

CONCURRENCE COPY

PROTECTED ESTATES BILL, 1983

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Mental Health Bill, 1983.

The object of this Bill is to provide for the management of the estates of—

- (a) persons who are incapable of managing their affairs;
- (b) patients (within the meaning of the proposed Mental Health Act, 1983) who request that management; and
- (c) persons residing outside New South Wales who are incapable of managing their affairs, in so far as their estate is situated in New South Wales.

The Bill contains the following provisions:—

PART I.—PRELIMINARY.

Clause 1. Short title.

Clause 2. Commencement.

Clause 3. Arrangement.

Clause 4. Interpretation. In this clause, a “protected person” is defined as a person in respect of whose estate an order for management has been made under the proposed Act.

PART II.—THE PROTECTIVE OFFICE.

Clause 5 provides for the appointment of the Protective Commissioner, the Deputy Protective Commissioner and other officers.

Clause 6 relates to inquiries by the Protective Commissioner at the direction of the Supreme Court of New South Wales (“the Court”).

Clauses 7 and 8 provide for the payment of expenses and fees in respect of the functions of the Protective Commissioner.

Clause 9 enables the Protective Commissioner to require persons to appear to give evidence or produce documents, to administer oaths and to take recognizances.

Clause 10 relates to cross-examination of a person giving evidence by affidavit to the Protective Commissioner.

Clause 11 provides for the publication of advertisements in relation to matters being dealt with by the Protective Commissioner.

Clause 12 provides for directions by the Court to the Protective Commissioner in relation to the exercise of any functions of the Protective Commissioner.

PART III.—MANAGEMENT OF ESTATES OF PERSONS

INCAPABLE OF MANAGING THEIR AFFAIRS.

DIVISION 1.—*Orders for management.*

Clause 13 enables the Court to order that a person's estate be subject to management where it is satisfied that the person is incapable of managing his or her affairs.

Clause 14 enables the Court to order that a person's estate be subject to management where the person has been found, in another country, state or territory, to be incapable of managing his or her affairs.

Clause 15 relates to the giving of certain notices to persons who are about to be brought before a stipendiary magistrate for determination as to whether the person should be detained as a patient (within the meaning of the proposed Mental Health Act, 1983) ("a patient").

Clauses 16–19 enable a stipendiary magistrate or the Mental Health Review Tribunal to be established under the proposed Mental Health Act, 1983 ("the Tribunal"), to order that the estates of persons detained as referred to in clause 15 and certain persons who have been charged with a criminal offence be subject to management.

Clause 20 makes it clear that interim orders for management may be made by a stipendiary magistrate or the Tribunal.

Clause 21 allows appeals to the Court against orders made as referred to in clauses 16–19.

DIVISION 2.—*Committing estates to management.*

Clause 22 provides for an estate the subject of an order referred to in clause 13 to be managed by the Protective Commissioner or a person appointed as manager.

Clause 23 provides for estates the subject of an order referred to in clauses 16–19 to be managed by the Protective Commissioner.

DIVISION 3.—*Management of estates by Protective Commissioner.*

Clause 24 specifies the powers of the Protective Commissioner in the management of estates.

Clause 25 allows the Protective Commissioner to employ agents.

Clause 26 relates to documents executed by the Protective Commissioner on behalf of a person whose estate is subject to management.

Clause 27 requires all money (other than fees) received by the Protective Commissioner to be paid into a trust fund in the Special Deposits Account in the Treasury.

Clause 28 provides for the application of money in any estate managed by the Protective Commissioner.

DIVISION 4.—Management of estates by other persons.

Clause 29 provides that the Division does not apply to protected persons whose estates are managed by the Protective Commissioner.

Clause 30 gives the Protective Commissioner the powers of the Court in relation to the management of estates by other persons and requires the Protective Commissioner to supervise that management.

Clause 31 relates to security given in respect of management under this Division.

Clause 32 enables the Court to make any orders for the management of the estates of protected persons under this Division.

Clause 33 allows the Court to authorise a manager to exercise certain powers of the Protective Commissioner referred to in clause 24.

DIVISION 5.—Suspension or termination of management.

Clause 34 specifies when management of an estate under the proposed Act terminates.

Clause 35 allows the Court to revoke any order for management where it is satisfied that the person is capable of managing his or her affairs.

Clause 36 allows the Tribunal to revoke an order for management made as referred to in clauses 16–19 where it is satisfied that the person is capable of managing his or her affairs.

Clauses 37 and 38 enable the Protective Commissioner to suspend or terminate management where a protected person who has been detained in a hospital (within the meaning of the proposed Mental Health Act, 1983) is allowed to be absent or is discharged from the hospital.

Clause 39 specifies the functions of the Protective Commissioner on termination of management of an estate which was under the management of the Protective Commissioner.

Clause 40 releases the Protective Commissioner from liability on being given a receipt for money paid, or chattels or documents handed over, on termination of management.

Clause 41 enables the Protective Commissioner to continue management of the estate of a person who was, but has ceased to be, a patient but requires the person to be informed of appeal entitlements.

Clause 42 specifies the functions of the Protective Commissioner on the death of a person whose estate was being managed by the Protective Commissioner.

Clause 43 enables the Protective Commissioner to continue management until notice of death or revocation of the order for management is received.

Clause 44 provides for unclaimed personal effects and money after termination of management.

Clause 45 provides for any act of the Protective Commissioner on behalf of a protected person to remain binding after termination of management of the person's estate.

DIVISION 6.—*General.*

Clause 46 relates to charges or mortgages for the future maintenance of a protected person.

Clause 47 provides for property taken in exchange on behalf of a protected person to be subject to the same trusts, charges, etc., as the property given in exchange.

Clause 48 specifies that the interests of certain persons in property in the estate of a protected person are not to be altered.

Clause 49 allows the expenses of improvements to be charged on the estate of a protected person, subject to certain conditions.

Clause 50 requires a protected person and relatives of the protected person to be consulted, as far as possible, in relation to proposed action by the Protective Commissioner which will affect the estate of the protected person.

Clause 51 requires personal items in the estate of a protected person to be preserved, as far as practicable.

PART IV.—FINANCIAL.

Clause 52. Interpretation.

Clause 53 allows all money in the trust fund referred to in clause 27 to be invested as a common fund.

Clause 54 provides for interest from investment of the common fund to be credited to an Interest Account.

Clause 55 provides for money to be transferred from the Interest Account to an Estates Guarantee and Reserve Account for general purposes relating to estates managed by the Protective Commissioner.

Clause 56 requires interest from investment of the common fund to be credited to each estate contributing to the investments.

Clause 57 allows any surplus from investment of the common fund to be used to defray the general expenses of the Protective Commissioner.

Clause 58 specifies the manner of investment of money in the common fund.

Clause 59 allows money in an estate to be invested separately from the common fund.

Clause 60 relates to certain advances which may be made from the common fund.

PART V.—MANAGEMENT OF ESTATES OF PERSONS WHO ARE NOT PROTECTED PERSONS.

Clause 61 specifies that the Part does not apply to protected persons.

Clause 62 allows applications to be made to the Protective Commissioner for the estates of certain patients to be managed by the Protective Commissioner.

Clause 63 specifies the powers of the Protective Commissioner in the management of an estate under this Part.

Clause 64 provides for the termination, upon request, of management under this Part.

PART VI.—RECIPROCAL ARRANGEMENTS WITH OTHER STATES.

Clause 65 provides for the Governor to declare, by proclamation published in the Gazette, a country, state or territory as a "reciprocating state".

Clause 66 allows the Protective Commissioner to exercise certain powers in respect of property in New South Wales which forms part of an estate which is subject to management in a reciprocating state.

Clause 67 allows the Protective Commissioner to authorise the person holding a corresponding office in a reciprocating state to deal with property in the reciprocating state which forms part of the estate of a protected person.

PART VII.—MISCELLANEOUS.

Clause 68 provides for a guardianship of certain protected persons.

Clause 69 empowers the Court to dissolve a partnership of which a protected person was a member.

Clause 70 requires an order of the Court relating to management of an estate to be carried into effect.

Clause 71 relates to the exercise of certain powers of protected persons, such as powers to appoint trustees.

Clause 72 allows the Protective Commissioner to arrange temporary provision for maintenance of a protected person or the family of the protected person, pending the making of formal orders for management.

Clause 73 provides for the transfer of stock forming part of the estate of a protected person into the name of a new manager when the previous manager has died or is otherwise incapable or unwilling.

Clause 74 provides for the transfer of stock forming part of an estate subject to management in another country, state or territory, at the request of the person having management of the estate.

Clause 75 empowers the Court to set aside a dealing made by a protected person while a patient.

Clause 76 makes provision with respect to powers of attorney given by persons whose estates are subject to management.

Clause 77 allows the Court to order costs, expenses and remuneration of a manager to be paid out of the estate of a protected person.

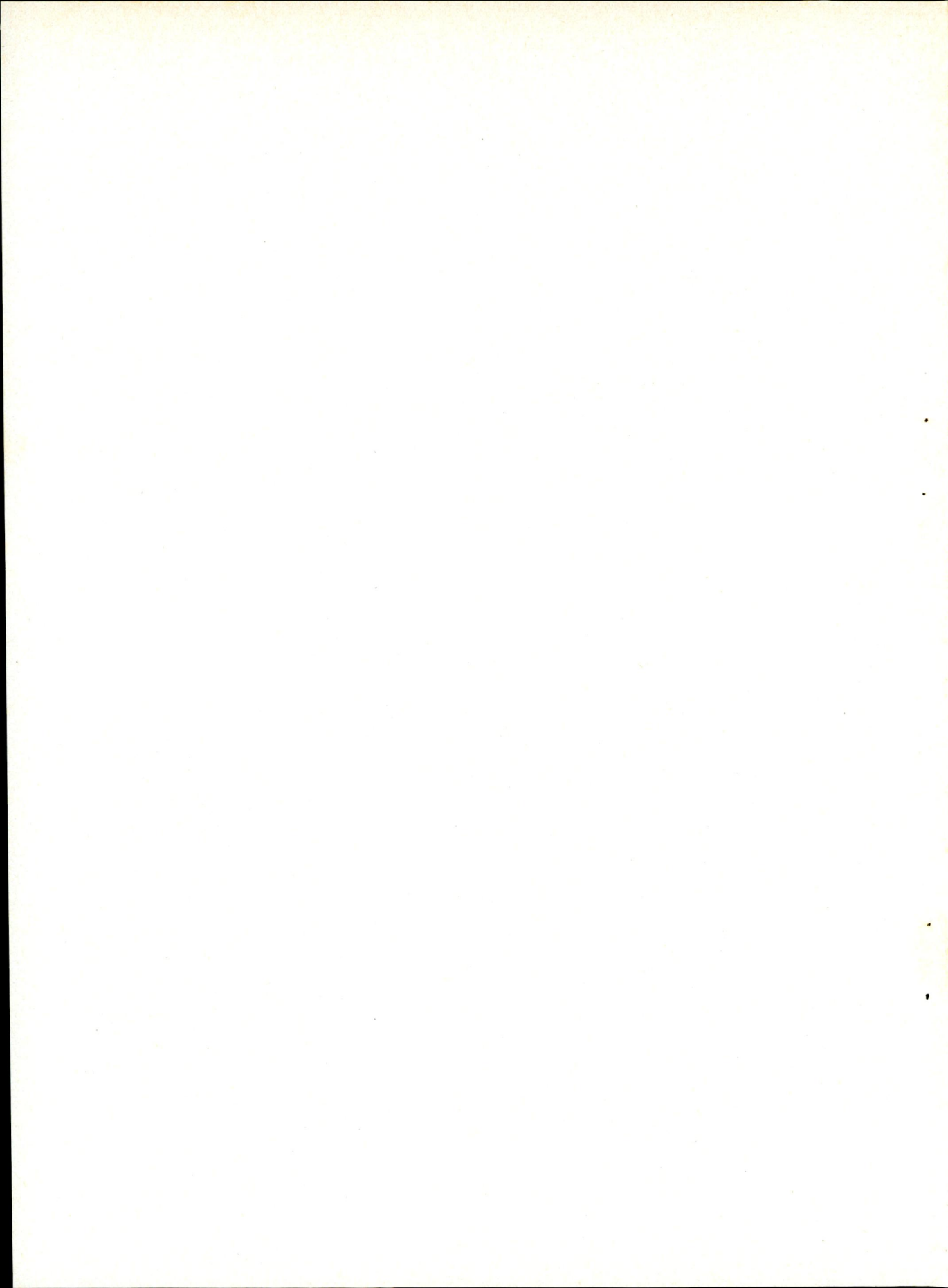
Clause 78 provides that all acts done under the proposed Act shall be valid and binding.

Clause 79 relates to Court visitors.

Clause 80 requires the Protective Commissioner to prepare an annual report which shall be laid before the Houses of Parliament.

Clauses 81 and 82 allow regulations and rules of Court, respectively, to be made for the purposes of the proposed Act.





PROTECTED ESTATES BILL, 1983

No. , 1983.

A BILL FOR

An Act to make provision with respect to the management of the property and affairs of persons who are incapable of managing their own affairs by reason of mental or other condition and certain other persons.

[MR BRERETON—22 *November*, 1983.]

Protected Estates.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "Protected Estates Act, 1983".

Commencement.

- 10 2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Arrangement.

- 15 3. This Act is divided as follows:—

PART I.—PRELIMINARY—ss. 1–4.

PART II.—THE PROTECTIVE OFFICE—ss. 5–12.

PART III.—MANAGEMENT OF ESTATES OF PERSONS INCAPABLE OF
MANAGING THEIR AFFAIRS—ss. 13–51.

20

DIVISION 1.—*Orders for management*—ss. 13–21.

DIVISION 2.—*Committing estates to management*—ss. 22, 23.

DIVISION 3.—*Management of estates by Protective Commis-
sioner*—ss. 24–28.

25

DIVISION 4.—*Management of estates by other persons*—ss. 29–
33.

DIVISION 5.—*Suspension or termination of management*—ss.
34–45.

DIVISION 6.—*General*—ss. 46–51.

Protected Estates.

PART IV.—FINANCIAL—*ss.* 52–60.

PART V.—MANAGEMENT OF ESTATES OF PERSONS WHO ARE NOT
PROTECTED PERSONS—*ss.* 61–64.

5 PART VI.—RECIPROCAL ARRANGEMENTS WITH OTHER STATES—*ss.*
65–67.

PART VII.—MISCELLANEOUS—*ss.* 68–82.

Interpretation.

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

10 “Court” means the Supreme Court of New South Wales;

“hospital” has the meaning ascribed thereto in section 4 (1) of the
Mental Health Act, 1983;

15 “incapable person” means a person who, under the law of another
country, state or territory, being the country, state or territory in
which the person resides, has been found to be incapable of
managing his or her affairs;

“informal patient” has the meaning ascribed thereto in section 4 (1) of
the Mental Health Act, 1983;

20 “patient” has the meaning ascribed thereto in section 4 (1) of the
Mental Health Act, 1983;

“protected person” means a person in respect of whom an order is in
force under this Act that the estate (or any part thereof) of the
person be subject to management under this Act;

25 “Protective Commissioner” means the person for the time being holding
the office of Protective Commissioner;

“regulations” means regulations made under this Act;

“stock” means—

(a) a share or other interest in a company, society or
association;

Protected Estates.

- (b) a fund, annuity or security transferable—
- (i) in books kept by a company, society or association;
 - (ii) by deed alone; or
 - (iii) by deed accompanied by other formalities;
- 5 (c) money payable for the discharge or redemption of any such fund, annuity or security; and
- (d) a share or other interest in any such fund, annuity or security;

10 “Tribunal” means the Mental Health Review Tribunal constituted under the Mental Health Act, 1983;

“trust fund” means the trust fund referred to in section 27 (1).

(2) In this Act, a reference to—

- (a) a function includes a reference to a power, authority and duty; and
- 15 (b) the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) In this Act, a reference to the functions of the Protective Commissioner includes a reference to the functions of the Court under this Act and the Supreme Court Act, 1970, which are exercisable by the Protective
20 Commissioner by virtue of this Act or rules of Court.

(4) In this Act, a reference to the estate of a person is a reference to the property and affairs of the person.

PART II.

THE PROTECTIVE OFFICE.

25 The Protective Commissioner and other officers.

5. (1) There shall be a Protective Commissioner and a Deputy Protective Commissioner, who shall be employed under, and hold office subject to, the Public Service Act, 1979.

Protected Estates.

(2) Such other staff as may be necessary for the administration of this Act shall be employed under, and hold office subject to, the Public Service Act, 1979.

(3) A person may, while holding office as Protective Commissioner or 5 Deputy Protective Commissioner or while holding an office as a member of the staff referred to in subsection (2), also, if so appointed, hold an office in the staff establishment of the Court.

(4) The Protective Commissioner shall have the functions conferred and imposed on the Protective Commissioner by or under this or any other 10 Act or law.

(5) The Deputy Protective Commissioner shall, during the illness or absence of the Protective Commissioner or during any vacancy in the office of the Protective Commissioner, have the functions conferred and imposed upon the Protective Commissioner by or under this or any other Act or law.

15 (6) Any thing done by the Deputy Protective Commissioner while acting pursuant to subsection (5) shall be deemed to have been done as Protective Commissioner.

(7) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising the Deputy Protective Com- 20 missioner to exercise, pursuant to subsection (5), a function conferred or imposed upon the Protective Commissioner.

(8) The Protective Commissioner and the Deputy Protective Commissioner shall, in their capacity as such, be officers of the Court.

(9) Nothing in this section limits the effect of any rules of Court 25 relating to the powers of the Court under this Act which may be exercised by the Protective Commissioner, the Deputy Protective Commissioner or a member of the staff referred to in subsection (2).

Court may refer inquiries to Protective Commissioner.

6. The Court may, in relation to any proceedings before the Court under 30 this Act, by order, direct the Protective Commissioner to conduct such inquiry as it may specify concerning a person or the estate of a person and to report to it the result of the inquiry.

Protected Estates.

Expenses of Protective Commissioner.

7. All expenses incurred by or on behalf of the Crown in the care and management of the estate of a protected person or in the supervision of the management, under this Act, by a manager of the estate of a protected person
5 may be—

- (a) charged by the Protective Commissioner against, and paid out of and recovered from, the estate;
 - (b) paid by the Protective Commissioner out of any money of the protected person that is received by the Protective Commissioner;
10 or
 - (c) recovered on summary application to the Court,
- whether or not the management under this Act of the estate of the protected person has terminated.

Fees.

15 8. (1) Fees (whether by way of percentage or otherwise) may, from time to time, be prescribed for the purposes of this section.

(2) There shall be charged in respect of the exercise of the functions of the Protective Commissioner such fees as may be prescribed for the purposes of this section.

20 (3) Such fees as may be prescribed for the purposes of this section shall be charged upon and payable out of the estate of a protected person whether or not, before payment, the management under this Act of the estate of the person has terminated.

25 (4) Where it appears to the Protective Commissioner to be just and reasonable to do so, the Protective Commissioner may, at the discretion of the Protective Commissioner, waive, remit or reduce any of the fees chargeable under this section.

30 (5) Except as provided by subsection (4), the Protective Commissioner shall pay into the Consolidated Fund, for the use and benefit of that fund, and at such times and in such manner as the Governor may from time to time appoint, all fees received by the Protective Commissioner, whether charged by way of percentage or otherwise.

Protected Estates.

Power to take evidence, etc.

9. (1) The Protective Commissioner may, in the exercise of the functions of the Protective Commissioner and in the prosecution of any inquiry or matter which the Protective Commissioner is directed to make under this Act—

- (a) issue a subpoena in or to the effect of the form prescribed by rules of Court requiring the person to whom the subpoena is addressed to do either or both of the following things:—
- 10 (i) to attend to give evidence before the Protective Commissioner at the time and place specified in the subpoena;
- (ii) so to attend and produce to the Protective Commissioner any books, papers, accounts, documents or other records in the possession or under the control of the person and specified in the subpoena;
- 15 (b) administer oaths and take evidence, either orally or by affidavit or partly orally and partly by affidavit; and
- (c) take recognizances.

(2) For the purposes of subsection (1), a subpoena is issued by the Protective Commissioner if it is signed by the Protective Commissioner or
20 the Deputy Protective Commissioner.

(3) Rules of Court may make provision for or with respect to authorising compliance with a subpoena to produce any books, papers, accounts, documents or other records by the production of any such records at a place specified in the subpoena at any time before the time at which the
25 records are required to be produced.

- (4) A person to whom a subpoena is addressed is entitled to receive—
- (a) where the subpoena was issued by the Protective Commissioner of the Protective Commissioner's own motion, from the Protective Commissioner; or
- 30 (b) where the subpoena was issued by the Protective Commissioner on the application of a person, from the person,

his or her reasonable costs, including any loss of earnings, incurred by the person in obeying the subpoena, calculated in accordance with the scale prescribed by rules of Court.

Protected Estates.

(5) A person—

(a) who is served with a subpoena addressed to the person pursuant to subsection (1); and

5 (b) to whom, at the time of service, is tendered an amount that is sufficient to cover the person's travelling and other out-of-pocket expenses in attending in accordance with the subpoena and producing anything required by the subpoena to be produced,

shall not, without reasonable cause, fail or refuse to obey the subpoena or, if required by the subpoena to attend to give evidence, to refuse to be sworn
10 or examined.

Penalty: \$500.

Witnesses may be cross-examined.

15 **10. (1)** Where a person giving evidence to the Protective Commissioner by affidavit is required, by a subpoena issued under section 9, to attend before the Protective Commissioner and give evidence, the person—

(a) may be cross-examined orally by or before the Protective Commissioner on the affidavit; and

(b) after cross-examination, may be re-examined orally by or on behalf of the person filing the affidavit.

20 **(2)** The costs and expenses determined in the manner prescribed by rules of Court and relating to the cross-examination and re-examination of a person under this section shall be paid in such manner and by such person as the Protective Commissioner directs.

Advertisements.

25 **11.** The Protective Commissioner may cause to be published such advertisements as, in the opinion of the Protective Commissioner, are necessary or expedient with reference to the subject-matter of a proposed inquiry or with a view to the efficient exercise of the functions of the Protective Commissioner in relation to the estate of a person.

Protected Estates.

Court may give directions to Protective Commissioner.

12. The Court may, upon the application of the Protective Commissioner, a protected person, a relative, friend, creditor or debtor of a protected person or any other person having, in the opinion of the Court, a sufficient interest
5 in any matter, give to the Protective Commissioner—

- (a) directions for such inquiries to be made and notices to be given as the Court thinks necessary; and
- (b) such directions as the Court thinks necessary with respect to the
10 exercise by the Protective Commissioner of the functions of the Protective Commissioner.

PART III.**MANAGEMENT OF ESTATES OF PERSONS INCAPABLE OF MANAGING
THEIR AFFAIRS.****DIVISION 1.—Orders for management.****15 Declaration and order where person incapable of managing affairs.**

13. (1) Where the Court is satisfied that a person is incapable of managing his or her affairs, it may make a declaration to that effect and order that the estate of the person be subject to management under this Act.

20 **(2)** On the hearing of an application for the purposes of this section, evidence of a person's capability to manage his or her affairs may be given to the Court in such form and in accordance with such procedures as the Court thinks fit and the Court may otherwise inform itself as to the person's capability to manage his or her affairs as it thinks fit.

Protected Estates.

(3) Without limiting the generality of subsection (2), the Court may—

- (a) personally examine a person whose capability to manage his or her affairs is in question;
- 5 (b) direct the Protective Commissioner to personally examine the person and to report to it on the examination; or
- (c) dispense with any such examination.

Incapable persons in places outside New South Wales.

14. Where the Court is satisfied that a person has been found to be
10 incapable of managing his or her affairs by any legal inquiry in any part of the Commonwealth of Nations outside New South Wales or in any other country, state or territory to which the Governor, by proclamation published in the Gazette, extends the provisions of this section, the Court may—

- 15 (a) direct a copy of the inquiry or finding on the inquiry, duly certified by an officer of the court or other authority to which the finding has been returned, to be filed of record in the Court;
- (b) make a declaration that the person is incapable of managing his or her affairs; and
- 20 (c) order that such of the estate of the person as is situated in New South Wales be subject to management under this Act.

Notice that person's capability to manage affairs will be considered.

15. A medical superintendent who intends to bring a person before a stipendiary magistrate under section 86 (3) of the Mental Health Act, 1983,
25 shall—

- (a) when giving the information required to be given to the person under section 86 (1) of that Act give to the person the prescribed information with respect to the question of the capability of the person to manage his or her affairs; and

Protected Estates.

- 5 (b) when giving the notice required to be given under section 86 (2) of that Act give to each of the persons required to be given that notice the prescribed information with respect to the question of the capability of the person being brought before the stipendiary magistrate to manage his or her affairs.

Consideration by magistrate of capability of patients to manage affairs.

10 **16. (1)** Where, under section 91 of the Mental Health Act, 1983, a stipendiary magistrate directs the detention of a person in a hospital as a temporary patient the stipendiary magistrate shall, except as provided by sub-section (2), consider the person's capability to manage his or her affairs and, unless satisfied that the person is capable of managing his or her affairs, shall order that the estate of the person be subject to management under this Act.

15 **(2)** A stipendiary magistrate may refer the question of a person's capability to manage his or her affairs to the Tribunal.

Consideration by Tribunal of capability of patient to manage affairs.

20 **17.** Where a stipendiary magistrate refers the question of a person's capability to manage his or her affairs to the Tribunal, the Tribunal shall consider the capability of the person to manage his or her affairs and, unless satisfied that the person is capable of managing his or her affairs, shall order that the estate of the person be subject to management under this Act.

Consideration of capability of forensic patients to manage affairs.

25 **18.** Where, under section 117, 118 or 125 of the Mental Health Act, 1983, the Tribunal reviews a person's case and makes a recommendation to the Minister that the person be detained in a hospital, it shall consider the person's capability to manage his or her affairs and, unless satisfied that the person is capable of managing his or her affairs, shall order that the estate of the person be subject to management under this Act.

Protected Estates.

Subsequent applications.

19. (1) The Tribunal may, on the application of any person having, in the opinion of the Tribunal, a sufficient interest in the matter and whether or not it has previously considered the question, consider a patient's capability
5 to manage his or her affairs and, unless satisfied that the patient is capable of managing his or her affairs, shall order that the estate of the patient be subject to management under this Act.

(2) On an application under subsection (1) in relation to a patient, the Tribunal may make an order that the estate of the patient be subject to
10 management under this Act notwithstanding that there may have been no change in the patient's capability to manage his or her affairs since that capability was last considered by a stipendiary magistrate or the Tribunal.

Interim orders.

20. (1) A stipendiary magistrate or the Tribunal may, if it appears to the
15 stipendiary magistrate or Tribunal necessary or convenient to do so, make an interim order under this Division for a specified period in respect of a patient pending further consideration of the patient's capability to manage his or her affairs.

(2) Where another order under this Division is not made in respect of
20 a patient before the period for which an interim order made in respect of the patient expires, the interim order shall be deemed to be revoked on the expiration of that period.

Appeal against order of stipendiary magistrate or Tribunal.

21. (1) Where a stipendiary magistrate or the Tribunal makes an order
25 that the estate of a person be subject to management under this Act, the person may, subject to and in accordance with rules of Court, appeal to the Court against the order.

(2) An appeal shall be by way of a new hearing and fresh evidence or evidence in addition to, or in substitution for, the evidence in relation to
30 which the order in respect of which the appeal is made may be given on the appeal.

Protected Estates.

(3) On an appeal, the Court may revoke or confirm the order in respect of which the appeal is made.

(4) The Tribunal and any member of the Tribunal shall not be liable to any costs relating to an order of the Tribunal in respect of which
5 an appeal is made or the appeal.

DIVISION 2.—*Committing estates to management.*

Management of estates of protected persons other than patients.

22. The Court may, by order, appoint a suitable person as manager of the estate of a protected person in respect of whom it has made an order
10 under section 13 or may, by such an order, commit the management of the estate of any such protected person to the Protective Commissioner.

Management of estates of patients who are protected persons.

23. Where, pursuant to a direction or an order of a stipendiary magistrate or a prescribed authority, a protected person is detained in a hospital, the
15 estate of the person is, without further authority than this section but subject to any special order of the Court, committed to the management of the Protective Commissioner.

DIVISION 3.—*Management of estates by Protective Commissioner.*

Powers as to property.

20 24. (1) In respect of the estate of a protected person the management of which is committed to the Protective Commissioner, the Protective Commissioner shall have, and may exercise—

- (a) all functions necessary and incidental to its management and care;
and
- 25 (b) such other functions as the Court may direct or authorise the Protective Commissioner to have or exercise.

Protected Estates.

(2) Without limiting the generality of subsection (1) but subject to subsection (3), the Protective Commissioner shall have, and may exercise, the following functions in respect of the estate of a protected person the management of which is committed to the Protective Commissioner, that is to say, the Protective Commissioner may—

- (a) receive money, rent, income and profit of real and personal property;
- (b) grant leases of property;
- (c) surrender a lease and accept a new lease;
- 10 (d) accept a surrender of a lease and grant a new lease;
- (e) execute a power of leasing vested in the protected person having a limited estate only in the property over which the power extends;
- (f) sell, realise, charge and mortgage real and personal property;
- 15 (g) settle, adjust and compromise a demand made by or against the estate;
- (h) make exchange or partition of property and give or receive money for equality of exchange or partition;
- 20 (i) carry on a business which the protected person had carried on, so far as may appear desirable for the purpose of more advantageously disposing of, or winding up, the business or preserving the business until the protected person is able to carry it on;
- 25 (j) agree to an alteration of the conditions of a partnership into which the protected person has entered, for the purpose of more advantageously disposing of an interest in the partnership or terminating liability;
- (k) complete a contract for the performance of which the protected person is liable or enter into an agreement terminating the liability;
- (l) surrender, assign or otherwise dispose of, with or without consideration, onerous property;
- 30 (m) exercise a power, or give a consent required for the exercise of a power, where the power is vested in the protected person for the benefit of the protected person or the power of consent is in the nature of a beneficial interest in the protected person;
- (n) sequestrate the estate under the bankruptcy laws;

Protected Estates.

- (o) bring and defend actions, suits and other proceedings, on behalf of the protected person;
- (p) bring land under the Real Property Act, 1900.

(3) The Protective Commissioner shall not, in the exercise of any 5 functions referred to in subsection (2), grant or accept a lease of land for a term exceeding 5 years without the direction of the Court.

Power to employ agents.

25 **25. (1)** The Protective Commissioner may, instead of acting personally in the management of the estate of a protected person, employ and pay an agent, whether being a bank, solicitor, stockbroker or other person, to transact any business or do any act required to be transacted or done in the administration and management of the estate.

(2) The Protective Commissioner shall not be responsible for the default of any agent employed as referred to in subsection (1).

15 Execution of documents.

26. (1) For the purposes of managing the estate of a protected person, the Protective Commissioner shall have, and may exercise, all such functions as the protected person has and can exercise or would have and could exercise if under no incapacity.

20 (2) For the purpose of exercising a function of a protected person as referred to in subsection (1), the Protective Commissioner may, in the name and on behalf of the protected person, execute and sign deeds, instruments, transfers of shares, receipts, releases and all other documents which shall be as effective as if they were executed and signed by the
25 protected person and, to the extent to which the protected person has no capacity to execute and sign any such document, as if the protected person were under no such incapacity and any such document shall be acted upon accordingly.

Protected Estates.

(3) A person acting upon a document executed or signed by the Protective Commissioner as referred to in subsection (2) shall not be bound to inquire as to the Protective Commissioner's power to execute or sign the document or as to the application of any money paid pursuant to any dealing with the Protective Commissioner as a consequence of the document.

Payments into trust fund.

27. (1) Except as provided by section 8 (5), the Protective Commissioner shall at such times and in such manner as the Governor may from time to time appoint, pay all money coming into the hands of the Protective Commissioner into the Special Deposits Account in the Treasury to the credit of a trust fund.

(2) A separate current account in respect of each estate shall be kept by the Protective Commissioner of payments to the credit of the trust fund as referred to in subsection (1) and of payments out of the trust fund.

15 Disposition of money in the hands of Protective Commissioner.

28. (1) The Protective Commissioner may apply money comprising the whole or any part of the estate of a protected person towards any one or more of the following purposes:—

- 20 (a) the payment of the debts and engagements of the protected person and the repayment of expenses chargeable to the estate of the protected person;
- (b) the maintenance, clothing, medicine and care, past and future, of the protected person and, in the event of the death of the protected person, the protected person's funeral expenses;
- 25 (c) the maintenance of the spouse of the protected person or any child, parent or other person dependent upon the protected person, or for whose maintenance the protected person provided when not a protected person or would be expected to provide;
- 30 (d) the payment of all proper costs, charges and expenses incurred in or about the care, protection, recovery, sale, mortgage, leasing, disposal and management of the estate of the protected person;

Protected Estates.

- (e) the preservation and improvement of the estate of the protected person;
- (f) the taking up of rights to issues of new shares, or options for new shares, to which the protected person may become entitled by virtue of any shareholdings;
- (g) the investment of money, being money not required for the time being for any of the foregoing purposes—
- (i) in any of the securities authorised by the Trustee Act, 1925; or
- (ii) subject to subsection (2), in the purchase of real estate.

(2) The Protective Commissioner shall not invest any money comprising part of the estate of a protected person in the purchase of real estate as referred to in subsection (1), unless such a purchase appears to the Protective Commissioner to be desirable for the purpose of—

- (a) protecting the estate from injury or deterioration in value;
- (b) increasing the value or facilitating the sale of other lands of the estate; or
- (c) providing a home for the protected person or any dependants of the protected person.

DIVISION 4.—*Management of estates by other persons.*

Application of Division.

29. This Division does not apply to or in respect of a protected person whose estate is committed to the management of the Protective Commissioner.

Functions of Protective Commissioner under this Division.

30. (1) The Protective Commissioner—

- (a) may, subject to rules of Court, exercise the jurisdiction and powers of the Court in respect of the administration and management of the estates of protected persons; and

Protected Estates.

(b) shall, subject to and in accordance with the regulations and rules of Court and to any special order of the Court, direct, supervise and enforce the performance of the obligations and duties of managers under this Act.

5 (2) An order made by the Protective Commissioner in the exercise of the jurisdiction and powers of the Court as referred to in subsection (1) shall take effect, unless varied or rescinded by the Court, as an order of the Court.

Security in respect of management.

10 31. (1) Where the Court appoints a manager of the estate of a protected person, it may require the manager to give security in respect of the management.

 (2) Security shall be deemed not to have been given by a manager as referred to in subsection (1) unless it has been approved by the Protective
15 Commissioner.

 (3) It is the duty of the Protective Commissioner to see that the conditions of all bonds and recognizances given or entered into (whether before, on or after the day referred to in section 2 (2)) by the manager of the estate of a protected person or by any other person in relation to the
20 estate of a protected person are faithfully and regularly observed and performed and to report immediately to the Court any breach or non-performance of any such condition.

 (4) Upon the breach or non-performance of a condition of a bond or recognizance, the Court may cause the bond or recognizance to be
25 forfeited or estreated and the forfeiture or estreat shall be enforced and effected in the same way as a recognizance is estreated to Her Majesty.

Orders by Court as to property.

 32. (1) The Court may make such orders as appear to it necessary for rendering the property and income of a protected person available for the
30 payment of the debts of, and the maintenance and otherwise for the benefit

Protected Estates.

of, the protected person and the family of the protected person and otherwise as it thinks necessary or desirable for the care and management of the estate of a protected person.

(2) Without limiting the generality of subsection (1), the Court
5 may—

- (a) order that any property of a protected person be sold, charged, mortgaged, dealt with or disposed of as the Court thinks most expedient for the purpose of raising or securing or repaying with or without interest money which is to be or which has been applied
10 to any one or more of the following purposes:—
- (i) payment of the protected person's debts or engagements;
 - (ii) discharge of any incumbrance on property of the protected person;
 - (iii) payment of any debt or expenditure incurred for the
15 maintenance, or otherwise for the benefit, of the protected person;
 - (iv) payment of, or provision for the expenses of, future maintenance of the protected person;
 - (v) payment of the costs of any proceeding under this Act or
20 of any sale or other disposition made under this Act;
 - (vi) payment of such other sum or sums to such person or persons as the Court thinks fit; and
- (b) authorise and direct the application of money comprising the whole or any part of the estate of the protected person to any one or
25 more of the following purposes:—
- (i) the preservation and improvement of the estate of the protected person;
 - (ii) the taking up of rights to issues of new shares, or options for new shares, to which the protected person may become entitled by virtue of any shareholdings;
 - (iii) the investment of money, being money not required for
30 the time being for any of the foregoing purposes, in such manner as the Court thinks fit.

Protected Estates.

Functions of manager.

33. (1) The Court may, by order, authorise and direct the manager of the estate of a protected person to have and exercise such functions in respect of the estate as it may specify, being functions of the same kind as those specified in section 24 (2) in respect of an estate committed to management by the Protective Commissioner (not being subject to any limitation specified in section 24 (3)).

(2) The Court may, by an order referred to in subsection (1), require a function to be exercised in such manner as it may specify or at such times or in such circumstances, or both, as it may specify or may make the exercise of a function subject to such conditions as it may specify.

*DIVISION 5.—Suspension or termination of management.***Termination of management.**

34. (1) The management of the estate of a protected person under this Act is terminated—

- (a) upon the order that the estate be subject to management under this Act being revoked;
- (b) in the case of a protected person who was, but has ceased to be, a patient, upon the Protective Commissioner certifying under section 38 that the management is terminated; or
- (c) upon the death of the protected person.

(2) Notwithstanding any other provision of this Act, where, after the commencement of section 269 of the Community Welfare Act, 1982, the Public Trustee is appointed under that section to act as manager of the estate of a protected person, during any period in which, pursuant to that appointment, the Public Trustee acts as manager of the estate—

- (a) the order that the estate be subject to management under this Act is suspended; and
- (b) the provisions of this Act apply to and in respect of the estate as if that order had, upon that appointment, been revoked.

Protected Estates.

Orders where person no longer incapable.

35. (1) Where, upon application to it by a protected person (including a protected person who became a protected person while a patient), the Court is satisfied that the protected person is capable of managing his or
5 her affairs, it may—

- (a) revoke any declaration made that the person is incapable of managing his or her affairs;
- (b) revoke the order that the estate of the person be subject to management under this Act; and
- 10 (c) make such orders as appear to it necessary to give effect to the revocation of the order, including the release of the estate of the person from the control of the Court, the Protective Commissioner or a manager and the discharge of any manager.

(2) On the hearing of an application for the purposes of this section,
15 evidence of a person's capability to manage his or her affairs may be given to the Court in the same form and in accordance with the same procedures as any such evidence may be given to the Court on the hearing of an application for the purposes of section 13.

Revocation of order by Tribunal.

20 36. Where, upon application to it by a protected person, being a protected person who was, but has ceased to be, a patient, the Tribunal is satisfied that the protected person is capable of managing his or her affairs, it may revoke the order that the estate of the person be subject to management under this Act.

25 Absence of patient from hospital.

37. While a protected person, being a patient, is absent from a hospital, the Protective Commissioner may, at the discretion of the Protective Commissioner—

- 30 (a) pay over to the patient or to any person on behalf of the patient who gives satisfactory security to the Protective Commissioner for the proper management and disposal of it, or as the patient or person directs, the whole or any part of the money standing to the credit of the current account of the patient in the trust fund; and

Protected Estates.

- (b) hand over to the patient or person, or as the patient or person directs, all or any chattels or documents forming part of the estate of the patient.

Discharge of patient from hospital.

- 5 **38. (1)** Upon a protected person who was a patient ceasing to be a patient or at any time thereafter, the Protective Commissioner may, if satisfied that the protected person is capable of managing his or her affairs, certify that management of the estate of the protected person by the Protective Commissioner is terminated.
- 10 **(2)** Where the Protective Commissioner certifies as referred to in subsection (1) in respect of the estate of a protected person, the order that the estate be subject to management under this Act shall cease to have any further effect.

Functions of Protective Commissioner on termination of management.

- 15 **39.** Except as provided by section 42, where the management of the estate of a protected person by the Protective Commissioner terminates, the Protective Commissioner shall, subject to any order of the Court—
- (a) pay over to the person, or as the person directs, all money standing to the credit of the current account of the person in the trust fund;
20 and
 - (b) hand over to the person, or as the person directs, all chattels and documents forming part of the estate of the person.

Receipt to be release.

- 25 **40.** The receipt of the patient or person to whom or in accordance with whose direction the Protective Commissioner has paid over money or handed over chattels or documents as referred to in section 37 or 39 shall be an absolute release to the Protective Commissioner from liability in respect of any action taken by the Protective Commissioner under those sections, notwithstanding any informality in, or in relation to, the patient's absence from
30 a hospital or, as the case may be, the person's ceasing to be a patient.

Protected Estates.

Continuation of management after discharge.**41. (1) Where—**

5 (a) it comes to the attention of the Protective Commissioner that a protected person who was a patient has ceased to be a patient; and

(b) the Protective Commissioner is not satisfied that the protected person is capable of managing his or her affairs,

the Protective Commissioner shall do all such things as are reasonably practicable to inform the person that the person may apply to the Tribunal or the Court for the revocation of the order that the estate of the person be subject to management under this Act and that, unless the order is revoked, management of the estate will continue at the discretion of the Protective Commissioner.

15 **(2)** Where a protected person who was a patient ceases to be a patient, the Protective Commissioner may, at the discretion of the Protective Commissioner, continue to have the management of the property and affairs of the person until—

(a) the order that the estate of the person be subject to management under this Act is revoked; or

20 (b) the Protective Commissioner is satisfied that the person is capable of managing his or her affairs,

whichever first occurs.

Death of protected person.**42. Where a protected person dies—**

25 (a) the Protective Commissioner may, at the discretion of the Protective Commissioner—

(i) pay any sum (not exceeding the prescribed amount) out of money standing to the credit of the current account of the protected person in the trust fund; or

30 (ii) hand over any chattels having a value not exceeding that amount and forming part of the estate of the protected person or any documents having a value not exceeding

Protected Estates.

that amount, or relating to property having a value not exceeding that amount, and forming part of the estate of the protected person,

5 to any person claiming to be entitled in the distribution of the estate or as legatee under the will of the protected person, notwithstanding that probate of the will or letters of administration has or have not been obtained, and notwithstanding that legal proof is not given of the right or title of the person so claiming; and

10 (b) except as provided by paragraph (a), the Protective Commissioner shall—

(i) pay all money standing to the credit of the current account of the protected person in the trust fund; and

15 (ii) hand over all chattels and documents forming part of the estate of the protected person,

to the legal personal representative of the protected person.

Protective Commissioner may act until notice of death or revocation received.

20 **43.** Notwithstanding the death of a protected person or the revocation of the order that the estate of a person be subject to management under this Act, the Protective Commissioner shall continue to have, and may continue to exercise, in respect of the estate of the person, the functions required or permitted to be exercised before the death or revocation until the Protective Commissioner is satisfied that the protected person has died
25 or, as the case may be, is served with a copy of the revocation.

Unclaimed personal effects and money.

44. (1) Where the management of the estate of a person under this Act terminates, all personal effects in the hands of the Protective Commissioner belonging to the person and not claimed within 2 years from the date of
30 the termination, may be sold by direction of the Protective Commissioner, and the proceeds of the sale shall be paid into the Consolidated Fund.

Protected Estates.

(2) All money standing to the credit of the current account of a person in the trust fund at the end of 6 years from the date of termination of the management of the estate of the person shall be carried to and form part of the Consolidated Fund.

5 (3) The owner of the proceeds of a sale referred to in subsection (1) or of any money referred to in subsection (2) shall, upon proving ownership, be entitled to recover the proceeds or money from the Treasurer.

(4) Where a person is entitled to recover any proceeds or money as referred to in subsection (3), the proceeds are, or the money is, by virtue of
10 this subsection, appropriated from the Consolidated Fund for the purpose of enabling its payment to the person and the Treasurer may withdraw the proceeds or money from the Consolidated Fund and pay the proceeds or money to the person accordingly.

**Protected person or legal personal representative bound by acts of
15 Protective Commissioner.**

45. On the termination of management by the Protective Commissioner of the estate of a person, the person or the legal personal representative of the person, as the case may be, shall be bound by and may take advantage of an act lawfully done by the Protective Commissioner on behalf of the
20 person, as if the act had been done by the person himself or herself and, to the extent to which the person had no capacity to do the act, as if the person were under no such incapacity.

DIVISION 6.—*General.*

Charges and mortgages.

25 46. Where a charge or mortgage in respect of property or an interest in property is created or granted under this Act for the expenses of future maintenance of a protected person, the money secured by the charge or mortgage—

30 (a) may, in the case of a charge or mortgage in respect of a contingent or future interest in property, be made payable under the charge or mortgage contingently or upon the happening of an event; and

Protected Estates.

- (b) may be made payable under the charge or mortgage—
- (i) in a gross sum or in annual or other periodical sums; and
 - (ii) at any specified time and in any specified manner.

Property exchanged and renewed lease to be to same uses as before.

5 **47.** Any property taken in exchange, and any renewed lease accepted, pursuant to this Act on behalf of a protected person shall be to the same uses and be subject to the same trusts, charges, incumbrances, dispositions, devices and conditions as the property given in exchange or the surrendered lease was or would, but for the exchange or surrender, have been subject to.

10 **Interest in property of certain persons not to be altered.**

15 **48. (1)** Any protected person, and any other person being an heir, next of kin, devisee, legatee, executor, administrator or assign of a protected person shall have the same interest in any surplus money or other property arising from any sale, mortgage, charge or disposition of any property or other dealing with property under this Act as the person would have had in the property the subject of the sale, mortgage, charge, disposition or dealing, if no sale, mortgage, charge, disposition or dealing had been made.

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

25 **(3)** Except as provided by subsection (4), money received for equality of partition and exchange, and all fines, premiums and sums of money received upon the grant or renewal of a lease where the property the subject of the partition, exchange, or lease was real estate of a protected person shall, subject to the application thereof for any purposes authorised by this Act, be considered as real estate.

(4) Fines, premiums and sums of money received upon the grant or renewal of leases of property of which a protected person was tenant for life shall be personal estate of the protected person.

30 **(5)** In order to give effect to this section the Court may make such orders and direct such conveyances, deeds and things to be executed and done as it thinks fit.

Protected Estates.

Expenses of improvements may be charged on estate.

49. (1) Except as provided by subsection (2), the whole or any part of any money expended or to be expended under this Act for the permanent improvement, security or advantage of the property of a protected person or
5 of any part of that property, may, with interest, be made a charge upon the improved property or any other property of the protected person.

(2) No right of sale or foreclosure during the lifetime of a protected person shall be conferred by a charge referred to in subsection (1) on the property of the protected person and the interest shall be kept down during
10 the lifetime of the protected person out of the income of the general estate as far as it is sufficient to bear it.

(3) A charge referred to in subsection (1) may be made either to some person advancing money or, if the money is paid out of the protected person's general estate, to some person as a trustee for the protected person
15 as part of the personal estate of the protected person.

Protected person and relatives to be consulted.

50. (1) Before—

(a) the Protective Commissioner, in the course of exercising the jurisdiction and powers of the Court under Division 4, makes an order
20 which will result in any action being taken in respect of the estate of a protected person; or

(b) the Protective Commissioner takes any other action in respect of the estate of a protected person,

the Protective Commissioner shall determine whether the action is of such
25 a nature that the protected person and relatives of the protected person or any of those persons should be consulted in relation to the action.

(2) In determining whether action in respect of the estate of a protected person is of such a nature that the protected person and relatives of the protected person or any of those persons should be consulted in
30 relation to the action, the Protective Commissioner shall consider all relevant circumstances and matters, including—

(a) the value of the estate;

Protected Estates.

- (b) the value and nature of any particular property proposed to be affected;
- (c) the consequences of the proposed action;
- (d) the necessity or practicality of the proposed action; and
- 5 (e) the extent (if any) to which the estate may be prejudiced by any delay in the proposed action being taken.

(3) Where the Protective Commissioner determines that any proposed action in respect of the estate of a protected person is of such a nature that the protected person and relatives of the protected person
10 or any of those persons should be consulted in relation to the action, the Protective Commissioner shall cause to be taken all such steps as are reasonably practicable in the circumstances to give notice to those persons and, before making the order which will result in any such action being taken or before taking any such action, shall consider any submissions made within
15 the period specified in any such notice in response to the notice.

Personal items to be preserved.

51. In the care and management of the estate of a protected person, any items in the estate which are of a personal nature and which the protected person or relatives of the protected person has or have requested
20 to be preserved, shall, as far as is reasonably practicable, be preserved.

PART IV.**FINANCIAL.****Interpretation.**

52. In this Division—

- 25 “common fund” means the fund comprising balances to the credit of all current accounts in the trust fund as provided by section 53 (1);

Protected Estates.

“Estates Guarantee and Reserve Account” means the account to which sums are transferred from the Interest Account by the Protective Commissioner as referred to in section 55 (1);

5 “Interest Account” means the account to which interest received from investments from the common fund is credited as referred to in section 54.

Common fund.

53. (1) Except as provided by subsection (2), balances to the credit of all current accounts in the trust fund shall, for the purposes of investment,
10 be one common fund.

(2) The balance of a current account shall not form part of the common fund where—

- (a) the current account is held by the Protective Commissioner jointly with another person; and
15 (b) the other person has objected in writing to it forming part of the common fund.

Interest Account.

54. Interest received from investments from the common fund shall be credited to an Interest Account and shall be allocated from that Account as
20 provided by this Part.

Estates Guarantee and Reserve Account.

55. (1) Out of the total amount of interest earned in any year by all investments from the common fund, such sum as the Protective Commissioner considers necessary may be transferred from the Interest Account to an
25 Estates Guarantee and Reserve Account kept by the Protective Commissioner.

Protected Estates.

(2) The Estates Guarantee and Reserve Account may, at the discretion of the Protective Commissioner, be applied to any one or more of the following purposes:—

- 5 (a) payment to the common fund of an amount equivalent to the loss upon realisation of any investment made from the common fund;
- (b) payment of any costs incurred in protecting investments made from the common fund;
- 10 (c) payment of such other expenses or charges incurred in respect of the common fund or investments made therefrom as, in the opinion of the Protective Commissioner, are properly chargeable against the Estates Guarantee and Reserve Account;
- (d) payment of any legal costs, charges and expenses not ordered by a court to be charged against a particular estate or otherwise not properly chargeable against a particular estate;
- 15 (e) payment of any legal costs, charges and expenses not ordered by a court to be charged against a particular estate but otherwise properly chargeable against a particular estate where there are insufficient funds in the particular estate to meet the costs, charges and expenses;
- 20 (f) payment of costs, charges and expenses incurred by the Protective Commissioner in obtaining any kind of advice or in any legal proceedings to which the Protective Commissioner is or is made a party where the costs, charges and expenses are such that, by reason of general interest and the importance of the subject-matter
- 25 of the advice or proceedings, they should not, in the opinion of the Protective Commissioner, be charged against a particular estate.

Interest to be credited.

56. (1) Out of the balance to the credit of the Interest Account after any sum is transferred to the Estates Guarantee and Reserve Account as referred to in section 55, interest shall be transferred and credited to the current accounts forming part of the common fund in respect of—

- (a) all capital balances; and
- (b) income balances where, in the opinion of the Protective Commissioner, the income should be interest earning.

Protected Estates.

(2) Interest allowed in respect of income balances shall be computed as from such date as the Protective Commissioner may determine and shall be credited at such rate and at such time or times as the Protective Commissioner may determine.

5 (3) Except as provided by this section, balances in the common fund shall not earn interest.

Surplus income from common fund.

57. Where, after transferring any sum referred to in section 55 (1) and interest as referred to in section 56, a surplus remains out of the income from
10 investments made from the common fund, the surplus, or so much thereof as the Protective Commissioner may determine, may be applied towards the annual amount incurred in the exercise of the functions of the Protective Commissioner.

Investment of common fund.

15 58. Money standing to the credit of the Interest Account and unapplied as referred to in sections 55, 56 and 57 and money in the common fund may be invested—

- (a) in any of the securities authorised by the Trustee Act, 1925; or
- 20 (b) to the extent of not more than \$1,000,000 at any one time, on deposit with the Treasurer for a period or periods not exceeding 12 months in any one case.

Withdrawal from common fund.

59. (1) The Protective Commissioner may sell or realise investments belonging to the common fund and may withdraw any part of the money
25 belonging to the common fund for any purpose of or relating to the exercise of the functions of the Protective Commissioner under this Act or for any purpose authorised by or under this or any other Act.

Protected Estates.

(2) The Protective Commissioner may withdraw from the common fund any amount belonging to any particular estate included in the common fund and may separately invest that amount for the benefit of the particular estate.

5 (3) Amounts withdrawn from the common fund pursuant to this section shall, as from the date of the withdrawal, cease to have any claim against the common fund or the Interest Account.

Power to make advances.

10 **60.** (1) In addition to any other power under this Act in relation to the common fund, the Protective Commissioner may make advances from the common fund for any purpose of or relating to any estate being managed by the Protective Commissioner.

15 (2) Any sum advanced as referred to in subsection (1) shall bear interest at a rate to be fixed by the Protective Commissioner and the sum and the interest on the sum shall be a charge on the assets of the estate or on the specific asset in respect of which the advance is made.

20 (3) Where any sum advanced as referred to in subsection (1) is applied in or towards the discharge of any debt or liability, the charge under subsection (2) shall rank in the same order of priority as the debt or liability.

(4) Any interest received under this section shall be paid into the Interest Account.

PART V.**MANAGEMENT OF ESTATES OF PERSONS WHO ARE NOT PROTECTED PERSONS.****25 Application of Part.**

61. This Part does not apply to or in respect of a person who is a protected person.

Protected Estates.

Applications under this Part.

62. An application under this Part may be made in writing to the Protective Commissioner—

- 5 (a) in respect of a patient who is of or above the age of 18 years, by the patient; or
- (b) in respect of a patient who is under the age of 18 years by—
- 10 (i) if both parents of the patient are alive—the parents;
- (ii) if only one parent of the patient is alive—the parent; or
- (iii) if no parents of the patient are alive—the guardian of the patient.

Management by Protective Commissioner.

63. (1) The Protective Commissioner may undertake the management of the estate of a person in respect of whom an application under this Part has been made as referred to in section 62.

15 **(2)** Except as provided by section 64, in the management of an estate under this Part, the Court and the Protective Commissioner shall have all functions which the Court or Protective Commissioner, as the case may be, would have if the estate were the estate of a protected person and the management of the estate were committed to the Protective Commissioner

20 under section 23.

(3) While the estate of a person is managed by the Protective Commissioner under this Part, this Act shall apply to and in respect of the person and the estate of the person as if the person were a protected person whose estate has been committed to the management of the Protective

25 Commissioner.

Termination of management under this Part.

64. (1) The Protective Commissioner shall cease to undertake the management of the estate of a person under this Part upon receipt of a request in writing that the management terminate, being a request made—

- 30 (a) where the person is of or above the age of 18 years—by the person; or
- (b) where the person is under the age of 18 years—by a parent or guardian of the person.

Protected Estates.

(2) A soon as practicable after receipt of a request referred to in subsection (1) in respect of an estate, the Protective Commissioner shall pay to the person who made the request all money in the trust fund standing to the credit of the current account kept in respect of the estate and shall
5 hand over to the person all chattels and documents forming part of the estate.

PART VI.

RECIPROCAL ARRANGEMENTS WITH OTHER STATES.

Declaration of reciprocating state.

10 65. (1) In this Part, "reciprocating state" means any country, state or territory outside New South Wales which has been declared under subsection (2) to be a reciprocating state for the purposes of this Part.

(2) Where the Governor is satisfied that the laws in force in any country, state or territory outside New South Wales are such as to enable
15 powers to be exercised in that country, state or territory in cases of protected persons residing in New South Wales substantially similar to the powers conferred by this Part, being powers exercisable in New South Wales in cases of incapable persons residing in that country, state or territory, the
20 Governor may, by proclamation published in the Gazette, declare that country, state or territory to be a reciprocating state for the purposes of this Part.

(3) The Governor may, by proclamation published in the Gazette, revoke or vary any proclamation under this section.

Protected Estates.

Powers of Protective Commissioner as to property in New South Wales of incapable persons in reciprocating states.

66. (1) If the officer charged by the laws of a reciprocating state with the care, recovery, collection, preservation and administration of the property
5 of incapable persons—

- (a) certifies in writing and under seal to the Protective Commissioner that a person residing in that state is incapable of managing his or her affairs and is possessed of or entitled to or appears to be possessed of or entitled to real or personal property in New South
10 Wales; and
- (b) by instrument in writing and under seal authorises the Protective Commissioner to collect, recover, manage, sell or otherwise dispose of and administer the property or to make inquiry respecting the
property,

15 the Protective Commissioner shall have and may exercise in respect of the property the same powers of collection, recovery, management, sale, disposition, administration and inquiry as the Protective Commissioner would have had and may have exercised over the property if the person had been a protected person resident in New South Wales and this Act shall apply
20 in respect of the property accordingly.

(2) Where the Protective Commissioner has, pursuant to an authority referred to in subsection (1) (b) and in the exercise of the powers referred to in subsection (1), received any money or property, the Protective Commissioner may—

25 (a) after payment of all costs, charges and expenses incurred in the exercise of those powers pursuant to that authority; and

(b) after satisfying or providing for—

- (i) debts of the incapable person named in the authority owing to persons resident in New South Wales; and
- 30 (ii) the claims of persons so resident against that incapable person,

being debts and claims of which the Protective Commissioner has notice,

35 pay or deliver the balance of the money or property to the officer of the reciprocating state who signed the authority or any successor in office, without seeing to the application thereof and without incurring any liability in respect of the payment or delivery, and shall duly account to that officer or successor for that balance.

Protected Estates.

Powers as to property in reciprocating state of protected persons in New South Wales.

67. (1) Where a protected person is possessed of or entitled to or appears to be possessed of or entitled to real or personal property in a reciprocating state, the Protective Commissioner may authorise an officer charged by the laws of the reciprocating state with the care, recovery, collection, preservation and administration of the property of incapable persons to collect, recover, manage, sell or otherwise dispose of and administer the property or to make inquiry respecting the property in accordance with the law in force in the reciprocating state as if the protected person were resident in the reciprocating state.

(2) Where the Protective Commissioner authorises an officer in a reciprocating state in respect of property in the reciprocating state, the Protective Commissioner shall not be bound to inquire as to the exercise of any functions by that officer in respect of that property and shall incur no liability in respect of any act, matter or thing done or omitted by that officer in respect of that property.

PART VII.**MISCELLANEOUS.****20 Appointment of guardian.**

68. (1) Where the Court is satisfied that a protected person is, owing to mental illness, incapable of managing his person or her person, it may, by order, appoint a guardian of the person of the protected person.

(2) The powers of a guardian appointed under subsection (1) shall be such as are specified by the Court in the order appointing the guardian.

(3) The Court may, at any time, by order, discharge a guardian appointed under subsection (1).

Protected Estates.

Court may dissolve partnership.

69. Where a person, being a member of a partnership, becomes a protected person, the Court may, by order, dissolve the partnership.

Power to carry orders into effect.

5 70. (1) The manager of the estate of a protected person, or such other person as the Court approves, shall, in the name and on behalf of the protected person, execute all such conveyances, deeds and transfers, and do all such things, as the Court directs for giving effect to any order under this Act.

10 (2) Every conveyance, deed, transfer and thing executed or done as referred to in subsection (1) shall be valid and effectual, and shall take effect accordingly, subject only to any prior charge to which the property affected thereby at the date of the order is subject.

15 (3) A reference in subsection (1) to the Court includes a reference to the Protective Commissioner where the Protective Commissioner exercises the jurisdiction and powers of the Court under Division 4 of Part III.

Manager may act as trustee or guardian in certain cases.

20 71. (1) Where a power is vested in a protected person in the capacity of a trustee or guardian, or the consent of a protected person to the exercise of a power is necessary in the like capacity or as a check upon the undue exercise of the power, and it appears to the Court to be expedient that the power should be exercised or the consent given, as the case may be, the Protective Commissioner or the manager of the estate of the protected person, as the case may be, in the name and on behalf of the protected person,
25 under an order of the Court made upon the application of any person interested in the exercise of the power, may exercise the power or give the consent, as the case may be, in such manner as the order may direct.

(2) Where under this Act the Protective Commissioner or the manager of an estate, under order of the Court, exercises in the name and on
30 behalf of a protected person a power of appointing new trustees vested in the

Protected Estates.

protected person, the persons who shall after and in consequence of the exercise of the power be the trustees shall have all the same rights and powers as they would have had if the order had been made by the Court under any law for the time being in force relating to trusts.

- 5 (3) Where, on an application to the Court for an order under subsection (1) in relation to a trust it seems to the Court to be expedient, it may make any other order respecting the property subject to the trust which might have been made on such an application under the provisions of any law relating to trusts on the appointment of new trustees.

10 Temporary provision for maintenance.

72. (1) In any case where, pending the making of orders as to the management of the estate of a protected person, it appears to the Protective Commissioner desirable that temporary provision should be made for the expenses of the maintenance or other necessary purposes or requirements of
15 the protected person or any member of the family of the protected person out of any cash or available investments belonging to the protected person in the hands of a banker, or of any other person, the Protective Commissioner may, by certificate, authorise the banker or other person to pay to such person as is named in the certificate such sum as the Protective Commissioner
20 certifies to be proper.

(2) The Protective Commissioner may, in a certificate referred to in subsection (1), give directions as to the proper application of the sum of money to which the certificate relates for the protected person's benefit by the person to whom it is to be paid, and the person shall be accountable for
25 the application, as the Protective Commissioner directs.

Transfer of stock belonging to certain persons.

73. In any case—

- (a) where stock—
30 (i) is standing in the name of or is vested in a protected person beneficially entitled to the stock; or
 (ii) is standing in the name of or vested in the manager of the estate of a protected person in trust for the protected person or as part of the estate; and

Protected Estates.

(b) where—

- (i) the manager of the estate of the protected person dies intestate or becomes a protected person or is out of the jurisdiction;
- 5 (ii) it is uncertain whether the manager of the estate of the protected person is living or dead; or
- (iii) the manager of the estate of the protected person neglects or refuses to transfer the stock and to receive and pay over the dividends thereof to a new manager or as a new manager
10 directs for 14 days after a request in writing for that purpose made by the new manager,

the Court may order an appropriate person to transfer the stock to or into the name of a new manager or otherwise and to receive and pay over the dividends thereof, or such sums of money, and in such manner as the Court
15 directs.

Stock in name of incapable persons residing out of State may be ordered to be transferred.

74. Where any stock is standing in the name of, or vested in, a person residing out of New South Wales, the Court, upon proof to its satisfaction
20 that—

- (a) the person is an incapable person; and
- (b) the personal estate of the person has been vested in a person appointed for the management thereof according to the laws of the place where the person is residing,

25 may order an appropriate person to transfer the stock to or into the name of the person so appointed or otherwise and to receive and pay over the dividends thereof as the Court thinks fit.

Sale, etc., by protected person may be set aside.

75. (1) Where a patient (within the meaning of the Mental Health Act,
30 1958) made or executed, before discharge and before the day appointed and notified under section 2 (2), a transfer, sale, alienation, charge or lease of any real or personal property or where a protected person, being a patient, makes or executes any such transfer, sale, alienation, charge or lease, the Court may, on application being made by the Protective Commissioner, and
35 on notice being given to such persons as the Court may direct, set aside the transfer, sale, alienation, charge or lease and may make such consequential orders as may be just.

Protected Estates.

(2) For the purposes of an application under subsection (1) in respect of a person who made or executed a transfer, sale, alienation, charge or lease as referred to in subsection (1), the person shall be prima facie deemed to have been mentally ill at the time when the transfer, sale, alienation, charge or lease was made or executed.

Powers of attorney.

76. (1) In this section, "principal" means a person who has given a power of attorney.

(2) A power of attorney is not terminated by the estate of the principal becoming subject to management under this Act.

(3) Subsection (2) has effect subject to the terms of the instrument creating the power.

(4) A person may give a power of attorney notwithstanding that the estate of the person is subject to management under this Act.

(5) A power of attorney is suspended while the estate of the principal is subject to management under this Act.

(6) Notwithstanding subsection (5), where an attorney under a power of attorney does an act within the scope of the power while the estate of the principal is subject to management under this Act, the act of the attorney has no less validity and effect than the act of the attorney would have had if this section had not been enacted, but this subsection does not affect the operation of subsection (9).

(7) While a power of attorney is suspended by this section, the Court may restore the power of attorney to operation to such extent, and on such terms and conditions, as the Court thinks fit.

(8) The Court may restore a power of attorney to operation under subsection (7) as from any time whether before or after the order of restoration is made or takes effect.

Protected Estates.

(9) Where the estate of a principal is subject to management under this Act, the Court may—

- (a) terminate the power of attorney; or
- (b) order that the power of attorney be subject to such conditions as the Court thinks fit.

(10) An attorney under a power of attorney and persons dealing with the attorney and all other persons shall have the like protections against any term or condition of any restoration of the power and against any condition or restriction to which the power is subject under this section as if the term, condition or restriction were effected by act of the principal.

(11) For the purposes of this section—

- (a) while a person is a protected person, the estate of the person is subject to management under this Act;
- (b) while the Protective Commissioner undertakes the management of the estate of a person in accordance with section 63, the estate of the person is subject to management under this Act; and
- (c) where, in relation to a person, it is certified to the Protective Commissioner and the Protective Commissioner is authorised as mentioned in section 66, the estate of the person thereupon becomes subject to management under this Act and remains so during the life of the person or until the Court declares that the exercise of the powers of the Protective Commissioner in relation to the estate is not required.

(12) The Court may make a declaration for the purposes of subsection (11) (c) on the application of the Protective Commissioner, the person whose power of attorney is in question or an attorney under the power of attorney.

(13) A declaration for the purposes of subsection (11) (c) shall not have any effect otherwise than for the purpose of subsection (11) (c).

(14) This section does not apply to a power of attorney given before the commencement of Schedule 1 to the Conveyancing (Powers of Attorney) Amendment Act, 1983.

Protected Estates.

(15) This section has effect subject to section 160 of the Conveyancing Act, 1919.

Costs and remuneration may be paid out of estate.

77. (1) The Court may order the costs and expenses of and relating to the applications, orders, directions, conveyances and transfers to be presented or made in pursuance of this Act to be paid and raised out of or from the property or the rents, income or profits in respect of which they are presented or made in such manner as it may think proper.

(2) The Court may order such sum by way of remuneration to be paid out of the estate to the manager of the estate of a protected person as the Court may think fit.

(3) A reference in subsections (1) and (2) to the Court includes a reference to the Protective Commissioner where the costs and expenses referred to in subsection (1) arise, or the remuneration referred to in subsection (2) is warranted, by reason of applications to, or orders or directions by, the Protective Commissioner where the Protective Commissioner exercises the jurisdiction and powers of the Court under Division 4 of Part III.

All deeds, transfers, payments, etc., made in pursuance of this Act to be valid and binding.

78. Every conveyance, lease, surrender, transfer, charge or other disposition made, accepted or executed and every payment made under this Act shall be valid to all intents and binding upon all persons and any person doing or permitting to be done any act or thing pursuant to this Act, or any order of the Court made or purporting to be made under this Act, is hereby indemnified and discharged from liability in respect of the act or thing.

Court visitors.

79. The Court or the Protective Commissioner may—

(a) by order, direct an authorised officer under the Mental Health Act, 1983, or any other specified person—

(i) to visit a protected person, not being a patient; and

Protected Estates.

- 5 (ii) to report in writing to the Court or Protective Commissioner, as the case may be, on the state of mind, bodily health and general condition of the protected person and on the care and treatment being received by the protected person;
- 10 (b) by order, direct that such information as the Court or the Protective Commissioner thinks necessary be given to the person directed to visit the protected person as to the nature and extent of the assets of the protected person and as to the orders made under this Act in respect of the protected person; and
- (c) order that any fees and expenses arising in connection with the visit be paid out of the estate of the protected person.

Annual report.

15 **80. (1)** As soon as practicable after 30th June, but on or before 31st December, in each year, the Protective Commissioner shall prepare and forward to the Minister a report of the work and activities of the Protective Commissioner for the 12 months ending on 30th June in that year.

(2) The Minister shall lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

20 Regulations.

81. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed (otherwise than by rules of Court) or that is necessary or convenient to be prescribed for carrying out or giving effect
25 to this Act.

(2) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind;
30 or

Protected Estates.

(c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body, or may do any combination of those things.

Rules of Court.

5 **82. (1)** Rules of Court may be made under the Supreme Court Act, 1970, for the purpose of regulating any proceedings under this Act in or before the Court and otherwise for or with respect to any matter that by this Act is required or permitted to be prescribed by rules of Court.

(2) Subsection (1) does not limit the rule-making powers conferred 10 by the Supreme Court Act, 1970.

(3) The reference in subsection (1) to proceedings in or before the Court includes a reference to proceedings in or before the Protective Commissioner where the Protective Commissioner is exercising the jurisdiction and powers of the Court under Division 4 of Part III.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1983

(\$1.50)

PROTECTED ESTATES ACT, 1983, No. 179

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 179, 1983.

An Act to make provision with respect to the management of the property and affairs of persons who are incapable of managing their own affairs by reason of mental or other condition and certain other persons. [Assented to, 31st December, 1983.]

Protected Estates.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "Protected Estates Act, 1983".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.
(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Arrangement.

3. This Act is divided as follows:—

PART I.—PRELIMINARY—*ss.* 1–4.

PART II.—THE PROTECTIVE OFFICE—*ss.* 5–12.

PART III.—MANAGEMENT OF ESTATES OF PERSONS INCAPABLE OF MANAGING THEIR AFFAIRS—*ss.* 13–51.

DIVISION 1.—*Orders for management*—*ss.* 13–21.

DIVISION 2.—*Committing estates to management*—*ss.* 22, 23.

DIVISION 3.—*Management of estates by Protective Commissioner*—*ss.* 24–28.

DIVISION 4.—*Management of estates by other persons*—*ss.* 29–33.

DIVISION 5.—*Suspension or termination of management*—*ss.* 34–45.

DIVISION 6.—*General*—*ss.* 46–51.

Protected Estates.

PART IV.—FINANCIAL—*ss.* 52–60.

PART V.—MANAGEMENT OF ESTATES OF PERSONS WHO ARE NOT PROTECTED PERSONS—*ss.* 61–64.

PART VI.—RECIPROCAL ARRANGEMENTS WITH OTHER STATES—*ss.* 65–67.

PART VII.—MISCELLANEOUS—*ss.* 68–82.

Interpretation.

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“Court” means the Supreme Court of New South Wales;

“hospital” has the meaning ascribed thereto in section 4 (1) of the Mental Health Act, 1983;

“incapable person” means a person who, under the law of another country, state or territory, being the country, state or territory in which the person resides, has been found to be incapable of managing his or her affairs;

“informal patient” has the meaning ascribed thereto in section 4 (1) of the Mental Health Act, 1983;

“patient” has the meaning ascribed thereto in section 4 (1) of the Mental Health Act, 1983;

“protected person” means a person in respect of whom an order is in force under this Act that the estate (or any part thereof) of the person be subject to management under this Act;

“Protective Commissioner” means the person for the time being holding the office of Protective Commissioner;

“regulations” means regulations made under this Act;

“stock” means—

- (a) a share or other interest in a company, society or association;

Protected Estates.

- (b) a fund, annuity or security transferable—
 - (i) in books kept by a company, society or association;
 - (ii) by deed alone; or
 - (iii) by deed accompanied by other formalities;
- (c) money payable for the discharge or redemption of any such fund, annuity or security; and
- (d) a share or other interest in any such fund, annuity or security;

“Tribunal” means the Mental Health Review Tribunal constituted under the Mental Health Act, 1983;

“trust fund” means the trust fund referred to in section 27 (1).

(2) In this Act, a reference to—

- (a) a function includes a reference to a power, authority and duty; and
- (b) the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) In this Act, a reference to the functions of the Protective Commissioner includes a reference to the functions of the Court under this Act and the Supreme Court Act, 1970, which are exercisable by the Protective Commissioner by virtue of this Act or rules of Court.

(4) In this Act, a reference to the estate of a person is a reference to the property and affairs of the person.

PART II.

THE PROTECTIVE OFFICE.

The Protective Commissioner and other officers.

5. (1) There shall be a Protective Commissioner and a Deputy Protective Commissioner, who shall be employed under, and hold office subject to, the Public Service Act, 1979.

Protected Estates.

(2) Such other staff as may be necessary for the administration of this Act shall be employed under, and hold office subject to, the Public Service Act, 1979.

(3) A person may, while holding office as Protective Commissioner or Deputy Protective Commissioner or while holding an office as a member of the staff referred to in subsection (2), also, if so appointed, hold an office in the staff establishment of the Court.

(4) The Protective Commissioner shall have the functions conferred and imposed on the Protective Commissioner by or under this or any other Act or law.

(5) The Deputy Protective Commissioner shall, during the illness or absence of the Protective Commissioner or during any vacancy in the office of the Protective Commissioner, have the functions conferred and imposed upon the Protective Commissioner by or under this or any other Act or law.

(6) Any thing done by the Deputy Protective Commissioner while acting pursuant to subsection (5) shall be deemed to have been done as Protective Commissioner.

(7) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising the Deputy Protective Commissioner to exercise, pursuant to subsection (5), a function conferred or imposed upon the Protective Commissioner.

(8) The Protective Commissioner and the Deputy Protective Commissioner shall, in their capacity as such, be officers of the Court.

(9) Nothing in this section limits the effect of any rules of Court relating to the powers of the Court under this Act which may be exercised by the Protective Commissioner, the Deputy Protective Commissioner or a member of the staff referred to in subsection (2).

Court may refer inquiries to Protective Commissioner.

6. The Court may, in relation to any proceedings before the Court under this Act, by order, direct the Protective Commissioner to conduct such inquiry as it may specify concerning a person or the estate of a person and to report to it the result of the inquiry.

Protected Estates.

Expenses of Protective Commissioner.

7. All expenses incurred by or on behalf of the Crown in the care and management of the estate of a protected person or in the supervision of the management, under this Act, by a manager of the estate of a protected person may be—

- (a) charged by the Protective Commissioner against, and paid out of and recovered from, the estate;
- (b) paid by the Protective Commissioner out of any money of the protected person that is received by the Protective Commissioner; or
- (c) recovered on summary application to the Court,

whether or not the management under this Act of the estate of the protected person has terminated.

Fees.

8. (1) Fees (whether by way of percentage or otherwise) may, from time to time, be prescribed for the purposes of this section.

(2) There shall be charged in respect of the exercise of the functions of the Protective Commissioner such fees as may be prescribed for the purposes of this section.

(3) Such fees as may be prescribed for the purposes of this section shall be charged upon and payable out of the estate of a protected person whether or not, before payment, the management under this Act of the estate of the person has terminated.

(4) Where it appears to the Protective Commissioner to be just and reasonable to do so, the Protective Commissioner may, at the discretion of the Protective Commissioner, waive, remit or reduce any of the fees chargeable under this section.

(5) Except as provided by subsection (4), the Protective Commissioner shall pay into the Consolidated Fund, for the use and benefit of that fund, and at such times and in such manner as the Governor may from time to time appoint, all fees received by the Protective Commissioner, whether charged by way of percentage or otherwise.

Protected Estates.

Power to take evidence, etc.

9. (1) The Protective Commissioner may, in the exercise of the functions of the Protective Commissioner and in the prosecution of any inquiry or matter which the Protective Commissioner is directed to make under this Act—

- (a) issue a subpoena in or to the effect of the form prescribed by rules of Court requiring the person to whom the subpoena is addressed to do either or both of the following things:—
 - (i) to attend to give evidence before the Protective Commissioner at the time and place specified in the subpoena;
 - (ii) so to attend and produce to the Protective Commissioner any books, papers, accounts, documents or other records in the possession or under the control of the person and specified in the subpoena;
- (b) administer oaths and take evidence, either orally or by affidavit or partly orally and partly by affidavit; and
- (c) take recognizances.

(2) For the purposes of subsection (1), a subpoena is issued by the Protective Commissioner if it is signed by the Protective Commissioner or the Deputy Protective Commissioner.

(3) Rules of Court may make provision for or with respect to authorising compliance with a subpoena to produce any books, papers, accounts, documents or other records by the production of any such records at a place specified in the subpoena at any time before the time at which the records are required to be produced.

(4) A person to whom a subpoena is addressed is entitled to receive—

- (a) where the subpoena was issued by the Protective Commissioner of the Protective Commissioner's own motion, from the Protective Commissioner; or
- (b) where the subpoena was issued by the Protective Commissioner on the application of a person, from the person,

his or her reasonable costs, including any loss of earnings, incurred by the person in obeying the subpoena, calculated in accordance with the scale prescribed by rules of Court.

Protected Estates.

(5) A person—

- (a) who is served with a subpoena addressed to the person pursuant to subsection (1); and
- (b) to whom, at the time of service, is tendered an amount that is sufficient to cover the person's travelling and other out-of-pocket expenses in attending in accordance with the subpoena and producing anything required by the subpoena to be produced,

shall not, without reasonable cause, fail or refuse to obey the subpoena or, if required by the subpoena to attend to give evidence, to refuse to be sworn or examined.

Penalty: \$500.

Witnesses may be cross-examined.

10. (1) Where a person giving evidence to the Protective Commissioner by affidavit is required, by a subpoena issued under section 9, to attend before the Protective Commissioner and give evidence, the person—

- (a) may be cross-examined orally by or before the Protective Commissioner on the affidavit; and
- (b) after cross-examination, may be re-examined orally by or on behalf of the person filing the affidavit.

(2) The costs and expenses determined in the manner prescribed by rules of Court and relating to the cross-examination and re-examination of a person under this section shall be paid in such manner and by such person as the Protective Commissioner directs.

Advertisements.

11. The Protective Commissioner may cause to be published such advertisements as, in the opinion of the Protective Commissioner, are necessary or expedient with reference to the subject-matter of a proposed inquiry or with a view to the efficient exercise of the functions of the Protective Commissioner in relation to the estate of a person.

Protected Estates.

Court may give directions to Protective Commissioner.

12. The Court may, upon the application of the Protective Commissioner, a protected person, a relative, friend, creditor or debtor of a protected person or any other person having, in the opinion of the Court, a sufficient interest in any matter, give to the Protective Commissioner—

- (a) directions for such inquiries to be made and notices to be given as the Court thinks necessary; and
- (b) such directions as the Court thinks necessary with respect to the exercise by the Protective Commissioner of the functions of the Protective Commissioner.

PART III.

**MANAGEMENT OF ESTATES OF PERSONS INCAPABLE OF MANAGING
THEIR AFFAIRS.**

DIVISION 1.—*Orders for management.*

Declaration and order where person incapable of managing affairs.

13. (1) Where the Court is satisfied that a person is incapable of managing his or her affairs, it may make a declaration to that effect and order that the estate of the person be subject to management under this Act.

(2) On the hearing of an application for the purposes of this section, evidence of a person's capability to manage his or her affairs may be given to the Court in such form and in accordance with such procedures as the Court thinks fit and the Court may otherwise inform itself as to the person's capability to manage his or her affairs as it thinks fit.

Protected Estates.

(3) Without limiting the generality of subsection (2), the Court may—

- (a) personally examine a person whose capability to manage his or her affairs is in question;
- (b) direct the Protective Commissioner to personally examine the person and to report to it on the examination; or
- (c) dispense with any such examination.

Incapable persons in places outside New South Wales.

14. Where the Court is satisfied that a person has been found to be incapable of managing his or her affairs by any legal inquiry in any part of the Commonwealth of Nations outside New South Wales or in any other country, state or territory to which the Governor, by proclamation published in the Gazette, extends the provisions of this section, the Court may—

- (a) direct a copy of the inquiry or finding on the inquiry, duly certified by an officer of the court or other authority to which the finding has been returned, to be filed of record in the Court;
- (b) make a declaration that the person is incapable of managing his or her affairs; and
- (c) order that such of the estate of the person as is situated in New South Wales be subject to management under this Act.

Notice that person's capability to manage affairs will be considered.

15. A medical superintendent who intends to bring a person before a stipendiary magistrate under section 86 (3) of the Mental Health Act, 1983, shall—

- (a) when giving the information required to be given to the person under section 86 (1) of that Act give to the person the prescribed information with respect to the question of the capability of the person to manage his or her affairs; and

Protected Estates.

- (b) when giving the notice required to be given under section 86 (2) of that Act give to each of the persons required to be given that notice the prescribed information with respect to the question of the capability of the person being brought before the stipendiary magistrate to manage his or her affairs.

Consideration by magistrate of capability of patients to manage affairs.

16. (1) Where, under section 91 of the Mental Health Act, 1983, a stipendiary magistrate directs the detention of a person in a hospital as a temporary patient the stipendiary magistrate shall, except as provided by subsection (2), consider the person's capability to manage his or her affairs and, unless satisfied that the person is capable of managing his or her affairs, shall order that the estate of the person be subject to management under this Act.

(2) A stipendiary magistrate may refer the question of a person's capability to manage his or her affairs to the Tribunal.

Consideration by Tribunal of capability of patient to manage affairs.

17. Where a stipendiary magistrate refers the question of a person's capability to manage his or her affairs to the Tribunal, the Tribunal shall consider the capability of the person to manage his or her affairs and, unless satisfied that the person is capable of managing his or her affairs, shall order that the estate of the person be subject to management under this Act.

Consideration of capability of forensic patients to manage affairs.

18. Where, under section 117, 118 or 125 of the Mental Health Act, 1983, the Tribunal reviews a person's case and makes a recommendation to the Minister that the person be detained in a hospital, it shall consider the person's capability to manage his or her affairs and, unless satisfied that the person is capable of managing his or her affairs, shall order that the estate of the person be subject to management under this Act.

Protected Estates.

Subsequent applications.

19. (1) The Tribunal may, on the application of any person having, in the opinion of the Tribunal, a sufficient interest in the matter and whether or not it has previously considered the question, consider a patient's capability to manage his or her affairs and, unless satisfied that the patient is capable of managing his or her affairs, shall order that the estate of the patient be subject to management under this Act.

(2) On an application under subsection (1) in relation to a patient, the Tribunal may make an order that the estate of the patient be subject to management under this Act notwithstanding that there may have been no change in the patient's capability to manage his or her affairs since that capability was last considered by a stipendiary magistrate or the Tribunal.

Interim orders.

20. (1) A stipendiary magistrate or the Tribunal may, if it appears to the stipendiary magistrate or Tribunal necessary or convenient to do so, make an interim order under this Division for a specified period in respect of a patient pending further consideration of the patient's capability to manage his or her affairs.

(2) Where another order under this Division is not made in respect of a patient before the period for which an interim order made in respect of the patient expires, the interim order shall be deemed to be revoked on the expiration of that period.

Appeal against order of stipendiary magistrate or Tribunal.

21. (1) Where a stipendiary magistrate or the Tribunal makes an order that the estate of a person be subject to management under this Act, the person may, subject to and in accordance with rules of Court, appeal to the Court against the order.

(2) An appeal shall be by way of a new hearing and fresh evidence or evidence in addition to, or in substitution for, the evidence in relation to which the order in respect of which the appeal is made may be given on the appeal.

Protected Estates.

(3) On an appeal, the Court may revoke or confirm the order in respect of which the appeal is made.

(4) The Tribunal and any member of the Tribunal shall not be liable to any costs relating to an order of the Tribunal in respect of which an appeal is made or the appeal.

DIVISION 2.—*Committing estates to management.*

Management of estates of protected persons other than patients.

22. The Court may, by order, appoint a suitable person as manager of the estate of a protected person in respect of whom it has made an order under section 13 or may, by such an order, commit the management of the estate of any such protected person to the Protective Commissioner.

Management of estates of patients who are protected persons.

23. Where, pursuant to a direction or an order of a stipendiary magistrate or a prescribed authority, a protected person is detained in a hospital, the estate of the person is, without further authority than this section but subject to any special order of the Court, committed to the management of the Protective Commissioner.

DIVISION 3.—*Management of estates by Protective Commissioner.*

Powers as to property.

24. (1) In respect of the estate of a protected person the management of which is committed to the Protective Commissioner, the Protective Commissioner shall have, and may exercise—

- (a) all functions necessary and incidental to its management and care; and
- (b) such other functions as the Court may direct or authorise the Protective Commissioner to have or exercise.

Protected Estates.

(2) Without limiting the generality of subsection (1) but subject to subsection (3), the Protective Commissioner shall have, and may exercise, the following functions in respect of the estate of a protected person the management of which is committed to the Protective Commissioner, that is to say, the Protective Commissioner may—

- (a) receive money, rent, income and profit of real and personal property;
- (b) grant leases of property;
- (c) surrender a lease and accept a new lease;
- (d) accept a surrender of a lease and grant a new lease;
- (e) execute a power of leasing vested in the protected person having a limited estate only in the property over which the power extends;
- (f) sell, realise, charge and mortgage real and personal property;
- (g) settle, adjust and compromise a demand made by or against the estate;
- (h) make exchange or partition of property and give or receive money for equality of exchange or partition;
- (i) carry on a business which the protected person had carried on, so far as may appear desirable for the purpose of more advantageously disposing of, or winding up, the business or preserving the business until the protected person is able to carry it on;
- (j) agree to an alteration of the conditions of a partnership into which the protected person has entered, for the purpose of more advantageously disposing of an interest in the partnership or terminating liability;
- (k) complete a contract for the performance of which the protected person is liable or enter into an agreement terminating the liability;
- (l) surrender, assign or otherwise dispose of, with or without consideration, onerous property;
- (m) exercise a power, or give a consent required for the exercise of a power, where the power is vested in the protected person for the benefit of the protected person or the power of consent is in the nature of a beneficial interest in the protected person;
- (n) sequester the estate under the bankruptcy laws;

Protected Estates.

- (o) bring and defend actions, suits and other proceedings, on behalf of the protected person;
- (p) bring land under the Real Property Act, 1900.

(3) The Protective Commissioner shall not, in the exercise of any functions referred to in subsection (2), grant or accept a lease of land for a term exceeding 5 years without the direction of the Court.

Power to employ agents.

25. (1) The Protective Commissioner may, instead of acting personally in the management of the estate of a protected person, employ and pay an agent, whether being a bank, solicitor, stockbroker or other person, to transact any business or do any act required to be transacted or done in the administration and management of the estate.

(2) The Protective Commissioner shall not be responsible for the default of any agent employed as referred to in subsection (1).

Execution of documents.

26. (1) For the purposes of managing the estate of a protected person, the Protective Commissioner shall have, and may exercise, all such functions as the protected person has and can exercise or would have and could exercise if under no incapacity.

(2) For the purpose of exercising a function of a protected person as referred to in subsection (1), the Protective Commissioner may, in the name and on behalf of the protected person, execute and sign deeds, instruments, transfers of shares, receipts, releases and all other documents which shall be as effective as if they were executed and signed by the protected person and, to the extent to which the protected person has no capacity to execute and sign any such document, as if the protected person were under no such incapacity and any such document shall be acted upon accordingly.

Protected Estates.

(3) A person acting upon a document executed or signed by the Protective Commissioner as referred to in subsection (2) shall not be bound to inquire as to the Protective Commissioner's power to execute or sign the document or as to the application of any money paid pursuant to any dealing with the Protective Commissioner as a consequence of the document.

Payments into trust fund.

27. (1) Except as provided by section 8 (5), the Protective Commissioner shall at such times and in such manner as the Governor may from time to time appoint, pay all money coming into the hands of the Protective Commissioner into the Special Deposits Account in the Treasury to the credit of a trust fund.

(2) A separate current account in respect of each estate shall be kept by the Protective Commissioner of payments to the credit of the trust fund as referred to in subsection (1) and of payments out of the trust fund.

Disposition of money in the hands of Protective Commissioner.

28. (1) The Protective Commissioner may apply money comprising the whole or any part of the estate of a protected person towards any one or more of the following purposes:—

- (a) the payment of the debts and engagements of the protected person and the repayment of expenses chargeable to the estate of the protected person;
- (b) the maintenance, clothing, medicine and care, past and future, of the protected person and, in the event of the death of the protected person, the protected person's funeral expenses;
- (c) the maintenance of the spouse of the protected person or any child, parent or other person dependent upon the protected person, or for whose maintenance the protected person provided when not a protected person or would be expected to provide;
- (d) the payment of all proper costs, charges and expenses incurred in or about the care, protection, recovery, sale, mortgage, leasing, disposal and management of the estate of the protected person;

Protected Estates.

- (e) the preservation and improvement of the estate of the protected person;
- (f) the taking up of rights to issues of new shares, or options for new shares, to which the protected person may become entitled by virtue of any shareholdings;
- (g) the investment of money, being money not required for the time being for any of the foregoing purposes—
 - (i) in any of the securities authorised by the Trustee Act, 1925; or
 - (ii) subject to subsection (2), in the purchase of real estate.

(2) The Protective Commissioner shall not invest any money comprising part of the estate of a protected person in the purchase of real estate as referred to in subsection (1), unless such a purchase appears to the Protective Commissioner to be desirable for the purpose of—

- (a) protecting the estate from injury or deterioration in value;
- (b) increasing the value or facilitating the sale of other lands of the estate; or
- (c) providing a home for the protected person or any dependants of the protected person.

DIVISION 4.—*Management of estates by other persons.*

Application of Division.

29. This Division does not apply to or in respect of a protected person whose estate is committed to the management of the Protective Commissioner.

Functions of Protective Commissioner under this Division.

30. (1) The Protective Commissioner—

- (a) may, subject to rules of Court, exercise the jurisdiction and powers of the Court in respect of the administration and management of the estates of protected persons; and

Protected Estates.

(b) shall, subject to and in accordance with the regulations and rules of Court and to any special order of the Court, direct, supervise and enforce the performance of the obligations and duties of managers under this Act.

(2) An order made by the Protective Commissioner in the exercise of the jurisdiction and powers of the Court as referred to in subsection (1) shall take effect, unless varied or rescinded by the Court, as an order of the Court.

Security in respect of management.

31. (1) Where the Court appoints a manager of the estate of a protected person, it may require the manager to give security in respect of the management.

(2) Security shall be deemed not to have been given by a manager as referred to in subsection (1) unless it has been approved by the Protective Commissioner.

(3) It is the duty of the Protective Commissioner to see that the conditions of all bonds and recognizances given or entered into (whether before, on or after the day referred to in section 2 (2)) by the manager of the estate of a protected person or by any other person in relation to the estate of a protected person are faithfully and regularly observed and performed and to report immediately to the Court any breach or non-performance of any such condition.

(4) Upon the breach or non-performance of a condition of a bond or recognizance, the Court may cause the bond or recognizance to be forfeited or estreated and the forfeiture or estreat shall be enforced and effected in the same way as a recognizance is estreated to Her Majesty.

Orders by Court as to property.

32. (1) The Court may make such orders as appear to it necessary for rendering the property and income of a protected person available for the payment of the debts of, and the maintenance and otherwise for the benefit

Protected Estates.

of, the protected person and the family of the protected person and otherwise as it thinks necessary or desirable for the care and management of the estate of a protected person.

(2) Without limiting the generality of subsection (1), the Court may—

- (a) order that any property of a protected person be sold, charged, mortgaged, dealt with or disposed of as the Court thinks most expedient for the purpose of raising or securing or repaying with or without interest money which is to be or which has been applied to any one or more of the following purposes:—
 - (i) payment of the protected person's debts or engagements;
 - (ii) discharge of any incumbrance on property of the protected person;
 - (iii) payment of any debt or expenditure incurred for the maintenance, or otherwise for the benefit, of the protected person;
 - (iv) payment of, or provision for the expenses of, future maintenance of the protected person;
 - (v) payment of the costs of any proceeding under this Act or of any sale or other disposition made under this Act;
 - (vi) payment of such other sum or sums to such person or persons as the Court thinks fit; and
- (b) authorise and direct the application of money comprising the whole or any part of the estate of the protected person to any one or more of the following purposes:—
 - (i) the preservation and improvement of the estate of the protected person;
 - (ii) the taking up of rights to issues of new shares, or options for new shares, to which the protected person may become entitled by virtue of any shareholdings;
 - (iii) the investment of money, being money not required for the time being for any of the foregoing purposes, in such manner as the Court thinks fit.

Protected Estates.

Functions of manager.

33. (1) The Court may, by order, authorise and direct the manager of the estate of a protected person to have and exercise such functions in respect of the estate as it may specify, being functions of the same kind as those specified in section 24 (2) in respect of an estate committed to management by the Protective Commissioner (not being subject to any limitation specified in section 24 (3)).

(2) The Court may, by an order referred to in subsection (1), require a function to be exercised in such manner as it may specify or at such times or in such circumstances, or both, as it may specify or may make the exercise of a function subject to such conditions as it may specify.

*DIVISION 5.—Suspension or termination of management.***Termination of management.**

34. (1) The management of the estate of a protected person under this Act is terminated—

- (a) upon the order that the estate be subject to management under this Act being revoked;
- (b) in the case of a protected person who was, but has ceased to be, a patient, upon the Protective Commissioner certifying under section 38 that the management is terminated; or
- (c) upon the death of the protected person.

(2) Notwithstanding any other provision of this Act, where, after the commencement of section 269 of the Community Welfare Act, 1982, the Public Trustee is appointed under that section to act as manager of the estate of a protected person, during any period in which, pursuant to that appointment, the Public Trustee acts as manager of the estate—

- (a) the order that the estate be subject to management under this Act is suspended; and
- (b) the provisions of this Act apply to and in respect of the estate as if that order had, upon that appointment, been revoked.

Protected Estates.

Orders where person no longer incapable.

35. (1) Where, upon application to it by a protected person (including a protected person who became a protected person while a patient), the Court is satisfied that the protected person is capable of managing his or her affairs, it may—

- (a) revoke any declaration made that the person is incapable of managing his or her affairs;
- (b) revoke the order that the estate of the person be subject to management under this Act; and
- (c) make such orders as appear to it necessary to give effect to the revocation of the order, including the release of the estate of the person from the control of the Court, the Protective Commissioner or a manager and the discharge of any manager.

(2) On the hearing of an application for the purposes of this section, evidence of a person's capability to manage his or her affairs may be given to the Court in the same form and in accordance with the same procedures as any such evidence may be given to the Court on the hearing of an application for the purposes of section 13.

Revocation of order by Tribunal.

36. Where, upon application to it by a protected person, being a protected person who was, but has ceased to be, a patient, the Tribunal is satisfied that the protected person is capable of managing his or her affairs, it may revoke the order that the estate of the person be subject to management under this Act.

Absence of patient from hospital.

37. While a protected person, being a patient, is absent from a hospital, the Protective Commissioner may, at the discretion of the Protective Commissioner—

- (a) pay over to the patient or to any person on behalf of the patient who gives satisfactory security to the Protective Commissioner for the proper management and disposal of it, or as the patient or person directs, the whole or any part of the money standing to the credit of the current account of the patient in the trust fund; and

Protected Estates.

- (b) hand over to the patient or person, or as the patient or person directs, all or any chattels or documents forming part of the estate of the patient.

Discharge of patient from hospital.

38. (1) Upon a protected person who was a patient ceasing to be a patient or at any time thereafter, the Protective Commissioner may, if satisfied that the protected person is capable of managing his or her affairs, certify that management of the estate of the protected person by the Protective Commissioner is terminated.

(2) Where the Protective Commissioner certifies as referred to in subsection (1) in respect of the estate of a protected person, the order that the estate be subject to management under this Act shall cease to have any further effect.

Functions of Protective Commissioner on termination of management.

39. Except as provided by section 42, where the management of the estate of a protected person by the Protective Commissioner terminates, the Protective Commissioner shall, subject to any order of the Court—

- (a) pay over to the person, or as the person directs, all money standing to the credit of the current account of the person in the trust fund; and
- (b) hand over to the person, or as the person directs, all chattels and documents forming part of the estate of the person.

Receipt to be release.

40. The receipt of the patient or person to whom or in accordance with whose direction the Protective Commissioner has paid over money or handed over chattels or documents as referred to in section 37 or 39 shall be an absolute release to the Protective Commissioner from liability in respect of any action taken by the Protective Commissioner under those sections, notwithstanding any informality in, or in relation to, the patient's absence from a hospital or, as the case may be, the person's ceasing to be a patient.

Protected Estates.

Continuation of management after discharge.**41. (1) Where—**

- (a) it comes to the attention of the Protective Commissioner that a protected person who was a patient has ceased to be a patient; and
- (b) the Protective Commissioner is not satisfied that the protected person is capable of managing his or her affairs,

the Protective Commissioner shall do all such things as are reasonably practicable to inform the person that the person may apply to the Tribunal or the Court for the revocation of the order that the estate of the person be subject to management under this Act and that, unless the order is revoked, management of the estate will continue at the discretion of the Protective Commissioner.

(2) Where a protected person who was a patient ceases to be a patient, the Protective Commissioner may, at the discretion of the Protective Commissioner, continue to have the management of the property and affairs of the person until—

- (a) the order that the estate of the person be subject to management under this Act is revoked; or
- (b) the Protective Commissioner is satisfied that the person is capable of managing his or her affairs,

whichever first occurs.

Death of protected person.**42. Where a protected person dies—**

- (a) the Protective Commissioner may, at the discretion of the Protective Commissioner—
 - (i) pay any sum (not exceeding the prescribed amount) out of money standing to the credit of the current account of the protected person in the trust fund; or
 - (ii) hand over any chattels having a value not exceeding that amount and forming part of the estate of the protected person or any documents having a value not exceeding

Protected Estates.

that amount, or relating to property having a value not exceeding that amount, and forming part of the estate of the protected person,

to any person claiming to be entitled in the distribution of the estate or as legatee under the will of the protected person, notwithstanding that probate of the will or letters of administration has or have not been obtained, and notwithstanding that legal proof is not given of the right or title of the person so claiming; and

(b) except as provided by paragraph (a), the Protective Commissioner shall—

(i) pay all money standing to the credit of the current account of the protected person in the trust fund; and

(ii) hand over all chattels and documents forming part of the estate of the protected person,

to the legal personal representative of the protected person.

Protective Commissioner may act until notice of death or revocation received.

43. Notwithstanding the death of a protected person or the revocation of the order that the estate of a person be subject to management under this Act, the Protective Commissioner shall continue to have, and may continue to exercise, in respect of the estate of the person, the functions required or permitted to be exercised before the death or revocation until the Protective Commissioner is satisfied that the protected person has died or, as the case may be, is served with a copy of the revocation.

Unclaimed personal effects and money.

44. (1) Where the management of the estate of a person under this Act terminates, all personal effects in the hands of the Protective Commissioner belonging to the person and not claimed within 2 years from the date of the termination, may be sold by direction of the Protective Commissioner, and the proceeds of the sale shall be paid into the Consolidated Fund.

Protected Estates.

(2) All money standing to the credit of the current account of a person in the trust fund at the end of 6 years from the date of termination of the management of the estate of the person shall be carried to and form part of the Consolidated Fund.

(3) The owner of the proceeds of a sale referred to in subsection (1) or of any money referred to in subsection (2) shall, upon proving ownership, be entitled to recover the proceeds or money from the Treasurer.

(4) Where a person is entitled to recover any proceeds or money as referred to in subsection (3), the proceeds are, or the money is, by virtue of this subsection, appropriated from the Consolidated Fund for the purpose of enabling its payment to the person and the Treasurer may withdraw the proceeds or money from the Consolidated Fund and pay the proceeds or money to the person accordingly.

Protected person or legal personal representative bound by acts of Protective Commissioner.

45. On the termination of management by the Protective Commissioner of the estate of a person, the person or the legal personal representative of the person, as the case may be, shall be bound by and may take advantage of an act lawfully done by the Protective Commissioner on behalf of the person, as if the act had been done by the person himself or herself and, to the extent to which the person had no capacity to do the act, as if the person were under no such incapacity.

DIVISION 6.—*General.*

Charges and mortgages.

46. Where a charge or mortgage in respect of property or an interest in property is created or granted under this Act for the expenses of future maintenance of a protected person, the money secured by the charge or mortgage—

- (a) may, in the case of a charge or mortgage in respect of a contingent or future interest in property, be made payable under the charge or mortgage contingently or upon the happening of an event; and

Protected Estates.

- (b) may be made payable under the charge or mortgage—
- (i) in a gross sum or in annual or other periodical sums; and
 - (ii) at any specified time and in any specified manner.

Property exchanged and renewed lease to be to same uses as before.

47. Any property taken in exchange, and any renewed lease accepted, pursuant to this Act on behalf of a protected person shall be to the same uses and be subject to the same trusts, charges, incumbrances, dispositions, devices and conditions as the property given in exchange or the surrendered lease was or would, but for the exchange or surrender, have been subject to.

Interest in property of certain persons not to be altered.

48. (1) Any protected person, and any other person being an heir, next of kin, devisee, legatee, executor, administrator or assign of a protected person shall have the same interest in any surplus money or other property arising from any sale, mortgage, charge or disposition of any property or other dealing with property under this Act as the person would have had in the property the subject of the sale, mortgage, charge, disposition or dealing, if no sale, mortgage, charge, disposition or dealing had been made.

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

(3) Except as provided by subsection (4), money received for equality of partition and exchange, and all fines, premiums and sums of money received upon the grant or renewal of a lease where the property the subject of the partition, exchange, or lease was real estate of a protected person shall, subject to the application thereof for any purposes authorised by this Act, be considered as real estate.

(4) Fines, premiums and sums of money received upon the grant or renewal of leases of property of which a protected person was tenant for life shall be personal estate of the protected person.

(5) In order to give effect to this section the Court may make such orders and direct such conveyances, deeds and things to be executed and done as it thinks fit.

Protected Estates.

Expenses of improvements may be charged on estate.

49. (1) Except as provided by subsection (2), the whole or any part of any money expended or to be expended under this Act for the permanent improvement, security or advantage of the property of a protected person or of any part of that property, may, with interest, be made a charge upon the improved property or any other property of the protected person.

(2) No right of sale or foreclosure during the lifetime of a protected person shall be conferred by a charge referred to in subsection (1) on the property of the protected person and the interest shall be kept down during the lifetime of the protected person out of the income of the general estate as far as it is sufficient to bear it.

(3) A charge referred to in subsection (1) may be made either to some person advancing money or, if the money is paid out of the protected person's general estate, to some person as a trustee for the protected person as part of the personal estate of the protected person.

Protected person and relatives to be consulted.

50. (1) Before—

- (a) the Protective Commissioner, in the course of exercising the jurisdiction and powers of the Court under Division 4, makes an order which will result in any action being taken in respect of the estate of a protected person; or
- (b) the Protective Commissioner takes any other action in respect of the estate of a protected person,

the Protective Commissioner shall determine whether the action is of such a nature that the protected person and relatives of the protected person or any of those persons should be consulted in relation to the action.

(2) In determining whether action in respect of the estate of a protected person is of such a nature that the protected person and relatives of the protected person or any of those persons should be consulted in relation to the action, the Protective Commissioner shall consider all relevant circumstances and matters, including—

- (a) the value of the estate;

Protected Estates.

- (b) the value and nature of any particular property proposed to be affected;
- (c) the consequences of the proposed action;
- (d) the necessity or practicality of the proposed action; and
- (e) the extent (if any) to which the estate may be prejudiced by any delay in the proposed action being taken.

(3) Where the Protective Commissioner determines that any proposed action in respect of the estate of a protected person is of such a nature that the protected person and relatives of the protected person or any of those persons should be consulted in relation to the action, the Protective Commissioner shall cause to be taken all such steps as are reasonably practicable in the circumstances to give notice to those persons and, before making the order which will result in any such action being taken or before taking any such action, shall consider any submissions made within the period specified in any such notice in response to the notice.

Personal items to be preserved.

51. In the care and management of the estate of a protected person, any items in the estate which are of a personal nature and which the protected person or relatives of the protected person has or have requested to be preserved, shall, as far as is reasonably practicable, be preserved.

PART IV.**FINANCIAL.****Interpretation.**

52. In this Division—

“common fund” means the fund comprising balances to the credit of all current accounts in the trust fund as provided by section 53 (1);

Protected Estates.

“Estates Guarantee and Reserve Account” means the account to which sums are transferred from the Interest Account by the Protective Commissioner as referred to in section 55 (1);

“Interest Account” means the account to which interest received from investments from the common fund is credited as referred to in section 54.

Common fund.

53. (1) Except as provided by subsection (2), balances to the credit of all current accounts in the trust fund shall, for the purposes of investment, be one common fund.

(2) The balance of a current account shall not form part of the common fund where—

- (a) the current account is held by the Protective Commissioner jointly with another person; and
- (b) the other person has objected in writing to it forming part of the common fund.

Interest Account.

54. Interest received from investments from the common fund shall be credited to an Interest Account and shall be allocated from that Account as provided by this Part.

Estates Guarantee and Reserve Account.

55. (1) Out of the total amount of interest earned in any year by all investments from the common fund, such sum as the Protective Commissioner considers necessary may be transferred from the Interest Account to an Estates Guarantee and Reserve Account kept by the Protective Commissioner.

Protected Estates.

(2) The Estates Guarantee and Reserve Account may, at the discretion of the Protective Commissioner, be applied to any one or more of the following purposes:—

- (a) payment to the common fund of an amount equivalent to the loss upon realisation of any investment made from the common fund;
- (b) payment of any costs incurred in protecting investments made from the common fund;
- (c) payment of such other expenses or charges incurred in respect of the common fund or investments made therefrom as, in the opinion of the Protective Commissioner, are properly chargeable against the Estates Guarantee and Reserve Account;
- (d) payment of any legal costs, charges and expenses not ordered by a court to be charged against a particular estate or otherwise not properly chargeable against a particular estate;
- (e) payment of any legal costs, charges and expenses not ordered by a court to be charged against a particular estate but otherwise properly chargeable against a particular estate where there are insufficient funds in the particular estate to meet the costs, charges and expenses;
- (f) payment of costs, charges and expenses incurred by the Protective Commissioner in obtaining any kind of advice or in any legal proceedings to which the Protective Commissioner is or is made a party where the costs, charges and expenses are such that, by reason of general interest and the importance of the subject-matter of the advice or proceedings, they should not, in the opinion of the Protective Commissioner, be charged against a particular estate.

Interest to be credited.

56. (1) Out of the balance to the credit of the Interest Account after any sum is transferred to the Estates Guarantee and Reserve Account as referred to in section 55, interest shall be transferred and credited to the current accounts forming part of the common fund in respect of—

- (a) all capital balances; and
- (b) income balances where, in the opinion of the Protective Commissioner, the income should be interest earning.

Protected Estates.

(2) Interest allowed in respect of income balances shall be computed as from such date as the Protective Commissioner may determine and shall be credited at such rate and at such time or times as the Protective Commissioner may determine.

(3) Except as provided by this section, balances in the common fund shall not earn interest.

Surplus income from common fund.

57. Where, after transferring any sum referred to in section 55 (1) and interest as referred to in section 56, a surplus remains out of the income from investments made from the common fund, the surplus, or so much thereof as the Protective Commissioner may determine, may be applied towards the annual amount incurred in the exercise of the functions of the Protective Commissioner.

Investment of common fund.

58. Money standing to the credit of the Interest Account and unapplied as referred to in sections 55, 56 and 57 and money in the common fund may be invested—

- (a) in any of the securities authorised by the Trustee Act, 1925; or
- (b) to the extent of not more than \$1,000,000 at any one time, on deposit with the Treasurer for a period or periods not exceeding 12 months in any one case.

Withdrawal from common fund.

59. (1) The Protective Commissioner may sell or realise investments belonging to the common fund and may withdraw any part of the money belonging to the common fund for any purpose of or relating to the exercise of the functions of the Protective Commissioner under this Act or for any purpose authorised by or under this or any other Act.

Protected Estates.

(2) The Protective Commissioner may withdraw from the common fund any amount belonging to any particular estate included in the common fund and may separately invest that amount for the benefit of the particular estate.

(3) Amounts withdrawn from the common fund pursuant to this section shall, as from the date of the withdrawal, cease to have any claim against the common fund or the Interest Account.

Power to make advances.

60. (1) In addition to any other power under this Act in relation to the common fund, the Protective Commissioner may make advances from the common fund for any purpose of or relating to any estate being managed by the Protective Commissioner.

(2) Any sum advanced as referred to in subsection (1) shall bear interest at a rate to be fixed by the Protective Commissioner and the sum and the interest on the sum shall be a charge on the assets of the estate or on the specific asset in respect of which the advance is made.

(3) Where any sum advanced as referred to in subsection (1) is applied in or towards the discharge of any debt or liability, the charge under subsection (2) shall rank in the same order of priority as the debt or liability.

(4) Any interest received under this section shall be paid into the Interest Account.

PART V.**MANAGEMENT OF ESTATES OF PERSONS WHO ARE NOT PROTECTED PERSONS.****Application of Part.**

61. This Part does not apply to or in respect of a person who is a protected person.

Protected Estates.

Applications under this Part.

62. An application under this Part may be made in writing to the Protective Commissioner—

- (a) in respect of a patient who is of or above the age of 18 years, by the patient; or
- (b) in respect of a patient who is under the age of 18 years by—
 - (i) if both parents of the patient are alive—the parents;
 - (ii) if only one parent of the patient is alive—the parent; or
 - (iii) if no parents of the patient are alive—the guardian of the patient.

Management by Protective Commissioner.

63. (1) The Protective Commissioner may undertake the management of the estate of a person in respect of whom an application under this Part has been made as referred to in section 62.

(2) Except as provided by section 64, in the management of an estate under this Part, the Court and the Protective Commissioner shall have all functions which the Court or Protective Commissioner, as the case may be, would have if the estate were the estate of a protected person and the management of the estate were committed to the Protective Commissioner under section 23.

(3) While the estate of a person is managed by the Protective Commissioner under this Part, this Act shall apply to and in respect of the person and the estate of the person as if the person were a protected person whose estate has been committed to the management of the Protective Commissioner.

Termination of management under this Part.

64. (1) The Protective Commissioner shall cease to undertake the management of the estate of a person under this Part upon receipt of a request in writing that the management terminate, being a request made—

- (a) where the person is of or above the age of 18 years—by the person; or
- (b) where the person is under the age of 18 years—by a parent or guardian of the person.

Protected Estates.

(2) As soon as practicable after receipt of a request referred to in subsection (1) in respect of an estate, the Protective Commissioner shall pay to the person who made the request all money in the trust fund standing to the credit of the current account kept in respect of the estate and shall hand over to the person all chattels and documents forming part of the estate.

PART VI.

RECIPROCAL ARRANGEMENTS WITH OTHER STATES.

Declaration of reciprocating state.

65. (1) In this Part, "reciprocating state" means any country, state or territory outside New South Wales which has been declared under subsection (2) to be a reciprocating state for the purposes of this Part.

(2) Where the Governor is satisfied that the laws in force in any country, state or territory outside New South Wales are such as to enable powers to be exercised in that country, state or territory in cases of protected persons residing in New South Wales substantially similar to the powers conferred by this Part, being powers exercisable in New South Wales in cases of incapable persons residing in that country, state or territory, the Governor may, by proclamation published in the Gazette, declare that country, state or territory to be a reciprocating state for the purposes of this Part.

(3) The Governor may, by proclamation published in the Gazette, revoke or vary any proclamation under this section.

Protected Estates.

Powers of Protective Commissioner as to property in New South Wales of incapable persons in reciprocating states.

66. (1) If the officer charged by the laws of a reciprocating state with the care, recovery, collection, preservation and administration of the property of incapable persons—

- (a) certifies in writing and under seal to the Protective Commissioner that a person residing in that state is incapable of managing his or her affairs and is possessed of or entitled to or appears to be possessed of or entitled to real or personal property in New South Wales; and
- (b) by instrument in writing and under seal authorises the Protective Commissioner to collect, recover, manage, sell or otherwise dispose of and administer the property or to make inquiry respecting the property,

the Protective Commissioner shall have and may exercise in respect of the property the same powers of collection, recovery, management, sale, disposition, administration and inquiry as the Protective Commissioner would have had and may have exercised over the property if the person had been a protected person resident in New South Wales and this Act shall apply in respect of the property accordingly.

(2) Where the Protective Commissioner has, pursuant to an authority referred to in subsection (1) (b) and in the exercise of the powers referred to in subsection (1), received any money or property, the Protective Commissioner may—

- (a) after payment of all costs, charges and expenses incurred in the exercise of those powers pursuant to that authority; and
- (b) after satisfying or providing for—
 - (i) debts of the incapable person named in the authority owing to persons resident in New South Wales; and
 - (ii) the claims of persons so resident against that incapable person,

being debts and claims of which the Protective Commissioner has notice,

pay or deliver the balance of the money or property to the officer of the reciprocating state who signed the authority or any successor in office, without seeing to the application thereof and without incurring any liability in respect of the payment or delivery, and shall duly account to that officer or successor for that balance.

Protected Estates.

Powers as to property in reciprocating state of protected persons in New South Wales.

67. (1) Where a protected person is possessed of or entitled to or appears to be possessed of or entitled to real or personal property in a reciprocating state, the Protective Commissioner may authorise an officer charged by the laws of the reciprocating state with the care, recovery, collection, preservation and administration of the property of incapable persons to collect, recover, manage, sell or otherwise dispose of and administer the property or to make inquiry respecting the property in accordance with the law in force in the reciprocating state as if the protected person were resident in the reciprocating state.

(2) Where the Protective Commissioner authorises an officer in a reciprocating state in respect of property in the reciprocating state, the Protective Commissioner shall not be bound to inquire as to the exercise of any functions by that officer in respect of that property and shall incur no liability in respect of any act, matter or thing done or omitted by that officer in respect of that property.

PART VII.**MISCELLANEOUS.****Appointment of guardian.**

68. (1) Where the Court is satisfied that a protected person is, owing to mental illness, incapable of managing his person or her person, it may, by order, appoint a guardian of the person of the protected person.

(2) The powers of a guardian appointed under subsection (1) shall be such as are specified by the Court in the order appointing the guardian.

(3) The Court may, at any time, by order, discharge a guardian appointed under subsection (1).

Protected Estates.

Court may dissolve partnership.

69. Where a person, being a member of a partnership, becomes a protected person, the Court may, by order, dissolve the partnership.

Power to carry orders into effect.

70. (1) The manager of the estate of a protected person, or such other person as the Court approves, shall, in the name and on behalf of the protected person, execute all such conveyances, deeds and transfers, and do all such things, as the Court directs for giving effect to any order under this Act.

(2) Every conveyance, deed, transfer and thing executed or done as referred to in subsection (1) shall be valid and effectual, and shall take effect accordingly, subject only to any prior charge to which the property affected thereby at the date of the order is subject.

(3) A reference in subsection (1) to the Court includes a reference to the Protective Commissioner where the Protective Commissioner exercises the jurisdiction and powers of the Court under Division 4 of Part III.

Manager may act as trustee or guardian in certain cases.

71. (1) Where a power is vested in a protected person in the capacity of a trustee or guardian, or the consent of a protected person to the exercise of a power is necessary in the like capacity or as a check upon the undue exercise of the power, and it appears to the Court to be expedient that the power should be exercised or the consent given, as the case may be, the Protective Commissioner or the manager of the estate of the protected person, as the case may be, in the name and on behalf of the protected person, under an order of the Court made upon the application of any person interested in the exercise of the power, may exercise the power or give the consent, as the case may be, in such manner as the order may direct.

(2) Where under this Act the Protective Commissioner or the manager of an estate, under order of the Court, exercises in the name and on behalf of a protected person a power of appointing new trustees vested in the

Protected Estates.

protected person, the persons who shall after and in consequence of the exercise of the power be the trustees shall have all the same rights and powers as they would have had if the order had been made by the Court under any law for the time being in force relating to trusts.

(3) Where, on an application to the Court for an order under subsection (1) in relation to a trust it seems to the Court to be expedient, it may make any other order respecting the property subject to the trust which might have been made on such an application under the provisions of any law relating to trusts on the appointment of new trustees.

Temporary provision for maintenance.

72. (1) In any case where, pending the making of orders as to the management of the estate of a protected person, it appears to the Protective Commissioner desirable that temporary provision should be made for the expenses of the maintenance or other necessary purposes or requirements of the protected person or any member of the family of the protected person out of any cash or available investments belonging to the protected person in the hands of a banker, or of any other person, the Protective Commissioner may, by certificate, authorise the banker or other person to pay to such person as is named in the certificate such sum as the Protective Commissioner certifies to be proper.

(2) The Protective Commissioner may, in a certificate referred to in subsection (1), give directions as to the proper application of the sum of money to which the certificate relates for the protected person's benefit by the person to whom it is to be paid, and the person shall be accountable for the application, as the Protective Commissioner directs.

Transfer of stock belonging to certain persons.

73. In any case—

(a) where stock—

- (i) is standing in the name of or is vested in a protected person beneficially entitled to the stock; or
- (ii) is standing in the name of or vested in the manager of the estate of a protected person in trust for the protected person or as part of the estate; and

Protected Estates.

(b) where—

- (i) the manager of the estate of the protected person dies intestate or becomes a protected person or is out of the jurisdiction;
- (ii) it is uncertain whether the manager of the estate of the protected person is living or dead; or
- (iii) the manager of the estate of the protected person neglects or refuses to transfer the stock and to receive and pay over the dividends thereof to a new manager or as a new manager directs for 14 days after a request in writing for that purpose made by the new manager,

the Court may order an appropriate person to transfer the stock to or into the name of a new manager or otherwise and to receive and pay over the dividends thereof, or such sums of money, and in such manner as the Court directs.

Stock in name of incapable persons residing out of State may be ordered to be transferred.

74. Where any stock is standing in the name of, or vested in, a person residing out of New South Wales, the Court, upon proof to its satisfaction that—

- (a) the person is an incapable person; and
- (b) the personal estate of the person has been vested in a person appointed for the management thereof according to the laws of the place where the person is residing,

may order an appropriate person to transfer the stock to or into the name of the person so appointed or otherwise and to receive and pay over the dividends thereof as the Court thinks fit.

Sale, etc., by protected person may be set aside.

75. (1) Where a patient (within the meaning of the Mental Health Act, 1958) made or executed, before discharge and before the day appointed and notified under section 2 (2), a transfer, sale, alienation, charge or lease of any real or personal property or where a protected person, being a patient, makes or executes any such transfer, sale, alienation, charge or lease, the Court may, on application being made by the Protective Commissioner, and on notice being given to such persons as the Court may direct, set aside the transfer, sale, alienation, charge or lease and may make such consequential orders as may be just.

Protected Estates.

(2) For the purposes of an application under subsection (1) in respect of a person who made or executed a transfer, sale, alienation, charge or lease as referred to in subsection (1), the person shall be prima facie deemed to have been mentally ill at the time when the transfer, sale, alienation, charge or lease was made or executed.

Powers of attorney.

76. (1) In this section, "principal" means a person who has given a power of attorney.

(2) A power of attorney is not terminated by the estate of the principal becoming subject to management under this Act.

(3) Subsection (2) has effect subject to the terms of the instrument creating the power.

(4) A person may give a power of attorney notwithstanding that the estate of the person is subject to management under this Act.

(5) A power of attorney is suspended while the estate of the principal is subject to management under this Act.

(6) Notwithstanding subsection (5), where an attorney under a power of attorney does an act within the scope of the power while the estate of the principal is subject to management under this Act, the act of the attorney has no less validity and effect than the act of the attorney would have had if this section had not been enacted, but this subsection does not affect the operation of subsection (9).

(7) While a power of attorney is suspended by this section, the Court may restore the power of attorney to operation to such extent, and on such terms and conditions, as the Court thinks fit.

(8) The Court may restore a power of attorney to operation under subsection (7) as from any time whether before or after the order of restoration is made or takes effect.

Protected Estates.

(9) Where the estate of a principal is subject to management under this Act, the Court may—

- (a) terminate the power of attorney; or
- (b) order that the power of attorney be subject to such conditions as the Court thinks fit.

(10) An attorney under a power of attorney and persons dealing with the attorney and all other persons shall have the like protections against any term or condition of any restoration of the power and against any condition or restriction to which the power is subject under this section as if the term, condition or restriction were effected by act of the principal.

(11) For the purposes of this section—

- (a) while a person is a protected person, the estate of the person is subject to management under this Act;
- (b) while the Protective Commissioner undertakes the management of the estate of a person in accordance with section 63, the estate of the person is subject to management under this Act; and
- (c) where, in relation to a person, it is certified to the Protective Commissioner and the Protective Commissioner is authorised as mentioned in section 66, the estate of the person thereupon becomes subject to management under this Act and remains so during the life of the person or until the Court declares that the exercise of the powers of the Protective Commissioner in relation to the estate is not required.

(12) The Court may make a declaration for the purposes of subsection (11) (c) on the application of the Protective Commissioner, the person whose power of attorney is in question or an attorney under the power of attorney.

(13) A declaration for the purposes of subsection (11) (c) shall not have any effect otherwise than for the purpose of subsection (11) (c).

(14) This section does not apply to a power of attorney given before the commencement of Schedule 1 to the Conveyancing (Powers of Attorney) Amendment Act, 1983.

Protected Estates.

(15) This section has effect subject to section 160 of the Conveyancing Act, 1919.

Costs and remuneration may be paid out of estate.

77. (1) The Court may order the costs and expenses of and relating to the applications, orders, directions, conveyances and transfers to be presented or made in pursuance of this Act to be paid and raised out of or from the property or the rents, income or profits in respect of which they are presented or made in such manner as it may think proper.

(2) The Court may order such sum by way of remuneration to be paid out of the estate to the manager of the estate of a protected person as the Court may think fit.

(3) A reference in subsections (1) and (2) to the Court includes a reference to the Protective Commissioner where the costs and expenses referred to in subsection (1) arise, or the remuneration referred to in subsection (2) is warranted, by reason of applications to, or orders or directions by, the Protective Commissioner where the Protective Commissioner exercises the jurisdiction and powers of the Court under Division 4 of Part III.

All deeds, transfers, payments, etc., made in pursuance of this Act to be valid and binding.

78. Every conveyance, lease, surrender, transfer, charge or other disposition made, accepted or executed and every payment made under this Act shall be valid to all intents and binding upon all persons and any person doing or permitting to be done any act or thing pursuant to this Act, or any order of the Court made or purporting to be made under this Act, is hereby indemnified and discharged from liability in respect of the act or thing.

Court visitors.

79. The Court or the Protective Commissioner may—

(a) by order, direct an authorised officer under the Mental Health Act, 1983, or any other specified person—

(i) to visit a protected person, not being a patient; and

Protected Estates.

- (ii) to report in writing to the Court or Protective Commissioner, as the case may be, on the state of mind, bodily health and general condition of the protected person and on the care and treatment being received by the protected person;
- (b) by order, direct that such information as the Court or the Protective Commissioner thinks necessary be given to the person directed to visit the protected person as to the nature and extent of the assets of the protected person and as to the orders made under this Act in respect of the protected person; and
- (c) order that any fees and expenses arising in connection with the visit be paid out of the estate of the protected person.

Annual report.

80. (1) As soon as practicable after 30th June, but on or before 31st December, in each year, the Protective Commissioner shall prepare and forward to the Minister a report of the work and activities of the Protective Commissioner for the 12 months ending on 30th June in that year.

(2) The Minister shall lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

Regulations.

81. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed (otherwise than by rules of Court) or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind;
or

Protected Estates.

(c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body, or may do any combination of those things.

Rules of Court.

82. (1) Rules of Court may be made under the Supreme Court Act, 1970, for the purpose of regulating any proceedings under this Act in or before the Court and otherwise for or with respect to any matter that by this Act is required or permitted to be prescribed by rules of Court.

(2) Subsection (1) does not limit the rule-making powers conferred by the Supreme Court Act, 1970.

(3) The reference in subsection (1) to proceedings in or before the Court includes a reference to proceedings in or before the Protective Commissioner where the Protective Commissioner is exercising the jurisdiction and powers of the Court under Division 4 of Part III.

In the name and on behalf of Her Majesty I assent to this Act.

L. W. STREET,
*By Deputation from
His Excellency the Governor.*

*Government House,
Sydney, 31st December, 1983.*