

ARTICLE 101, CHAPTER 101, STATUTES OF NEW HAMPSHIRE
1980

Courts and Tribunals Legislation (Miscellaneous Amendments) Bill

Circulation Print

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

- Clause 1 provides that the Act's purposes are—
- to amend the **Administration and Probate Act 1958**, the **Evidence Act 1958**, and the **Supreme Court Act 1986**;
 - to amend the **Guardianship and Administration Act 1986** to provide for the rehearings and reassessments of orders made under that Act and make minor amendments;
 - to amend the **Juries Act 2000**.
- Clause 2 provides that the Act (except section 13) commences when it receives Royal Assent. Section 13 is deemed to have come into operation on 1 January 2000.

PART 2—ADMINISTRATION AND PROBATE ACT 1958

- Clause 3 amends the definition section of the **Administration and Probate Act 1958** by inserting a definition of "the Rules" (meaning the Rules of the Supreme Court).
- Clause 4 amends the **Administration and Probate Act 1958** by allowing the Registrar of Probates to authenticate a probate order either under seal or in a manner prescribed by the Rules of the Supreme Court.

PART 3—EVIDENCE ACT 1958

- Clause 5 amends the **Evidence Act 1958** to prescribe the use of transcript providers in certain civil actions, subject to the appointment of an alternative supplier by the court where the parties have shown cause.

PART 4—GUARDIANSHIP AND ADMINISTRATION ACT 1986

The purpose of Part 4 is to—

- change terminology in section 61 of the **Guardianship and Administration Act 1986** ("the Act") to avoid confusion between the systematic reviews carried out on all guardianship and administration orders to assess the need for continuation of the orders and reviews sought in the review jurisdiction of the Victorian Civil and Administrative Tribunal ("the Tribunal");
- provide for a right of rehearing in respect of most orders made by the Tribunal under the Act; and
- make a number of miscellaneous amendments to the Act.

- Clause 6 makes a number of minor amendments to the Act that flow from the change in terminology in section 61 from "review" to "reassessment" and the introduction of the rehearing procedure.

- Clause 7 inserts a new Division 1 in Part 6 of the Act to provide for the introduction of rehearings in the guardianship and administration jurisdiction of the Tribunal.

The new section 60A(1) deals with an application for rehearing. It provides that, where the Tribunal has made an order under the Act, an application may be brought for a rehearing of the application to which the order relates. This is subject to restrictions set out in section 60A(2) and (6). Generally, a party or person entitled to notice of the original application may apply for a rehearing.

The new section 60A(2) provides that a person entitled to notice but who was not a party to the original application may bring an application for a rehearing only with leave of the Tribunal.

The new section 60A(3) provides that the Public Advocate may always bring an application for a rehearing whether or not the Public Advocate was a party to the original application.

Section 60A(4) provides that an application for rehearing or for leave must be brought within 28 days after the day of the order.

Section 60A(5) provides that, if written reasons are requested following the making of an order, the 28 day time limit in subsection (4) begins to run from the date the written reasons are provided.

Section 60A(6) provides that there is no right of rehearing available under the Act—

- where the President of the Tribunal has made the order. This restriction has been made because there is no member of the Tribunal more senior than the President to conduct the rehearing. However, where the President makes an order a party may still appeal to the Court of Appeal on a question of law under section 148 of the **Victorian Civil and Administrative Tribunal Act 1998** ("the VCAT Act"); or
- in relation to an application under section 42B for the consent of the Tribunal to carry out a procedure for the purposes of medical research; or
- in relation to an application under section 42I or 42N for medical or dental treatment. However, the restriction does not apply where a general guardian is appointed under section 42N(6)(b); or
- where a rehearing of the original application has already been conducted (or leave has been refused).

The new section 60B deals with the parties to the rehearing and notice. This section provides that a party to the original application is a party to the rehearing. A person who was entitled to notice of the original application is entitled to notice of an application for rehearing.

The new section 60C sets out the functions and powers of the Tribunal in determining an application for rehearing.

The new section 60D provides that the making of an application for a rehearing does not affect the operation of the original order or prevent the taking of action to implement the order. However, the Tribunal may stay the operation of the order or part of the order pending the determination of the application for rehearing.

- Clause 8 has the effect of making the current provisions of Part 6 of the Act a new Division 2 of that Part. It also provides that reviews under section 61 of guardianship and administration orders will now be called "reassessments". Consequential amendments to reflect this change in terminology are also made.
- Clause 9 inserts a new section 87 in the Act, which sets out the transitional arrangements for the amendments. The effect of section 87(1) is that the right of rehearing will apply to an application made under the Act after the commencement of clause 7. Section 87(2) provides that the changes in terminology from "review" to "reassessment" will apply to existing as well as future guardianship or administration orders. Section 87(3) provides that a review under section 61 that has started but is not complete prior to the commencement of clause 8 may be completed as if it were a reassessment. Clauses 7 and 8 will commence on the day after Royal Assent (see clause 2).
- Clause 10 amends—
- section 42D of the Act to provide that the Tribunal must commence to hear an application under Division 4 of Part 4A (special procedures) within 30 days of receipt of the application, instead of the current time limit of 14 days;
 - Form 1 in Schedule 4 to the Act, which deals with the appointment of an enduring guardian, to align the form more closely with the provisions of section 35B of the Act and to require the date of execution to be included in the Form;
 - Form 2 in Schedule 4 to the Act, which deals with the revocation of appointment of an enduring guardian, to require the date of execution to be included in the Form.

Clause 11 makes a number of consequential amendments to the VCAT Act. The definition of "proceeding" in section 3 of the VCAT Act is amended to include a rehearing or reassessment under Part 6 of the Act. It is also made clear in section 42(2) of the VCAT Act that rehearings and reassessments are part of the Tribunal's original jurisdiction, not review jurisdiction. This clause also amends Schedule 1 to the VCAT Act to provide for the constitution of the Tribunal for the purposes of a rehearing.

PART 5—JURIES ACT 2000

Clause 12 amends the **Juries Act 2000** by providing that it must commence on or before 1 August 2001 instead of 1 January 2001.

PART 6—SUPREME COURT ACT 1986

Clause 13 inserts a new Part 4A into the **Supreme Court Act 1986** relating to Group Proceedings. Part 4A has six Divisions.

Division 1 contains a definition section (section 33A) and provides that Part 4A applies to causes of action arising before or after 1 January 2000, but does not apply to representative actions under sections 34 and 35 (section 33B).

Division 2 deals with the commencement of proceedings, including the circumstances where group proceedings may be commenced (section 33C) and the circumstances where a person can bring an action on behalf of other persons in the group (section 33D). Except in certain circumstances, the consent of a person to be a group member is not required (section 33E). A person under disability is not required to have a litigation guardian to be a group member, but may only take a step in a group proceeding through a litigation guardian (section 33F). Group proceedings arising solely out of cross-vesting legislation may not be commenced (section 33G).

Group proceedings must be commenced by writ (section 33H). A group member may opt out of group proceedings in certain circumstances (section 33J). The plaintiff in a group proceeding may apply to the Court to alter the description of the group at any stage of the proceeding (section 33K).

Section 33KA allows the Court to order that a person cease to be, or not become, a group member where the person does not have sufficient connection with Australia or for any other just or expedient reason. This provision is intended to reflect common law principles regarding the Court's capacity to exercise jurisdiction over the parties and subject matter of proceedings.

The Court may order a group proceeding to continue or not continue where it appears there are likely to be fewer than seven group members (section 33L). The Court may direct the discontinuance or stay of group proceedings where the cost of identifying group members would be excessive (section 33M) or to order that group proceedings be discontinued where it is satisfied the group proceeding is inappropriate (section 33N). The plaintiff in a group proceeding may proceed on their own behalf and a former group member may be joined where an order is made under sections 33L, 33M or 33N (section 33P).

The Court may give directions to determine questions which a group proceeding would not otherwise determine for all group members, and to establish sub-groups (section 33Q). The Court in giving directions under section 33Q may permit an individual group member to take part in proceedings for the purpose of determining a question that relates only to that member. In such a situation the individual group member will be liable for costs (section 33R). The court may direct the commencement of another proceeding where a question cannot be properly or conveniently dealt with under section 33Q or 33R (section 33S).

The Court may substitute another group or sub-group member as plaintiff or representative party (section 33T). If a defendant commences proceedings against a group member, the Court may order a stay of execution for relief awarded to a group member until after the defendant's proceedings are concluded (section 33U).

The Court is required to approve the settlement or discontinuance of a group proceeding (section 33V). The plaintiff's individual claim may be settled with the leave of the Court (section 33W).

Division 3 contains provisions in relation to notices in group proceedings including the circumstances where notice must be given to group members (section 33X). The form and content of the notice under section 33X must be approved by the Court (section 33Y).

Division 4 sets out the Court's powers in determining group proceedings (section 33Z) and allows the Court to make provision for the constitution and administration of a fund of the money to be distributed to group members (section 33ZA). A judgement in a group proceeding must describe or identify group members, and all such members are bound by the judgement (section 33ZB).

Division 5 sets out the appeal procedure in group proceedings (section 33ZC).

Division 6 contains miscellaneous provisions relating to the Court's jurisdiction to order costs against group members (section 33ZD), the operation of any limitation period applying to group proceedings (section 33ZE), the Court's general power to make orders it thinks appropriate (section 33ZF), the Court's power to make an order closing the group on a specified date (section 33ZG), the giving of notice in relation to orders made under sections 33ZF and 33ZG (section 33ZH), the reimbursement of the plaintiff's costs in a group proceeding (section 33ZJ) and transitional provisions (section 33ZK).

- Clause 14 repeals sections 34 and 35 of the **Supreme Court Act 1986**. These provisions established a procedure for representative proceedings. Group proceedings replace representative proceedings.
- Clause 15 inserts section 128A into the **Supreme Court Act 1986** which states that it is the intention of the proposed section 33ZD(b) and clause 14 of the Bill to alter or vary section 85 of the **Constitution Act 1975**.
- Clause 16 inserts section 140 into the **Supreme Court Act 1986** which states that any proceedings commenced under sections 34 and 35 of that Act and not yet finally determined are not affected by the repeal of those sections.

