

Queensland



**GUARDIANSHIP AND  
ADMINISTRATION AND  
OTHER ACTS AMENDMENT  
ACT 2003**

**Act No. 87 of 2003**



# Queensland



## GUARDIANSHIP AND ADMINISTRATION AND OTHER ACTS AMENDMENT ACT 2003

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Queensland



**Guardianship and Administration and Other  
Acts Amendment Act 2003**

**Act No. 87 of 2003**

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**An Act to amend the *Guardianship and Administration Act 2000*, and  
for other purposes**

*[Assented to 18 November 2003]*

**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 2003*.

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

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

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

### **3 Insertion of new s 11A**

Chapter 2, after section 11—

*insert—*

#### **‘11A Primary focus—adults**

‘(1) Adults with impaired capacity are the primary focus of this Act.

‘(2) However, chapter 5A<sup>1</sup> deals with children with an impairment.’.

### **4 Amendment of s 20 (Management plan)**

(1) Section 20, before ‘nominee’—

*insert—*

‘appropriately qualified’.

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<sup>1</sup> Chapter 5A (Consent to sterilisation of child with impairment)

(2) Section 20—

*insert—*

‘(2) The tribunal, or its appropriately qualified nominee, may approve a management plan.

‘(3) In this section—

“**appropriately qualified**”, for a nominee in relation to a management plan, means having the qualifications or experience appropriate to approve the plan.’.

## **5 Amendment of s 21 (Advice to registrar of titles if appointment concerns land)**

Section 21(1), ‘the tribunal must’—

*omit, insert—*

‘the tribunal and the administrator must each, within 3 months of the appointment,’.

## **6 Amendment of s 28 (Periodic review of appointment)**

Section 28, after ‘administrator’—

*insert—*

‘(other than the public trustee or a trustee company under the *Trustee Companies Act 1968*)’.

## **7 Replacement of s 29 (Other review of appointment)**

Section 29—

*omit, insert—*

### **‘29 Other review of appointment**

‘The tribunal may review an appointment of a guardian or administrator for an adult at any time—

- (a) on its own initiative; or
- (b) on the application of any of the following—
  - (i) the adult;

- (ii) an interested person for the adult;
- (iii) the public trustee;
- (iv) a trustee company under the *Trustee Companies Act 1968*.<sup>1</sup>

## **8 Amendment of s 31 (Appointment review process)**

Section 31(5)(c)—

*omit, insert—*

- ‘(c) the appointee is an administrator appointed for a matter involving an interest in land and the appointee fails to advise the registrar of titles of the appointment as required under section 21(1); or
- (d) the appointee has otherwise contravened this Act.’

## **9 Replacement of s 32 (Tribunal to advise of change or revocation of appointment)**

Section 32—

*omit, insert—*

### **‘32 Tribunal to advise of change, revocation or ending of appointment**

‘(1) This section applies if—

- (a) the tribunal changes or revokes the appointment for an adult of a guardian or administrator; or
- (b) the tribunal is given advice of the ending of an appointment under section 26 or 57.<sup>2</sup>

‘(2) The registrar of the tribunal must take reasonable steps to advise the adult and any remaining guardians and administrators of the change, revocation or ending of the appointment.

### **‘32A Additional requirements if change, revocation or ending of appointment and interest in land involved**

‘(1) This section applies if—

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<sup>2</sup> Section 26 (Automatic revocation) or 57 (Advice of change of successive appointee)

- (a) an administrator was appointed for a matter involving an interest in land; and
- (b) either—
  - (i) the tribunal changes or revokes the appointment; or
  - (ii) the tribunal is given advice of the ending of the appointment under section 26 or 57.

‘(2) The registrar of the tribunal and any remaining administrator appointed for a matter involving an interest in land must, within 3 months of the change, revocation or ending of the appointment, advise the registrar of titles of the change, revocation or ending of the appointment.

‘(3) If the registrar of titles receives an advice, the registrar of titles must enter the advice in a file maintained for the purpose.’.

#### **10 Amendment of s 44 (Right of guardian or administrator to information)**

Section 44(6), ‘This section’—

*omit, insert—*

‘Subject to subsection (5), this section’.

#### **11 Amendment of s 50 (Keep property separate)**

Section 50(1), as a penalty—

*insert—*

‘Maximum penalty—300 penalty units.’.

#### **12 Omission of ss 52 and 53**

Sections 52 and 53—

*omit.*

#### **13 Amendment of s 68 (Special health care)**

Section 68(1), ‘may consent’—

*omit, insert—*

‘may, by order, consent’.

#### **14 Amendment of s 76 (Health providers to give information)**

**(1)** Section 76(2) and (3), after ‘who is treating’—

*insert—*

‘, or has treated,’.

**(2)** Section 76(4)—

*omit, insert—*

‘**(4)** The information to be given by a health provider who is treating, or has treated, the adult includes information about—

- (a) the nature of the adult’s condition at the time of the treatment; and
- (b) the particular form of health care being, or that was, carried out; and
- (c) the reasons why the particular form of health care is being, or was, carried out; and
- (d) the alternative forms of health care available for the condition at the time of the treatment; and
- (e) the general nature and effect of each form of health care at the time of the treatment; and
- (f) the nature and extent of short-term, or long-term, significant risks associated with each form of health care; and
- (g) for a health provider who is treating the adult—the reasons why it is proposed a particular form of health care should be carried out.’.

**(3)** Section 76(8), ‘This section’—

*omit, insert—*

‘Subject to subsection (7), this section’.

**(4)** Section 76(9)—

*omit, insert—*

‘(9) This section does not limit—

- (a) a guardian’s right to information under section 44;<sup>3</sup> or
- (b) the tribunal’s right to information under section 130;<sup>4</sup> or
- (c) an attorney’s right to information under the *Powers of Attorney Act 1998*, section 81.<sup>5</sup>’.

## 15 Insertion of new ch 5A

After section 80—

*insert—*

### **‘CHAPTER 5A—CONSENT TO STERILISATION OF CHILD WITH IMPAIRMENT**

#### **‘PART 1—PRELIMINARY**

#### **‘80A Definitions for ch 5A**

‘In this chapter—

“**active party**” see section 80K.<sup>6</sup>

“**alternative forms of health care**” includes menstrual management strategies and alternative forms of sterilisation.

“**chapter 5A application**” means an application under this chapter for consent to the sterilisation of a child<sup>7</sup> with an impairment.

“**child representative**” see section 80L.<sup>8</sup>

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3 Section 44 (Right of guardian or administrator to information)

4 Section 130 (Tribunal to ensure it has all relevant information and material)

5 *Powers of Attorney Act 1998*, section 81 (Right of attorney to information)

6 Section 80K (Who is an “active party”)

7 “**Child**”, if age rather than descendency is relevant, means an individual who is under 18—*Acts Interpretation Act 1954*, section 36 (Meaning of commonly used words and expressions).

8 Section 80L (Child representative must be appointed)

“**confidentiality order**” see section 80G(2).<sup>9</sup>

“**health care**”, of a child, is care or treatment of, or a service or a procedure for, the child—

- (a) to diagnose, maintain, or treat the child’s physical or mental condition; and
- (b) carried out by, or under the direction or supervision of, a health provider.

“**impairment**” means a cognitive, intellectual, neurological, or psychiatric impairment.

“**sterilisation**” see section 80B.

### **‘80B Sterilisation**

‘(1) “**Sterilisation**” is health care of a child who is, or is reasonably likely to be, fertile that is intended, or reasonably likely, to make the child, or to ensure the child is, permanently infertile.

*Examples of sterilisation—*

Endometrial ablation, hysterectomy, tubal ligation and vasectomy.

‘(2) However, sterilisation does not include health care without which an organic malfunction or disease of the child is likely to cause serious or irreversible damage to the child’s physical health.

*Example—*

If the child has cancer affecting the reproductive system and, without the health care, the cancer is likely to cause serious or irreversible damage to the child’s physical health, the health care is not sterilisation.

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9 Section 80G (Open)



## **‘PART 2—CONSENT BY TRIBUNAL**

### **‘80C When tribunal may consent and effect of consent**

‘(1) On an application made under part 3,<sup>10</sup> the tribunal may, by order, consent to the sterilisation of a child with an impairment.

‘(2) The tribunal may consent to the sterilisation only if the tribunal is satisfied the sterilisation is in the best interests of the child.

‘(3) A child’s sterilisation, to which the tribunal has consented, is not unlawful.

### **‘80D Whether sterilisation is in child’s best interests**

‘(1) The sterilisation of a child with an impairment is in the child’s best interests only if—

- (a) one or more of the following applies—
  - (i) the sterilisation is medically necessary;
  - (ii) the child is, or is likely to be, sexually active and there is no method of contraception that could reasonably be expected to be successfully applied;
  - (iii) if the child is female—the child has problems with menstruation and cessation of menstruation by sterilisation is the only practicable way of overcoming the problems; and
- (b) the child’s impairment results in a substantial reduction of the child’s capacity for communication, social interaction and learning; and
- (c) the child’s impairment is, or is likely to be, permanent and there is a reasonable likelihood, when the child turns 18, the child will have impaired capacity<sup>11</sup> for consenting to sterilisation; and
- (d) the sterilisation can not reasonably be postponed; and
- (e) the sterilisation is otherwise in the child’s best interests.

‘(2) Sterilisation is not in the child’s best interests if the sterilisation is—

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10 Part 3 (Tribunal proceedings)

11 See schedule 4 (Dictionary).

- (a) for eugenic reasons; or
- (b) to remove the risk of pregnancy resulting from sexual abuse.

‘(3) In deciding whether the sterilisation is in the child’s best interests, the tribunal must—

- (a) ensure the child is treated in a way that respects the child’s dignity and privacy; and
- (b) do each of the following—
  - (i) in a way that has regard to the child’s age and impairment, seek the child’s views and wishes and take them into account;
  - (ii) to the greatest extent practicable, seek the views of each of the following persons and take them into account—
    - (A) any parent or guardian of the child;
    - (B) if a parent or guardian is not the child’s primary carer, the child’s primary carer;
    - (C) the child representative for the child;
  - (iii) take into account the information given by any health provider who is treating, or has treated, the child; and
- (c) take into account—
  - (i) the wellbeing of the child; and
  - (ii) alternative forms of health care that have proven to be inadequate in relation to the child; and
  - (iii) alternative forms of health care that are available, or likely to become available, in the foreseeable future; and
  - (iv) the nature and extent of short-term, or long-term, significant risks associated with the proposed sterilisation and available alternative forms of health care.

‘(4) The child’s views and wishes may be expressed in the following ways—

- (a) orally;
- (b) in writing;
- (c) in another way including, for example, by conduct.

## ‘PART 3—TRIBUNAL PROCEEDINGS

### *‘Division 1—General*

#### **‘80E Relationship with ch 7**

‘(1) The following provisions of chapter 7<sup>12</sup> apply in relation to a chapter 5A application and a proceeding under this part—

- part 1 (other than sections 101 and 109)
- section 122
- part 3 (other than section 125)
- part 4 (other than sections 128, 129, 134, 138 and 138A)
- part 6 (other than section 158)
- part 8 (other than section 164)
- part 10.<sup>13</sup>

‘(2) The remaining provisions of chapter 7 do not apply in relation to a chapter 5A application or a proceeding under this part.

‘(3) However, this part contains additional provisions that apply in relation to a chapter 5A application and a proceeding under this part.

#### **‘80F Members constituting tribunal**

‘(1) At a hearing of a chapter 5A application, the tribunal must be constituted by 3 members.

‘(2) To the extent practicable, the tribunal must include—

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12 Chapter 7 (Tribunal proceedings)

13 Part 1 (General), sections 101 (Members constituting tribunal) and 109 (Open), section 122 (Withdrawal of application), part 3 (Participation), section 125 (Representative may be appointed), part 4 (Proceeding), sections 128 (Tribunal may stay decision pending hearing), 129 (Interim order), 134 (Report by tribunal staff), 138 (Advice, directions and recommendations), 138A (Tribunal may dismiss frivolous etc. applications), part 6 (Decision), section 158 (Decision and reasons to the adult and each active party), part 8 (Appeal), section 164 (Appellant), part 10 (Other provisions about proceedings)

- (a) the president, a deputy president or a legal member; and
- (b) a member who is a paediatrician; and
- (c) a personal experience member.

‘(3) In this section—

“**paediatrician**” means a specialist registrant in paediatrics under the *Medical Practitioners Registration Act 2001*.

### ‘80G Open

‘(1) Generally, a hearing by the tribunal of a proceeding in relation to a chapter 5A application must be in public.

‘(2) However, if the tribunal is satisfied it is desirable to do so because of the confidential nature of particular information or matter or for another reason, the tribunal may, by order (a “**confidentiality order**”)—

- (a) give directions about the persons who may or may not be present; and
- (b) direct a hearing or part of a hearing take place in private; and
- (c) give directions prohibiting or restricting the publication of information given before the tribunal, whether in public or in private, or of matters contained in documents filed with, or received by, the tribunal; and
- (d) give directions prohibiting or restricting the disclosure to some or all of the active parties in a proceeding of—
  - (i) information given before the tribunal; or
  - (ii) matters contained in documents filed with, or received by, the tribunal; or
  - (iii) subject to subsection (3), the tribunal’s decision or reasons.

‘(3) The tribunal may make a confidentiality order prohibiting or restricting disclosure of the tribunal’s decision or reasons to the child only if the tribunal considers disclosure to the child might be prejudicial to the physical or mental health or wellbeing of the child.

‘(4) The tribunal may not make a confidentiality order that is likely to affect the ability of an active party to form and express a considered view about the proposed sterilisation.

‘(5) The tribunal may make a confidentiality order on its own initiative or on the application of an active party.

‘(6) A person must not contravene a confidentiality order, unless the person has a reasonable excuse.

Maximum penalty for subsection (6)—200 penalty units.

### *‘Division 2—Applications*

#### **‘80H Who may apply**

‘(1) An application may be made to the tribunal for consent to the sterilisation of a child with an impairment.

‘(2) The application may only be made by—

- (a) a parent or guardian of the child; or
- (b) another interested person.<sup>14</sup>

#### **‘80I How to apply**

‘(1) Unless the tribunal directs otherwise, a chapter 5A application must—

- (a) be written; and
- (b) be signed by the applicant; and
- (c) be filed with the tribunal; and
- (d) comply with subsections (2) to (5).

‘(2) The application must include all of the following information—

- (a) the reason for the application, including information about why the proposed sterilisation would, in the applicant’s view, be in the child’s best interests;<sup>15</sup>
- (b) a detailed description of—
  - (i) the child’s impairment; and

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<sup>14</sup> See schedule 4 (Dictionary).

<sup>15</sup> See section 80C (When tribunal may consent and effect of consent).

- (ii) how the child communicates; and
- (iii) the impact of the impairment on the child's capacity for communication, social interaction and learning;
- (c) whether the child has been informed of the application;
- (d) whether the child has indicated the child does not wish to have the proposed sterilisation;<sup>16</sup>
- (e) information about the help, if any, the child might need at the hearing of the application;
- (f) if urgent action is required—an explanation of the urgency;
- (g) any other information in relation to the wellbeing of the child the applicant considers relevant;
- (h) to the best of the applicant's knowledge, information about the following persons—
  - (i) the applicant;
  - (ii) the child;
  - (iii) any parent or guardian of the child;
  - (iv) if a parent or guardian of the child is not the primary carer of the child, the primary carer of the child;
  - (v) a doctor who is treating the child.

**'(3)** The information required under subsection (2)(h) is to enable the tribunal to give notice of the hearing and must consist of—

- (a) each person's name; and
- (b) either—
  - (i) details the applicant knows of the person's address and telephone and facsimile number; or
  - (ii) if the applicant does not know the details—a way known to the applicant of contacting the person.

**'(4)** The application must also include a report by a doctor who is treating the child.

**'(5)** The report must state in detail information about—

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<sup>16</sup> See section 80D(4) (Whether sterilisation is in child's best interests)

- (a) the child's impairment and the impact of the impairment on the child's capacity for communication, social interaction and learning; and
- (b) the proposed sterilisation, including information about—
  - (i) the reason for the proposed sterilisation, including information about why the proposed sterilisation would, in the doctor's view, be in the child's best interests; and
  - (ii) whether the child is, or is reasonably likely to be, fertile; and
  - (iii) the type of proposed sterilisation and a description of the procedure; and
  - (iv) when and where the proposed sterilisation would be carried out; and
  - (v) why the sterilisation can not be reasonably postponed; and
  - (vi) any alternative forms of health care that have proven to be inadequate in relation to the child; and
  - (vii) alternative forms of health care that are available, or likely to become available, in the foreseeable future; and
  - (viii) any risks to the child if the proposed sterilisation is carried out; and
  - (ix) any risks to the child if the proposed sterilisation is not carried out; and
  - (x) the likely long term social and psychological effects of the sterilisation on the child; and
  - (xi) whether the child's impairment is, or is likely to be, permanent.

### **'80J Tribunal advises persons concerned of hearing**

'(1) At least 7 days before the hearing of a chapter 5A application, the tribunal must give notice of the hearing to the child and, as far as practicable, to—

- (a) the applicant; and
- (b) any parent or guardian of the child; and

- (c) if a parent or guardian of the child is not the primary carer of the child, the primary carer; and
- (d) a doctor who is treating the child; and
- (e) the child representative for the child; and
- (f) anyone else the tribunal considers should be notified.

‘(2) However, the tribunal is not required to give notice to the child if the tribunal considers that notice to the child might be prejudicial to the physical or mental health or wellbeing of the child.

‘(3) Also, if the president or presiding member of the tribunal is satisfied urgent action is required, the president or presiding member may, by direction under section 110,<sup>17</sup> direct that the time stated in subsection (1) be reduced.

#### **‘80K Who is an “active party”**

‘Each of the following persons is an **“active party”** for a proceeding in relation to a chapter 5A application—

- (a) the child;
- (b) the applicant;
- (c) any parent or guardian of the child;
- (d) if a parent or guardian of the child is not the primary carer of the child, the primary carer of the child;
- (e) a doctor who is treating the child;
- (f) the child representative for the child;
- (g) a person joined as a party to the proceeding by the tribunal.

#### **‘80L Child representative must be appointed**

‘(1) As soon as possible after a chapter 5A application is made, the tribunal must appoint a person to separately represent the child before the tribunal (a **“child representative”**).

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<sup>17</sup> Section 110 (Procedural directions)



‘(2) A person is eligible for appointment as a child representative only if the person is a lawyer<sup>18</sup> who has experience in dealing with children with an impairment.

‘(3) The child representative must—

- (a) act in the child’s best interests; and
- (b) have regard to any expressed views or wishes of the child; and
- (c) to the greatest extent practicable, present the child’s views and wishes to the tribunal.

‘(4) To ensure the child representative has all the information necessary to act in the child’s best interests, the tribunal may order a person, for example, a parent or a doctor who is treating, or has treated, the child, to give the child representative information about the child.

‘(5) If the tribunal orders a person to give information under subsection (4), the person must comply with the order unless the person has a reasonable excuse.

‘(6) It is a reasonable excuse for a person to fail to give information because giving the information might tend to incriminate the person.

‘(7) Subject to subsection (6), this section overrides—

- (a) any restriction, in an Act or the common law, about the disclosure or confidentiality of information; and
- (b) any claim of confidentiality or privilege, including a claim based on legal professional privilege.

### ***‘Division 3—Proceeding***

#### **‘80M Advice, directions and recommendations**

‘(1) Once a chapter 5A application is made to the tribunal, the tribunal may—

- (a) give the advice or directions about the application it considers appropriate; or

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18 “**Lawyer**” means a barrister, solicitor, barrister and solicitor or legal practitioner of the High Court or the Supreme Court of a State—*Acts Interpretation Act 1954*, section 36 (Meaning of commonly used words and expressions).

(b) make the recommendations it considers appropriate about action an active party should take.

‘(2) If the tribunal gives advice or a direction or makes a recommendation, it may also—

(a) continue with the application; or

(b) adjourn the application; or

(c) dismiss the application.

‘(3) The tribunal may also give leave for an active party to apply to the tribunal for directions about implementing the recommendation.

#### ***‘Division 4—Decision***

##### **‘80N Decision and reasons to each active party**

‘(1) Generally, the tribunal must give a copy of its decision, and any written reasons for its decision, on a chapter 5A application to each active party in the proceeding.

‘(2) Generally, the tribunal must also give a copy of its decision to each person given notice of the hearing of the application.

‘(3) However, a confidentiality order may displace the requirement to give copies of its decision or reasons.<sup>19</sup>

‘(4) The tribunal may also give a copy of its decision or reasons to anyone else as required by a tribunal order.

#### ***‘Division 5—Appeal***

##### **‘80O Appellant**

‘(1) An active party for a proceeding under this part may, by notice, appeal to the court against a tribunal decision in relation to the proceeding.

‘(2) The court’s leave is required for an appeal other than an appeal on a question of law only.

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<sup>19</sup> See section 80G (Open).

‘(3) In this section—

“**tribunal decision**” includes a declaration, order or direction of the tribunal.

## **‘PART 4—OTHER PROVISIONS ABOUT CONSENT TO STERILISATION OF CHILD**

### **‘80P Health providers to give information**

‘(1) The purpose of this section is to ensure the tribunal, in deciding whether to consent to sterilisation of a child, has all the information necessary to make an informed decision.

‘(2) The tribunal may order a health provider who is treating, or has treated, the child to give information to the tribunal, including—

- (a) the type of information mentioned in section 80I(5); and
- (b) any other relevant information.

‘(3) The health provider must comply with the order, unless the health provider has a reasonable excuse.

‘(4) It is a reasonable excuse for a health provider to fail to give information because giving the information might tend to incriminate the health provider.

‘(5) Subject to subsection (4), this section overrides—

- (a) any restriction, in an Act or the common law, about the disclosure or confidentiality of information; and
- (b) any claim of confidentiality or privilege.

### **‘80Q No less protection than if adult gave consent**

‘A person carrying out sterilisation of a child to which the tribunal has consented under this part is not liable for an act or omission to any greater extent than if the child were an adult with capacity to consent and the act or omission happened with the adult’s consent.’

## **16 Amendment of s 82 (Functions)**

(1) Section 82(1)(h) and (i)—

*renumber* as section 82(1)(i) and (j).

(2) Section 82(1)—

*insert*—

‘(h) consenting to the sterilisation of a child with an impairment;<sup>20</sup>’.

## **17 Replacement of s 101 (Members constituting tribunal)**

Section 101—

*omit, insert*—

### **‘101 Members constituting tribunal**

‘(1) At a hearing, the tribunal must be constituted by 3 members unless the president considers it appropriate for the proceeding to be heard by the tribunal constituted by 2 members or a single member.

‘(2) To the extent practicable, the tribunal when constituted by 3 members must include—

- (a) the president, a deputy president or a legal member; and
- (b) a professional member; and
- (c) a personal experience member.

‘(3) To the extent practicable, the tribunal when constituted by 2 members must be constituted by—

- (a) the president, a deputy president or a legal member; and
- (b) a professional member or a personal experience member.

‘(4) When constituted by a single member—

- (a) the tribunal must be constituted by a legal member or a professional member; and
- (b) the single member is taken to be the presiding member.

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20 See chapter 5A (Consent to sterilisation of child with impairment).

‘(5) Despite subsections (2), (3) and (4), when constituted to hear an application for a warrant to enter a place and to remove an adult,<sup>21</sup> the tribunal must be constituted by or include 1 of the following members—

- (a) the president;
- (b) a deputy president who was eligible for appointment under section 86(5)(a);
- (c) a legal member.’.

### **18 Amendment of s 102 (Presiding member)**

Section 102(1), ‘3 members’—

*omit, insert—*

‘2 or 3 members’.

### **19 Amendment of s 105 (Way question of law to be decided)**

Section 105—

*insert—*

‘(5) This section does not apply if the tribunal has referred a question of law to the court for opinion.’.

### **20 Insertion of new s 105A**

After section 105—

*insert—*

#### **‘105A Court’s opinion on question of law**

‘(1) The tribunal may, at any stage of a proceeding and on the terms it considers appropriate, refer a question of law relevant to the proceeding to the court for opinion.

‘(2) The court may—

- (a) hear and decide the question; and

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<sup>21</sup> See chapter 7 (Tribunal proceedings), part 5 (Particular proceedings or orders), division 2 (Entry and removal warrant), particularly section 149 (Issue of entry and removal warrant).

(b) remit the question, with its opinion, to the tribunal.

‘(3) The tribunal must give effect to the court’s opinion.’.

## **21 Amendment of s 108 (Procedural fairness)**

Section 108(2) and (3)—

*omit, insert—*

‘(2) Each active party in a proceeding must be given a reasonable opportunity to present the active party’s case and, in particular, to inspect a document before the tribunal directly relevant to an issue in the proceeding and to make submissions about the document.

‘(3) However—

(a) the tribunal may displace the right to inspect the document in a confidentiality order;<sup>22</sup> and

(b) the tribunal rules may prescribe conditions in relation to inspection of the document.’.

## **22 Amendment of s 110 (Procedural directions)**

Section 110(6) and (7)—

*omit, insert—*

‘(6) If the tribunal engages a person under subsection (2)(b), the tribunal must pay the person an amount prescribed under a regulation.

‘(7) If the tribunal gives a direction under subsection (2)(c) or (e), the tribunal may direct that a party pay for the examination or for the preparation and production of the report or document.

‘(8) In this section—

“**psychologist**” means a general registrant under the *Psychologists Registration Act 2001*.’.

---

22 See section 109 (Open).

### **23 Amendment of s 118 (Tribunal advises persons concerned of hearing)**

(1) Section 118(1), ‘14 days’—

*omit, insert—*

‘7 days’.

(2) Section 118(2) to (7)—

*renumber* as section 118(3) to (8).

(3) Section 118—

*insert—*

‘(2) However, the tribunal is not required to give notice to the adult if any of the following apply—

(a) the tribunal considers that notice to the adult might be prejudicial to the physical or mental health or wellbeing of the adult;

(b) the tribunal considers the adult is evading the hearing;

(c) the adult is—

(i) temporarily or permanently unconscious; or

(ii) unable to be located after the tribunal has made reasonable inquiries into the adult’s whereabouts.’.

(4) Section 118(6) as renumbered, ‘Failure’—

*omit, insert—*

‘Subject to subsection (2), failure’.

### **24 Replacement of s 119 (Who is an “active party”)**

Section 119—

*omit, insert—*

#### **‘119 Who is an “active party”**

‘Each of the following persons is an “active party” for a proceeding in relation to an adult—

(a) the adult;

(b) if the adult is not the applicant—the applicant;

- (c) if the proceeding is for the appointment or reappointment of a guardian, administrator or attorney for the adult—the person proposed for appointment or reappointment;
- (d) any current guardian, administrator or attorney for the adult;
- (e) the adult guardian;
- (f) the public trustee;
- (g) a person joined as a party to the proceeding by the tribunal.’.

## **25 Omission of s 120 (Notice of intention to be an active party)**

Section 120—

*omit.*

## **26 Replacement of s 122 (Withdrawal of application)**

Section 122—

*omit, insert—*

### **‘122 Withdrawal by leave**

‘An application may be withdrawn only with the tribunal’s leave.’.

## **27 Amendment of s 129 (Interim order)**

(1) Section 129(4), ‘28 days’—

*omit, insert—*

‘6 months’.

(2) Section 129(6)—

*renumber* as section 129(7).

(3) Section 129—

*insert—*

‘(6) However, an interim order may be renewed only if the period of the renewal, when added to the period of the original interim order and any previous renewals, is not more than 6 months.’.



## **28 Amendment of s 130 (Tribunal to ensure it has all relevant information and material)**

Section 130—

*insert—*

‘(2) At the tribunal’s request, a person who has custody or control of information or material that the tribunal considers is necessary to make an informed decision about the matter must give the information or material to the tribunal, unless the person has a reasonable excuse.

‘(3) The tribunal may order a person to give information or material to the tribunal.

‘(4) If the tribunal orders a person to give it information or material, the person must comply with the order, unless the person has a reasonable excuse.

‘(5) It is a reasonable excuse for a person to fail to give information or material because giving the information or material might tend to incriminate the person.

‘(6) Subject to subsection (5), this section overrides—

- (a) any restriction, in an Act or the common law, about the disclosure or confidentiality of information; and
- (b) any claim of confidentiality or privilege, including a claim based on legal professional privilege.’.

## **29 Amendment of s 138 (Advice, directions and recommendations)**

Section 138(2)(c)—

*omit.*

## **30 Insertion of new s 138A**

After section 138—

*insert—*

### **‘138A Tribunal may dismiss frivolous etc. applications**

‘(1) The tribunal may dismiss an application at any stage of a proceeding if the tribunal—

- (a) considers the application is frivolous, trivial, or vexatious; or
- (b) is satisfied the application is misconceived or lacks substance.

‘(2) The tribunal may dismiss the application on its own initiative or on the application of an active party.’.

### **31 Insertion of new ch 7, pt 4A**

After section 145—

*insert—*

## **‘PART 4A—DISPUTE RESOLUTION**

### **‘145A Definition for pt 4A**

‘In this part—

“**dispute resolution**” means dispute resolution under this Act.

### **‘145B Purpose of dispute resolution**

‘The purpose of dispute resolution is—

- (a) to identify and reduce the issues in dispute between the active parties to a proceeding; and
- (b) to promote settlement of the issues in dispute.

### **‘145C Referral to dispute resolution**

‘(1) At any stage of a proceeding, the tribunal may, with the president’s approval, refer the active parties to dispute resolution.

‘(2) The tribunal may give directions and make orders about the conduct of a dispute resolution.

*Example of tribunal direction—*

To help a person participate in a dispute resolution, the tribunal may direct that the person be allowed to use the services of an interpreter.

### **‘145D Appointment of mediator**

‘(1) This section applies if the active parties to a proceeding are referred to dispute resolution.

‘(2) The president must appoint a tribunal member, other than the president, as mediator to conduct the dispute resolution.

‘(3) A tribunal member, other than a tribunal member hearing the proceeding, may be appointed as the mediator.

### **‘145E Mediator must disclose conflict of interest**

‘(1) This section applies if—

- (a) a mediator appointed to conduct a dispute resolution becomes aware the mediator has an interest in an issue being considered in the dispute resolution; and
- (b) the interest could conflict with the proper performance of the mediator’s functions for the dispute resolution.

‘(2) The mediator must disclose the issue giving rise to the conflict to the president constituted for the proceeding.

‘(3) After making the disclosure—

- (a) the mediator may disqualify himself or herself; or
- (b) may continue to conduct the dispute resolution only with the agreement of the president and the active parties.

‘(4) In this section—

“**interest**” means direct or indirect financial or other interest.

### **‘145F Procedure at dispute resolution**

‘Subject to any directions given or orders made by the tribunal, the way a dispute resolution is conducted is at the mediator’s discretion.

### **‘145G Evidence from dispute resolution inadmissible**

‘(1) Evidence of anything said or done in the course of a dispute resolution is inadmissible in any proceeding.

‘(2) However—

- (a) evidence of something said or done in the course of a dispute resolution is admissible in a proceeding if all active parties participating in the dispute resolution agree to the admission of the evidence; or
- (b) if an active party participating in a dispute resolution makes a threat against another person, evidence of something said or done in the course of the dispute resolution relevant to the threat is admissible in a proceeding in which the threat is relevant; or
- (c) if 1 of the active parties participating in a dispute resolution admits to emotionally, mentally or physically abusing the adult, evidence of the admission is admissible in a proceeding in which the abuse is relevant.

#### **‘145H Mediator to maintain secrecy**

‘(1) A mediator must not disclose information about a matter coming to the mediator’s knowledge during dispute resolution, unless the mediator has a reasonable excuse.

‘(2) Without limiting what is a reasonable excuse, it is a reasonable excuse to disclose information if—

- (a) the disclosure is permitted under section 145G; or
- (b) the disclosure is made under section 145I.

#### **‘145I Mediator’s report**

‘The mediator must report to the tribunal on the following—

- (a) whether a dispute resolution happened;
- (b) if a dispute resolution happened—
  - (i) when the dispute resolution took place; and
  - (ii) who participated in the dispute resolution; and
  - (iii) whether or not the active parties participating in the dispute resolution reached a settlement of the issues in dispute.

### **‘145J Settlement of issues at dispute resolution**

‘(1) This section applies if the active parties to a proceeding in relation to an application reach a settlement of the issues in dispute during a dispute resolution.

‘(2) The settlement must be—

- (a) in writing; and
- (b) signed by each of the active parties; and
- (c) filed with the tribunal.

‘(3) Without conducting a hearing or further hearing, the tribunal may decide the application in terms of the settlement if the tribunal—

- (a) considers the terms of the settlement are in the best interests of the adult about whom the application was made; and
- (b) could otherwise give a decision in those terms under this or another Act.’.

### **32 Amendment of s 152 (Tribunal authorisation or approval)**

Section 152(2) to (4)—

*omit, insert—*

‘(2) The tribunal may approve an investment as an authorised investment.’.

### **33 Amendment of s 163 (Tribunal may suspend decision pending appeal)**

Section 163(1), before ‘part 6 or 7’—

*insert—*

‘chapter 5A<sup>23</sup> or’.

### **34 Amendment of s 164 (Appellant)**

Section 164(1), ‘may appeal’—

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23 Chapter 5A (Consent to sterilisation of child with impairment)

*omit, insert—*

‘may, by notice, appeal’.

### **35 Insertion of new s 164A**

After section 164—

*insert—*

#### **‘164A Notice of appeal**

‘A notice of appeal must, unless the court orders otherwise—

- (a) be filed in the court registry within 28 days after the date of the tribunal decision appealed from, or the date of the written reasons for the tribunal’s decision, whichever is later; and
- (b) be served as soon as practicable on all active parties to the proceeding.<sup>24</sup>.

### **36 Amendment of s 174 (Functions)**

(1) Section 174(2)(f) and (g)—

*renumber* as section 174(2)(g) and (h).

(2) Section 174(2)—

*insert—*

‘(f) consenting to a forensic examination under section 198A;<sup>25</sup>’.

### **37 Amendment of s 183 (Right to information)**

Section 183(5), ‘However, this section’—

*omit, insert—*

‘Subject to subsection (4), this section’.

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24 See the *Uniform Civil Procedures Rules 1999*, rules 784 (Procedure for appeals to a court from other entities) and 785 (Application of rules to appeals and cases stated under this part).

25 Section 198A (Consent to forensic examination)

### **38 Insertion of new ch 8, pt 3A**

After section 198—

*insert—*

#### **‘PART 3A—POWER TO CONSENT TO FORENSIC EXAMINATION**

##### **‘198A Consent to forensic examination**

‘The adult guardian may consent to the forensic examination of an adult with impaired capacity for consenting to the examination if—

- (a) the adult guardian reasonably considers the examination is in the adult’s best interests; and
- (b) any of the following apply—
  - (i) no guardian or attorney for the adult is appointed or available to consent for the adult to the examination;
  - (ii) any guardian or attorney for the adult who is available has failed to consent;
  - (iii) the adult guardian reasonably considers the adult’s interests would not be adequately protected if the consent of any guardian or attorney for the adult were sought.<sup>26</sup>

*Example of forensic examination that may be in an adult’s best interests—*

A forensic examination to obtain evidence that a criminal offence has been committed against the adult.’

### **39 Insertion of new s 248A**

After section 248—

*insert—*

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<sup>26</sup> See also section 248A (Protection for person carrying out forensic examination with consent).

**‘248A Protection for person carrying out forensic examination with consent**

‘(1) A person carrying out an authorised forensic examination of an adult is not liable for an act or omission to any greater extent than if the adult were an adult with capacity to consent and the act or omission happened with the adult’s consent.

‘(2) An authorised forensic examination is not unlawful.

‘(3) In this section—

**“authorised forensic examination”** of an adult means a forensic examination of the adult, consent to which has been given by—

- (a) a guardian for the adult; or
- (b) the adult guardian under section 198A.’.

**40 Amendment of s 260 (Management by public trustee)**

Section 260(2), from ‘Act—’—

*omit, insert—*

‘Act, the public trustee is taken to be appointed by the tribunal as the person’s administrator for all financial matters.’.

**41 Insertion of new ch 12, pt 6**

Chapter 12, after section 262B—

*insert—*

**‘PART 6—TRANSITIONAL PROVISION FOR  
GUARDIANSHIP AND ADMINISTRATION AND OTHER  
ACTS AMENDMENT ACT 2003**

**‘262C Application of amended s 29 to reviews of existing appointments**

‘Section 29, as in force after the commencement of this section (the **“commencement”**), applies in relation to an appointment of a guardian or administrator made before the commencement.



### **‘262D Effect of contravention of repealed ss 52 and 53**

‘(1) This section applies if, before the commencement of this section (the “**commencement**”), an administrator contravened section 52 or 53<sup>27</sup> as in force before the commencement.

‘(2) For the purposes of deciding whether the administrator is no longer competent,<sup>28</sup> the contravention may be taken into account as a contravention of the Act as if the *Guardianship and Administration Act and Other Acts Amendment Act 2003*, section 12 had not been enacted.

### **‘262E Person given notice of hearing able to become active party**

‘(1) This section applies if before the commencement of this section (the “**commencement**”)—

- (a) a person is given a notice under section 118<sup>29</sup> as in force immediately before the commencement; and
- (b) the person had not, under section 120 as in force immediately before the commencement (the “**repealed section**”),<sup>30</sup> given the tribunal a notice as permitted under the repealed section.

‘(2) After the commencement—

- (a) the repealed section continues to apply in relation to the person as if it had not been repealed; and
- (b) if the person gives the tribunal a notice as permitted under the repealed section, the person is taken to be an active party in the proceeding.

---

27 Section 52 (Unauthorised real estate transaction only with approval) and 53 (Unauthorised security transaction only with approval)

28 See, for example, section 31(5)(d) (Appointment review process), section 155(2)(c) (Suspension of guardianship order or administration order) or section 195(2)(c) (Suspension of attorney’s power).

29 Section 118 (Tribunal advises persons concerned of hearing)

30 Section 120 (Notice of intention to be an active party)

### **‘262F Interim orders**

‘(1) This section applies in relation to an interim order made before the commencement of this section (the “**commencement**”) under section 129.<sup>31</sup>

‘(2) Section 129, as in force immediately before the commencement, continues to apply in relation to the order as if the *Guardianship and Administration Act and Other Acts Amendment Act 2003*, section 27 had not been enacted.’.

### **42 Amendment of sch 2, s 1 (Financial matter)**

Schedule 2, section 1(m) to (q)—

*omit, insert—*

- ‘(m) undertaking a real estate transaction for the adult;
- (n) dealing with land for the adult under the *Land Act 1994* or *Land Title Act 1994*;
- (o) undertaking a transaction for the adult involving the use of the adult’s property as security (for example, for a loan or by way of a guarantee) for an obligation the performance of which is beneficial to the adult;
- (p) a legal matter relating to the adult’s financial or property matters.’.

### **43 Amendment of sch 2, s 2 (Personal matter)**

(1) Schedule 2, section 2(h)—

*renumber* as schedule 2, section 2(i).

(2) Schedule 2, section 2—

*insert—*

- ‘(h) whether to consent to a forensic examination of the adult;<sup>32</sup>’.

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31 Section 129 (Interim order)

32 See also section 248A (Protection for person carrying out forensic examination with consent).

#### 44 Amendment of sch 2, s 13 (Approved clinical research)

Schedule 2, section 13—

*insert—*

‘(1A) However, a comparative assessment of health care already proven to be beneficial is not medical research.

*Examples—*

- a comparative assessment of the effects of different forms of administration of a drug proven to be beneficial in the treatment of a condition, for example, a continuous infusion, as opposed to a once-a-day administration, of the drug
- a comparative assessment of the angle at which to set a tilt-bed to best assist an adult’s breathing.’.

#### 45 Amendment of sch 4 (Dictionary)

(1) Schedule 4, definitions “active party”, “authorised real estate transaction”, “authorised security transaction”, “health care”, “primary carer”, “security transaction” and “sterilisation”—

*omit.*

(2) Schedule 4—

*insert—*

‘ “active party”—

- (a) for chapter 5A,<sup>33</sup> see section 80K;<sup>34</sup> or
- (b) otherwise, see section 119.

“alternative forms of health care”, for chapter 5A, see section 80A.

“chapter 5A application”, for chapter 5A, see section 80A.

“child representative”, for chapter 5A, see section 80L.<sup>35</sup>

“confidentiality order”—

- (a) for chapter 5A, see section 80G(2);<sup>36</sup> or

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33 Chapter 5A (Consent to sterilisation of child with impairment)

34 Section 80K (Who is an “active party”)

35 Section 80L (Child representative must be appointed)

36 Section 80G (Open)

(b) otherwise, see section 109(2).

**“dispute resolution”**, for chapter 7, part 4A,<sup>37</sup> see section 145A.

**“forensic examination”** of an adult means a medical or dental procedure for the adult that is carried out for forensic purposes, other than because the adult is suspected of having committed a criminal offence.<sup>38</sup>

**“health care”**—

(a) for chapter 5A, see section 80A; or

(b) otherwise, see schedule 2, section 5.

**“impairment”**, for chapter 5A, see section 80A.

**“primary carer”**, for a person, means a person who is primarily responsible for providing support or care to the other person.

**“sterilisation”**—

(a) for chapter 5A, see section 80B; or

(b) otherwise, see schedule 2, section 9.’.

## **PART 3—AMENDMENT OF CHILD PROTECTION (INTERNATIONAL MEASURES) ACT 2003**

### **46 Act amended in pt 3**

This part amends the *Child Protection (International Measures) Act 2003*.

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

(1) Schedule 4, definition **“registrar”**—

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<sup>37</sup> Chapter 7 (Tribunal proceedings), part 4A (Dispute resolution)

<sup>38</sup> For procedures in relation to an adult suspected of having committed an indictable offence, see the *Police Powers and Responsibilities Act 2000*, chapter 8 (Powers in relation to persons in custody), part 3 (Medical and dental procedures).

*omit.*

(2) Schedule 4—

*insert—*

‘ **“Children Services Tribunal”** means the Children Services Tribunal established under the *Children Services Tribunal Act 2000*, section 8.<sup>39</sup>

**“Guardianship and Administration Tribunal”** means the Guardianship and Administration Tribunal established under the *Guardianship and Administration Act 2000*, section 81.<sup>40</sup>

**“registrar”**, in relation to a Queensland court, means—

- (a) if the Queensland court is the Supreme Court—a registrar of the Supreme Court; or
- (b) if the Queensland court is the District Court—a registrar, within the meaning of the *District Court of Queensland Act 1967*, of the court; or
- (c) if the Queensland court is the Childrens Court—the person who, under the *Childrens Court Act 1992*, section 27,<sup>41</sup> holds the same office for the Childrens Court as a registrar of the District Court or the clerk of a Magistrates Court; or
- (d) if the Queensland court is a Magistrates Court—the clerk of the court; or
- (e) if the Queensland court is the Children Services Tribunal—the registrar of the Children Services Tribunal; or
- (f) if the Queensland court is the Guardianship and Administration Tribunal—the registrar of the Guardianship and Administration Tribunal.’.

(3) Schedule 4, definition **“Queensland Court”**, paragraph (e)—

*omit, insert—*

- ‘(e) the Children Services Tribunal; or
- (f) the Guardianship and Administration Tribunal.’.

---

<sup>39</sup> *Children Services Tribunal Act 2000*, section 8 (Children Services Tribunal)

<sup>40</sup> *Guardianship and Administration Act 2000*, section 81 (Tribunal)

<sup>41</sup> *Childrens Court Act 1992*, section 27 (Court officials)

## **PART 4—AMENDMENT OF CHILDREN SERVICES TRIBUNAL ACT 2000**

### **48 Act amended in pt 4**

This part amends the *Children Services Tribunal Act 2000*.

### **49 Amendment of s 24 (Registrar of tribunal)**

(1) Section 24(5)—

*omit.*

(2) Section 24(4)—

*renumber* as section 24(5).

(3) Section 24—

*insert—*

‘(4) The registrar may delegate the registrar’s powers under this Act to an appropriately qualified member of the tribunal’s staff.’.

(4) Section 24—

*insert—*

‘(6) In this section—

**“appropriately qualified”**, for a person to whom a power may be delegated, includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of ‘standing’—*

A person’s classification level in the public service.’.

### **50 Amendment of s 28 (Constitution of tribunal for review)**

(1) Section 28(5)—

*omit.*

(2) Section 28(4)—

*renumber* as section 28(5).

(3) Section 28(3)—

*omit, insert—*

‘(3) The tribunal must be constituted by 3 members unless a direction is made under section 80(2)<sup>42</sup> or the president directs otherwise under subsection (4).

‘(4) For a child-related employment review, the president may direct that the tribunal be constituted by 2 members or a single member.’.

(4) Section 28—

*insert—*

‘(6) The tribunal, when constituted by 2 members, must include at least 1 member who is a lawyer of at least 5 years standing.

‘(7) The tribunal, when constituted by a single member, must be constituted by a member who is a lawyer of at least 5 years standing.’.

## **51 Amendment of s 32 (Reconstituting tribunal)**

Section 32(3), ‘28(4)’—

*omit, insert—*

‘28(5)’.

## **52 Amendment of s 79 (Preliminary conferences)**

(1) Section 79(2)(b) to (g)—

*renumber* as section 79(2)(c) to (h).

(2) Section 79(2)—

*insert—*

‘(b) stay the operation of a reviewable decision under section 70;<sup>43</sup>.

## **53 Replacement of s 80 (Single member may constitute tribunal for preliminary conference)**

Section 80—

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42 Section 80 (Constitution of tribunal for preliminary conference)

43 Section 70 (Stay of reviewable decision’s operation)

*omit, insert—*

### **‘80 Constitution of tribunal for preliminary conference**

‘(1) This section applies if the tribunal constituted for a review consists of 3 members and the parties to the review have been required to attend a preliminary conference.

‘(2) The president or presiding member may direct that, for the preliminary conference, the tribunal may be constituted by a single member or 2 members.

‘(3) However, only a tribunal constituted by 3 members may stay the operation of a reviewable decision if the decision maker opposes the staying of the decision’s operation.’.

## **PART 5—AMENDMENT OF POWERS OF ATTORNEY ACT 1998**

### **54 Act amended in pt 5**

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

### **55 Amendment of s 86 (Keep property separate)**

Section 86(1), as a penalty—

*insert—*

‘Maximum penalty—300 penalty units.’.

### **56 Insertion of new s 104**

After section 103—

*insert—*

### **‘104 Protection for person carrying out forensic examination with consent**

‘(1) A person carrying out a forensic examination of a principal to which an attorney for the principal has consented is not liable for an act or



omission to any greater extent than if the act or omission happened with the principal's consent and the principal had capacity to consent.

'(2) A forensic examination, to which the attorney has consented, is not unlawful.'

**57 Amendment of s 123 (Court may dismiss frivolous etc. applications)**

Section 123(1)(a), after 'frivolous'—

*insert*—

' , trivial'.

**58 Amendment of sch 2, s 1 (Financial matter)**

Schedule 2, section 1(n), after 'dealing with land'—

*insert*—

'for the principal'.

**59 Amendment of sch 2, s 2 (Personal matter)**

(1) Schedule 2, section 2(g) and (h)—

*renumber* as schedule 2, section 2(h) and (i).

(2) Schedule 2, section 2—

*insert*—

'(g) whether to consent to a forensic examination of the principal;<sup>44</sup>'.

**60 Amendment of sch 2, s 13 (Approved clinical research)**

Schedule 2, section 13—

*insert*—

'(1A) However, a comparative assessment of health care already proven to be beneficial is not medical research.'

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44 See also section 104 (Protection for person carrying out forensic examination with consent).

*Examples—*

- a comparative assessment of the effects of different forms of administration of a drug proven to be beneficial in the treatment of a condition, for example, a continuous infusion, as opposed to a once-a-day administration, of the drug
- a comparative assessment of the angle at which to set a tilt-bed to best assist a principal's breathing.<sup>45</sup>

## **61 Amendment of sch 3 (Dictionary)**

Schedule 3—

*insert—*

- ‘ **“forensic examination”** of a principal means a medical or dental procedure for the principal that is carried out for forensic purposes, other than because the principal is suspected of having committed a criminal offence.<sup>45</sup>’

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<sup>45</sup> For procedures in relation to a principal suspected of having committed an indictable offence, see the *Police Powers and Responsibilities Act 2000*, chapter 8 (Powers in relation to persons in custody), part 3 (Medical and dental procedures).