

Queensland



**GUARDIANSHIP AND  
ADMINISTRATION AND  
OTHER ACTS AMENDMENT  
ACT 2001**

**Act No. 95 of 2001**



Queensland



**GUARDIANSHIP AND ADMINISTRATION  
AND OTHER ACTS AMENDMENT  
ACT 2001**

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**Guardianship and Administration and Other  
Acts Amendment Act 2001**

**Act No. 95 of 2001**

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**An Act to amend the *Guardianship and Administration Act 2000*, the  
*Powers of Attorney Act 1998* and the *Public Trustee Act 1978***

*[Assented to 10 December 2001]*

**The Parliament of Queensland enacts—**

## **PART 1—PRELIMINARY**

### **1 Short title**

This Act may be cited as the *Guardianship and Administration and Other Acts Amendment Act 2001*.

### **2 Commencement**

(1) Part 4 commences on assent.

(2) The remaining provisions of this Act commence on a day to be fixed by proclamation.

## **PART 2—AMENDMENT OF GUARDIANSHIP AND ADMINISTRATION ACT 2000**

### **3 Act amended in pt 2**

This part amends the *Guardianship and Administration Act 2000*.

### **4 Amendment of s 11 (Principles for adults with impaired capacity)**

Section 11(1), after ‘for a health matter’—

*insert—*

‘or a special health matter’.

### **5 Amendment of s 61 (Purpose to achieve balance for health care)**

Section 61(b)—

*omit, insert—*

- ‘(b) ensuring health care given to the adult is only—
- (i) health care that is necessary and appropriate to maintain or promote the adult’s health or wellbeing; or
  - (ii) health care that is, in all the circumstances, in the adult’s best interests.<sup>1</sup>’.

## **6 Amendment of s 63 (Urgent health care)**

(1) Section 63(1), ‘considers’—

*omit, insert—*

‘reasonably considers’.

(2) Section 63(2), footnote—

*omit.*

(3) Section 63—

*insert—*

‘(5) In this section—

“**health care**”, of an adult, does not include withholding or withdrawal of a life-sustaining measure for the adult.’.

## **7 Insertion of new s 63A**

After section 63—

*insert—*

### **‘63A Life-sustaining measure in an acute emergency**

‘(1) A life-sustaining measure may be withheld or withdrawn for an adult without consent if the adult’s health provider reasonably considers—

- (a) the adult has impaired capacity for the health matter concerned; and
- (b) the commencement or continuation of the measure for the adult would be inconsistent with good medical practice; and

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<sup>1</sup> See also section 11 (Principles for adults with impaired capacity).

(c) consistent with good medical practice, the decision to withhold or withdraw the measure must be taken immediately.

‘(2) However, the measure may not be withheld or withdrawn without consent if the health provider knows the adult objects to the withholding or withdrawal.’<sup>2</sup>

‘(3) The health provider must certify in the adult’s clinical records as to the various things enabling the measure to be withheld or withdrawn because of this section.

‘(4) For this section, artificial nutrition and hydration is not a “life-sustaining measure”.’.

## **8 Amendment of s 64 (Minor, uncontroversial health care)**

Section 64(1), ‘considers’—

*omit, insert—*

‘reasonably considers’.

## **9 Amendment of s 66 (Adult with impaired capacity—order of priority in dealing with health matter)**

Section 66—

*insert—*

‘(6) This section does not apply to a health matter relating to health care that may be carried out without consent under division 1.’.

## **10 Insertion of new ss 66A–66B**

After section 66—

*insert—*

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<sup>2</sup> “Object” is defined in schedule 4 (Dictionary).

**‘66A When consent to withholding or withdrawal of life-sustaining measure may operate**

‘(1) This section applies if a matter concerning the withholding or withdrawal of a life-sustaining measure is to be dealt with under section 66(3), (4) or (5).<sup>3</sup>

‘(2) A consent to the withholding or withdrawal of a life-sustaining measure for the adult can not operate unless the adult’s health provider reasonably considers the commencement or continuation of the measure for the adult would be inconsistent with good medical practice.

**‘66B Certificate in clinical records if life-sustaining measure withheld or withdrawn**

‘(1) This section applies if a life-sustaining measure is withheld or withdrawn for an adult other than because of section 63A.<sup>4</sup>

‘(2) The adult’s health provider must certify in the adult’s medical records as to the various things enabling the measure to be withheld or withdrawn because of—

- (a) for a withholding or withdrawal under a direction in the adult’s advance health directive—section 66(2) and the *Powers of Attorney Act 1998*, section 36;<sup>5</sup> or
- (b) for a withholding or withdrawal by consent—section 66(3), (4) or (5) and section 66A.’.

**11 Amendment of s 67 (Effect of adult’s objection to health care)**

Section 67(3)(c)—

*omit.*

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3 If a matter concerning the withholding or withdrawal of a life-sustaining measure is to be dealt with under section 66(2), see the *Powers of Attorney Act 1998*, section 36(2) (Operation of advance health directive) as to when a direction to withhold or withdraw a life-sustaining measure can operate.

4 Section 63A (Life-sustaining measure in an acute emergency)

5 *Powers of Attorney Act 1998*, section 36 (Operation of advance health directive)

**12 Amendment of s 79 (Offence to carry out health care unless authorised)**

Section 79(1)(a), ‘consent;<sup>6</sup> or’—

*omit, insert—*

‘consent;<sup>7</sup> or’.

**13 Amendment of s 82 (Functions)**

(1) Section 82(1)(d)(ii) and (iii)—

*omit, insert—*

‘(ii) attorneys;

(iii) enduring documents;

(iv) related matters;’.

(2) Section 82(1)(f) to (h)—

*renumber* as section 82(1)(g) to (i).

(3) Section 82(1)—

*insert—*

‘(f) consenting to the withholding or withdrawal of a life-sustaining measure for adults with impaired capacity for the health matter concerned;’.

**14 Amendment of s 198 (Health providers may advise adult guardian)**

Section 198(1), ‘considers’—

*omit, insert—*

‘reasonably considers’.

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6 See sections 63 (Urgent health care) and 64 (Minor, uncontroversial health care).

7 See sections 63 (Urgent health care), 63A (Life-sustaining measure in an acute emergency) and 64 (Minor, uncontroversial health care).

## 15 Insertion of new ch 12, pt 4

Chapter 12—

*insert—*

### **‘PART 4—TRANSITIONAL PROVISION FOR GUARDIANSHIP AND ADMINISTRATION AND POWERS OF ATTORNEY AMENDMENT ACT 2001**

#### **‘262A Protection for health provider**

‘(1) This section applies if—

- (a) an adult’s health provider withheld or withdrew a life-sustaining measure for the adult on or after 1 July 2000 and before the commencement of this section; and
- (b) at the time the measure was withheld or withdrawn the health provider reasonably considered—
  - (i) the adult had impaired capacity for the health matter concerned; and
  - (ii) the commencement or continuation of the measure for the adult would have been inconsistent with good medical practice.

‘(2) The withholding or withdrawal of the measure is taken—

- (a) for section 79<sup>8</sup>—to have been health care for which consent was properly given under this Act; and
- (b) for section 80<sup>9</sup>—to have been health care authorised by this Act.’.

## 16 Amendment of sch 1, s 12

Schedule 1, section 12(1), other than the example—

*omit, insert—*

‘(1) The **“health care principle”** means power for a health matter, or special health matter, for an adult should be exercised by a guardian, the

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8 Section 79 (Offence to carry out health care unless authorised)

9 Section 80 (No less protection than if adult gave health consent)

adult guardian, the tribunal, or for a matter relating to prescribed special health care, another entity—

- (a) in the way least restrictive of the adult's rights; and
- (b) only if the exercise of power—
  - (i) is necessary and appropriate to maintain or promote the adult's health or wellbeing; or
  - (ii) is, in all the circumstances, in the adult's best interests.'.

### **17 Amendment of sch 2, s 5**

(1) Schedule 2, section 5(2)—

*renumber* as section 5(3).

(2) Schedule 2, section 5—

*insert*—

'(2) "**Health care**", of an adult, includes withholding or withdrawal of a life-sustaining measure for the adult if the commencement or continuation of the measure for the adult would be inconsistent with good medical practice.'.

### **18 Insertion in sch 2 of new ss 5A–5B**

Schedule 2—

*insert*—

#### **'5A Life-sustaining measure**

'(1) A "**life-sustaining measure**" is health care intended to sustain or prolong life and that supplants or maintains the operation of vital bodily functions that are temporarily or permanently incapable of independent operation.

'(2) Without limiting subsection (1), each of the following is a "**life-sustaining measure**"—

- (a) cardiopulmonary resuscitation;
- (b) assisted ventilation;

(c) artificial nutrition and hydration.

‘(3) A blood transfusion is not a **“life-sustaining measure”**’.

#### **‘5B Good medical practice**

‘ **“Good medical practice”** is good medical practice for the medical profession in Australia having regard to—

- (a) the recognised medical standards, practices and procedures of the medical profession in Australia; and
- (b) the recognised ethical standards of the medical profession in Australia.’.

#### **19 Amendment of sch 2, s 7**

(1) Schedule 2, section 7(f)—

*omit.*

(2) Schedule 2, section 7(g)—

*renumber* as section 7(f).

#### **20 Omission of sch 2, s 16**

Schedule 2, section 16—

*omit.*

#### **21 Amendment of sch 4 (Dictionary)**

(1) Schedule 4, definition, **“special life-sustaining measures”**—

*omit.*

(2) Schedule 4—

*insert*—

‘ **“good medical practice”** see schedule 2, section 5B.

**“life-sustaining measure”** see schedule 2, section 5A.

**“reasonably considers”** means considers on grounds that are reasonable in the circumstances.’.

## **PART 3—AMENDMENT OF POWERS OF ATTORNEY ACT 1998**

### **22 Act amended in pt 3**

This part amends the *Powers of Attorney Act 1998*.

### **23 Amendment of s 6A (Relationship with Guardianship and Administration Act 2000)**

Section 6A(1)(c), after ‘consent’—

*insert—*

‘to the withholding or withdrawal of a life-sustaining measure and’.

### **24 Amendment of s 35 (Advance health directives)**

Section 35(2)(b), ‘particular special life-sustaining measures’—

*omit, insert—*

‘a life-sustaining measure’.

### **25 Amendment of s 36 (Operation of advance health directive)**

(1) Section 36(2), ‘special’—

*omit.*

(2) Section 36(2)(b)—

*omit, insert—*

‘(b) for a direction to withhold or withdraw artificial nutrition or artificial hydration—the commencement or continuation of the measure would be inconsistent with good medical practice; and’.

### **26 Amendment of s 103 (Protection of health provider for non-compliance with advance health directive)**

Section 103(1), ‘contrary to’—

*omit, insert—*

‘inconsistent with’.

## **27 Insertion of new ch 9, pt 3**

Chapter 9—

*insert—*

### **‘PART 3—TRANSITIONAL PROVISIONS FOR GUARDIANSHIP AND ADMINISTRATION AND POWERS OF ATTORNEY AMENDMENT ACT 2001**

#### **‘165 References to special life-sustaining measures**

‘A reference in an enduring document of force and effect immediately before the commencement of this section to special life-sustaining measures or a special life-sustaining measure, however described, is, from the commencement of this section, taken to be a reference to life-sustaining measures or a life-sustaining measure.’

#### **‘166 Power for health matters excludes power for withholding or withdrawal of life-sustaining measure**

‘An enduring document of force and effect immediately before the commencement of this section that authorises an attorney to exercise power for health matters does not, from the commencement of this section, authorise the attorney to exercise power for the withholding or withdrawal of a life-sustaining measure.’.

## **28 Amendment of sch 1, s 12**

Schedule 1, section 12(1)(b)—

*omit, insert—*

‘(b) only if the exercise of power—

- (i) is necessary and appropriate to maintain or promote the adult’s health or wellbeing; or
- (ii) is, in all the circumstances, in the adult’s best interests.’.

## 29 Amendment of schedule 2, s 5

(1) Schedule 2, section 5(2)—

*renumber* as section 5(3).

(2) Schedule 2, section 5—

*insert*—

‘(2) **“Health care”**, of a principal, includes withholding or withdrawal of a life-sustaining measure for the principal if the commencement or continuation of the measure for the principal would be inconsistent with good medical practice.’.

## 30 Insertion in sch 2 of new ss 5A–5B

Schedule 2—

*insert*—

### ‘5A Life-sustaining measure

‘(1) A **“life-sustaining measure”** is health care intended to sustain or prolong life and that supplants or maintains the operation of vital bodily functions that are temporarily or permanently incapable of independent operation.

‘(2) Without limiting subsection (1), each of the following is a **“life-sustaining measure”**—

- (a) cardiopulmonary resuscitation;
- (b) assisted ventilation;
- (c) artificial nutrition and hydration.

‘(3) A blood transfusion is not a **“life-sustaining measure”**’.

### ‘5B Good medical practice

‘ **“Good medical practice”** is good medical practice for the medical profession in Australia having regard to—

- (a) the recognised medical standards, practices and procedures of the medical profession in Australia; and
- (b) the recognised ethical standards of the medical profession in Australia.’.

**31 Amendment of sch 2, s 7**

(1) Schedule 2, section 7(f)—

*omit.*

(2) Schedule 2, section 7(g)—

*renumber* as section 7(f).

**32 Omission of sch 2, s 16**

Schedule 2, section 16—

*omit.*

**33 Amendment of sch 3 (Dictionary)**

(1) Schedule 3, definition, “**special life-sustaining measures**”—

*omit.*

(2) Schedule 3—

*insert—*

‘ “**good medical practice**” see schedule 2, section 5B.

“**life-sustaining measure**” see schedule 2, section 5A.’.

## **PART 4—AMENDMENT OF PUBLIC TRUSTEE ACT 1978**

**34 Act amended in pt 4**

This part amends the *Public Trustee Act 1978*.

**35 Amendment of s 102A (Public trustee may refund certain amounts to accountable persons)**

Section 102A(2), ‘, less the public trustee’s reasonable expenses,’—

*omit.*

