal order to do anything and that person fails to comply with any of the requirements of the order, any party to the proceedings in which the order was made, or the person in respect of whom the order was made, may apply to a court for the appointment of a welfare guardian.
- (2) The function of a welfare guardian appointed under this section shall be to take all reasonable steps to ensure compliance with the order of the court by the person who has so far failed to comply with it.
- (3) A court, on appointing a welfare guardian under this section, shall specify in the order by which the appointment is made the date on which the welfare guardian is to cease to act; and on that date the order shall expire.
- (4) Subject to the preceding provisions of this section, the provisions of sections 19 to 22, so far as they are applicable and with the necessary modifications, shall apply to a welfare guardian appointed under this section as if the welfare guardian had been appointed under section 12.

### **Part 3 Property rights**

**24 Presumption of competence**

For the purposes of this Part, every person shall be presumed, until the contrary is proved, to be competent to manage his or her own affairs in relation to his or her property.

**25 Jurisdiction of court under this Part**

- (1) A court shall have jurisdiction under this Part in respect of any property owned by any person—
  - (a) who is domiciled or is ordinarily resident in New Zealand; and
  - (b) who, in the opinion of the court, lacks wholly or partly the competence to manage his or her own affairs in relation to his or her property.
- (2) A court shall also have jurisdiction under this Part in respect of any property situated in New Zealand and owned by any person—
  - (a) who is not domiciled nor is ordinarily resident in New Zealand; and
  - (b) who, in the opinion of the court, lacks wholly or partly the competence to manage his or her own affairs in relation to his or her property so situated.
- (3) The fact that the person in respect of whom an application is made for the exercise of the court's jurisdiction is managing or is intending to manage his or her own affairs in relation to his or her property in a manner that a person of ordin-

ary prudence would not adopt given the same circumstances is not in itself sufficient ground for the exercise of that jurisdiction by the court.

- (4) In determining whether or not it should exercise its jurisdiction under this Part in relation to any person, a court may have regard to the degree to which the person is subject, or is liable to be subjected, to undue influence in the management of his or her own affairs in relation to his or her property.

## **26 Persons who may apply for exercise of court's jurisdiction**

Any 1 or more of the following persons may apply to a court for the exercise of its jurisdiction under this Part:

- (a) a person who seeks the exercise of the court's jurisdiction in respect of himself or herself:
- (b) a relative or an attorney of the person in respect of whom the application is made:
- (c) a social worker:
- (d) a medical practitioner:
- (e) a trustee corporation:
- (f) a representative of any group that is engaged, otherwise than for commercial gain, in the provision of services and facilities for the welfare of persons in relation to whom the court has jurisdiction under this Act in accordance with section 25:
- (g) where the exercise of the court's jurisdiction is sought in respect of any person who is a patient or a resident in any place that provides hospital care, rest home care, or residential disability care within the meaning of the Health and Disability Services (Safety) Act 2001, the principal manager of that place:
- (h) where a welfare guardian has been appointed for the person in respect of whom the application is made, that welfare guardian:
- (i) any other person, with leave of the court.

Section 26(g): substituted, on 25 September 2008, by section 5 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

## **27 Need for application in respect of hospital patient, etc, may be investigated**

- (1) Where—
- (a) any person is or has been admitted to any hospital, home, or other institution as a patient or resident; and
  - (b) the superintendent, licensee, supervisor, or other person in charge of the hospital, home, or other institution considers—
    - (i) that the patient or resident may be a person in relation to whom a court has jurisdiction under this Part; and

- (ii) that it may be desirable in the interests of the patient or resident that a manager be appointed under this Part in respect of any property owned by the patient or resident,—

the superintendent, licensee, supervisor, or other person in charge may give notice of the case to the Registrar of the court.

- (2) On receiving any notice under subsection (1), the Registrar may refer the matter to a trustee corporation with a request that the corporation investigate the case and report to the Registrar on—
  - (a) whether any person described in section 26 is intending to make an application to the court for the exercise of its jurisdiction under section 25, or to a trustee corporation under section 32 or section 33, in respect of any property owned by the patient or resident; and
  - (b) if no such person is intending to make such an application, whether the trustee corporation considers that such an application would be desirable in the interests of the patient.
- (3) If the trustee corporation—
  - (a) finds that no person described in section 26 intends to make such an application; and
  - (b) considers that the making of such an application would be desirable in the interest of the patient; and
  - (c) does not intend to make such an application itself,—
 the trustee corporation may report accordingly to the Registrar.
- (4) On receiving a report under subsection (3), the Registrar shall refer the matter to a Judge who may give to the Registrar all such directions as the Judge considers appropriate to have the matter drawn to the attention of such person or persons described in section 26 as the Judge thinks fit.

## **28 Primary objectives of court in exercise of jurisdiction under this Part**

The primary objectives of a court on an application for the exercise of its jurisdiction under this Part shall be as follows:

- (a) to make the least restrictive intervention possible in the management of the affairs of the person in respect of whom the application is made in relation to his or her property, having regard to the degree of that person's lack of competence:
- (b) to enable or encourage that person to exercise and develop such competence as he or she has to manage his or her own affairs in relation to his or her property to the greatest extent possible.

## **29 Course to be followed by court**

- (1) In considering an application for the exercise of its jurisdiction under this Part, a court shall determine whether or not the person in respect of whom the appli-

cation is made is a person in relation to whom it has jurisdiction under this Part in accordance with section 25.

- (2) If the court is satisfied that the person in respect of whom the application is made is a person in relation to whom it has jurisdiction under this Part in accordance with section 25, the court shall determine whether or not to make an order under section 31, and (if so) in relation to what property, having regard to the primary objectives specified in section 28.
- (3) If the court decides to make an order under section 31 in relation to any property, it shall determine which of the rights and powers specified in clause 1 of Schedule 1 the manager is to have in respect of that property, what other rights and powers (if any) the manager is to have in respect of that property, and what restrictions (if any) are to be imposed on the exercise of any such rights and powers.

### **30 Temporary orders**

- (1) Where a court is satisfied—
  - (a) that an application for the exercise of its jurisdiction under this Part has been made or is to be made in relation to any person; and
  - (b) that there are reasonable grounds for believing that that person may be a person in relation to whom a court has jurisdiction under this Part in accordance with section 25; and
  - (c) that it is in the best interests of that person that urgent provision be made for the protection of his or her property or any part of it pending the final determination of the application for the exercise of the court's jurisdiction,—

the court may make a temporary order under this section.

- (2) A temporary order may be made on the application of any person specified in section 26.
- (3) It shall not be necessary to serve a copy of an application for a temporary order on the person in respect of whom the order is sought, nor shall that person be entitled to attend, or be heard, or call or cross-examine witnesses in respect of the application, unless the court otherwise orders.
- (4) Nothing in sections 66 to 73 shall apply in respect of an application for a temporary order under this section.
- (5) If a court makes a temporary order, it shall appoint as temporary manager such fit and proper person (being a person who would be eligible for appointment as manager under section 31) to take possession and control of the property of the person in respect of whom the order is made, or such of that person's property as may be specified in the order.
- (6) Where a court decides to make a temporary order, sections 16, 31, 35 to 53, and 57 shall apply with any necessary modifications.

- (7) No temporary order made pursuant to this section shall continue in force for more than 3 months after the date on which it is made.
- (8) A temporary order made pursuant to this section may be varied, discharged, or enforced in the same manner as if it were a final order of the Family Court.

Section 30(8): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

### **31 Appointment of manager**

- (1) Subject to the succeeding provisions of this section and to sections 31A and 31B, on an application for the exercise of a court's jurisdiction under this Part, the court may make an order appointing 1 or more suitable persons (whether or not the person or persons proposed in the application) to act as manager of the property, or any specified part of the property, of the person in respect of whom the application is made.
- (2) Where the court appoints 2 or more managers, their responsibility shall be jointly held, unless the court orders otherwise.
- (3) No person under the age of 20 years, and no body corporate other than a trustee corporation, shall be appointed a manager under this section.
- (4) Where the person in respect of whom the application for the exercise of the court's jurisdiction is made is a patient or resident of a hospital, home, or other institution, the superintendent, licensee, supervisor, or other person in charge of the hospital, home, or other institution shall not be appointed a manager under this section.
- (5) The court shall not appoint any person a manager under this section unless it is satisfied—
  - (a) that the proposed appointee is capable of carrying out the duties of a manager in a satisfactory manner, having regard to the needs of the person in respect of whom the application is made, and the relationship between that person and the proposed appointee; and
  - (b) that the proposed appointee will act in the best interests of the person in respect of whom the application is made; and
  - (c) the proposed appointee consents to the appointment.
- (6) In determining whom to appoint as manager under this section, a court shall take into account any likely conflict between the interests of the proposed appointee and those of the person in respect of whom the application is made.
- (7) So far as is practicable in the circumstances, a court shall ascertain the wishes of the person in respect of whom the application is made when determining whom to appoint as manager under this section.
- (8) In any order made under this section, the court shall specify a date, being not later than 3 years after the date of the order, by which the manager is required to apply to the court for a review of the order.

Section 31(1): amended, on 1 July 1993, by section 362(1) of Te Ture Whenua Maori Act 1993 (1993 No 4).

### **31A Kai tiaki trusts**

Where a kai tiaki trust is constituted under section 217 of Te Ture Whenua Maori Act 1993 in respect of any interests in Maori land or General land or any shares in a Maori incorporation or any personal property to which any person under disability (within the meaning of Part 12 of that Act) is entitled, no property order made under section 31 and no declaration accepted by a trustee corporation and filed under section 32(3) or section 33(4) shall apply in respect of any such interests or shares or property.

Section 31A: inserted, on 1 July 1993, by section 362(1) of Te Ture Whenua Maori Act 1993 (1993 No 4).

### **31B Maori land or shares in Maori incorporation**

- (1) Where it appears to the Family Court that an application for the exercise of the court's jurisdiction under this Part may result in an order appointing 1 or more persons to act as the manager of—
  - (a) beneficial interests in Maori freehold land (as defined in section 4 of Te Ture Whenua Maori Act 1993); or
  - (b) shares in a Maori incorporation (as defined in section 246 of Te Ture Whenua Maori Act 1993),—the court shall refer that application to the Maori Land Court.
- (2) Where an application is referred to the Maori Land Court under subsection (1), the Maori Land Court shall treat that application, to the extent that it relates to beneficial interests in Maori freehold land or shares in a Maori incorporation or both, as if it were an application under section 217 of Te Ture Whenua Maori Act 1993 for the constitution of a kai tiaki trust in respect of those interests or shares or both.
- (3) Where the Maori Land Court constitutes a kai tiaki trust in respect of any beneficial interests in Maori freehold land or shares in a Maori incorporation,—
  - (a) no order shall be made under section 31 in respect of those interests or shares; and
  - (b) no trustee corporation shall, under section 32(3) or section 33(4), accept any application filed under section 33 or section 34 in respect of those interests or shares.
- (4) Where the Maori Land Court, after considering an application referred to that court under subsection (1), declines to constitute a kai tiaki trust in respect of any beneficial interests in Maori freehold land or any shares in a Maori incorporation to which that application relates, the Family Court may—
  - (a) make a property order under section 31 in respect of those interests or shares or any of them; or

- (b) otherwise exercise its jurisdiction under this Part in respect of those interests or shares or any of them.

Section 31B: inserted, on 1 July 1993, by section 362(1) of Te Ture Whenua Maori Act 1993 (1993 No 4).

Section 31B(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 31B(4): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

### **32 Application to trustee corporation to act as manager**

- (1) Any person who—
  - (a) has attained the age of 18 years; and
  - (b) is domiciled or is ordinarily resident in New Zealand; and
  - (c) considers that he or she lacks wholly or partly the competence to manage his or her own affairs in relation to his or her property,—
 

may apply in accordance with the succeeding provisions of this section to a trustee corporation to act as manager of that person’s property or of any part of it.
- (2) Every application under this section shall be in writing, and shall—
  - (a) contain particulars of the person’s lack of competence to manage his or her own affairs in relation to his or her property; and
  - (b) specify the property of the applicant, and the rights and powers in respect of that property, of which the applicant wishes the trustee corporation to assume control; and
  - (c) be accompanied by—
    - (i) certificates from 2 medical practitioners (at least 1 of whom must be independent of the applicant, or a relative of the applicant) as to the extent of the applicant’s lack of competence to manage his or her own affairs in relation to his or her property; and
    - (ii) a statutory declaration by the applicant that the applicant has received independent legal advice about, and understands the nature, purpose, and consequences of, the application and the applicant’s right under section 34(c) to declare that the trustee corporation shall no longer act as manager; and
  - (d) be made to the trustee corporation within 30 days after the date of the earlier of the 2 medical certificates referred to in paragraph (c)(i), or of the date of the statutory declaration referred to in paragraph (c)(ii), whichever is the earlier.
- (3) If the trustee corporation is satisfied that—
  - (a) the applicant is not wholly competent to manage his or her own affairs in relation to his or her property; and



- (b) it is in the best interests of that person that a manager act for that person; and
- (c) the applicant seeks to have the trustee corporation assume control of the property of the applicant, and of the applicant's rights and powers in respect of that property (as specified in the application) only to the extent necessary having regard to the degree of the applicant's lack of competence,—

the trustee corporation may accept the application and file a copy of it with a court within 30 days after the making of the application.

- (4) The trustee corporation shall make such inquiries and obtain such reports as it thinks necessary for the purposes of subsection (3).
- (5) On the filing of a copy of an application under subsection (3), the trustee corporation shall become the manager of the property specified in the application and shall have and may exercise in respect of that property the rights and powers specified in the application.

Section 32(2)(c)(i): substituted, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

### **33 Application to trustee corporation in respect of small estates**

- (1) A person who may apply for an order under any of paragraphs (b) to (d) and (f) to (h) of section 26 may apply to a trustee corporation to act as manager for any other person in respect of any property of that other person, the gross value of which does not exceed \$100,000 or such other amount as is, from time to time, prescribed by Order in Council for the purposes of this subsection.
- (2) No application may be made under subsection (1) in relation to any property in respect of which a court does not have jurisdiction under this Part.
- (3) Every application under this section shall be in writing, and shall—
  - (a) contain particulars of the person's lack of competence to manage his or her own affairs in relation to his or her property; and
  - (b) specify the property of the person in respect of whom the application is made, and the rights and powers in respect of that property, of which the applicant wishes the trustee corporation to assume control; and
  - (c) be accompanied by certificates from 2 medical practitioners (at least 1 of whom must be independent of the applicant and the person in respect of whom the application is made) as to whether or not that person—
    - (i) lacks the competence to manage his or her own affairs in relation to his or her property, and, if so, to what extent; and
    - (ii) is able to understand the nature, purpose, and consequences of the application; and
  - (d) where a certificate referred to in paragraph (c) indicates that the person in respect of whom the application is made is able to understand the

- nature, purpose, and consequences of the application, be accompanied by a statutory declaration by the person that he or she has received independent legal advice about, and understands the nature, purpose, and consequences of, the application and that person's right under section 34(c) to declare that the trustee corporation shall no longer act as manager; and
- (e) be made to the trustee corporation within 30 days after the date of the earlier of the 2 medical certificates referred to in paragraph (c) or of the date of any statutory declaration referred to in paragraph (d), whichever is the earlier.
- (4) If the trustee corporation is satisfied that—
- (a) the person in respect of whom the application is made is not wholly competent to manage his or her own affairs in relation to his or her property; and
- (b) it is in the best interests of that person that a manager act for that person; and
- (c) the applicant seeks to have the trustee corporation assume control of the property of that person, and of that person's rights and powers in respect of that property (as specified in the application) only to the extent necessary having regard to the degree of that person's lack of competence,—
- the trustee corporation may accept the application and file a copy of it with a court within 30 days after the making of the application.
- (5) The trustee corporation shall make such inquiries and obtain such reports as it thinks necessary for the purposes of subsection (4).
- (6) On the filing of a copy of an application under subsection (4), the trustee corporation shall become the manager of the property specified in the application and shall have and may exercise in respect of that property the rights and powers specified in the application.
- (7) If, after filing a copy of an application under subsection (6), the gross value of the person's property is found to exceed \$120,000 or such other amount as is, from time to time, prescribed by Order in Council for the purposes of this subsection at the time of such filing, the trustee corporation shall file in the court a memorandum stating that fact, and seeking the leave of the court to withdraw the application.

Section 33(1): amended, on 28 July 1997, by section 3(1) of the Protection of Personal and Property Rights Amendment Act 1997 (1997 No 52).

Section 33(3)(c): substituted, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 33(7): amended, on 28 July 1997, by section 3(2) of the Protection of Personal and Property Rights Amendment Act 1997 (1997 No 52).

**34 When a person ceases to be subject to property order**

- (1) A person shall cease to be subject to a property order where—
- (a) the person dies; or
  - (b) the court discharges the property order under section 87; or
  - (c) in any case where a trustee corporation is acting as manager pursuant to section 32 or section 33, 7 days after the person for whom the corporation is acting, by notice in writing to the corporation (a copy of which notice the corporation shall forthwith file with the court) declares that the corporation shall no longer act as manager.
- (2) Where—
- (a) a trustee corporation is acting as manager pursuant to section 32 or section 33; and
  - (b) the trustee corporation receives from the person for whom it is so acting a notice of a kind referred to in subsection (1)(c); and
  - (c) the trustee corporation knows that a welfare guardian or an attorney is acting for that person,—

the trustee corporation shall inform the welfare guardian or attorney of the receipt of the notice.

**Part 4  
Managers**

**35 Property not to vest in manager**

The property of a person subject to a property order shall not vest in the manager, but the manager shall be entitled to the possession and management of so much of the property as the order applies to in accordance with the succeeding provisions of this Part.

**36 Functions and duties of manager**

- (1) In managing any property under this Act, the first and paramount consideration of a manager shall be to use the property in the promotion and protection of the best interests of the person for whom the manager is acting, while seeking at all times to encourage that person to develop and exercise such competence as that person has to manage his or her own affairs in relation to his or her property.
- (2) Without limiting the generality of subsection (1), so far as is practicable in the circumstances and to encourage the person for whom the manager is acting to develop and exercise such competence as that person has to manage his or her own affairs in relation to his or her property, the manager may allow that person to have control of and deal with any part of the property.

**37 Security for performance of manager's duties**

- (1) A court may, if it thinks fit, require any manager (other than a trustee corporation), upon appointment or at any time thereafter, to give such security to Public Trust as the court thinks fit for the due performance of the duties of the manager.
- (2) The security may be a bond, with or without a surety or sureties, or such other security as the court directs and approves.
- (3) A court may at any time, on the application of Public Trust, require a manager to give to Public Trust further or other security for the due performance of the manager's duties.
- (4) A court may at any time give leave to Public Trust to enforce any such security, and Public Trust shall thereupon proceed by action or otherwise to enforce the security accordingly.
- (5) All money so received by Public Trust shall be deemed part of the property for which the person is or was the manager, and all costs and expenses so incurred by Public Trust shall be paid out of that property.
- (6) Public Trust may commence or institute proceedings against any such manager for any breach of duty, and may apply to the court *ex parte* for an injunction to restrain any such breach or any threatened breach.

Section 37(1): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 37(3): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 37(4): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 37(5): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 37(6): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

**38 Powers of manager**

- (1) A manager shall have all such rights and powers as the court may confer on the manager in the property order, subject to any restrictions specified by the court in the order.
- (2) A manager of the property of a person subject to a property order may apply to a court for directions relating to the exercise of any of the manager's rights and powers.
- (3) Where a manager is, in accordance with this Act, authorised to make an application under section 87 of the Land Transfer Act 2017 to have a transmission registered, the Registrar-General of Land is authorised to accept such an application notwithstanding the fact that the manager is not the person claiming to be entitled to the estate or interest in land.

Section 38(3): added, on 1 July 1994, by section 4 of the Protection of Personal and Property Rights Amendment Act 1994 (1994 No 54).

Section 38(3): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

### **39 Additional powers where Public Trust appointed manager**

For the purpose of enabling Public Trust to exercise effectively any of the powers conferred on Public Trust by or under this Act or any other enactment or by any order of the court or by law, or to do any other act or thing that Public Trust is thereby authorised or empowered to do, Public Trust may, either in Public Trust's own corporate name or in the name and on behalf of the person subject to a property order, exercise the powers in clause 1 of Schedule 2.

Section 39 heading: amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 39: amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

### **40 Application of Public Trust Act 2001**

- (1) The management of the property of a person subject to a property order in respect of which Public Trust is the manager or one of the managers shall be deemed to be placed in Public Trust; and, subject to the provisions of this Act, all the provisions of the Public Trust Act 2001, so far as they are applicable and with any necessary modifications, shall extend and apply accordingly to the management of that person's property.
- (2) All expenses incurred by Public Trust as manager, whether alone or together with any other person or persons, in respect of the maintenance of any person subject to a property order or in the management of the property of any such person, or in the exercise of the powers, authorities, and discretions conferred on Public Trust in respect of that property, shall be charged against and payable out of that person's property; and, in addition, there shall be payable in respect of that property remuneration and amounts in accordance with Public Trust's scale of charges.
- (3) All such expenses, commissions, and other charges shall be payable out of the estate of the person subject to a property order notwithstanding that the person dies or his or her property otherwise ceases to be under the management of Public Trust before such payment is made.

Section 40 heading: amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 40(1): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 40(2): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 40(3): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

**41 Application of Maori Trustee Act 1953**

- (1) The management of the property of a person subject to a property order in respect of which the Māori Trustee is the manager or one of the managers shall be deemed to be placed in the Māori Trustee; and, subject to the provisions of this Act, all the provisions of the Maori Trustee Act 1953, so far as they are applicable and with any necessary modifications, shall extend and apply accordingly to the management of that person's property.
- (2) All expenses incurred by the Māori Trustee as manager, whether alone or together with any other person or persons, in respect of the maintenance of any person subject to a property order or in the management of the property of any such person, or in the exercise of the powers, authorities, and discretions conferred on the Māori Trustee in respect of that property, shall be charged against and payable out of that person's property; and, in addition, there shall be payable in respect of that property the commissions and other charges from time to time prescribed by regulations made under section 48 of the Maori Trustee Act 1953.
- (3) All such expenses, commissions, and other charges shall be payable out of the estate of the person subject to a property order notwithstanding that the person dies or his or her property otherwise ceases to be under the management of the Māori Trustee before such payment is made.

Section 41(1): amended, on 1 July 2009, by section 30(1) of the Māori Trustee Amendment Act 2009 (2009 No 12).

Section 41(2): amended, on 1 July 2009, by section 30(1) of the Māori Trustee Amendment Act 2009 (2009 No 12).

Section 41(3): amended, on 1 July 2009, by section 30(1) of the Māori Trustee Amendment Act 2009 (2009 No 12).

**42 Manager's powers subject to provisions of personal order**

Where a property order is made in respect of any person subject to a personal order, the exercise by the manager of the rights and powers conferred by or under this Part shall be subject to the terms of the personal order.

**43 Manager's duty to consult**

- (1) In the management of the property of a person subject to a property order, the manager shall, as far as it may be practicable, consult—
  - (a) the person for whom the manager is acting; and
  - (b) such other persons, as are, in the opinion of the manager, interested in the welfare of the person and competent to advise the manager in relation to the management of the person's property; and
  - (c) a representative of any group that is engaged, otherwise than for commercial gain, in the provision of services and facilities for the welfare of persons in respect of whose property the court has jurisdiction in accordance with section 25, and that, in the opinion of the manager, is compe-

tent to advise the manager in relation to the property that is subject to the property order.

- (2) The manager may follow any advice given to the manager by the person for whom the manager is acting or by any other person referred to in subsection (1), and shall not be liable for anything done or omitted by the manager in following that advice, unless done or omitted in bad faith or without reasonable care.
- (3) In any case where the manager is of the opinion that any such advice conflicts with his or her duty as manager or with any rule of law or would or may expose the manager to liability or is otherwise objectionable, or in any case where conflicting advice is given to the manager, the manager may apply to a court for directions in the matter, and shall not incur any liability in respect of anything done or omitted to be done in accordance with any such directions.
- (4) In any case to which subsection (3) applies, the court may make such order as to costs as it thinks fit.
- (5) Nothing in subsection (3) shall oblige the manager to apply to a court for directions.
- (6) Without limiting any of the foregoing provisions of this section, where a welfare guardian has been appointed for the person for whom the manager is acting, the manager shall consult on a regular basis with that welfare guardian to ensure that the interests of the person for whom they are acting are not prejudiced through any breakdown in communication between the manager and the welfare guardian.

#### **44 Effect of manager's decisions, etc**

- (1) Every decision made by a manager in the exercise of the powers conferred by or under this Part, and everything done by a manager in implementation of any such decision, shall have the same effect as it would have had if it had been made or done by the person for whom the manager is acting and that person had had full capacity to make or do it.
- (2) Without limiting the generality of subsection (1), any contract, agreement, or other arrangement made or entered into by the manager in relation to any property of which he or she is the manager may be enforced in respect of the property, by proceedings (where necessary) brought against the manager in his or her capacity as manager, in the same manner and to the same extent as it could have been enforced if it had been made or entered into by the person for whom the manager is acting and that person had been fully competent to make or enter into it.
- (3) No person dealing with a manager in respect of any matter within the powers of a manager shall be concerned to inquire as to the concurrence or otherwise of the person for whom the manager is acting or of any other person or be affected by notice that the person or any other person has not concurred.

**45 Statements required**

- (1) For the purposes of this section the term **year**, in relation to a manager, means a period of 12 months commencing with the date on which his or her managership begins or with an anniversary of that date.
- (2) Every manager shall prepare a statement, in the prescribed form and containing the prescribed particulars, and file it in a court together with 2 copies, as follows:
  - (a) within 3 months after the date of the commencement of his or her managership, a statement of the property, as at that date, of the person for whom the manager is acting;
  - (b) within 30 days after the expiry of each year during which his or her managership continues, a statement relating to the property, as at the expiry of that year, of the person for whom the manager is acting and to the management of that property by the manager during that year;
  - (c) within 30 days after the date on which the manager ceases in accordance with section 52 to hold office as manager, a statement relating to the property, as at that date, of the person for whom the manager was acting and to the management of that property by the manager during the period commencing with the expiry of the last complete year of his or her managership and ending with that date.
- (2A) Notwithstanding anything in subsections (1) and (2)(b), the court may specify both the period of 12 months that, in relation to any managership, is to constitute a year for the purposes of any statement required to be filed under subsection (2)(b) and the transitional arrangements that, in relation to statements required to be filed under subsection (2)(b), are to apply in relation to a change of balance date.
- (3) Every manager commits an offence and is liable upon conviction to imprisonment for a term not exceeding 3 years who, in a statement filed under this section, includes any particular knowing it to be false.
- (4) Every manager commits an offence and is liable on conviction to a fine not exceeding \$1,000 who fails to file a statement when required to do so by subsection (2).

Section 45(2A): inserted, on 1 July 1994, by section 5 of the Protection of Personal and Property Rights Amendment Act 1994 (1994 No 54).

Section 45(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 45(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**46 Statement to be examined by or on behalf of Public Trust**

- (1) Where any statement is filed in a court under section 45 by any manager who is not a trustee corporation, the Registrar of the court shall forthwith transmit 1



copy of the statement to Public Trust, and send the other copy to the person for whom the manager is acting.

- (2) Public Trust, or a qualified auditor appointed by Public Trust for the purposes of this section, shall examine a statement transmitted to Public Trust under subsection (1), and shall prepare a report as to whether the statement is correct and, if not, in what respects it is deficient.
- (3) A report under subsection (2) shall be filed with the court, and a copy of the report shall be given to the manager who filed the statement.
- (4) Public Trust, or a qualified auditor appointed by Public Trust for the purposes of this section, shall have a right of access to the books, accounts, vouchers, securities, or other documents of the manager or in the manager's custody or under the manager's control, and to any securities and documents of title held by the manager on account of the person for whom he or she is acting as manager, and may require from the manager such information and explanation as may be necessary.
- (5) If any person having the custody or control of any books, accounts, vouchers, securities, or other documents to which Public Trust, or a qualified auditor appointed by Public Trust for the purposes of this section, has a right of access under this section fails or refuses to allow Public Trust or that qualified auditor to exercise such access or in any way obstructs the preparation of a report under subsection (2), a court, on the application of Public Trust or the qualified auditor, may make such order as it thinks appropriate.
- (6) The remuneration and expenses of Public Trust, or any qualified auditor appointed by Public Trust for the purposes of this section, shall be such as may be prescribed or (if not so prescribed) as may be determined by the court, and shall, unless the court otherwise orders, be borne by the property of the person for whom the manager is acting; and where the court orders otherwise, such remuneration and expenses shall be borne by the manager personally or be apportioned between the manager and the property of the person for whom the manager is acting, as the court thinks just.
- (7) All expenses and costs for which the property of a person subject to a property order is liable under this section shall be a charge on that property, and that charge may be enforced in such manner as the court directs.
- (8) Public Trust, or a qualified auditor appointed by Public Trust for the purposes of this section, shall not be liable for any expenses or costs under this section.
- (9) In this section, **qualified auditor** has the same meaning as in section 35 of the Financial Reporting Act 2013.

Section 46 heading: amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 46(1): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 46(2): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

Section 46(2): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 46(4): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

Section 46(4): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 46(5): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

Section 46(5): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 46(6): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

Section 46(6): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 46(8): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

Section 46(8): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 46(9): inserted, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

#### **47 Inspection and copying of statements and reports by leave**

Any person may, by leave of the court or of the Registrar, inspect or make a copy of the whole or any part of any statement or report filed in a court under section 45 or section 46.

#### **48 Enforcement of manager's duty to prepare and file statements**

- (1) Where a manager fails to file a statement in a court when required to do so by section 45(2), the Registrar of the court shall draw the matter to the attention of a Judge, who may make an order directing the manager to remedy the default within such time as may be specified in the order.
- (2) An order made under subsection (1) may provide that all costs of and incidental to the application shall be borne by the manager.
- (3) Nothing in this section shall limit or affect section 45(4).

#### **49 Liability of manager**

- (1) Subject to subsection (2), no action shall lie against a manager in respect of anything done or omitted to be done by the manager in the exercise of the powers conferred by or under this Act, unless it is shown that the manager acted in bad faith or without reasonable care.
- (2) A manager shall be personally liable in respect of any contract or arrangement entered into with, or liability incurred to, any person if the manager does not, before entering into the contract or arrangement or incurring the liability, disclose to that person that the manager is acting in that capacity.

**50 Expenses of management and remuneration of managers**

- (1) All expenses properly incurred by a manager under this Part shall be charged against and payable out of the property of the person for whom the manager is acting.
- (2) Except as provided by any other Act, no manager shall be entitled to remuneration for his or her services unless a court otherwise directs, either in the property order or by a subsequent order.
- (3) All such expenses, remuneration, and other charges shall be payable out of the property of the person for whom the manager is acting, although the person dies or the property otherwise ceases to be under the management of the manager before such payment is made.

**51 Grants to Public Trustee**

*[Repealed]*

Section 51: repealed, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

**52 When manager ceases to hold office**

A manager shall cease to hold office as manager under this Part—

- (a) if the person for whom the manager was acting dies; or
- (b) if the manager dies or is adjudged bankrupt or becomes a special patient or a committed patient under the Mental Health Act 1969 or becomes subject to a property order or becomes otherwise incapable of acting; or
- (c) unless the court otherwise orders in any case where there are 2 or more managers, if one of the other managers dies or is adjudged bankrupt or becomes a special patient or a committed patient under the Mental Health Act 1969 or becomes subject to a property order or becomes otherwise incapable of acting; or
- (d) if the property order is discharged by the court under section 87; or
- (e) unless the court otherwise orders, if another person is appointed as manager.

**Part 5**

**Powers and property of persons subject to property orders**

**53 Powers of persons subject to property orders**

- (1) Subject to section 36(2), a person subject to a property order shall be incapable of exercising personally any of the powers vested in the manager in respect of any property to which the manager's powers extend.
- (2) Every transfer, lease, mortgage, or other disposition of property, and every contract (except for necessities), made or entered into by a person subject to a

property order who, by virtue of subsection (1) does not have the capacity to make or enter into it shall, unless it is made or entered into with the leave of a court, be avoidable by that person or by the manager acting for that person.

- (3) A court may give leave to any person subject to a property order to make any such transfer, lease, mortgage, or other disposition, or to enter into any such contract, if the court is satisfied that the transaction is for the person's benefit and that the person consents to it with adequate understanding of its nature.
- (4) A manager shall not be entitled to avoid any transaction under subsection (2) in any case where an application in writing has been made to the manager by any party to the transaction requiring the manager to decide whether or not to avoid the transaction, and the manager has, for a period of 28 days after the receipt of the application or such extended period as may be allowed by a court, failed to give to that party notice whether the manager is avoiding the transaction or not.
- (5) If the manager, after any such application, does not, within the period or extended period referred to in subsection (4), avoid the transaction, the manager shall be deemed to have continued it.
- (6) Subject to subsection (8), if any transaction is avoided under subsection (2), a court, on the application of any party to the transaction or of the manager, may make such orders as it thinks just for the purpose of adjusting the rights of the parties and of any other person who has received any property or money comprised in the transaction (not being a person who has received the property or money from a party in good faith and for valuable consideration or who claims through such a person).
- (7) Without limiting the generality of subsection (6), on an application under that subsection, a court may make an order for the restitution or transfer or payment by or to the person subject to a property order or the manager or any other person of any property or money, in whole or in part, or of any sum representing the value, in whole or in part, of any such property.
- (8) Relief under subsections (6) and (7) may be denied wholly or in part if the person from whom relief is sought received the property or money in good faith and has so altered his or her position in reliance on having received an indefeasible interest in it that, in the court's opinion, it would be inequitable to grant relief, or to grant relief in full, as the case may be.
- (9) For the purposes of subsection (2), the question whether goods or services are necessities is a question of fact.

#### **54 Testamentary powers of person subject to property order**

- (1) Without limiting the generality of section 4, a person subject to a property order shall not, by reason only of being subject to that order, be incapable of making testamentary dispositions.
- (2) A court may direct that a person subject to a property order may make a testamentary disposition only by leave of the court; and, in such a case, a testament-

ary disposition made without the leave of the court shall be ineffective for all purposes.

- (3) The court may grant leave to make a testamentary disposition under subsection (2) in respect of a testamentary disposition already made or to be made.
- (4) The court may cause inquiries to be made as to the existence of any testamentary disposition made by a person subject to a property order before the making of the property order (whether such testamentary disposition was made before or after the passing of this Act), and may direct that any such testamentary disposition shall be deposited in the court.
- (5) If it appears to the court that a testamentary disposition was made when the person was unable to manage his or her own affairs in relation to his or her property, the court may cause inquiries to be made, in such manner as the court thinks fit, whether that testamentary disposition expresses the present desire and intention of the person.
- (6) If the court is satisfied that the testamentary disposition does not express the present desire and intention of the person, a court may, in any case where such a course is possible, cause the present desire and intention of the person to be ascertained to the court's satisfaction, and may authorise the execution by the manager under section 55 of a new testamentary disposition of that person's estate in accordance with that present desire and intention.

**55 Court may authorise manager to make testamentary disposition for person subject to property order**

- (1) Where the court has given a direction under section 54(2) that a person subject to a property order may make a testamentary disposition only by leave of the court, or the court is satisfied that such a person lacks testamentary capacity, the court may authorise the manager acting for that person to execute a will for and on behalf of that person in such terms as the court directs.
- (2) Before a court authorises a manager to execute a testamentary disposition under subsection (1), it shall settle the proposed terms of the testamentary disposition provisionally, and hear such persons who wish to be heard and whom the court is satisfied have a proper interest in the matter.
- (3) A testamentary disposition executed by a manager under this section may, while the person continues to lack testamentary capacity, be varied, or revoked and substituted, by another testamentary disposition authorised by the court and executed by the manager in the same manner as the original testamentary disposition.
- (4) Any testamentary disposition executed by a manager under this section shall be—
  - (a) signed in the manager's name for and on behalf of the person for whom it is made, in the presence of 2 or more witnesses present at the same time; and

- (b) attested and subscribed by those witnesses in the presence of the manager; and
  - (c) sealed with the seal of the court.
- (5) The following provisions apply to a testamentary disposition authorised and executed under this section:
- (a) it is valid despite—
    - (i) section 11 of the Wills Act 2007; and
    - (ii) sections 9 and 10 of the Wills Act 1837 of the United Kingdom Parliament; and
  - (b) it has the same effect for all purposes as it would have had if the person subject to the property order—
    - (i) had had testamentary capacity; and
    - (ii) had executed the testamentary disposition in the manner required by the applicable section.
- (6) The Law Reform (Testamentary Promises) Act 1949, the Family Protection Act 1955, and all other enactments and rules of law relating to the estates of deceased persons shall apply in respect of any testamentary disposition executed under this section as if the person to whom it relates had had testamentary capacity and had executed the testamentary disposition in accordance with law.
- (7) Notwithstanding paragraph (c) of subsection (4), a testamentary disposition that is signed in accordance with paragraph (a) of that subsection, and attested and subscribed in accordance with paragraph (b) of that subsection, shall be valid notwithstanding that the person to whom the testamentary disposition relates dies before it is sealed with the seal of the court so long as the terms of the testamentary disposition accord with the directions of the court.
- (8) A testamentary disposition authorised and executed in accordance with this section shall continue to have effect, until it is revoked, notwithstanding that the person to whom it relates has ceased to be subject to a property order.

Section 55(5): substituted, on 1 November 2007, by section 41 of the Wills Act 2007 (2007 No 36).

## **56 Testamentary law otherwise unaffected**

Except as provided in sections 54 and 55, nothing in this Act shall affect the law relating to testamentary dispositions.

## **57 Proceedings, execution, etc, not to proceed without leave of court**

- (1) From the date on which an application is made for a property order in respect of any person, no person shall, without the leave of a court,—
- (a) bring or continue any proceedings (not being proceedings under this Act or proceedings in the High Court) against the person in respect of whom the application is made; or

- (b) issue any execution, attach any debt, or otherwise enforce or seek to enforce any judgment or order (not being a judgment or order given under this Act) against the person in respect of whom the application is made; or
  - (c) enter into possession, sell, appoint a receiver, or take or continue any power or right under or in pursuance of any mortgage, charge, instrument, or other security over the property of the person in respect of whom the application is made; or
  - (d) determine or forfeit any tenancy, retake or re-enter any premises, or take or continue any power or right under or in pursuance of any lease, tenancy, or agreement to let or lease against the property of the person in respect of whom the application is made.
- (2) This section shall also apply to a company and its property, and to any subsidiary of a company and the subsidiary's property, where the person in respect of whom the application is made is a member of the company and holds more than 50% of its issued shares.
- (3) For the purposes of subsection (2),—

**company** has the same meaning as in section 2(1) of the Companies Act 1993

**subsidiary** has the same meaning as in section 5 of the Companies Act 1993.

Section 57(1)(a): amended, on 1 July 1994, by section 6 of the Protection of Personal and Property Rights Amendment Act 1994 (1994 No 54).

Section 57(1)(c): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Section 57(1)(d): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Section 57(2): amended, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 57(3): replaced, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

## **58 Notional preservation of character of assets converted**

- (1) Where any property (including money) is derived from any sale, mortgage, charge, or other disposition of any other property belonging to a person subject to a property order pursuant to any powers conferred by or under this Act or any former corresponding Act, the person whose property is so disposed of, and anyone claiming through that person, shall have the same interest in the property so derived, so far as it has not been applied or spent or disposed of in accordance with any powers so conferred, as he or she would have had in the property disposed of if no disposition had been made, and the surplus property so derived shall be deemed to be of the same nature as the property disposed of.

- (2) In any such case, the manager may, for the purpose of giving better effect to the provisions of subsection (1), carry to a separate account an amount representing the property so derived, or any balance for the time being remaining.
- (3) While an amount stands to the credit of that separate account, any payments from the property of the person subject to a property order shall be made out of any other property properly available for the purpose, except so far as the manager decides that the payment should be made wholly or partly from the separate account.
- (4) Subject to subsection (5), this section shall apply in all cases, whether the property was so derived before or after the commencement of this Act, but shall not apply to any property so derived by the disposition of any property belonging to a mentally defective person who died before 18 October 1957 (being the date of the commencement of the Mental Health Amendment Act 1957), unless the court had, in the lifetime of that person, made an order that would have been authorised by section 60 if it had then been in force.
- (5) No distribution that has been made before the commencement of this Act of property affected by any such order shall be disturbed by reason of this section or of section 59 or section 60.
- (6) This section shall not apply to income arising from any such property so derived during the lifetime of the person subject to a property order.

**59 Notional preservation of character of money expended for certain purposes**

- (1) A court shall have power to order that the whole or any part of any money expended or to be expended for—
  - (a) the improvement, security, or advantage of any property of a person subject to a property order; or
  - (b) repaying money secured by a mortgage or other charge over such property,—

shall be a charge upon the property, but so that no right of sale during the lifetime of the person shall be conferred by the charge.

- (2) The charge may include interest on the money if the court thinks fit, and the court may give directions regarding payment of interest.
- (3) The charge may take effect in favour of a person as trustee for the person subject to a property order as part of that latter person's personal estate or of a specified part thereof.
- (4) At any time before the death of a person in respect of whom the court has made an order under this section, and whether or not that person is still subject to a property order, the court may vary or discharge the charge and give any consequential directions.



- (5) Nothing in this section shall apply to any mortgage or charge in favour of any other person who advances the money, nor shall it restrict the operation of section 56 of the Public Trust Act 2001 or affect any charge created by subsection (4) of that section.

Section 59(5): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

**60 Court may make orders for preserving nature and devolution of property**

- (1) A court shall have power, in the management of the property of a person subject to a property order, to make such orders as it thinks fit for the purpose of preserving the nature, quality, tenure, and devolution of the property or of any part of it.
- (2) Without limiting the generality of subsection (1), a court may direct that any money shall be carried to a separate account, and may declare the notional character that the money in that account bears, and may order such assurances and things to be executed and done as it thinks expedient.
- (3) At any time before the death of the person subject to a property order, and whether or not he or she is still subject to such an order, the court may vary or discharge the order, and give any consequential directions.

**61 Termination of notional preservation of character of assets**

- (1) Section 58 shall cease to apply to any capital money, and any charge on property created under an order of the court made under section 59 shall be extinguished, and any order of the court made under section 60 shall cease to have effect, if, at any time after section 58 became applicable to the capital money, or the charge came into existence, or the order was made, as the case may be (in this section referred to as a subsequent time), the person subject to a property order has been entitled for any continuous period of 12 months to manage the capital money, or the property charged, or the money or other property affected by the order, as the case may be.
- (2) If the person subject to a property order has not been so entitled, section 58 shall continue to apply to any of his or her capital money to which it has become applicable, and any such charge or order shall continue to exist and have effect, except so far as the person has, at any subsequent time, while having the necessary capacity to do so,—
- (a) made a valid testamentary disposition of, or paid or transferred to any other person beneficially, the capital money or the property charged or the money or other property affected by the order, as the case may be; or
- (b) in the case of property charged, released the charge.
- (3) This section shall not limit or affect any power of the court under section 59 or section 60 to vary or discharge any such charge or order.

- (4) Subsection (2) shall have effect whether or not the person continues to be subject to a property order or to be entitled to manage all or any of his or her money and other property.

**62 Court may settle the beneficial interests of person subject to property order**

- (1) A court may direct a settlement to be made of all or any of the property of a person subject to a property order on such trusts and subject to such powers and provisions as the court may think fit; and, in particular, the court may give such directions—
- (a) where the property has been acquired under a settlement or will, or on intestacy, or represents property so acquired; or
  - (b) where,—
    - (i) by reason of any change in the law or of any change in circumstances since the execution by the person of a testamentary disposition; or
    - (ii) by reason of any absence of information at the time of that execution; or
    - (iii) on account of the former management of the property or the expenditure of money in improving or maintaining it; or
    - (iv) for any other special reason,—the court is satisfied that the devolution or distribution of the property of the person, either under any testamentary disposition or on intestacy, would be such as might cause injustice or hardship to any person.
- (2) A court may direct the transfer by way of gift of any of the property of a person subject to a property order for the maintenance and benefit of members of the person's family or for the provision of other persons or purposes for whom or which the person might be expected to provide if he or she were able to manage his or her own affairs in relation to his or her property.
- (3) A court may direct the manager, to execute any transfer or other instrument, and to do any other act or thing, that may be required for giving effect to the transfer or settlement, in the name and on behalf of the person, and for that purpose may make a vesting order or appoint a person to convey; and any settlement or transfer approved by the court shall be as effectual and binding on all persons interested as if it had been made by the person while of full competence.
- (4) This section applies whether or not the person has executed a testamentary disposition and notwithstanding that it is not known whether the person has executed such a disposition or not, but does not apply when the person is a minor who is not married or in a civil union.

- (5) An application to a court for an order under this section may be made by any of the following persons:
- (a) any person who has or would have had any interest in the property of the person subject to a property order or any expectation of succession to any such property, whether that interest or expectation arises or could have arisen under a testamentary disposition that is known to exist or in the event of the intestacy of the person:
  - (b) the manager:
  - (c) any other person who adduces proof of circumstances that, in the opinion of the court, make it proper that that person should make the application.
- (6) Subject to making due provision for the maintenance of the person subject to a property order in accordance with his or her means and way of 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 person recovering full competence to manage his or her own affairs in relation to his or her property, the court may, in making any order under this section, have regard to all or any of the following matters:
- (a) the manner in which the property has been settled or dealt with on former occasions:
  - (b) in the case of any land or business, the welfare of the persons employed in connection with the land or business, and the expediency of settling other assets to devolve with the land or business:
  - (c) the provisions of any testamentary disposition of the person subject to a property order:
  - (d) the expediency of providing for—
    - (i) payments or annuities for the wife, husband, civil union partner, de facto partner, or children of the person subject to a property order or for other persons dependent on that person, and for other annual or capital charges and the power to create them:
    - (ii) the continuation or provision of any superannuation or pension, and the application of any part of the income for charitable purposes:
    - (iii) discretionary trusts, trusts for effecting or maintaining policies of insurance, powers of appointment, sinking funds for making good any losses (instead of or in addition to insurance), or any other purposes:
    - (iv) the extension of any statutory powers of investment, management, or otherwise:

- (v) the manner in which any costs are to be raised and paid, whether out of the settled property or otherwise:
  - (vi) any other matter or thing that the court may consider material, having regard to the nature of the settlement, development, and enjoyment, and to the persons who are to take, either successively or otherwise.
- (7) At any time before the death of a person in respect of whom it has made an order under this section, and whether or not he or she is still subject to a property order, the court may, in respect of 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) Without limiting the provisions of section 111, rules of court may be made for all or any of the following purposes:
- (a) giving effect to the provisions of this section:
  - (b) compelling information to be furnished respecting, and production of, testamentary dispositions, and their lodgement in court:
  - (c) making representation orders.

Section 62(4): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 62(6)(d)(i): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 62(8): amended, on 13 September 2002, by section 6 of the Family Courts Amendment Act 2000 (2000 No 65).

## Part 6 Procedure

### 63 Service of copy of application required

- (1) Where an application is made for the exercise of a court's jurisdiction under this Act, a copy of the application shall be served on the following persons:
- (a) subject to subsection (2), the person in respect of whom the application is made:
  - (b) each parent or guardian of that person:
  - (c) if that person is not living with either of his or her parents or guardians, any person with whom that person is living:
  - (d) if it is proposed that a person be appointed as welfare guardian or manager, the proposed appointee:
  - (e) if a welfare guardian is acting for that person, that welfare guardian:

- (f) if that person is subject to a property order, the manager of that person's property:
  - (g) any other person specified by the court.
- (2) The court may dispense with service under subsection (1)(a) where it is satisfied that—
  - (a) the person in respect of whom the application is made wholly lacks the capacity to understand the nature and purpose of the proceedings; or
  - (b) exceptional circumstances exist of a nature to justify dispensing with service.
- (3) Any person served with proceedings under subsection (1) shall be entitled to appear and be heard as a party to the proceedings.

#### **64 Applications may be joined, etc**

- (1) Applications under Parts 1 and 3 may be joined, and, subject to any rules of court, it shall not be necessary to file separate applications.
- (2) A court may hear and determine any proceedings before it under Part 1 in conjunction with any proceedings under Part 3 in any case where both proceedings are in respect of the same person, whether or not the parties to the proceedings are the same.
- (3) If it appears to a court hearing an application under Part 1 that a property order should be made, either in addition to or instead of a personal order, or if it appears to a court hearing an application under Part 3 that a personal order should be made, either in addition to or instead of a property order, the court may make all such orders and give all such directions as may be necessary to facilitate the hearing of an application under Part 3 or (as the case may require) Part 1.

Section 64(1): amended, on 13 September 2002, by section 6 of the Family Courts Amendment Act 2000 (2000 No 65).

#### **65 Appointment of lawyer to represent person in respect of whom application made**

- (1) On an application for the exercise of the court's jurisdiction under this Act, a court or the Registrar of a court must appoint a lawyer to represent the person in respect of whom the application is made, unless the court or the Registrar is satisfied that the person has retained or will retain a lawyer.
- (2) So far as may be practicable, it shall be the duty of the lawyer appointed under subsection (1) to—
  - (a) contact the person in respect of whom the application is made, explain to that person the nature and purpose of the application, and ascertain and give effect to that person's wishes in respect of the application; and

- (b) evaluate the solutions for the problem for which an order is sought submitted by other parties to the proceedings, taking account of the need to find a solution that—
  - (i) makes the least restrictive intervention possible in the life of the person in respect of whom the application is made, having regard to the degree of incapacity or incompetence of that person; and
  - (ii) enables or encourages the person in respect of whom the application is made to develop and exercise such capacity or competence that the person may have to the greatest extent possible.
- (3) *[Repealed]*
- (4) A lawyer appointed under this section may call any person as a witness in the proceedings, and may cross-examine witnesses called by any party to the proceedings or by the person in respect of whom the application is made or by the court.
- (5) Fees for professional services provided by lawyers appointed under this section, and reasonable expenses incurred,—
  - (a) may be determined in accordance with regulations made under this Act; and
  - (b) are payable out of public money appropriated by Parliament for the purpose.
- (6) An invoice for fees and expenses submitted for payment by a lawyer appointed under this section must be given to a Registrar of the court, and the Registrar processing the invoice may decide to adjust the amount of the invoice.
- (7) If the lawyer is dissatisfied with the decision of the Registrar as to the amount of the invoice, the lawyer may, within 14 days after the date of the decision, apply to a Family Court Judge to review the decision; and the Judge may make such order varying or confirming the decision as the Judge considers fair and reasonable.
- (8) Notwithstanding subsection (5), the court shall have regard to the means of any party to the proceedings or the person in respect of whom the application is made, and shall, if it thinks proper, order any party or the person to refund to the Crown such amount as the court specifies in respect of any fees or expenses paid under that subsection; and the amount ordered to be refunded shall be a debt due to the Crown by that party or by that person and shall be recoverable accordingly in any court of competent jurisdiction.

Section 65 heading: replaced, on 31 March 2014, by section 4(1) of the Protection of Personal and Property Rights Amendment Act 2013 (2013 No 83).

Section 65(1): amended, on 31 March 2014, by section 4(2) of the Protection of Personal and Property Rights Amendment Act 2013 (2013 No 83).

Section 65(1): amended, on 18 May 2009, by section 4(2)(a) of the Protection of Personal and Property Rights Amendment Act 2008 (2008 No 84).

Section 65(1): amended, on 18 May 2009, by section 4(2)(b) of the Protection of Personal and Property Rights Amendment Act 2008 (2008 No 84).

Section 65(2): amended, on 31 March 2014, by section 4(2) of the Protection of Personal and Property Rights Amendment Act 2013 (2013 No 83).

Section 65(3): repealed, on 31 March 2014, by section 4(3) of the Protection of Personal and Property Rights Amendment Act 2013 (2013 No 83).

Section 65(3): amended, on 18 May 2009, by section 4(3) of the Protection of Personal and Property Rights Amendment Act 2008 (2008 No 84).

Section 65(4): amended, on 31 March 2014, by section 4(2) of the Protection of Personal and Property Rights Amendment Act 2013 (2013 No 83).

Section 65(5): substituted, on 1 July 1994, by section 7 of the Protection of Personal and Property Rights Amendment Act 1994 (1994 No 54).

Section 65(5): amended, on 31 March 2014, by section 4(4) of the Protection of Personal and Property Rights Amendment Act 2013 (2013 No 83).

Section 65(5)(b): substituted, on 3 June 1998, by section 2 of the Protection of Personal and Property Rights Amendment Act 1998 (1998 No 58).

Section 65(6): replaced, on 8 September 2018, by section 78 of the Statutes Amendment Act 2018 (2018 No 27).

Section 65(7): amended, on 31 March 2014, by section 4(2) of the Protection of Personal and Property Rights Amendment Act 2013 (2013 No 83).

Section 65(7): amended, on 31 March 2014, by section 4(6) of the Protection of Personal and Property Rights Amendment Act 2013 (2013 No 83).

### **65A Appointment of lawyer to assist court**

In any proceedings under this Act, a court may—

- (a) appoint a lawyer to assist the court; or
- (b) direct the Registrar of the court to appoint a lawyer to assist the court.

Section 65A: inserted, on 31 March 2014, by section 5 of the Protection of Personal and Property Rights Amendment Act 2013 (2013 No 83).

### **65B Payment of lawyer appointed under section 65A**

- (1) The fees and expenses of any lawyer appointed under section 65A must—
  - (a) be determined in accordance with regulations made under section 16D of the Family Court Act 1980 or, if no such regulations are made, by a Registrar of the court; and
  - (b) be paid in accordance with that determination out of public money appropriated by Parliament for the purpose.
- (2) An invoice for fees and expenses submitted for payment by a lawyer appointed under section 65A must be given to a Registrar of the court, and the Registrar processing the invoice may decide to adjust the amount of the invoice.
- (3) A lawyer who is dissatisfied with the decision of the Registrar as to the amount of the invoice may, within 14 days after the date of the decision, apply to a Family Court Judge to review the decision, and the Judge may on the application make any order varying or confirming the decision that the Judge considers fair and reasonable.

- (4) Where the fees and expenses of a lawyer appointed under section 65A have been paid under subsection (1)(b), the court may, if it thinks it appropriate, order a party to the proceedings to refund to the Crown an amount that the court specifies in respect of those fees and expenses, and the amount ordered to be refunded is a debt due to the Crown by that party and, in default of payment of that amount, payment may be enforced, by order of the District Court or the High Court, as the case may require, in the same manner as a judgment of that court.

Section 65B: inserted, on 31 March 2014, by section 5 of the Protection of Personal and Property Rights Amendment Act 2013 (2013 No 83).

Section 65B(1)(a): amended, on 8 September 2018, by section 79(1) of the Statutes Amendment Act 2018 (2018 No 27).

Section 65B(1)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 65B(2): replaced, on 8 September 2018, by section 79(2) of the Statutes Amendment Act 2018 (2018 No 27).

Section 65B(4): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

### *Pre-hearing conferences*

#### **66 Calling of pre-hearing conference**

- (1) When an application for the exercise of the court's jurisdiction under this Act has been filed in a court, any of the following persons may request the Registrar to convene a pre-hearing conference:
- (a) the applicant;
  - (b) the person in respect of whom the application is made;
  - (c) any barrister or solicitor appointed pursuant to section 65(1) to represent that person;
  - (d) any other person upon whom a copy of the application has been served in accordance with section 63.
- (2) When an application for the exercise of the court's jurisdiction under this Act has been filed in a court, any Family Court Judge may direct the Registrar to convene a pre-hearing conference.
- (3) On receiving a request under subsection (1) or a direction under subsection (2), the Registrar shall—
- (a) appoint a time and place for the holding of a pre-hearing conference, being as soon as reasonably practicable after the receipt of the request or direction; and
  - (b) give notice to each of the persons referred to in paragraphs (a) to (d) of subsection (1) of the time and place of the pre-hearing conference, and request each of those persons to attend the conference.



**67 Objectives of pre-hearing conference**

The objectives of a pre-hearing conference shall be—

- (a) to identify the problem for which an order of the court is sought; and
- (b) to reach agreement between the parties and the person in respect of whom the application is made on a solution for the problem.

**68 Procedure at pre-hearing conference**

- (1) Every pre-hearing conference shall be presided over by a Family Court Judge.
- (2) The barrister or solicitor representing the person in respect of whom the application is made shall be present at the pre-hearing conference to assist and advise that person (if that person is present) or to represent that person (if that person is not present).
- (3) Subject to any direction by the presiding Judge to the contrary, any barrister or solicitor representing any other party to the application may be present at the pre-hearing conference to assist and advise that party.
- (4) Subject to any direction by the presiding Judge to the contrary, every pre-hearing conference shall be held in private.
- (5) The presiding Judge may from time to time adjourn a pre-hearing conference to such time and place as the Judge may determine.

**69 Identification of issues**

- (1) If the parties at a pre-hearing conference agree on the nature of the problem for which an order of the court is sought, and on the solution for that problem, the presiding Judge shall record in writing the terms of the agreement.
- (2) Where agreement is not reached on all matters, the presiding Judge shall record in writing those matters on which there is agreement and those matters on which there is no agreement.
- (3) In every case, the presiding Judge shall state in the record whether or not—
  - (a) the person in respect of whom the application is made was present during the pre-hearing conference; and
  - (b) the person was able to understand the nature and purpose of the proceedings; and
  - (c) the person agreed to any matter referred to in subsection (1).
- (4) The record made by the presiding Judge under subsection (1) or subsection (2) shall be filed in the District Court in which the relevant application is filed.

**70 Power of presiding Judge to make consent orders**

- (1) Subject to subsection (2), at a pre-hearing conference the presiding Judge may, by consent of the parties, make any orders that could have been made by the Family Court exercising jurisdiction under this Act.

- (2) The presiding Judge shall not make an order under subsection (1) unless the Judge is satisfied that the person in respect of whom the application is made understands the nature and foresees the consequences of the order and consents to the order.
- (3) An order made under this section shall for all purposes have the same effect as if it were made by consent in proceedings before the Family Court.

Section 70(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 70(3): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

### **71 Power to require attendance at pre-hearing conference**

- (1) Where a person fails to comply with a request under section 66 to attend a pre-hearing conference, a District Court Judge may, on the request of the Registrar of the court, issue a summons requiring the person to attend a pre-hearing conference at a time and place to be specified in the summons.
- (2) Section 159 of the Criminal Procedure Act 2011 applies to a summons under this section as if it were a witness summons issued under that section.

Section 71(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **72 Privilege**

- (1) No evidence shall be admissible in any court, or before any person acting judicially, of any information, statement, or admission disclosed or made in the course of a pre-hearing conference.
- (2) Nothing in subsection (1) shall apply to a record made by a Family Court Judge under section 69, or to any consent order made under section 70, or to any proceedings for the review of such an order.

### **73 Presiding Judge may hear subsequent proceedings**

The Family Court Judge who presides over a pre-hearing conference shall be entitled to hear any subsequent proceedings under that application unless in all the circumstances the Judge decides, of the Judge's own motion or on application by any party,—

- (a) that it would be inappropriate for the Judge to do so; or
- (b) that there is some other sufficient reason for the application to be heard by another Judge.

### *Proceedings before court*

### **74 Attendance of person in respect of whom application is made**

- (1) The person in respect of whom an application for the exercise of the court's jurisdiction under this Act is made shall be present throughout the hearing unless excused or excluded by the court under subsection (2) or subsection (3).

- (2) The court may excuse the person if it is satisfied that the person wholly lacks the capacity to understand the nature and purpose of the proceedings, or that attendance or continued attendance is likely to cause that person serious mental, emotional, or physical harm.
- (3) The court may exclude the person if it is satisfied that the person is causing such a disturbance that it is not practicable to continue with the hearing in the presence of that person.
- (4) The court may exercise its discretion to excuse or exclude the person at any stage of the hearing.
- (5) The person shall be present while the court makes any order upon the application unless—
  - (a) the person has been excused or excluded under subsection (2) or subsection (3); or
  - (b) there are exceptional circumstances justifying the court making an order in the absence of the person.

#### **75 Right of person to be heard and call evidence**

- (1) Where the person in respect of whom an application for the exercise of the court's jurisdiction under this Act is made is not a party to the application, the person shall be entitled to be heard by the court, whether in person or through a barrister or solicitor, and to call witnesses, and to cross-examine any witness called by any party to the proceedings.
- (2) Without limiting anything in subsection (1), where the person is present and appears capable of addressing the court, the court shall give the person an opportunity to do so; and, in any such case, the court may, if it thinks it desirable to do so, require any parent or guardian of that person, or any other person with whom that person is living, or any barrister or solicitor representing any such parent, guardian, or other person, to withdraw from the court while the person is addressing the court.
- (3) Nothing in this section shall limit or affect the rights of the person in respect of whom the application is made where the person is a party to the proceedings.

#### **76 Court may call for report on person**

- (1) On an application for the exercise of the court's jurisdiction under this Act, a court may, if it is satisfied that it is necessary for the proper disposition of the application,—
  - (a) request any person whom it considers qualified to do so to prepare a medical, psychiatric, psychological, or other report on the person in respect of whom the application is made; or
  - (b) direct the Registrar of the court to request any person whom the Registrar considers qualified to do so to prepare a medical, psychiatric,

- psychological, or other report on the person in respect of whom the application is made.
- (2) In deciding whether or not to request a report or make a direction under subsection (1), a court may ascertain and have regard to the wishes of the parties and of the person in respect of whom the application is made.
  - (3) A copy of any report obtained under this section shall be given by the Registrar of the court to—
    - (a) the lawyer for each party to the proceedings and for the person in respect of whom the application is made or, if any party is not represented by a lawyer, to that party; and
    - (b) any lawyer appointed under section 65A.
  - (4) A report given to a lawyer under subsection (3) shall not be given or be shown to the person for whom the lawyer is acting if the court so orders.
  - (5) Fees for reports prepared pursuant to a request under subsection (1), and reasonable expenses incurred,—
    - (a) may be determined in accordance with regulations made under this Act; and
    - (b) are payable by such party or parties to the proceedings as the court orders or, if the court so decides, are payable out of public money appropriated by Parliament for the purpose.
  - (5A) Any amount of any fees and expenses ordered to be paid by any party under subsection (5)(b) shall, if paid by the Crown, be a debt due to the Crown by that party and, in default of payment of the amount, payment thereof may be enforced, by order of the District Court or the High Court as the case may require, in the same manner as a judgment of that court.
  - (6) Any party to the proceedings, or the person in respect of whom the application is made, or any lawyer appointed under section 65A may tender evidence on any matter referred to in any such report.
  - (7) The court may call the person making the report as a witness, either of its own motion or on the application of any party or the person in respect of whom the application is made.

Section 76(1): substituted, on 18 May 2009, by section 5(1) of the Protection of Personal and Property Rights Amendment Act 2008 (2008 No 84).

Section 76(2): amended, on 18 May 2009, by section 5(2) of the Protection of Personal and Property Rights Amendment Act 2008 (2008 No 84).

Section 76(3)(a): amended, on 31 March 2014, by section 6(1) of the Protection of Personal and Property Rights Amendment Act 2013 (2013 No 83).

Section 76(3)(b): amended, on 31 March 2014, by section 6(1) of the Protection of Personal and Property Rights Amendment Act 2013 (2013 No 83).

Section 76(3)(b): amended, on 31 March 2014, by section 6(2) of the Protection of Personal and Property Rights Amendment Act 2013 (2013 No 83).

Section 76(4): amended, on 31 March 2014, by section 6(1) of the Protection of Personal and Property Rights Amendment Act 2013 (2013 No 83).

Section 76(5): substituted, on 1 July 1994, by section 8 of the Protection of Personal and Property Rights Amendment Act 1994 (1994 No 54).

Section 76(5)(b): substituted, on 3 June 1998, by section 3 of the Protection of Personal and Property Rights Amendment Act 1998 (1998 No 58).

Section 76(5A): inserted, on 1 July 1994, by section 8 of the Protection of Personal and Property Rights Amendment Act 1994 (1994 No 54).

Section 76(5A): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 76(6): amended, on 31 March 2014, by section 6(1) of the Protection of Personal and Property Rights Amendment Act 2013 (2013 No 83).

Section 76(6): amended, on 31 March 2014, by section 6(3) of the Protection of Personal and Property Rights Amendment Act 2013 (2013 No 83).

## **77 Evidence**

*[Repealed]*

Section 77: repealed, on 31 March 2014, by section 17A(i) of the Family Courts Act 1980 (1980 No 161).

## **78 Power of court to call witnesses**

- (1) Without limiting anything in section 77, in respect of any application for the exercise of the court's jurisdiction under this Act, a court may, of its own motion, call as a witness any person whose evidence may in its opinion be of assistance to the court.
- (2) A witness called by a court under this section shall have the same privilege to refuse to answer any question as the witness would have if the witness had been called by a party to the proceedings.
- (3) A witness called by a court under this section may be examined and re-examined by the court and may be cross-examined by or on behalf of any party to the proceedings or the person in respect of whom the application is made.
- (4) Sections 159 and 161 to 165 of the Criminal Procedure Act 2011, so far as they are applicable and with the necessary modifications, shall apply with respect to every person called as a witness by the court under this section as if that person had been called by a party to the proceedings.
- (5) The expenses of any witness called by a court under this section shall be paid in the first instance, in accordance with the prescribed scale of witnesses' expenses, out of public money appropriated by Parliament for the purpose.

Section 78(3): amended, on 31 March 2014, by section 7 of the Protection of Personal and Property Rights Amendment Act 2013 (2013 No 83).

Section 78(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 78(5): amended, on 1 July 1989, by section 86(1) of the Public Finance Act 1989 (1989 No 44).

**79 Attendance at hearings**

- (1) The following persons may attend a hearing of an application under this Act:
  - (a) officers of the court:
  - (b) parties to the proceedings:
  - (c) lawyers representing parties to the proceedings:
  - (d) the person in respect of whom the application is made:
  - (e) the lawyer representing the person in respect of whom the application is made:
  - (f) a lawyer appointed under section 65A to assist the court:
  - (g) witnesses:
  - (h) accredited news media reporters:
  - (i) persons whom the Judge permits to be present as support persons for any person described in paragraphs (b) and (d):
  - (j) any other person whom the Judge permits to be present.
- (2) The Family Court Judge must agree to a request under subsection (1)(i) unless the Judge considers there is a good reason why the named support persons should not be permitted to be present.
- (3) No support persons may help a party conduct his or her case.
- (4) If, during a hearing, the Family Court Judge requests a person of any of the following kinds to leave the courtroom, the person must do so:
  - (a) a witness:
  - (b) an accredited news media reporter:
  - (c) a support person whom the Judge permitted to be present under subsection (1)(i).
- (5) Nothing in this section limits any other power of the court—
  - (a) to hear proceedings in private; or
  - (b) to permit a McKenzie friend to be present; or
  - (c) to exclude any person from the court.

Section 79: substituted, on 18 May 2009, by section 6 of the Protection of Personal and Property Rights Amendment Act 2008 (2008 No 84).

Section 79(1)(f): replaced, on 31 March 2014, by section 8 of the Protection of Personal and Property Rights Amendment Act 2013 (2013 No 83).

**80 Publication of reports of proceedings**

Sections 11B to 11D of the Family Court Act 1980 apply to the publication of a report of any proceedings under this Act—

- (a) in the Family Court:

- (b) in any other court, in which case references in those sections to the Family Court or court must be read as references to that other court.

Section 80: substituted, on 18 May 2009, by section 7 of the Protection of Personal and Property Rights Amendment Act 2008 (2008 No 84).

Section 80: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 80(a): replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## **81 Costs**

Subject to any other provision of this Act, a court, on the hearing of any proceedings before it under this Act, may make such order as to costs as it thinks fit.

## **Part 7 Appeals and reviews**

### **82 Court to state whether order is suspended pending appeal**

When a court makes a personal order or a property order, it shall state in the order whether, in the event of an appeal being lodged, the order is or is not to be suspended in whole or in part pending the determination of the appeal.

### **83 Right of appeal to High Court**

- (1) If, on an application for the exercise of the court's jurisdiction under this Act, the court makes or refuses to make an order, or dismisses or otherwise finally determines the proceedings, a party to the proceedings or the person in respect of whom the application was made may appeal to the High Court against the order or other decision of the court.
- (2) If the court makes an interlocutory or interim order, a party to the proceedings or the person in respect of whom the application was made may, with the leave of the court, appeal to the High Court against the order.
- (3) The High Court Rules 2016 and sections 126 to 130 of the District Court Act 2016, with all necessary modifications, apply to an appeal under subsection (1) or (2) as if it were an appeal under section 124 of that Act.
- (4) On the *ex parte* application of the appellant, the court may order that the appellant must not be required under section 126(1) of the District Court Act 2016 to give the Registrar of the High Court security for costs.
- (5) Subsection (4) overrides subsection (3).

Section 83: substituted, on 24 November 2003, by section 4 of the District Courts Amendment Act 2002 (2002 No 63).

Section 83(3): replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 83(4): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

**83A Procedure on appeal to High Court**

The High Court Rules 2016 and sections 127 to 130 of the District Court Act 2016, with all necessary modifications, apply to an appeal under section 83.

Section 83A: substituted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 83A: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 83A: amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

**84 Further appeal to Court of Appeal**

A party to an appeal under section 83 may, with the leave of the Court of Appeal, appeal to the Court of Appeal against any determination of the High Court in the appeal.

Section 84: substituted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

**85 Appeals to Court of Appeal from decisions of High Court**

(1) Where—

(a) an application to the Family Court for the exercise of the court's jurisdiction under this Act has been transferred to the High Court in accordance with section 14 of the Family Court Act 1980; and

(b) the High Court has made or refused to make an order,—

a party to the proceedings or the person in respect of whom the application was made may, within 28 days after the making of the order or decision or within such further time as the Court of Appeal may allow, appeal to the Court of Appeal against the order or decision.

(2) Every appeal under subsection (1), except an appeal upon a question of law, shall be by way of rehearing of the original proceedings as if the proceedings had been properly commenced in the Court of Appeal.

(3) *[Repealed]*

Section 85(1)(a): replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 85(3): repealed, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

**86 Review of personal orders**

(1) Without limiting anything in sections 10(3), 11(4), and 12(7), the following persons may at any time apply to a court for a review of any personal order, whether made by consent or otherwise:

(a) the person in respect of whom the order was made:

(b) any welfare guardian or manager who is acting for that person:

(c) any other person, with the leave of the court.



- (2) Without limiting the discretion of the court on any application under subsection (1), but subject to subsection (3), on an application made pursuant to section 10(3) or section 11(4) or section 12(7), the court shall review—
  - (a) the capacity of the person to understand the nature and to foresee the consequences of decisions in respect of matters relating to the personal care and welfare of the person; and
  - (b) the capacity of the person to communicate decisions in respect of such matters.
- (3) Notwithstanding anything in subsection (2), where an application for review is made to provide for a new welfare guardian to be appointed in place of the present welfare guardian, the court shall not be obliged to review (but may review) the matters specified in that subsection.
- (4) On any application for the review of a personal order, the primary objectives of the court shall be those set out in section 8.
- (5) Subject to subsection (6), on any application for review of a personal order, a court may—
  - (a) vary or decline to vary the order; or
  - (b) discharge or decline to discharge the order; or
  - (c) extend the order for a further period; or
  - (d) make any order, whether in addition to or instead of the order under review, that it could have made on the original application.
- (6) On any application to which subsection (2) applies, the court shall not make any order that would extend the effect of the original order beyond the date on which it would otherwise expire unless the court is satisfied, having regard to the relevant provisions of Part 1, that the order continues to be necessary in the interests of the person in respect of whom it was made.
- (7) If the court does make an order that extends the effect of the original order beyond the date on which it would otherwise have expired, the following provisions shall apply:
  - (a) in the case of an order made under section 11, the court shall specify a date, being not later than 3 years after the date of the new order, by which the person appointed to administer the property is to apply to the court for a further review of the original order:
  - (b) in the case of an order made under section 12, the court shall specify a date, being not later than 3 years after the date of the new order, by which the welfare guardian is to apply to the court for a further review of the original order:
  - (c) in any other case, the court may specify a date by which the original order is to be further reviewed by the court and, if it does so, the court shall also specify the person or persons who is or are to be responsible

for applying to the court for a further review of the original order before the specified date.

- (8) Notwithstanding anything in paragraph (a) or paragraph (b) of subsection (7), the court may specify a date, for a further review of the original order, later than 3 years but not later than 5 years after the date of the new order if it is satisfied, in the exceptional circumstances of the case, that an earlier review is not necessary in the interests of the person to whom the order relates.

### **87 Review of property orders**

- (1) Where a trustee corporation—
- (a) has filed in a court an application made to the trustee corporation under section 32 or section 33 to act as manager of any property of a person; or
  - (b) is deemed by subsection (3) or subsection (4) of section 117 to be a manager appointed under this Act in respect of the property of any person (being property the gross value of which, as at the commencement of this Act, did not exceed \$100,000),—
- the trustee corporation shall, in accordance with subsection (1A), file in the court the reports specified in subsection (1B).
- (1A) The reports required by subsection (1) shall,—
- (a) where subsection (1)(a) applies, be filed not earlier than 2 years nor later than 3 years after the date of the filing of the application; or
  - (b) where subsection (1)(b) applies, be filed by the date specified in the programme drawn up in accordance with the Protection of Personal and Property Rights Regulations 1988.
- (1B) The reports required under subsection (1) comprise—
- (a) a report from each of 2 medical practitioners (at least 1 of whom must be independent of the applicant, or any relative of the applicant) as to the extent to which the person subject to the order has the competence or lacks the competence to manage his or her own affairs in relation to his or her property; and
  - (b) a report from the trustee corporation on the current condition of the person subject to the order, which report—
    - (i) shall indicate whether or not there has been any change in that person's condition since the application was made; and
    - (ii) shall contain other relevant information.
- (1C) If, after consideration of the reports filed in accordance with subsection (1), the court is of the opinion—
- (a) that the order should be discharged or that the order should be extended; and

- (b) a full review by the court in accordance with subsections (3) to (10) is unnecessary,—  
the court may order that the order be discharged or that the order be extended with such variation, if any, as the court may direct.
- (1D) Notwithstanding subsections (1) to (1C), where the reports are filed under subsection (1)(a), the court may if it thinks fit, either on its own motion or on the application of a person specified in subsection (2), direct that a full review of the case be undertaken and subsections (3) to (10) shall apply with any necessary modification to every such review as if the original application filed in the court were an order made by the court.
- (1E) Notwithstanding subsections (1) to (1C), where the reports are filed under subsection (1)(b), the court may if it thinks fit, either on its own motion or on the application of a person specified in subsection (2), direct that a full review of the case be undertaken and subsections (3) to (10) shall apply.
- (1F) In any case other than a case in which reports have been filed under subsection (1) in relation to a person subject to a property order, any person who, under a property order, is the manager of any property and who is of the opinion that the property order should be discharged may file in the court—
- (a) a report from each of 2 medical practitioners (at least 1 of whom must be independent of the applicant or any relative of the applicant) as to the extent to which the person subject to the order has the competence to manage his or her own affairs in relation to his or her property; and
- (b) a report from the manager on the current condition of the person subject to the order, which report—
- (i) shall set out the nature and extent of the change in that person's condition since the order was made; and
- (ii) shall contain other relevant information.
- (1G) If, after consideration of the reports filed in accordance with subsection (1F), the court is of the opinion—
- (a) that the order should be discharged; and
- (b) that a full review by the court in accordance with subsections (3) to (10) is unnecessary,—  
the court may order that the order be discharged.
- (1H) Notwithstanding subsections (1F) and (1G), where an application is made under subsection (1F), the court may if it thinks fit, either on its own motion or on the application of a person specified in subsection (2), direct that a full review of the case be undertaken and subsections (3) to (10) shall apply.
- (2) Without limiting anything in section 31(8) or in subsections (1) to (1H), the following persons may at any time apply to a court for a review of any property order, whether made by consent or otherwise:

- (a) the person in respect of whom the order was made;
  - (b) the manager or any welfare guardian who is acting for that person;
  - (c) any person described in paragraphs (b) to (h) of section 26;
  - (d) any other person, with the leave of the court.
- (3) Without limiting the discretion of the court on any application under subsection (2), but subject to subsection (4), on an application made pursuant to section 31(8) or where the court directs under subsection (1D) or subsection (1E) or subsection (1H) that a full review of a case be undertaken, the court shall review the competence of the person subject to the property order to manage his or her own affairs in relation to his or her property.
- (4) Notwithstanding anything in subsection (3), where an application for review is made to provide for a new manager to be appointed in place of the present manager, the court shall not be obliged to review (but may review) the matters specified in that subsection.
- (5) On any application for the review of a property order, the primary objectives of the court shall be those set out in section 28.
- (6) Subject to subsection (7), on any application for review of a property order, a court may—
- (a) vary or decline to vary the order; or
  - (b) discharge or decline to discharge the order; or
  - (c) extend the order; or
  - (d) make any order, whether in addition to or instead of the order under review.
- (7) On any application to which subsection (3) applies, the court shall not make any order that would extend the original order beyond the date on which it would otherwise expire unless the court is satisfied, having regard to the relevant provisions of Part 3, that the order continues to be necessary in the interests of the person in respect of whom it was made.
- (8) If the court does make an order that extends the effect of the original order beyond the date on which it would otherwise have expired, the court shall specify a date, being not later than 3 years after the date of the new order, by which the manager is to apply to the court for a further review of the original order.
- (9) Notwithstanding anything in subsection (8), the court may specify a date, for a further review of the original order, later than 3 years but not later than 5 years after the date of the new order if it is satisfied, in the exceptional circumstances of the case, that an earlier review is not necessary in the interests of the person to whom the order relates.

- (10) No order to which subsection (8) or subsection (9) applies shall automatically expire by reason only of the fact that the date specified for the first review or any further review has been reached.

Section 87(1): substituted, on 1 July 1994, by section 9(1) of the Protection of Personal and Property Rights Amendment Act 1994 (1994 No 54).

Section 87(1A): inserted, on 1 July 1994, by section 9(1) of the Protection of Personal and Property Rights Amendment Act 1994 (1994 No 54).

Section 87(1B): inserted, on 1 July 1994, by section 9(1) of the Protection of Personal and Property Rights Amendment Act 1994 (1994 No 54).

Section 87(1B)(a): substituted, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 87(1C): inserted, on 1 July 1994, by section 9(1) of the Protection of Personal and Property Rights Amendment Act 1994 (1994 No 54).

Section 87(1D): inserted, on 1 July 1994, by section 9(1) of the Protection of Personal and Property Rights Amendment Act 1994 (1994 No 54).

Section 87(1E): inserted, on 1 July 1994, by section 9(1) of the Protection of Personal and Property Rights Amendment Act 1994 (1994 No 54).

Section 87(1F): inserted, on 1 July 1994, by section 9(1) of the Protection of Personal and Property Rights Amendment Act 1994 (1994 No 54).

Section 87(1F)(a): substituted, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 87(1G): inserted, on 1 July 1994, by section 9(1) of the Protection of Personal and Property Rights Amendment Act 1994 (1994 No 54).

Section 87(1H): inserted, on 1 July 1994, by section 9(1) of the Protection of Personal and Property Rights Amendment Act 1994 (1994 No 54).

Section 87(2): amended, on 1 July 1994, by section 9(2) of the Protection of Personal and Property Rights Amendment Act 1994 (1994 No 54).

Section 87(3): amended, on 1 July 1994, by section 9(3) of the Protection of Personal and Property Rights Amendment Act 1994 (1994 No 54).

Section 87(10): added, on 1 July 1994, by section 9(4) of the Protection of Personal and Property Rights Amendment Act 1994 (1994 No 54).

## **88 Procedure on review**

On any application for the review of any personal order or property order, the provisions of sections 63 to 65A and 74 to 81, so far as they are applicable and with any necessary modifications, shall apply.

Section 88: amended, on 31 March 2014, by section 9 of the Protection of Personal and Property Rights Amendment Act 2013 (2013 No 83).

## **89 Review of welfare guardian's or manager's decisions**

- (1) A person for whom a welfare guardian or a manager is acting, and any other person with the leave of the court, may at any time apply to a court to review any decision made by the welfare guardian or manager, and the court may, if it thinks it reasonable to do so in all the circumstances, review the decision and make such order as it thinks fit.
- (2) An order made under subsection (1) shall have effect according to its tenor.

## Part 8

### Reciprocal provisions

#### 90 Interpretation

In this Part, unless the context otherwise requires,—

**authorised officer** means an officer charged by the laws of any country (other than New Zealand) with the care, recovery, collection, preservation, or administration of the property and estates of persons in that country who, by the law of that country, are or are deemed to be incapable, by reason of their mental condition, of managing their own affairs

**country** includes any State, territory, province, or other part of a country

**incapacitated person**, in relation to any person in a country other than New Zealand, means a person who—

- (a) has been committed to or is lawfully detained in a hospital or other institution authorised by the law of the country where he or she is for the reception and care of persons suffering from any form of mental disorder, mental illness, or mental disability; or
- (b) has been found to be suffering from any form of mental disorder, mental illness, or mental disability by any court, tribunal, or other authority or person of competent jurisdiction in the country where he or she is, whether or not he or she has been committed to or is detained in any hospital or institution,—

and who, under the law of that country, is not or is deemed not to be competent, by reason of such disorder, illness, or disability, of managing his or her own affairs in relation to his or her property; or

- (c) is subject to any rule of law in that country providing for the protection of personal and property rights of persons who wholly or partially lack the capacity to understand the nature and foresee the consequences of decisions in respect of matters relating to their personal care and welfare.

#### 91 Powers of Public Trust as to property in New Zealand of incapacitated person in another country

- (1) The Governor-General may from time to time, by Order in Council, apply the provisions of this section, subject to any exceptions and modifications specified in the order, to any country specified in the order.
- (2) If an authorised officer of any country in respect of which an Order in Council under subsection (1) is for the time being in force—
  - (a) certifies in writing under his or her hand and seal to Public Trust that—
    - (i) any person in that country (whatever that person's domicile may be) is, by the law of that country, an incapacitated person; and

- (ii) that the person is possessed of or entitled to or interested in any property in New Zealand; and
- (b) such authorised officer, by instrument in writing under his or her hand and seal, authorises Public Trust to collect, manage, sell, or otherwise dispose of and administer that property or to make inquiry respecting it,—

Public Trust shall, subject to any exceptions and modifications specified in the Order in Council, have and may exercise over and in respect of the property all the powers, authorities, and discretions conferred on Public Trust by or under this or any other Act or by law, to the like extent and in the same manner as if the incapacitated person were a person subject to a property order and Public Trust had been appointed as the manager of that person's property with full rights and powers in respect of that property.

- (3) Subject to subsection (4), the powers, duties, and functions of Public Trust shall cease when Public Trust receives from an authorised officer in that country a certificate that the person to whom the certificate mentioned in subsection (2) related has died or is no longer an incapacitated person in that country.
- (4) Public Trust may pay over or deliver to an authorised officer in that country the balance of money or property received by Public Trust, after payment of all costs, charges, and expenses incurred in and about the exercise of those powers and after satisfying or providing for the debts and claims of all persons resident in New Zealand of whose debts or claims Public Trust has had notice, without seeing to its application and without incurring any liability in regard to any such payment or delivery; and shall duly account for it to such officer.

Section 91 heading: amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 91(2): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 91(2)(a): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 91(2)(b): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 91(3): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 91(4): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

## **92 Appointment of authorised officer in another country**

If it appears to the manager of a person subject to a property order in New Zealand that the person is possessed of or entitled to or interested in property in any country in respect of which an Order in Council under section 91(1) is for the time being in force, the manager may deliver to an authorised officer in that country a certificate to the effect that the person is subject to a property order, and may by instrument in writing under his or her hand (or seal, if a trustee

corporation) authorise that officer to collect, manage, sell, or otherwise dispose of and manage such property, or to make inquiry respecting it.

### **93 Resealing in New Zealand**

- (1) The Governor-General may from time to time, by Order in Council, apply the provisions of this section, subject to any exceptions and modifications specified in the order, to any country specified in the order.
- (2) When any Order in Council under subsection (1) is for the time being in force in respect of any country, a copy of any order or declaration made by a court of competent jurisdiction under the law of that country in the exercise of its jurisdiction in respect of incapacitated persons or their estates may be deposited with a Registrar of a court in New Zealand and shall thereupon, subject to the payment of any prescribed fees, be sealed with the seal of that court.
- (3) On the sealing of the order or declaration under subsection (2), it shall, subject to subsection (4) and to any exceptions or modifications specified in the Order in Council, have the like force and effect and have the same operation, and every master, curator, administrator, guardian, committee, manager, or receiver acting under it shall perform the same duties and be subject to the same liabilities in New Zealand, as if it had been originally made by the court in New Zealand.
- (4) No such master, curator, administrator, guardian, committee, manager, or receiver appointed under any such order shall have or exercise any power or authority under it in New Zealand after it has been so sealed until his or her appointment has been confirmed by a court in New Zealand, which confirmation may be granted on such terms as the court thinks fit or may be refused.
- (5) This section shall apply to such orders and declarations, whether made before or after the commencement of this Act.

## **Part 9**

### **Enduring powers of attorney**

#### **93A Purpose of this Part**

- (1) The purpose of this Part is to enable a person (the **donor**) to—
  - (a) grant to another person an enduring power of attorney to act in relation to the donor's personal care and welfare if the donor becomes mentally incapable:
  - (b) grant to another person or persons enduring powers of attorney to act in relation to the donor's property affairs—
    - (i) if the donor becomes mentally incapable; or
    - (ii) while the donor is mentally capable and if the donor becomes mentally incapable:



- (c) grant to another person an enduring power of attorney to act in both capacities.
- (2) Accordingly, this Part—
- (a) states the requirements for creating an enduring power of attorney:
  - (b) defines when a donor is mentally incapable for the purposes of this Part:
  - (c) states the duties of an attorney (in addition to those set out in the enduring power of attorney):
  - (d) sets out the court's jurisdiction in respect of an enduring power of attorney:
  - (e) provides for the review by the court of any decision of an attorney:
  - (f) establishes the circumstances in which an enduring power of attorney may be suspended or revoked.

Section 93A: inserted, on 25 September 2008, by section 6 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

### **93B Presumption of competence**

- (1) For the purposes of this Part, every person is presumed, until the contrary is shown,—
- (a) to be competent to manage his or her own affairs in relation to his or her property:
  - (b) to have the capacity—
    - (i) to understand the nature of decisions about matters relating to his or her personal care and welfare; and
    - (ii) to foresee the consequences of decisions about matters relating to his or her personal care and welfare or of any failure to make such decisions; and
    - (iii) to communicate decisions about those matters.
- (2) A person must not be presumed to lack the competence described in subsection (1)(a) just because the person manages or intends to manage his or her own affairs in relation to his or her property in a manner that a person exercising ordinary prudence would not adopt in the same circumstances.
- (3) A person must not be presumed to lack the capacity described in subsection (1)(b) just because the person makes or intends to make a decision in relation to his or her personal care and welfare that a person exercising ordinary prudence would not make in the same circumstances.
- (4) A person must not be presumed to lack the competence described in subsection (1)(a) or, as the case may be, the capacity described in subsection (1)(b), just because the person is subject to compulsory treatment or has special patient status under the Mental Health (Compulsory Assessment and Treatment) Act 1992.

Section 93B: inserted, on 25 September 2008, by section 6 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

#### 94 Interpretation

- (1) For the purposes of this Part, the donor of an enduring power of attorney is mentally incapable in relation to property if the donor is not wholly competent to manage his or her own affairs in relation to his or her property.
- (2) For the purposes of this Part, the donor of an enduring power of attorney is mentally incapable in relation to personal care and welfare if the donor—
  - (a) lacks the capacity—
    - (i) to make a decision about a matter relating to his or her personal care and welfare; or
    - (ii) to understand the nature of decisions about matters relating to his or her personal care and welfare; or
    - (iii) to foresee the consequences of decisions about matters relating to his or her personal care and welfare or of any failure to make such decisions; or
  - (b) lacks the capacity to communicate decisions about matters relating to his or her personal care and welfare.
- (3) Nothing in subsection (1) or (2) affects any rule of law relating to capacity to give or to revoke a power of attorney.
- (4) In this Part—

**health practitioner**—

  - (a) has the meaning given to it by section 5(1) of the Health Practitioners Competence Assurance Act 2003;
  - (b) in the case of a certificate of mental incapacity issued outside New Zealand, means a person registered as a medical practitioner by the competent authority of the State concerned

**lawyer** has the meaning given to it by section 6 of the Lawyers and Conveyancers Act 2006

**prescribed form** means a form prescribed by regulations under this Act

**relevant health practitioner** means a health practitioner—

- (a) whose scope of practice includes the assessment of a person's mental capacity; or
- (b) whose scope of practice—
  - (i) includes the assessment of a person's mental capacity; and
  - (ii) is specified in the enduring power of attorney (for example, a specialist).

Section 94: substituted, on 25 September 2008, by section 7 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

**94A Creation of enduring power of attorney**

- (1) This section applies only to a power of attorney executed after the commencement of section 7 of the Protection of Personal and Property Rights Amendment Act 2007.
- (2) The instrument creating an enduring power of attorney—
  - (a) must be in the prescribed form; and
  - (b) must have attached to it the certificate referred to in subsection (7).
- (3) The instrument must be signed—
  - (a) by the donor, or by some other person in the presence of the donor and by the direction of the donor; and
  - (b) by the attorney (or if more than 1, by each attorney).
- (4) The signature of the donor must be witnessed by a person who, subject to subsection (8), is independent of the attorney (or of each attorney) and who is—
  - (a) a lawyer; or
  - (b) an officer or employee of a trustee corporation authorised by the corporation for the purposes of this subsection; or
  - (c) a legal executive who meets the requirements of subsection (9).
- (4A) If 2 people appoint each other as attorney, the witness to the signature of one person as donor (**witness A**) does not fail to be independent for the purposes of subsection (4) by reason only that the witness to the signature of the other person as donor—
  - (a) is a lawyer or legal executive in the same firm, or an officer or employee of the same trustee corporation, as witness A; or
  - (b) is the same person as witness A, if, having regard to the matters listed in subsection (7)(a) to (b), the witness is satisfied that witnessing both signatures does not constitute more than a negligible risk of a conflict of interest.
- (5) The signature of an attorney must be witnessed by a person other than the donor or the donor's witness.
- (6) Before the donor signs the instrument, the witness to the donor's signature must explain the effects and implications of the enduring power of attorney to the donor, and advise the donor of—
  - (a) the matters referred to in the notes to the prescribed form of power of attorney;
  - (b) the donor's right to suspend or revoke the power of attorney;
  - (c) in the case of a power of attorney in relation to property,—
    - (i) the donor's right to appoint more than 1 attorney, or a trustee corporation, as attorney; and

- (ii) the donor's right to stipulate whether and, if so, how the attorney's dealings with the donor's property are to be monitored.
- (6A) If regulations made under section 112(bab) prescribe a form of standard explanation for any of the matters required to be explained to a donor under subsection (6), the witness to the donor's signature may give the explanation by—
  - (a) giving a copy of the form to the donor; and
  - (b) following any instructions in the form for giving a verbal explanation to the donor; and
  - (c) if the form and the instructions do not cover all of the matters in subsection (6), using other appropriate means to fulfil all of the requirements of that subsection.
- (7) The witness to the donor's signature must certify on the prescribed form for the certificate referred to in subsection (2)(b) that—
  - (a) the requirements of subsection (6) have been met; and
  - (ab) in the case of an enduring power of attorney signed by the donor after the commencement of this paragraph, the witness believes on reasonable grounds that the donor—
    - (i) understands the nature of the instrument; and
    - (ii) understands the potential risks and consequences of the instrument; and
    - (iii) is not acting under undue pressure or duress; and
  - (b) the witness has no reason to suspect that the donor was or may have been mentally incapable at the time the donor signed the instrument; and
  - (c) the witness is independent of the attorney (or of each attorney) or that subsection (8)(a) or (b) applies or, if subsection (4A)(b) applies, the witness is satisfied that no more than a negligible risk of a conflict of interest arises.
- (8) Despite subsection (4),—
  - (a) if the attorney is a trustee corporation, an officer or employee of that corporation authorised by the corporation for the purposes of this subsection may witness the donor's signature;
  - (b) if the attorney is appointed in his or her capacity as a lawyer, another lawyer in the attorney's firm or a legal executive in that firm who meets the requirements of subsection (9) may witness the donor's signature.
- (9) A legal executive who witnesses the donor's signature—
  - (a) must be a member of the body that, immediately before the commencement of section 7 of the Protection of Personal and Property Rights Amendment Act 2007, was known as the New Zealand Institute of Legal Executives Inc; and

- (b) must hold a current annual registration certificate issued by that body; and
- (c) must have at least 12 months' experience as a legal executive; and
- (d) must be employed by, and under the direct supervision of, a lawyer.

Section 94A: inserted, on 25 September 2008, by section 7 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

Section 94A(4A): replaced on 16 March 2017, by section 77(1) of the Statutes Amendment Act 2016 (2016 No 104).

Section 94A(6A): inserted, on 16 March 2017, by section 77(2) of the Statutes Amendment Act 2016 (2016 No 104).

Section 94A(7): amended, on 16 March 2017, by section 77(3) of the Statutes Amendment Act 2016 (2016 No 104).

Section 94A(7)(ab): inserted, on 16 March 2017, by section 77(4) of the Statutes Amendment Act 2016 (2016 No 104).

Section 94A(7)(c): amended, on 16 March 2017, by section 77(5) of the Statutes Amendment Act 2016 (2016 No 104).

## **95 When power of attorney is an enduring power of attorney**

- (1) Except as otherwise provided in this section, a power of attorney that meets the requirements of section 94A is an enduring power of attorney.
- (2) A power of attorney purporting to be an enduring power of attorney has effect even though it is not in the prescribed form, but only if—
  - (a) no prescribed provision is substantially omitted; and
  - (b) the differences are immaterial.
- (3) A power of attorney shall not have effect as an enduring power of attorney unless the attorney, when signing the instrument creating it, is—
  - (a) an individual who is not less than 20 years of age, is not bankrupt, and is not subject to a personal order or a property order; or
  - (b) a trustee corporation.
- (4) A power of attorney delegating trustee powers, authorities, and discretions under section 31 of the Trustee Act 1956 shall not have effect as an enduring power of attorney.
- (5) A power of attorney that gives the attorney the right to appoint a substitute or a successor shall not have effect as an enduring power of attorney; but an enduring power of attorney may provide for successive attorneys, the appointment of one being conditional upon the cessation of the appointment of another.
- (6) A power of attorney executed before the commencement of this Act shall not have effect as an enduring power of attorney.

Section 95(1): substituted, on 25 September 2008, by section 8(1) of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

Section 95(2): substituted, on 25 September 2008, by section 8(2) of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

**95A Notice revoking earlier enduring power of attorney**

- (1) If an enduring power of attorney states that it revokes an earlier enduring power of attorney and both powers of attorney are of the same kind, they both continue to have effect until the earlier power of attorney is revoked by notice given in the manner set out in subsection (2) or ceases to have effect by any of the other ways listed in section 106(1).
- (2) Notice revoking an earlier power of attorney is given when a copy of the later power of attorney is given to the attorney or attorneys appointed under the earlier power of attorney and, to avoid doubt, the notice may be given by a person other than the donor, for example, the donor's lawyer or one of the attorneys appointed under the later power of attorney, including in the event that the donor becomes mentally incapable.
- (3) This section applies to any enduring power of attorney, whether executed before or after this section comes into force.
- (4) For the purposes of this section, **of the same kind**, in relation to 2 enduring powers of attorney, means—
  - (a) that both powers of attorney relate to—
    - (i) the donor's property; or
    - (ii) the donor's personal care and welfare; or
  - (b) if the earlier power of attorney relates to the donor's property or the donor's personal care and welfare, or both, the later power of attorney relates to both the donor's property and the donor's personal care and welfare.

Section 95A: inserted, on 16 March 2017, by section 78 of the Statutes Amendment Act 2016 (2016 No 104).

**96 Enduring power of attorney not revoked by donor's subsequent mental incapacity**

An enduring power of attorney shall not be revoked by the donor's subsequent mental incapacity, but shall continue to have effect according to its tenor.

**97 Enduring power of attorney in relation to property**

- (1) A donor of an enduring power of attorney may authorise the attorney to act generally in relation to the whole or a specified part of the donor's affairs in relation to his or her property, or to act in relation to specified things on the donor's behalf, and in either case such authorisation may be given subject to conditions and restrictions.
- (2) Where a donor of an enduring power of attorney authorises the attorney to act generally in relation to the whole or a specified part of the donor's affairs in relation to the donor's property, the attorney shall have authority to do anything on behalf of the donor that the donor can lawfully do by an attorney, but sub-

ject to sections 100 and 107 and to any conditions or restrictions contained in the enduring power of attorney.

- (3) Where a donor of an enduring power of attorney has become mentally incapable, the attorney shall be authorised to make an application under section 87 of the Land Transfer Act 2017 to have a transmission registered where the attorney believes that the donor is entitled to any estate or interest in land by virtue of that transmission, and the Registrar-General of Land is authorised to accept such an application notwithstanding the fact that the attorney is not the person claiming to be entitled to the estate or interest in land.
- (4) A donor of an enduring power of attorney may—
  - (a) authorise the enduring power of attorney to have effect while the donor is mentally capable and to continue to have effect if the donor becomes mentally incapable; or
  - (b) authorise the enduring power of attorney to have effect only if the donor becomes mentally incapable.
- (5) If subsection (4)(b) applies, the attorney must not act in relation to the donor's property unless a relevant health practitioner has certified, or the court has determined, that the donor is mentally incapable.

Section 97(3): added, on 1 July 1994, by section 11 of the Protection of Personal and Property Rights Amendment Act 1994 (1994 No 54).

Section 97(3): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Section 97(4): added, on 25 September 2008, by section 9 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

Section 97(5): added, on 25 September 2008, by section 9 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

#### **97A Exercise of enduring power of attorney in relation to property**

- (1) This section applies to an attorney acting under an enduring power of attorney in relation to the donor's property if the donor of the power becomes mentally incapable.
- (2) The paramount consideration of the attorney is to use the donor's property in the promotion and protection of the donor's best interests, while seeking at all times to encourage the donor to develop the donor's competence to manage his or her own affairs in relation to his or her property.
- (3) This section applies regardless of whether the enduring power of attorney is of the type referred to in section 97(4)(a) or (b).

Section 97A: inserted, on 25 September 2008, by section 10 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

#### **98 Enduring power of attorney in relation to personal care and welfare**

- (1) Subject to subsections (3) and (4), a donor of an enduring power of attorney may authorise the attorney to act in relation to the donor's personal care and

welfare, either generally or in relation to specific matters, and in either case such authorisation may be given subject to conditions and restrictions.

- (2) Notwithstanding section 95(3), an enduring power of attorney may not appoint a trustee corporation to be an attorney, nor may it appoint more than 1 individual to be attorneys, to act in relation to the donor's personal care and welfare.
- (3) The attorney—
  - (a) must not act in respect of a significant matter relating to the donor's personal care and welfare unless a relevant health practitioner has certified, or the court has determined, that the donor is mentally incapable; and
  - (b) must not act in respect of any other matter relating to the donor's personal care and welfare unless the attorney believes on reasonable grounds that the donor is mentally incapable.
- (3A) For the purposes of subsection (3), a donor's mental capacity is determined—
  - (a) at the time a decision about the matter relating to the donor's personal care and welfare is being made or is proposed to be made; and
  - (b) in relation to the personal care and welfare matter concerned.
- (3B) Despite subsection (3A),—
  - (a) if the donor is certified as mentally incapable because of a health condition that is likely to continue indefinitely, no further certificates are required under subsection (3)(a) in relation to any further personal care and welfare matters:
  - (b) if the donor is certified as mentally incapable because of a health condition that is likely to continue for a period specified in the certificate, no further certificates are required under subsection (3)(a) in relation to any further personal care and welfare matters that arise during the specified period.
- (4) The attorney shall not act in respect of any matter relating to the donor's personal care and welfare where, if the attorney were the welfare guardian of the donor, the attorney would be denied the power to act by section 18.
- (5) Subject to subsections (3) and (4), any action taken by the attorney in relation to the donor's personal care and welfare shall have the same effect as it would have had if it had been taken by the donor and the donor had had full capacity to take it.
- (6) In subsection (3)(a), a **significant matter relating to the donor's personal care and welfare** means a matter that has, or is likely to have, a significant effect on the health, well-being, or enjoyment of life of the donor (for example, a permanent change in the donor's residence, entering residential care, or undergoing a major medical procedure).



Section 98(3): substituted, on 25 September 2008, by section 11(1) of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

Section 98(3A): inserted, on 25 September 2008, by section 11(1) of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

Section 98(3B): inserted, on 25 September 2008, by section 11(1) of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

Section 98(6): added, on 25 September 2008, by section 11(2) of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

### **98A Exercise of enduring power of attorney in relation to personal care and welfare**

- (1) This section applies to an attorney acting under an enduring power of attorney in relation to the donor's personal care and welfare.
- (2) The paramount consideration of the attorney is the promotion and protection of the welfare and best interests of the donor, while seeking at all times to encourage the donor to develop and exercise his or her capacity to—
  - (a) understand the nature and foresee the consequences of decisions relating to his or her personal care and welfare; and
  - (b) communicate such decisions.
- (3) Without limiting the generality of subsection (2), the attorney must—
  - (a) encourage the donor to act on his or her own behalf to the greatest extent possible; and
  - (b) seek to facilitate the integration of the donor into the community to the greatest extent possible.
- (4) When deciding any matter relating to the donor's personal care and welfare, the attorney must give due consideration to the financial implications of that decision in respect of the donor's property.

Section 98A: inserted, on 25 September 2008, by section 12 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

### **99 Both kinds of powers may be given**

- (1) Nothing in section 95 or section 97(1) or section 98(1) shall prevent a donor from—
  - (a) authorising the attorney, whether in the same or in a separate document, to act both—
    - (i) in relation to the whole or a specified part of the donor's affairs in relation to his or her property, or to act in relation to specified things on the donor's behalf; and
    - (ii) in relation to the donor's personal care and welfare, either generally or in relation to specific matters; or
  - (b) giving an enduring power of attorney to any person or persons for the purposes described in subparagraph (i) of paragraph (a), and, whether in

the same or in a separate document, to another person for the purposes described in subparagraph (ii) of that paragraph.

- (2) If subsection (1)(b) applies, the attorney responsible for the donor's property must give the attorney responsible for the donor's personal care and welfare any financial support required by that attorney to carry out his or her duties in relation to the donor's personal care and welfare.
- (3) Subsection (2) is subject to—
  - (a) the enduring power of attorney; and
  - (b) any direction of the court under section 101 made on the application of either attorney.

Section 99(2): substituted, on 25 September 2008, by section 13 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

Section 99(3): added, on 25 September 2008, by section 13 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

#### **99A Attorney's duty to consult**

- (1) When acting under an enduring power of attorney, the attorney must, as far as is practicable, consult—
  - (a) the donor; and
  - (b) in relation to any particular matter, any person specified in the enduring power of attorney to be consulted, generally, in respect of matters of that kind, or in respect of that matter; and
  - (c) any other attorney appointed by the donor under the enduring power of attorney (other than a successive attorney whose appointment has not taken effect); and
  - (d) any other attorney appointed by the donor under another enduring power of attorney (other than a successive attorney whose appointment has not taken effect).
- (2) An attorney acting under an enduring power of attorney in relation to the donor's personal care and welfare may, subject to any consultation under subsection (1), have regard to any advance directive given by the donor except to the extent that the directive would require the attorney to act in a manner contrary to section 98(4).
- (3) The attorney may follow any advice given under subsection (1), or any advance directive given by the donor, and is not liable for anything done or omitted in following that advice or directive, unless done or omitted in bad faith or without reasonable care.
- (4) The attorney may apply to a court for directions under section 101 in respect of any advice given under subsection (1) or any advance directive given by the donor.

- (5) The attorney is not liable in respect of anything done or omitted to be done in accordance with the court's directions.
- (6) Nothing in subsection (4) obliges the attorney to apply to a court for directions.
- (7) If a donor has, under an enduring power of attorney, appointed one attorney in relation to his or her property and another attorney in relation to his or her personal care and welfare, both attorneys must consult each other regularly to ensure that the donor's interests are not prejudiced through any breakdown in communication between them.
- (8) To avoid doubt, if the same attorney must be consulted under subsection (1)(c) or (d) and subsection (7), the requirements of both subsections must be met in relation to that attorney.

Section 99A: inserted, on 25 September 2008, by section 14 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

Section 99A(1)(b): amended, on 16 March 2017, by section 79(1) of the Statutes Amendment Act 2016 (2016 No 104).

Section 99A(1)(c): inserted, on 16 March 2017, by section 79(2) of the Statutes Amendment Act 2016 (2016 No 104).

Section 99A(1)(d): inserted, on 16 March 2017, by section 79(2) of the Statutes Amendment Act 2016 (2016 No 104).

Section 99A(8): inserted, on 16 March 2017, by section 79(3) of the Statutes Amendment Act 2016 (2016 No 104).

### **99B Attorney must provide information on exercise of powers**

An attorney must promptly comply with any request for information relating to the exercise of the attorney's powers under the enduring power of attorney if—

- (a) the person requesting the information is specified in the enduring power of attorney as a person to be provided with such information and the information requested is the kind of information specified in the enduring power of attorney to be provided to that person:
- (b) the person requesting the information is a barrister or solicitor appointed under section 65 and the information requested is records of financial transactions that the attorney must keep under section 99C.

Section 99B: inserted, on 25 September 2008, by section 14 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

### **99C Attorney as to property must keep records**

- (1) An attorney under an enduring power of attorney in relation to a donor's property must keep records of each financial transaction entered into by the attorney under the enduring power of attorney while the donor is mentally incapable.
- (2) An attorney who fails without reasonable excuse to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$1,000.

Section 99C: inserted, on 25 September 2008, by section 14 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

Section 99C(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **99D Medical certification of incapacity**

- (1) A certificate of the donor's mental incapacity under this Part must—
  - (a) contain the prescribed information; or
  - (b) if the certificate is issued outside New Zealand, be in a form acceptable to the competent authority of the State concerned.
- (2) The donor may specify in an enduring power of attorney that the assessment of his or her mental capacity for the purposes of this Part be undertaken by a health practitioner with a specified scope of practice, but only if the scope of practice specified includes the assessment of a person's mental capacity.
- (3) The cost of any medical assessment or examination reasonably required for the purpose of certifying whether the donor is mentally incapable under this Part is recoverable as a debt from the donor's property.

Section 99D: inserted, on 25 September 2008, by section 14 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

Section 99D(1): replaced on 16 March 2017, by section 80 of the Statutes Amendment Act 2016 (2016 No 104).

### **100 Enduring powers of attorney subject to personal order and property order**

Where an enduring power of attorney is given by a person who is or who subsequently becomes subject to a personal order or a property order, the order shall be binding on the attorney; and, in the event of any conflict arising between the powers and duties of the attorney and the terms of the order, the order shall prevail.

### **100A Suspension of attorney's power to act**

- (1) A donor of an enduring power of attorney who has been, but is no longer, mentally incapable may suspend the attorney's authority to act under the enduring power of attorney by giving written notice to the attorney.
- (2) An attorney whose authority is suspended may not act under the enduring power of attorney unless a relevant health practitioner has certified, or the court has determined, that the donor is mentally incapable.
- (3) The suspension does not revoke the enduring power of attorney.
- (4) Nothing in this section affects the donor's right to revoke the enduring power of attorney while the donor is mentally capable.

Section 100A: inserted, on 25 September 2008, by section 15 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

**101 Attorney may seek directions from court**

- (1) The attorney under an enduring power of attorney may apply to a court for directions relating to the exercise of the attorney's powers.
- (2) Nothing in subsection (1) shall limit or affect the jurisdiction of any other court.

**102 Court's jurisdiction in respect of an enduring power of attorney**

- (1) A court shall have jurisdiction to determine—
  - (a) whether or not any instrument is an enduring power of attorney; or
  - (b) whether or not the donor of an enduring power of attorney is mentally incapable.
- (2) A court shall have jurisdiction to do all or any of the following things in respect of an enduring power of attorney where the donor has become mentally incapable:
  - (a) determine any question as to the meaning or effect of the instrument by which the power is given:
  - (b) determine whether or not any such instrument has ceased to have effect:
  - (c) give directions with respect to—
    - (i) the management or disposal by the attorney of the property and affairs of the donor; or
    - (ii) the rendering of accounts by the attorney and the production of the records kept by the attorney for the purpose; or
    - (iii) the remuneration or expenses of the attorney, whether or not in default of or in accordance with any provision made by the instrument, including directions for the repayment of excessive, or the payment of additional, remuneration; or
    - (iv) any matter relating to the personal care and welfare of the donor:
    - (v) any other matter on which the directions of the court are sought under section 101:
  - (d) modify the scope of the enduring power of attorney by including or excluding—
    - (i) part of the donor's affairs in relation to his or her property, or any powers relating to any such affairs; or
    - (ii) any specific matters in relation to the donor's personal care and welfare, or any powers relating to any such matters, not being a matter referred to in section 98(4):
  - (e) require the attorney to furnish information or produce documents or things in his or her possession as attorney:

- (f) give any consent or authorisation to act that the attorney would have to obtain from the donor if the donor were mentally capable:
  - (g) authorise the attorney to act, otherwise than in accordance with section 107, to the benefit of the attorney or persons other than the donor, but subject to any conditions or restrictions contained in the instrument:
  - (ga) authorise the attorney to make any loan or advance of the donor's property subject to—
    - (i) any conditions that the court considers appropriate; and
    - (ii) any conditions or restrictions contained in the instrument:
  - (h) determine whether the donor of the power was induced by undue influence or fraud to create the power:
  - (i) determine whether, having regard to all the circumstances and, in particular, the attorney's relationship with the donor, the attorney is suitable to be the donor's attorney:
  - (j) authorise an attorney acting under an enduring power of attorney in relation to a donor's property to execute a will for and on behalf of the donor if the court is satisfied that—
    - (i) the donor lacks testamentary capacity; and
    - (ii) there is no express provision to the contrary in the enduring power of attorney.
- (2A) For the purposes of any application for the exercise of the court's jurisdiction under subsection (2)(j), section 55 applies as if every reference to a manager were a reference to the attorney, and every reference to a person subject to a property order were a reference to the donor.
- (3) Nothing in the foregoing provisions of this section shall limit or affect the jurisdiction of any other court.

Section 102(2)(c)(v): amended, on 25 September 2008, by section 16(1) of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

Section 102(2)(ga): inserted, on 25 September 2008, by section 16(2) of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

Section 102(2)(j): added, on 25 September 2008, by section 16(3) of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

Section 102(2A): inserted, on 25 September 2008, by section 16(4) of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

### **102A Persons who may apply for exercise of court's jurisdiction**

An application to a court for the exercise of its jurisdiction under section 102 or 105 may be made by—

- (a) any person listed in section 103(1); or
- (b) any other person with the leave of the court.

Section 102A: inserted, on 25 September 2008, by section 17 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

### **103 Review of attorney's decisions**

- (1) Any of the following people may at any time apply to a court to review any decision made by an attorney acting under an enduring power of attorney while the donor is or was mentally incapable:
  - (a) the donor of the enduring power of attorney;
  - (b) a relative or attorney of the donor (not being the attorney whose decision is sought to be reviewed);
  - (c) a social worker;
  - (d) a medical practitioner;
  - (e) a trustee corporation;
  - (f) if the donor is a patient or a resident in any place that provides hospital care, rest home care, or residential disability care within the meaning of the Health and Disability Services (Safety) Act 2001, the principal manager of that place;
  - (g) any welfare guardian who has been appointed for the donor;
  - (h) a person authorised by a body or organisation contracted by the Government to provide elder abuse and neglect prevention services.
- (2) Any other person may apply for a review if the court gives leave to do so.
- (3) For the avoidance of doubt, an application for review may be made while the enduring power of attorney is in force or after it is revoked by the death of the donor or otherwise.
- (4) The court may, if it thinks it reasonable to do so in all the circumstances, review the decision and make any order it thinks fit.
- (5) An order under subsection (4) has effect according to its tenor.

Section 103: substituted, on 25 September 2008, by section 18 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

### **103A Validity of actions under power of attorney not meeting requirements of section 94A or 95**

The fact that a power of attorney is not an enduring power of attorney because of any failure to meet the requirements of section 94A or 95 does not affect the validity of—

- (a) any act of the attorney done under the power of attorney in good faith with no knowledge of the failure; or
- (b) any transaction entered into by the attorney under the power of attorney if the other party to the transaction entered into it in good faith and with no knowledge of the failure.

Section 103A: inserted, on 25 September 2008, by section 18 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

### **103B Effect of attorney's decision on third parties**

A person dealing with an attorney acting under an enduring power of attorney in respect of any matter within the power of attorney—

- (a) does not have to inquire about the concurrence or otherwise of the donor or any other person; and
- (b) is not affected by notice that the donor or any other person has not concurred.

Section 103B: inserted, on 25 September 2008, by section 18 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

### **103C Effect of attorney's actions, etc, before notice of revocation or suspension received**

- (1) This section applies, instead of section 20(1) to (4) of the Property Law Act 2007, to enduring powers of attorney executed before or after the commencement of section 18 of the Protection of Personal and Property Rights Amendment Act 2007, but subject to section 20(5)(b) of the Property Law Act 2007.
- (2) An enduring power of attorney continues in force until notice of an event revoking the power is received by the attorney.
- (3) The authority of an attorney to act under an enduring power of attorney continues in force until notice suspending that authority is received by the attorney.
- (4) Every act or thing within the scope of the enduring power of attorney done by or to the attorney in good faith before he or she receives notice of any event revoking the power of attorney has effect as if the event had not occurred.
- (5) Every act or thing within the scope of an enduring power of attorney done by or to the attorney in good faith before he or she receives notice that his or her authority to act under the power of attorney is suspended has effect as if the authority were not suspended.
- (6) A person dealing with the attorney may rely on a certificate of non-revocation and non-suspension of the enduring power of attorney in the prescribed form as conclusive proof of the non-revocation and non-suspension of the power of attorney as at the date of the certificate if—
  - (a) the person—
    - (i) is dealing with the attorney in good faith; and
    - (ii) does not have actual knowledge that an event revoking the power of attorney has occurred, or that the attorney's authority to act under it has been suspended; and
  - (b) the certificate—



- (i) is signed by the attorney or, if the attorney is a corporation, an officer or employee of the corporation authorised by the corporation for the purposes of this subsection; and
  - (ii) is given immediately before, or any time after, the doing of a thing by the attorney.
- (7) A person who knowingly gives a false certificate commits an offence and is liable on conviction to a fine not exceeding \$5,000.
- (8) **An event revoking the power of attorney** means any event described in section 106(1) in which the enduring power of attorney ceases to have effect.

Section 103C: inserted, on 25 September 2008, by section 18 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

Section 103C(7): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **104 Disclaimer by attorney**

- (1) An attorney under an enduring power of attorney may not disclaim that power otherwise than by notice given as follows:
  - (a) where the donor is not mentally incapable, by written notice to the donor;
  - (b) where the donor is mentally incapable, by filing a notice in a court.
- (2) If the donor is mentally incapable, the attorney must file with the notice a report stating—
  - (a) that the attorney considers it is in the interests of the donor that a welfare guardian be appointed in relation to the donor's personal care and welfare, or a property manager be appointed in relation to the donor's property; or
  - (b) that the attorney considers it is not necessary that a welfare guardian or property manager be appointed, and why the attorney considers it not necessary.
- (3) On receiving a report under subsection (2), the Registrar shall refer the matter to a Judge who may give to the Registrar all such directions as the Judge considers appropriate to have the matter drawn to the attention of such person or persons described in section 103 as the Judge thinks fit.

Section 104(2): substituted, on 25 September 2008, by section 19(1) of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

Section 104(3): amended, on 25 September 2008, by section 19(2) of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

#### **105 Court may revoke appointment of attorney**

- (1) The court may, in any proceeding commenced under section 101, 102A, or 103, revoke the appointment of an attorney under an enduring power of attorney if it is satisfied that the attorney—

- (a) is not acting, or proposes not to act, in the best interests of the donor; or
  - (b) is failing, or has failed, to comply with any of the attorney's obligations under section 99A or 99B, or proposes not to comply with any of those obligations.
- (1A) In any proceedings commenced under section 101 or 102, the court may revoke the appointment of an attorney under an enduring power of attorney only on the motion of the donor or a party to the proceeding other than the attorney.
- (2) Where a court under paragraph (h) or paragraph (i) of section 102(2) determines that the donor of an enduring power of attorney was induced by undue influence or fraud to create the power or that the attorney is not suitable to be the donor's attorney, the court shall revoke the appointment of the attorney.

Section 105(1): substituted, on 25 September 2008, by section 20 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

Section 105(1A): inserted, on 25 September 2008, by section 20 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

### **106 Circumstances in which enduring power of attorney ceases to have effect**

- (1) An enduring power of attorney shall cease to have effect when—
- (a) the donor, by notice in writing to the attorney, revokes the power while mentally capable of doing so; or
  - (ab) it is revoked by notice given in the manner set out in section 95A to the attorney or attorneys; or
  - (b) the donor dies; or
  - (ba) the donor, by notice in writing to the attorney, revokes the appointment of the attorney while mentally capable of doing so; or
  - (bb) in the case of an enduring power of attorney that appoints more than 1 attorney with joint but not several authority, the donor, by notice in writing to one of the attorneys, revokes the appointment of that attorney while mentally capable of doing so; or
  - (c) the attorney gives notice of disclaimer in accordance with section 104; or
  - (d) the attorney dies, or is adjudged bankrupt, or becomes subject to compulsory treatment or a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992, or becomes subject to a personal order or a property order, or otherwise becomes incapable of acting; or
  - (e) in the case of an enduring power of attorney that appoints more than 1 attorney with joint but not several authority, one of the attorneys dies, or is adjudged bankrupt, or becomes subject to compulsory treatment or a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992, or becomes subject to a personal order or a property order, or otherwise becomes incapable of acting; or

- (ea) in the case of an enduring power of attorney that appoints more than 1 attorney with several authority or with joint and several authority, the last remaining attorney—
  - (i) has his or her appointment revoked by the donor under section 106A(1); or
  - (ii) dies, is adjudged bankrupt, becomes subject to compulsory treatment or a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992, is subject to a personal order or a property order, or otherwise becomes incapable of acting; or
- (f) a court revokes the appointment of the attorney pursuant to section 105.
- (2) In any case where the enduring power of attorney provides for successive attorneys, the appointment of one being conditional upon the cessation of the appointment of another, subsection (1)(ba) to (f) applies only in respect of the last such attorney.

Section 106 heading: amended, on 16 March 2017, by section 81(1) of the Statutes Amendment Act 2016 (2016 No 104).

Section 106(1)(a): amended, on 25 September 2008, by section 21 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

Section 106(1)(ab): inserted, on 16 March 2017, by section 81(2) of the Statutes Amendment Act 2016 (2016 No 104).

Section 106(1)(ba): inserted, on 16 March 2017, by section 81(3) of the Statutes Amendment Act 2016 (2016 No 104).

Section 106(1)(bb): inserted, on 16 March 2017, by section 81(3) of the Statutes Amendment Act 2016 (2016 No 104).

Section 106(1)(d): amended, on 16 March 2017, by section 81(4) of the Statutes Amendment Act 2016 (2016 No 104).

Section 106(1)(e): amended, on 16 March 2017, by section 81(4) of the Statutes Amendment Act 2016 (2016 No 104).

Section 106(1)(ea): inserted, on 16 March 2017, by section 81(5) of the Statutes Amendment Act 2016 (2016 No 104).

Section 106(2): amended, on 16 March 2017, by section 81(6) of the Statutes Amendment Act 2016 (2016 No 104).

### **106A Revocation of appointment of attorneys with several authority**

- (1) If an enduring power of attorney appoints more than 1 attorney with several authority or with joint and several authority, the donor may, by notice in writing to 1 or more of the attorneys, revoke the appointment of that attorney or those attorneys while mentally capable of doing so.
- (2) To avoid doubt, if a donor revokes the appointment of 1 or more attorneys under subsection (1), the enduring power of attorney remains in effect if there is at least 1 remaining attorney.

Section 106A: inserted, on 16 March 2017, by section 82 of the Statutes Amendment Act 2016 (2016 No 104).

**107 Attorney's power to benefit self and others**

- (1) An attorney under an enduring power of attorney must not, at any time while the donor is mentally incapable, act to the benefit of the attorney or of a person other than the donor, or recover any expenses from the donor's property, unless and only to the extent that—
- (a) the donor has specified a power to so act in the enduring power of attorney; or
  - (b) the court authorises the attorney to so act in an order under section 102(2)(g) or (ga); or
  - (c) the attorney's actions relate to 1 or more of the following matters and the enduring power of attorney does not expressly provide otherwise:
    - (i) if the attorney and donor are married to, or in a civil union or de facto relationship with, each other, and are living together and sharing their incomes, any action taken by the attorney in respect of real or personal property that the donor and the attorney own jointly and not as tenants in common;
    - (ii) any payments of a kind described in subsection (2);
    - (iii) if acting under an enduring power of attorney in relation to the donor's property, any loan or advance or other investment of the donor's property that a trustee could make of trust funds under section 13A of the Trustee Act 1956.
- (2) The payments referred to in subsection (1)(c)(ii) are payments (being payments for which receipts or other evidence are provided by the attorney) of—
- (a) out-of-pocket expenses (other than lost wages or remuneration) reasonably incurred by an attorney; or
  - (b) professional fees and expenses reasonably incurred by an attorney who—
    - (i) has accepted appointment in a professional capacity; or
    - (ii) has undertaken work in any professional capacity to give effect to the decisions taken under the enduring power of attorney.

Section 107: substituted, on 25 September 2008, by section 22 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

**108 Procedure**

For the purpose of proceedings under this Part, the provisions of Part 6 (except section 64), and sections 83 to 85, so far as they are applicable and with any necessary modifications, shall apply as if the donor were a person in respect of whom an application for a personal order or a property order was being sought or in respect of whom such an order had been made, subject to the following provisions:

- (a) where the application for the exercise of the court's jurisdiction is made by any person other than the attorney, a copy of the application shall be served on the attorney (as well as the persons listed in section 63(1)):
- (b) where a donor has given 2 or more enduring powers of attorney and it is intended to apply to the court under this Part in respect of any 2 or more of those powers, the applications may be joined, and, subject to any rules of court, it shall not be necessary to file separate applications:
- (c) a court may hear and determine any proceedings before it under this Part in conjunction with any other proceedings under this or any other Part of this Act in any case where both proceedings are in respect of the same person, whether or not the parties to the proceedings are the same.

Section 108(b): amended, on 13 September 2002, by section 6 of the Family Courts Amendment Act 2000 (2000 No 65).

**108AA Enduring powers of attorney created before Protection of Personal and Property Rights Amendment Act 2007**

- (1) In this section, **commencement date** means the commencement date of section 23 of the Protection of Personal and Property Rights Amendment Act 2007.
- (2) If an enduring power of attorney is executed but not effective before the commencement date,—
  - (a) section 94A does not apply to it; and
  - (b) section 95(1) and (2) (as it reads before the commencement date) continue to apply to the enduring power of attorney.
- (3) If an enduring power of attorney is effective before the commencement date,—
  - (a) sections 94A and 107 do not apply to it; and
  - (b) sections 95(1), (2), and 107 (as they read before the commencement date) continue to apply to the enduring power of attorney.

Section 108AA: inserted, on 25 September 2008, by section 23 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

**108AAB Review of Protection of Personal and Property Rights Amendment Act 2007**

- (1) The Minister of State for the time being responsible for senior citizens must, as soon as practicable, 5 years after the commencement of section 23 of the Protection of Personal and Property Rights Amendment Act 2007,—
  - (a) review the effectiveness of the amendments to this Act made by the Protection of Personal and Property Rights Amendment Act 2007; and
  - (b) consider whether any amendments to this Act are necessary or desirable; and
  - (c) prepare a report on the findings.

- (2) The Minister must present a copy of the report to the House of Representatives no later than 6 years after the commencement of section 23 of the Protection of Personal and Property Rights Amendment Act 2007.

Section 108AAB: inserted, on 25 September 2008, by section 23 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

## Part 9A

### Payment of money or damages

Part 9A: inserted, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

#### 108A Interpretation

In this Part,—

**court** means,—

- (a) where a claim of a specified person could be the subject of proceedings in New Zealand, a court in which proceedings could be taken to enforce the claim; or
- (b) where the claim could not be the subject of proceedings in New Zealand, a court in which proceedings could be taken to enforce a similar claim in New Zealand

**specified person** means a person who is incapable of managing his or her own affairs.

Section 108A: inserted, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

#### 108B Approval of court required to settle claims of specified persons

- (1) This section applies where money or damages are claimed by or on behalf of a specified person, whether alone or in conjunction with another person.
- (2) If the claim is not the subject of proceedings before a court, an agreement for the compromise or settlement of the claim entered into by the specified person, or on his or her behalf by a person who, in the opinion of a court, is a fit and proper person to do so, is binding on the specified person if the agreement, or a release of the claim, is in writing and is approved by the court under section 108C.
- (3) If the claim has not been compromised or settled in accordance with subsection (2), and has become the subject of proceedings before a court, a settlement, compromise, or payment, or acceptance of money paid into court, whenever entered into or made, is valid so far as it relates to the specified person's claim only with the approval of the court under section 108C.

Compare: 1957 No 36 s 66(1)

Section 108B: inserted, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

### **108C Applications for approval of court**

- (1) An application for the approval of a court under this section may be made by or on behalf of a specified person, or by any other party to the agreement or proceedings.
- (2) On an application for its approval under this section, the court, in its discretion, may—
  - (a) refuse the application; or
  - (b) grant its approval unconditionally; or
  - (c) grant its approval subject to any conditions and directions that it thinks fit, including conditions and directions as to—
    - (i) the terms of the agreement, compromise, or settlement; or
    - (ii) the amount, payment, security, application, or protection of the money paid, or to be paid; or
    - (iii) any other relevant matter.

Compare: 1957 No 36 s 66(2), (3)

Section 108C: inserted, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

### **108D Money or damages may be held upon trust**

- (1) Without limiting section 108C, this section applies where the court directs that all or part of any money or damages awarded to a specified person, or of money to which the person is entitled under an agreement, compromise, or settlement approved under section 108C, must be held on trust for the person under this section by a trustee corporation or any other person.
- (2) The amount must be invested and held by the trustee upon trust—
  - (a) to make payments to any person out of the income and capital of the amount as directed by the court; and
  - (b) to apply the income and capital of the amount, or so much of the income and capital as the trustee from time to time thinks fit, for or towards the maintenance or education (including past maintenance or education) or the advancement or benefit of the specified person.
- (3) The specified person has no power, either alone or in conjunction with any other person or persons, to terminate the trusts upon which the amount is held or to modify or extinguish those trusts.
- (4) The interest of the specified person in the income and capital of the amount must not, while it remains in the hands of the trustee, be alienated or pass by bankruptcy, or be liable to be seized, sold, attached, or taken in execution by process of law.
- (5) This section applies subject to—

- (a) any direction of the court that an immediate payment be made from the money or damages; and
- (b) any other direction or condition given or imposed by the court.

Compare: 1957 No 36 s 66(4)

Section 108D: inserted, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

### **108E Money or damages held by manager**

- (1) Without limiting section 108C(2), where there is a manager of the estate of the specified person under this Act, the court may direct that all or part of any money or damages awarded to that person, or of any money to which the person is entitled under an agreement, compromise, or settlement approved under section 108C, must be held by the manager as if it were part of the specified person's estate.
- (2) A manager who holds money or damages under a direction given under subsection (1) does so with and subject to the powers and discretion conferred upon a manager by this Act.

Compare: 1957 No 36 s 66(5)

Section 108E: inserted, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

### **108F Termination of trust**

- (1) Where a specified person attains the capacity to manage his or her own affairs while any amount is held on trust for his or her benefit under section 108D, the balance of that amount and of the income from that amount remaining in the hands of the trustee must be paid to the specified person.
- (2) At any time before the payment is made, the court may order that the whole or any part of the amount must continue to be held on trust under section 108D.
- (3) Where the trustee has made an application or received notice that an application has been made to the court for an order that the amount must continue to be held on trust, the trustee must not make any payment under this section until the application has been disposed of.

Compare: 1957 No 36 s 66(6)

Section 108F: inserted, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

### **108G Part does not affect Deaths by Accidents Compensation Act 1952**

Nothing in this Part limits or affects the Deaths by Accidents Compensation Act 1952.

Compare: 1957 No 36 s 66(9)

Section 108G: inserted, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).



## **Part 10**

### **Miscellaneous provisions**

#### **109 Orders may be registered**

- (1) A property order may be registered under the Deeds Registration Act 1908 as an instrument affecting the title to any land in which the person subject to the order has any estate or interest, whether legal or equitable.
- (2) A property order shall be deemed to be an instrument purporting to affect land under the Land Transfer Act 2017, and a memorial of the instrument may accordingly be entered upon the register of any land in respect of which the person subject to the order is the registered owner of any estate or interest under this Act.
- (3) A trustee corporation that becomes the manager of a person's property under section 32 or section 33 may register a notice in the prescribed form under the Deeds Registration Act 1908 or the Land Transfer Act 2017 as if it were a property order.

Section 109(2): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Section 109(3): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

#### **110 Remission of fees in cases of hardship**

Where it appears to the Registrar of a court that the payment of any fees prescribed as payable in respect of any proceedings under this Act, or of those fees in full, would cause undue hardship to the person liable for their payment, the Registrar may remit the whole or such part of the fees as the Registrar thinks fit, and may, without further appropriation than this section, refund all such fees that have already been paid or any part of such fees.

#### **111 Rules of procedure**

Rules may be made regulating the practice and procedure of courts in proceedings under this Act,—

- (a) in the case of the High Court, under section 148 of the Senior Courts Act 2016:
- (b) in the case of the District Court, under section 228 of the District Court Act 2016:
- (c) in the case of the Family Court, under section 16A of the Family Court Act 1980.

Section 111: substituted, on 13 September 2002, by section 6 of the Family Courts Amendment Act 2000 (2000 No 65).

Section 111(a): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

Section 111(b): replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 111(c): replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

### **111A Transitional provision relating to rules**

- (1) Subsections (2) and (3) apply to rules made under section 111 that are in force immediately before the commencement of this section, unless those rules are revoked on or after the commencement of this section.
- (2) Rules to which this subsection applies that regulate the practice or procedure of the High Court continue to regulate the practice and procedure of the High Court until any rules referred to in section 111(a) come into force.
- (3) Rules to which this subsection applies that regulate the practice or procedure of the District Court continue to regulate the practice and procedure of the District Court until any rules referred to in section 111(b) come into force.

Section 111A: inserted, on 13 September 2002, by section 6 of the Family Courts Amendment Act 2000 (2000 No 65).

Section 111A(3): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

### **112 Regulations**

The Governor-General may from time to time, by Order in Council, make regulations—

- (a) making provision for the determination of the amount of fees and expenses, including minimum and maximum amounts, payable in respect of professional services provided by lawyers appointed under section 65, which fees and expenses may differ according to the complexity of the proceedings and the time spent, and according to whether or not professional services are to be provided in a specified number of proceedings during a specified period:
- (b) making provision for the determination of the amount of fees and expenses, including minimum and maximum amounts, payable in respect of the preparation of reports requested pursuant to section 76, which fees and expenses may differ according to the type of report and the time spent, and according to whether or not professional services are to be available in a specified number of proceedings during a specified period:
- (ba) prescribing forms for enduring powers of attorney for the purposes of Part 9:
- (bab) prescribing a form of standard explanation for the purpose of explaining the effects and implications of an enduring power of attorney to a donor (which may include requirements for the content of the explanation and the manner in which it is to be given) under section 94A(6) and (6A):

- (bb) prescribing forms for certificates for the purposes of the witnessing requirements in section 94A(7):
- (bc) prescribing information required for certificates for the purposes of any medical examination or assessment under Part 9:
- (bd) prescribing forms that may be used for the suspension and revocation of enduring powers of attorney for the purposes of Part 9:
- (be) prescribing the form for the certificate of non-revocation and non-suspension of the enduring power of attorney for the purposes of section 103C(6):
- (c) providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

Section 112: substituted, on 1 July 1994, by section 12 of the Protection of Personal and Property Rights Amendment Act 1994 (1994 No 54).

Section 112(a): amended, on 31 March 2014, by section 10 of the Protection of Personal and Property Rights Amendment Act 2013 (2013 No 83).

Section 112(ba): inserted, on 26 September 2007, by section 24 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

Section 112(bab): inserted, on 16 March 2017, by section 83(1) of the Statutes Amendment Act 2016 (2016 No 104).

Section 112(bb): inserted, on 26 September 2007, by section 24 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

Section 112(bc): replaced on 16 March 2017, by section 83(2) of the Statutes Amendment Act 2016 (2016 No 104).

Section 112(bd): inserted, on 26 September 2007, by section 24 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

Section 112(be): inserted, on 26 September 2007, by section 24 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

### **113 Reference to Aged and Infirm Persons Protection Act 1912 and Part 7 of the Mental Health Act 1969 in other Acts**

Unless the context otherwise requires, in any other enactment, or in any regulation, rule, order, agreement, deed, instrument, application, or other document in force at the commencement of this Act every reference to the Aged and Infirm Persons Protection Act 1912 or Part 7 of the Mental Health Act 1969 shall hereafter be read as a reference to this Act.

### **114 Savings**

Nothing in this Act shall limit the general jurisdiction of the High Court under section 14 of the Senior Courts Act 2016 or otherwise.

Section 114: amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

**115 Maori Affairs Act 1953 amended**

*[Repealed]*

Section 115: repealed, on 1 July 1993, by section 362(1) of Te Ture Whenua Maori Act 1993 (1993 No 4).

**116 Repeals**

The enactments specified in Schedule 4 are hereby repealed.

**117 Transitional provisions**

- (1) Subject to subsections (2) and (4), but notwithstanding any other provision of this Act, all proceedings commenced under the Aged and Infirm Persons Protection Act 1912 or Part 7 of the Mental Health Act 1969 and pending at the commencement of this Act shall be heard and determined as if this Act had not been passed.
- (2) If an interim protection order has been made under section 29A of the Aged and Infirm Persons Protection Act 1912 but, as at the commencement of this Act, no application has been made under section 4 or section 5 of that Act, then subsections (7) and (8) of section 29A of that Act shall apply as if the references to a protection order under section 4 or section 5 of that Act were references to a property order.
- (3) On the commencement of this Act, every protected person under the Aged and Infirm Persons Protection Act 1912 and every protected patient under Part 7 of the Mental Health Act 1969 and every manager appointed in respect of a protected person or a protected patient shall be deemed to be a person subject to a property order or a manager appointed under this Act, as the case may require.
- (4) Where, in proceedings to which subsection (1) applies, a person becomes a protected person under the Aged and Infirm Persons Protection Act 1912 or a protected patient under Part 7 of the Mental Health Act 1969, on becoming so that person shall be deemed to be a person subject to a property order, and a manager appointed in respect of that person shall be deemed to be a manager appointed under this Act.
- (4A) Every person who is deemed by subsection (3) or subsection (4) to be a manager appointed under this Act shall, subject to any order of the court made on an application filed under this Act, have all the powers set out in Schedule 1.
- (5) Within 3 years after the commencement of this Act, every person, other than a trustee corporation, who is deemed by subsection (3) or subsection (4) to be a manager appointed under this Act shall apply to a court in accordance with section 87 for a review of the original order by which that person was appointed.
- (6) Within 1 year after the commencement of this Act, every trustee corporation who is deemed by subsection (3) or subsection (4) to be a manager appointed under this Act shall notify a court of each case, and the court and the trustee corporation shall draw up a programme in accordance with regulations made under this Act for the progressive review of all such cases.

- (7) The repeal by section 116 of this Act of the Aged and Infirm Persons Protection Act 1912 shall not affect any of the provisions of section 18 of that Act, and those provisions shall continue to apply, in respect of any period that has not expired at the commencement of this Act.
- (8) The repeal by section 116 of this Act of Part 7 of the Mental Health Act 1969 shall not affect any of the provisions of section 90 of that Act, and those provisions shall continue to apply, in respect of any period that has not expired at the commencement of this Act.
- (9) Nothing in section 45(2)(a) shall apply to any person who is deemed by subsection (3) of this section to be a manager appointed under this Act.
- (10) For the purposes of section 45(2)(b),—
  - (a) a person who was the manager of the estate of a protected person under the Aged and Infirm Persons Protection Act 1912 and who is deemed by subsection (3) to be a manager appointed under this Act shall be deemed to have been so appointed on the expiry of the period referred to in subsection (7); and
  - (b) a person who was the manager of the estate of a protected patient under Part 7 of the Mental Health Act 1969 and who is deemed by subsection (3) to be a manager appointed under this Act shall be deemed to have been so appointed on the expiry of the period referred to in subsection (8).

Section 117(4A): inserted (with effect on 1 October 1988), on 12 December 1989, by section 2 of the Protection of Personal and Property Rights Amendment Act 1989 (1989 No 133).

## Schedule 1

### Powers of managers

s 29

- 1 Subject to the terms of the property order (or, in a case where a trustee corporation has agreed to act as manager pursuant to an application under section 32 or section 33, to the terms of the application) a manager may—
- (a) take possession of all of the property of the person and demand, receive, and recover possession of it from any person holding it, with further power—
    - (i) to institute or defend in the manager’s own name or in the name of the person subject to a property order any action, suit, or other proceeding (either civil or criminal) concerning the property of the person and to suffer judgment to go by default; or to consent to any judgment, decree, or order in the action, suit, or proceeding on such terms as the manager thinks fit:
    - (ii) to take proceedings to cause to be adjudicated a bankrupt or placed in liquidation any person or company indebted to the person subject to a property order, or to make any application for or in relation to a summary instalment order in respect of any such person under subpart 3 of Part 5 of the Insolvency Act 2006; and to vote and act either personally or by proxy at all meetings of creditors and in all other matters relating to the bankruptcy or liquidation or summary instalment order:
    - (iii) in the name and on behalf of the person subject to a property order, to lodge a caveat under the Land Transfer Act 2017 or a notice of claim under section 42 of the Property (Relationships) Act 1976:
    - (iv) to compromise or otherwise settle any claims or demands made by or against the person subject to a property order, or by or against the manager of the estate, on such terms as the manager thinks fit and on such evidence as the manager considers sufficient; and to submit such claims or demands to arbitration; and to do all acts and things necessary to render any such compromise or arbitration effectual:
    - (v) to give directions or consents with reference to the share or interest of the person subject to a property order in or under any trust, settlement, will, or intestacy:
    - (vi) to make any election arising out of or give directions with reference to the right, title, share, or interest of the person subject to the property order in or under any policy of assurance, or any pen-

sion, superannuation, benefit, benevolent, or other fund, or in any money arising from any such policy or fund:

- (vii) to make an application under section 87 of the Land Transfer Act 2017 to have a transmission registered where the manager believes that the person subject to a property order is entitled to any estate or interest in land by virtue of that transmission:
- (b) apply and expend in the manager's discretion, and to such extent as the manager thinks fit, any money belonging to the person subject to the property order including any money borrowed or advanced by the manager for any 1 or more of the following purposes:

- (i) for or towards the maintenance, education, advancement, or benefit of the person, or of his or her spouse, civil union partner, child, grandchild, or other relative, or of any person wholly or partially dependent on the person:
- (ii) in the doing or continuation of any acts of bounty or charity previously done or promised to be done by the person, or that might reasonably be expected of the person if he or she were not subject to a property order and that the manager, having regard to the circumstances and to the nature and value of the estate, considers proper and reasonable:

provided that, in the exercise of the powers conferred by this subparagraph, the manager shall not, without the consent of the court, expend any sum or sums that would, when added to any other sum or sums expended pursuant to this subparagraph during the preceding period of 12 months, exceed in the aggregate \$5,000:

- (iii) in the acquisition of a home for the person or for his or her spouse, civil union partner, or children, by the purchase of freehold or leasehold land with a dwellinghouse erected on it; or by the purchase of freehold or leasehold land and the erection on it of a dwellinghouse together with such outbuildings, fences, gates, paths, and other amenities and improvements as the manager thinks fit; or by the acquisition of a flat or apartment by any means that the manager may consider appropriate (whether by acquiring shares or interest in the land on which the premises are erected or in any other way), and with further power to enter into any lease, licence, agreement, or other arrangement under which the manager or his or her nominee or the person who is to occupy the flat or apartment has the right to occupy it (including an arrangement whereby any shares in a limited liability company and the benefit of any such lease, licence, or agreement may be held by that person or by some other nominee of the manager upon trust for the manager); or by such other means as in the cir-

cumstances of the case may appear to the manager to be reasonable and proper:

provided that the manager shall not, without the consent of the court, expend a sum or sums exceeding in the aggregate the specified sum in acquiring a home pursuant to the provisions of this subparagraph:

- (iv) in the provision for the use and benefit of the person, or of his or her spouse, civil union partner, or children, of such furniture, clothing, and other articles of personal or household use or ornament (including motor vehicles) as the manager, having regard to the circumstances and to the nature and value of the estate, considers proper and reasonable:
- (v) in or towards the payment of any debt, obligation, or liability of the person, or incurred by the manager in the exercise of the powers vested in the manager by this or any other enactment or by any order of the court or by law:
- (vi) in or towards the payment of all rates, taxes, rent, insurance premiums, or other outgoings payable in respect of the property of the person or under any policy of insurance of any kind:
- (vii) for the repair, maintenance, upkeep, or renovation of any property of the person:
- (viii) for the reinstatement or rebuilding of any property of the person destroyed or damaged by fire or otherwise:
- (ix) for the improvement or development of any property of the person by way of building or otherwise:

provided that, in the exercise of the power conferred by this subparagraph, not more than the specified sum may be so expended for any one purpose without the consent of the court:

- (c) with the prior approval of the court, to invest any money belonging to the person subject to a property order:

provided that, where the money is to be invested in the manner authorised by the Trustee Act 1956 for the investment of trust funds, it shall not be necessary to obtain the prior approval of the court:

- (d) insure any of the property of the person subject to a property order against loss or damage to its full insurable value or for its full replacement value, or insure against any other risk or liability against which it would be prudent to insure:
- (e) carry out and perform contracts entered into by the person subject to a property order before the manager was appointed:
- (f) carry on any trade or business of the person subject to a property order or carry on the business of any partnership in which the person is a part-



ner, for such period or periods, in either case, as the manager thinks fit, with further power—

- (i) to employ any part of the property of the person in the trade or business and from time to time to increase or diminish the part of the person's property so employed:
- (ii) to purchase stock, machinery, plant, implements, and chattels for the purposes of the trade or business:
- (iii) to employ such managers, agents, servants, clerks, workmen, and others as the manager thinks fit:
- (iv) subject to the Sharemilking Agreements Act 1937, to enter into any sharemilking agreement for such period and on such terms and conditions as the manager thinks fit:
- (v) to agree on an alteration of the conditions of any partnership for the purpose of more advantageously carrying on or preserving the business, until the recovery of the person or disposing of it or winding it up:
- (vi) to dissolve any partnership of which the person is a member in the same manner in all respects as the person could have done had he not been subject to this Act, and on such dissolution the manager in the name and on behalf of the person may join with the other partner or partners in disposing of the partnership property, whether real or personal, either to such partner or partners or to any other person on such terms and in such manner as the manager thinks fit:
- (g) where the person subject to a property order is a mortgagor or mortgagee of any land, agree to extend or vary the mortgage on such terms as the manager thinks fit:
- (h) exercise any power of sale or other power vested in the person subject to a property order as mortgagee, or as unpaid vendor, lessor, or bailee:
- (i) in the name and on behalf of the person subject to a property order and in the same manner in all respects as the person could have done had he or she not been subject to a property order exercise, either in person or by proxy, all rights, powers, and privileges (including voting powers) attaching to or exercisable in respect of any shares, stocks, debentures, debenture stock, bonds, notes (whether registered or unregistered, and whether or not they convey any right of conversion), and other securities or investments in or issued by any company or other incorporated body or by any Government or governmental agency (whether central or local) or by any public, municipal, or local corporation, board, or authority:

- (j) surrender, assign, or otherwise dispose of, with or without consideration, any onerous property belonging to the person subject to a property order or any policy of life insurance:
- (k) in the name and on behalf of the person subject to a property order and whether the person is possessed of any estate or not, make any application to the court under the Matrimonial Property Act 1963, the Property (Relationships) Act 1976, or any of the provisions of the Family Proceedings Act 1980 except Part 4 (which relates to the status of marriage or civil union), that the person would be entitled to make if he or she were not subject to a property order:
- (l) in the name and on behalf of the person subject to a property order, enter into an agreement under Part 6 of the Property (Relationships) Act 1976:
- (m) in the name and on behalf of the person subject to a property order enter into any scheme of family arrangement to which the person is a necessary or proper party:
- (n) sell any of the property of the person subject to a property order, either subject to prior encumbrances or not, and either together or in lots, by public auction or public tender or private contract, and subject to any such conditions respecting title or evidence of title or other matters as the manager thinks fit; with power to modify or vary any contract or agreement for sale and purchase, or to agree to do so, and to buy in at any auction, and to cancel or rescind any contract or agreement for sale and purchase, or to agree to do so, and to buy in at any auction, and to cancel or rescind any contract or agreement for sale and purchase and to resell, without being answerable for any loss, and to compromise with or make allowances to any person with whom any such contract or agreement has been made, or who is the assignee thereof, in respect of any unpaid purchase money secured on mortgage or otherwise:  

provided that the manager shall not, without the consent of the court, sell any freehold or leasehold land belonging to the person subject to a property order in any case where the value (as determined in accordance with section 28 of the Trustee Act 1956) of the land or of the share or interest of the person therein exceeds the specified sum; except that the manager may, without the consent of the court, sell any such land or the share or interest of the person therein for more than the specified sum if (in accordance with section 28 of the Trustee Act 1956) the manager has in good faith fixed the value of that land or of that share or interest immediately before the sale at the specified sum or less:
- (o) dispose of any of the property of the person subject to a property order by way of exchange for other property in New Zealand of a like nature and a like or better tenure; or, where the person has an undivided share in any property, concur in the partition of the property; and give or take any property by way of equality of exchange or partition:

provided that the manager shall not, without the consent of the court, exchange any freehold or leasehold land in any case where the value (as determined in accordance with section 28 of the Trustee Act 1956) of the land or of the share or interest of the person therein exceeds the specified sum:

- (p) subdivide any freehold or leasehold land belonging to the person subject to a property order or in which the person has any share or interest, and construct, dedicate, make, and maintain, or contribute money towards the construction, dedication, making and maintenance of roads, streets, access ways, service lanes, footpaths, and reserves, and sewerage, water, electricity, drainage, and other works (whether on land belonging to the person or elsewhere), and do all such other things and make all such other payments as are required by any law or bylaw relating to subdivisions or as the manager thinks are necessary or are likely to be beneficial to the person or to his or her estate or to any part of it:
- (q) grant, reserve, or acquire easements and *profits à prendre*, and enter into party wall agreements and agreements that relate to fencing, or to which section 4 of the Fencing Act 1978 applies, and execute all necessary documents to give effect thereto:
- (r) let or sublet or lease or sublease any property of the person subject to a property order for such term, at such rent (with or without a fine, premium, or foregift) and on and subject to such covenants and conditions as the manager thinks fit, with power at any time to reduce the rent or otherwise vary or modify the terms, and with further power—
  - (i) to grant to a lessee or sublessee a right of renewal for one or more terms at a rent to be fixed or made ascertainable in a manner specified in the original lease or sublease:
  - (ii) to grant a lease with an optional or compulsory purchasing clause:
  - (iii) to grant to a lessee or sublessee a right to claim compensation for improvements made or to be made by the lessee or sublessee in, upon, or about the property that is leased or subleased:

provided that the manager shall not, without the consent of the court, grant a lease or sublease for a term of more than 10 years or a lease or sublease with a right or rights of renewal if the aggregate duration of the original and of the renewed terms could exceed 10 years; and shall not, without the consent of the court, grant a lease with an optional or compulsory purchasing clause in any case where the value (as determined in accordance with section 28 of the Trustee Act 1956) of the property to be leased or of the share or interest of the person therein exceeds the specified sum at the time of the granting of the lease:

- (s) accept the surrender of any lease, sublease, or tenancy:

- (t) accept a lease, sublease, or tenancy of any property, or a renewal of a lease, sublease, or tenancy, at such rent, on such terms, and subject to such covenants and conditions as the manager thinks fit:
- (u) surrender any lease, sublease, or tenancy:
- (v) in the name and on behalf of the person subject to a property order exercise any option to purchase property conferred on the person:  
provided that the manager shall not, without the consent of the court, exercise the power conferred by this paragraph if the price payable for the property exceeds or may exceed the specified sum:
- (w) in the name and on behalf of the person subject to a property order settle or join with his or her spouse in settling any property as a joint family home under the Joint Family Homes Act 1964, or apply for cancellation of the registration of any property as a joint family home; and, in consideration of any such cancellation, or on any other occasion when the manager considers it reasonable or proper to so, enter into such agreement or arrangement as the manager thinks just and equitable concerning the future ownership, occupation, or possession of that property, or concerning the proceeds of the sale, letting, or other disposition of it:
- (x) grant powers of attorney to any person in or out of New Zealand to do any act or thing with respect to the property of the person subject to a property order that the manager of the estate of the person can do, during any temporary period of absence or incapacity of the manager or in any other circumstances specified by the court:
- (y) concur or join with any other person or persons in doing any 1 or more of the foregoing things.

Schedule 1 clause 1(a)(ii): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Schedule 1 clause 1(a)(iii): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Schedule 1 clause 1(a)(iii): amended, on 1 February 2002, by section 64(2) of the Property (Relationships) Amendment Act 2001 (2001 No 5).

Schedule 1 clause 1(a)(vii): added, on 1 July 1994, by section 13 of the Protection of Personal and Property Rights Amendment Act 1994 (1994 No 54).

Schedule 1 clause 1(a)(vii): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Schedule 1 clause 1(b)(i): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Schedule 1 clause 1(b)(iii): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Schedule 1 clause 1(b)(iv): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Schedule 1 clause 1(k): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Schedule 1 clause 1(k): amended, on 1 February 2002, by section 64(2) of the Property (Relationships) Amendment Act 2001 (2001 No 5).

Schedule 1 clause 1(l): amended, on 1 February 2002, by section 64(2) of the Property (Relationships) Amendment Act 2001 (2001 No 5).

Schedule 1 clause 1(r) proviso: amended (with effect on 1 October 1988), on 12 December 1989, by section 3 of the Protection of Personal and Property Rights Amendment Act 1989 (1989 No 133).

- 2 For the purpose of exercising the powers conferred by this Act, where appropriate, a manager may execute, give, and do all such assurances, notices, and things as the manager considers necessary for or reasonable incidental to the exercise of a power or the doing of an act or thing that the manager is authorised to exercise or do as a manager; and all assurances, notices, and things so executed, given, or done shall have the same force and effect as if executed, given, or done by the person who is subject to a property order and as if the person had not been so subject.
- 3 In this schedule the expression **the specified sum** means \$120,000 or such other amount as is, from time to time, prescribed by Order in Council for the purposes of this clause.

Schedule 1 clause 3: amended, on 28 July 1997, by section 4 of the Protection of Personal and Property Rights Amendment Act 1997 (1997 No 52).

## Schedule 2

### Further powers of Public Trust as manager

s 39

Schedule 2 heading: amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

- 1 For the purposes of section 39, Public Trust may advance money to the estate of the person subject to a property order in accordance with section 56 of the Public Trust Act 2001; or borrow money in such other manner as Public Trust thinks fit and give security over all or any part of the property of the person, whether by way of mortgage, pledge, or otherwise, for the repayment thereof, with or without interest, and on and subject to such other terms and conditions as Public Trust thinks fit:

provided that Public Trust shall not, without the consent of the court, advance to the estate of the person, or borrow for any purpose connected with the management or administration of that estate, any sum or sums that would, when added to the balance for the time being remaining owing of any money that Public Trust has previously advanced to or borrowed in connection with that estate, amount in all to more than the specified sum.

Schedule 2 clause 1: amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Schedule 2 clause 1 proviso: amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

- 2 In this schedule the expression **the specified sum** means \$120,000 or such other amount as is, from time to time, prescribed by Order in Council for the purposes of this clause.

Schedule 2 clause 2: amended, on 28 July 1997, by section 5 of the Protection of Personal and Property Rights Amendment Act 1997 (1997 No 52).

## Schedule 3

### Form of enduring power of attorney in relation to property

*[Repealed]*

s 95

Schedule 3: repealed, on 25 September 2008, by section 25 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

## Schedule 4 Enactments repealed

s 116

**Aged and Infirm Persons Protection Act 1912 (1912 No 26)**

**Aged and Infirm Persons Protection Amendment Act 1969 (1969 No 54)**

**Aged and Infirm Persons Protection Amendment Act 1975 (1975 No 58)**

**Judicature Amendment Act 1972 (1972 No 130)**

*Amendment(s) incorporated in the Act(s).*

**Judicature Amendment Act (No 2) 1985 (1985 No 112)**

*Amendment(s) incorporated in the Act(s).*

**Maori Affairs Amendment Act 1974 (1974 No 73)**

*Amendment(s) incorporated in the Act(s).*

**Mental Health Act 1969 (1969 No 16)**

*Amendment(s) incorporated in the Act(s).*

**Mental Health Amendment Act 1972 (1972 No 22)**

*Amendment(s) incorporated in the Act(s).*

**Mental Health Amendment Act 1975 (1975 No 118)**

**Protection of Personal and Property Rights  
(Incapacitated Person in Australia or Great Britain)  
Order 1989  
(SR 1989/378)**

Thomas Eichelbaum, Administrator of the Government

**Order in Council**

At Wellington this 4th day of December 1989

Present:

The Right Hon G W R Palmer presiding in Council

Pursuant to section 91(1) of the Protection of Personal and Property Rights Act 1988, His Excellency the Administrator of the Government, acting by and with the advice and consent of the Executive Council, hereby makes the following order.

**Order**

**1 Title and commencement**

- (1) This order may be cited as the Protection of Personal and Property Rights (Incapacitated Person in Australia or Great Britain) Order 1989.
- (2) This order shall come into force on 1 January 1990.

**2 Powers of Public Trust as to property in New Zealand of incapacitated person in Australia or Great Britain**

The provisions of section 91 of the Protection of Personal and Property Rights Act 1988 are hereby applied to—

- (a) Australia; and
- (b) Great Britain.

Clause 2 heading: amended, on 1 March 2002, pursuant to section 152(1) of the Public Trust Act 2001 (2001 No 100).

C J Hill,  
for Clerk of the Executive Council.

Date of notification in *Gazette*: 7 December 1989.



## **Reprints notes**

### **1 *General***

This is a reprint of the Protection of Personal and Property Rights Act 1988 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### **2 *Legal status***

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3 *Editorial and format changes***

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4 *Amendments incorporated in this reprint***

Statutes Amendment Act 2018 (2018 No 27): Part 25

Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31): section 149

Land Transfer Act 2017 (2017 No 30): section 250

Statutes Amendment Act 2016 (2016 No 104): Part 23

District Court Act 2016 (2016 No 49): section 261

Senior Courts Act 2016 (2016 No 48): section 183(b), (c)

Financial Reporting Amendment Act 2014 (2014 No 64): section 17

Protection of Personal and Property Rights Amendment Act 2013 (2013 No 83)

Companies Amendment Act 2013 (2013 No 111): section 14

Criminal Procedure Act 2011 (2011 No 81): section 413

Māori Trustee Amendment Act 2009 (2009 No 12): section 30(1), (2)(a)

Protection of Personal and Property Rights Amendment Act 2008 (2008 No 84)

Property Law Act 2007 (2007 No 91): section 364(1)

Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90)

Wills Act 2007 (2007 No 36): section 41

Protection of Personal and Property Rights Order 2007 (SR 2007/196)

Disabled Persons Employment Promotion Repeal Act 2007 (2007 No 11): section 11

Insolvency Act 2006 (2006 No 55): section 445

Relationships (Statutory References) Act 2005 (2005 No 3): section 7

Care of Children Act 2004 (2004 No 90): section 151

Supreme Court Act 2003 (2003 No 53): section 48(1)  
Health Practitioners Competence Assurance Act 2003 (2003 No 48): section 175(1)  
District Courts Amendment Act 2002 (2002 No 63): section 4  
Public Trust Act 2001 (2001 No 100): section 170(1)  
Property (Relationships) Amendment Act 2001 (2001 No 5): section 64(2)  
Family Courts Amendment Act 2000 (2000 No 65): section 6  
Department of Child, Youth and Family Services Act 1999 (1999 No 82): section 13  
Protection of Personal and Property Rights Amendment Act 1998 (1998 No 58)  
Protection of Personal and Property Rights Amendment Act 1997 (1997 No 52)  
Protection of Personal and Property Rights Amendment Act 1994 (1994 No 54)  
Te Ture Whenua Maori Act 1993 (1993 No 4): section 362(1)  
Social Welfare (Transitional Provisions) Act 1990 (1990 No 26): section 36(5)  
Protection of Personal and Property Rights Amendment Act 1989 (1989 No 133)  
Public Finance Act 1989 (1989 No 44): sections 83(7), 86(1)  
Family Courts Act 1980 (1980 No 161): section 17A(i)