



Queensland

# **Guardianship and Administration and Other Acts Amendment Act 2008**

**Act No. 54 of 2008**





## Queensland

# Guardianship and Administration and Other Acts Amendment Act 2008

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Queensland

## **Guardianship and Administration and Other Acts Amendment Act 2008**

**Act No. 54 of 2008**

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**An Act to amend the Guardianship and Administration Act 2000, the Powers of Attorney Act 1998, the Jury Act 1995 and the Status of Children Act 1978 for particular purposes**

**[Assented to 23 October 2008]**

[s 1]

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**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 2008*.

### **2 Commencement**

This Act, other than parts 4 and 5, commences 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 20 (Management plan)**

(1) Section 20, heading—

*omit, insert—*

#### **‘20 Financial management plan’.**

(2) Section 20(1), (2) and (3), before ‘management’—

*insert—*

‘financial’.



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**5 Amendment of s 80A (Definitions for ch 5A)**

Section 80A, definition *confidentiality order*—  
*omit.*

**6 Amendment of s 80E (Relationship with ch 7)**

- (1) Section 80E(1), ‘109’—  
*omit, insert—*  
‘109B’.
- (2) Section 80E(1), ‘(other than section 158)’—  
*omit.*

**7 Omission of s 80G and ch 5A, pt 3, div 4**

Section 80G and chapter 5A, part 3, division 4—  
*omit.*

**8 Amendment of s 98 (Annual report)**

Section 98(1)(a)—  
*omit, insert—*  
‘(a) prepare a report on the tribunal’s operations during the year, including—  
(i) the number and type of limitation orders made by the tribunal; and  
(ii) the number of applications, approvals and orders made under chapter 5B; and’.

**9 Insertion of new ss 99A and 99B**

Chapter 7, part 1, before section 99—  
*insert—*

[s 9]

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## **‘99A Definitions for pt 1**

‘In this part—

*document* includes a photograph, drawing, model or other object.

*health information* for a person means—

- (a) information about the person’s physical or mental condition; or
- (b) information about the person’s health care, including the person’s expressed wishes about the person’s health care; or
- (c) information about the person collected to provide, or in providing, health care to the person; or
- (d) information about the person collected in relation to the donation, or intended donation, of the person’s body parts, organs or bodily substances; or
- (e) genetic information about the person in a form that is, or could be, predictive about the health of the person or of a sibling, relative or descendant of the person.

*significant health detriment* to a person means significant identifiable detriment to any of the following—

- (a) the person’s physical or mental health or wellbeing;
- (b) the person’s health care;
- (c) the person’s relationship with a health provider, including the person’s willingness to fully disclose relevant information to the health provider.

## **‘99B Types of limitation order**

‘A *limitation order* means an order of the following type—

- (a) an adult evidence order;
- (b) a closure order;

- (c) a non-publication order;
- (d) a confidentiality order.’.

## **10 Replacement of ss 108 and 109**

Sections 108 and 109—

*omit, insert—*

### **‘108 Procedural fairness and access**

- ‘(1) The tribunal must observe the rules of procedural fairness.
- ‘(2) Each active party in a proceeding must be given a reasonable opportunity to present the active party’s case and, in particular—
  - (a) to access, before the start of a hearing, a document before the tribunal that the tribunal considers is relevant to an issue in the proceeding; and
  - (b) to access, during a hearing, a document or other information before the tribunal that the tribunal considers is credible, relevant and significant to an issue in the proceeding; and
  - (c) to make submissions about a document or other information accessed under this subsection.
- ‘(3) Each active party in a proceeding, or person the tribunal considers has a sufficient interest in the proceeding, must be given a reasonable opportunity to access, within a reasonable time after a hearing, a document before the tribunal that the tribunal considered credible, relevant and significant to an issue in the proceeding.
- ‘(4) For subsections (2) and (3), something is relevant only if it is directly relevant.
- ‘(5) On request, the tribunal must give access to a document or other information in accordance with this section.
- ‘(6) The tribunal may displace the right to access a document or other information only by a confidentiality order.

[s 10]

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- ‘(7) To remove any doubt, it is declared that the right to access a document or other information is not affected by an adult evidence order, a closure order or a non-publication order.

### ‘109 Open

- ‘(1) A hearing by the tribunal of a proceeding must be in public.
- ‘(2) However, the tribunal may make an adult evidence order or a closure order.

### ‘109A Basis of consideration for limitation order

- ‘(1) In considering whether to make a limitation order, the tribunal must take as the basis of its consideration—
- (a) that each active party in the proceeding is entitled to access a document or other information before the tribunal that is credible, relevant and significant to an issue in the proceeding; and
  - (b) that it is desirable that tribunal hearings be held in public and be able to be publicly reported.
- ‘(2) For subsection (1), something is relevant only if it is directly relevant.

### ‘109B Adult evidence order

- ‘(1) If the tribunal is satisfied it is necessary to avoid serious harm or injustice to a person or to obtain relevant information the tribunal would not otherwise receive, the tribunal may, by order (an *adult evidence order*), obtain relevant information from the adult concerned in the matter at a hearing in the absence of anyone else, including, for example—
- (a) members of the public; or
  - (b) a particular person, including an active party.
- ‘(2) To the extent relevant information is health information for a person, serious harm to the person includes significant health detriment to the person.

- 
- ‘(3) For subsection (1), something is relevant only if it is directly relevant.
  - ‘(4) The tribunal may make an adult evidence order on its own initiative or on the application of an active party.
  - ‘(5) A person must not contravene an adult evidence order, unless the person has a reasonable excuse.

Maximum penalty for subsection (5)—200 penalty units.

### ‘109C Closure order

- ‘(1) If the tribunal is satisfied it is necessary to avoid serious harm or injustice to a person, the tribunal may, but only to the extent necessary, by order (a *closure order*), do either or both of the following—
  - (a) close a hearing or part of a hearing to all or some members of the public;
  - (b) exclude a particular person, including an active party, from a hearing or part of a hearing.
- ‘(2) To the extent the hearing or the part of the hearing concerns health information for a person, serious harm to the person includes significant health detriment to the person.
- ‘(3) The tribunal may make a closure order on its own initiative or on the application of an active party.
- ‘(4) A person must not contravene a closure order, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—200 penalty units.

### ‘109D Non-publication order

- ‘(1) If the tribunal is satisfied it is necessary to avoid serious harm or injustice to a person, the tribunal may, but only to the extent necessary, by order (a *non-publication order*), prohibit publication of information about a tribunal proceeding the publication of which is not prohibited under section 112.

[s 10]

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- ‘(2) To the extent information about a tribunal proceeding is health information for a person, serious harm to the person includes significant health detriment to the person.
- ‘(3) The tribunal may make a non-publication order on its own initiative or on the application of an active party.
- ‘(4) If information about a tribunal proceeding discloses information prepared or provided by an entity, the tribunal may make a non-publication order on the application of the entity.
- ‘(5) If information about a tribunal proceeding discloses health information for the person—
  - (a) without limiting subsection (3) or (4), the tribunal may make a non-publication order on the application of—
    - (i) the person; or
    - (ii) an interested person for the person; and
  - (b) an application may be made by an interested person for the person even after the person’s death.
- ‘(6) If a non-publication order is made prohibiting publication of information about a tribunal proceeding and the information about the tribunal proceeding discloses health information for the person, the person’s death does not affect the non-publication order.
- ‘(7) A person must not contravene a non-publication order, unless the person has a reasonable excuse.

Maximum penalty for subsection (7)—200 penalty units.

### ‘109E Confidentiality order

- ‘(1) If the tribunal is satisfied it is necessary to avoid serious harm or injustice to a person, the tribunal may, but only to the extent necessary, by order (a *confidentiality order*)—
  - (a) withhold from an active party or other person a document, or part of a document, before the tribunal; or

- 
- (b) withhold from an active party or other person other information before the tribunal.
- ‘(2) To the extent a document or part of a document contains health information for a person, or to the extent other information is health information for a person, serious harm to the person includes significant health detriment to the person.
- ‘(3) The tribunal may make a confidentiality order on its own initiative or on the application of an active party.
- ‘(4) Also, the tribunal may make a confidentiality order in relation to a document or other information on the application of the entity who prepared or provided the document or other information.
- ‘(5) A person must not contravene a confidentiality order, unless the person has a reasonable excuse.

Maximum penalty for subsection (5)—200 penalty units.

**‘109F Non-publication or confidentiality order made before hearing**

- ‘(1) In a proceeding, a non-publication order or confidentiality order may be made before a hearing of the proceeding starts.
- ‘(2) However, a non-publication order or confidentiality order made before a hearing is vacated at the start of the hearing.
- ‘(3) Sections 109G to 109I do not apply in relation to a non-publication order or confidentiality order made before the hearing of the proceeding starts.

**‘109G Standing for limitation order**

- ‘(1) Each active party, and any entity that would be adversely affected by a proposed limitation order, has standing to be heard in relation to the making of the order.

*Example—*

A journalist who would be excluded from a hearing by a proposed closure order would be an entity that would be adversely affected by the proposed order.

[s 10]

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- ‘(2) Each active party, and any entity adversely affected by a limitation order, may appeal to the court against the tribunal decision to make the order.

#### **‘109H Making and notifying decision for limitation order**

- ‘(1) The tribunal must give its decision on the making of a limitation order as soon as practicable after hearing any submissions on the making of the order.
- ‘(2) As soon as practicable after making its decision, the tribunal must notify, and give a copy of its decision to—
  - (a) the adult concerned in the matter; and
  - (b) another active party in the proceeding; and
  - (c) each entity heard in relation to the order; and
  - (d) the public advocate.
- ‘(3) The tribunal must also give a copy of its decision to anyone else who requests a copy.
- ‘(4) For subsection (3), it is sufficient for the tribunal to give a copy of the decision in a form that does not contravene section 112.
- ‘(5) Also, within 28 days after making its decision, the tribunal must give the public advocate all information before the tribunal in its consideration of making the limitation order, including, for a confidentiality order, the document or other information being considered as the subject of the confidentiality order.

#### **‘109I Written reasons for limitation order and copy of reasons**

- ‘(1) This section applies if the tribunal decides to make a limitation order.
- ‘(2) The tribunal must give written reasons for its decision to make the limitation order (other than an adult evidence order) and



may give reasons for its decision to make an adult evidence order.

- ‘(3) If the tribunal gives written reasons for its decision, it must give a copy of the reasons within 28 days after making the decision to—
- (a) the adult concerned in the matter; and
  - (b) each other active party in the proceeding; and
  - (c) each entity heard in relation to the order; and
  - (d) the public advocate.
- ‘(4) The tribunal must also give a copy of its written reasons to anyone else who requests a copy.
- ‘(5) For subsection (4), it is sufficient for the tribunal to give a copy of the written reasons in a form that does not contravene section 112.’.

**11 Replacement of s 112 (Publication about proceeding or disclosure of identity)**

Section 112—

*omit, insert—*

**‘112 Publication about proceeding that discloses adult’s identity**

- ‘(1) Generally, information about a guardianship proceeding may be published.
- ‘(2) However, a person must not, without reasonable excuse, publish information about a guardianship proceeding to the public, or a section of the public, if the publication is likely to lead to the identification of the relevant adult by a member of the public, or by a member of the section of the public to whom the information is published.

Maximum penalty—200 penalty units.

*Notes—*

- The publication of information about a tribunal proceeding may also be prohibited by a non-publication order—see section 109D.

[s 11]

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- Also see the *Child Protection Act 1999*, section 189 (Prohibition of publication of information leading to identity of children).

‘(3) Subsection (2) does not apply—

- (a) to publication of information by the adult guardian, or the public advocate, if the adult guardian, or the public advocate, considers it is necessary in the public interest to publish the information in response to a prohibited publication by another entity; or
- (b) to publication of information after the relevant adult has died; or
- (c) to publication of information authorised by an order made under this section.

*Note—*

A non-publication order may prohibit publication of information about a tribunal proceeding disclosing health information about a person even after the person’s death.

‘(4) The court may make an order authorising publication of information about a guardianship proceeding that is otherwise prohibited under subsection (2).

‘(5) The tribunal may make an order authorising publication of information about a tribunal proceeding that is otherwise prohibited under subsection (2).

‘(6) The court or tribunal may make an order under subsection (4) or (5) authorising publication only if the court or tribunal is satisfied the publication is in the public interest or the relevant adult’s interest.

‘(7) In this section—

***prohibited publication*** means publication of information about a guardianship proceeding to the public, or a section of the public, that is likely to lead to the identification of the relevant adult by a member of the public, or by a member of the section of the public to whom the information is published.

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*relevant adult* means the adult concerned in the matter (whether or not the court or tribunal decides the adult is an adult with impaired capacity).’.

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

(1) Section 138(1)—

*insert—*

‘*Note—*

For disobeying a direction of the tribunal, see section 143(d).’.

(2) Section 138(5)—

*omit.*

(3) Section 138(6)—

*renumber* as section 138(5).

## **13 Insertion of new s 138AA**

After section 138—

*insert—*

### **‘138AA Directions to former attorney**

‘(1) At any hearing of a proceeding relating to an adult, the tribunal may give directions to a person who was formerly an attorney for a matter for the adult.

*Note—*

For disobeying a direction of the tribunal, see section 143(d).

‘(2) However—

(a) the directions may only be directions the tribunal considers necessary because of the ending of the person’s appointment as attorney for the matter; and

(b) the directions may relate only to a matter for which the person was appointed as attorney immediately before the appointment ended.

[s 14]

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‘(3) In this section—

*attorney* means—

- (a) an attorney under a power of attorney; or
- (b) an attorney under an advance health directive.’.

## 14 Insertion of new s 143A

After section 143—

*insert—*

### ‘143A Exclusion of disruptive person from tribunal

‘(1) The tribunal may make an order—

- (a) excluding a disruptive person from the place the tribunal is sitting; and
- (b) authorising the tribunal’s staff to use necessary and reasonable help and force to remove a disruptive person from the place the tribunal is sitting.

‘(2) If the tribunal makes an order under subsection (1), the order is taken to be an authorising law for the purposes of the *Police Powers and Responsibilities Act 2000*, section 16.

*Note—*

The *Police Powers and Responsibilities Act 2000*, section 16 (Helping public officials exercise powers under other Acts) provides for a police officer, if a public official asks, to help the public official perform the public official’s functions under an authorising law.

‘(3) If the tribunal makes an order under subsection (1)(b), it is lawful for the tribunal’s staff, and any person helping the tribunal’s staff, to remove the disruptive person from the place the tribunal is sitting, using necessary and reasonable force for the purpose.

‘(4) In this section—

*disruptive person* means a person who the tribunal considers is contravening section 143 at the place the tribunal is sitting.’.

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**15 Replacement of ss 156–158**

Sections 156 to 158—

*omit, insert—*

**‘156 Making and notifying decision**

‘(1) This section does not apply in relation to the making of a limitation order.

*Note—*

In relation to the making of a limitation order, see section 109H.

‘(2) The tribunal must make its decision on a matter involved in a proceeding within a reasonable time after the matter is heard.

‘(3) Subject to section 157, as soon as practicable after making its decision, the tribunal must notify, and give a copy of its decision to, each relevant person.

‘(4) The tribunal must also give a copy of its decision to anyone else who requests a copy.

‘(5) For subsection (4), it is sufficient for the tribunal to give a copy of the decision in a form that does not contravene section 112.

‘(6) When the tribunal gives a person a copy of a decision, the tribunal must also give the person a notice that, if the person is aggrieved by the decision, the person may obtain written reasons for the decision by making a written request to the tribunal within 28 days after the person is given the notice.

‘(7) Subsection (6) does not apply if the tribunal gives the person a copy of its written reasons when the tribunal gives the person a copy of its decision.

‘(8) In this section—

***relevant person*** means—

- (a) the adult concerned in the matter; or
- (b) another active party in the proceeding; or
- (c) another person given notice of the hearing of the application.

[s 15]

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### **‘157 Order postponing giving copy of decision**

- ‘(1) The tribunal may, by order (a *postponement order*), postpone notifying, and giving a copy of its decision to, a particular person under section 156.
- ‘(2) The tribunal may make a postponement order only if the tribunal is satisfied, on reasonable grounds, that making the order is necessary to avoid—
  - (a) serious harm to a person; or
  - (b) the effect of the decision being defeated.
- ‘(3) A postponement order has effect for the period specified in the order.
- ‘(4) The maximum period that may be specified in a postponement order is 14 days.
- ‘(5) A postponement order may be renewed, but only if the tribunal is satisfied there are exceptional circumstances justifying the renewal.

### **‘158 Written reasons for decision**

- ‘(1) This section does not apply in relation to a decision to make a limitation order.

*Note—*

In relation to a decision to make a limitation order, see section 109I.

- ‘(2) If directed by the president to give written reasons for a decision, the tribunal must give written reasons for the decision within 28 days after the later of the following days—
  - (a) the day the decision is made;
  - (b) the day the direction is given.

*Editor’s note—*

*Acts Interpretation Act 1954, section 27B—*

#### **27B Content of statement of reasons for decision**

If an Act requires a tribunal, authority, body or person making a decision to give written reasons for the decision (whether the

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expression 'reasons', 'grounds' or another expression is used), the instrument giving the reasons must also—

- (a) set out the findings on material questions of fact; and
- (b) refer to the evidence or other material on which those findings were based.

- '(3) Also, the tribunal must give written reasons for a decision if a person aggrieved by the decision gives the tribunal a written request for the reasons within 28 days after the person is given notice under section 156(6).
- '(4) If requested under subsection (3), the tribunal must give written reasons for the decision within 28 days after receiving the request.

#### **'158A Copy of reasons to be given**

- '(1) This section does not apply in relation to a decision to make a limitation order.

*Note—*

In relation to a decision to make a limitation order, see section 109I.

- '(2) This section applies if the tribunal gives written reasons for its decision on an application about a matter.
- '(3) The tribunal must give a copy of the written reasons to—
  - (a) the adult concerned in the matter; and
  - (b) each other active party in the proceeding.
- '(4) The tribunal must also give a copy of its written reasons to anyone else who requests a copy.
- '(5) For subsection (4), it is sufficient for the tribunal to give a copy of the written reasons in a form that does not contravene section 112.'

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

Section 164(3), definition *eligible person*—

*omit, insert—*

[s 17]

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*‘eligible person—*

- (a) means—
- (i) the person whose capacity for a matter was under consideration in the proceeding; or
  - (ii) the applicant in the proceeding; or
  - (iii) a person proposed for appointment by the proceeding; or
  - (iv) a person whose power as guardian, administrator or attorney was changed or removed by the tribunal decision; or
  - (v) the adult guardian; or
  - (vi) the public trustee; or
  - (vii) the Attorney-General; or
  - (viii) a person given leave to appeal by the court; and
- (b) for an appeal to the court against a tribunal decision to make a limitation order, also means a party or entity entitled to appeal under section 109G(2).’.

**17 Amendment of s 164A (Notice of appeal)**

Section 164A—

*insert—*

- ‘(2) However, if the tribunal makes 1 or more orders under section 157 postponing notifying, and giving a copy of, its decision for a specified period, the notice of appeal may be filed within 28 days after the later of the following days—
- (a) the last day of the specified period or periods;
  - (b) the date of the written reasons for the tribunal’s decision.’.

**18 Replacement of s 193 (Report after investigation or audit)**

Section 193—



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*omit, insert—*

**‘193 Report after investigation or audit**

- ‘(1) After the adult guardian has carried out an investigation or audit in relation to an adult, the adult guardian must make a written report and give a copy of the report to any person at whose request the investigation or audit was carried out and to every attorney, guardian or administrator, for the adult.
- ‘(2) It is a lawful excuse for the publication of a defamatory statement made in the report that the publication is made in good faith and is, or purports to be, made for this Act.
- ‘(3) The adult guardian must allow an interested person to inspect a copy of the report at all reasonable times and, at the person’s own expense, to be given a copy of the report.
- ‘(4) If a report made by the adult guardian contains information about a person and the adult guardian considers it appropriate to protect the person’s identity, the adult guardian may remove, from the copy of the report to be given or inspected, information likely to result in the person’s identification.
- ‘(5) In this section—  
*attorney* means—
  - (a) an attorney under a power of attorney; or
  - (b) an attorney under an advance health directive.

**‘193A Prohibited use of report after investigation or audit**

- ‘(1) This section applies if—
  - (a) a report contains information about a person but does not identify the person (the *de-identified person*); and
  - (b) another person accesses the report.
- ‘(2) The other person must not, unless the other person has a reasonable excuse, publish information contained in the report to the public, or a section of the public, if the publication is likely to result in the identification of the de-identified person

[s 19]

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by a member of the public, or by a member of the section of the public to whom the information is published.

Maximum penalty—200 penalty units.

- ‘(3) However, subsection (2) does not apply if the other person is a person who has access to the report because of being, or an opportunity given by being—
- (a) a relevant person; or
  - (b) an attorney.

*Note—*

For the confidentiality requirements for a relevant person, see section 249A and for the confidentiality requirements for an attorney, see the *Powers of Attorney Act 1998*, section 74A.

- ‘(4) In this section—

***attorney*** means—

- (a) an attorney under a power of attorney; or
- (b) an attorney under an advance health directive; or
- (c) a statutory health attorney.

***relevant person*** see section 246.’.

## 19 Amendment of s 246 (Definitions for pt 4)

Section 246—

*insert—*

‘***commission*** means the Law Reform Commission established under the *Law Reform Commission Act 1968*.

***confidential information*** includes information about a person’s affairs but does not include—

- (a) information within the public domain unless further disclosure of the information is prohibited by law; or
- (b) statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates; or

(c) information about a guardianship proceeding.

**consultant** means a person engaged under the *Law Reform Commission Act 1968*, section 9.

**relevant person** means—

- (a) a relevant tribunal person; or
- (b) the adult guardian or a member of the adult guardian's staff; or
- (c) a professional consulted or employed by the adult guardian for an investigation; or
- (d) the public advocate or a member of the public advocate's staff; or
- (e) a guardian or administrator; or
- (f) a community visitor or a public service officer involved in the administration of a program called the community visitor program; or
- (g) a member of the commission or its staff, or a consultant, involved in the substituted decision-making review.

**relevant tribunal person** means—

- (a) the president, a deputy president or another tribunal member; or
- (b) the registrar, a member of the tribunal staff or a tribunal expert.

**substituted decision-making review** means the review of particular matters under this Act and the *Powers of Attorney Act 1998* referred to the commission by the Minister on 14 October 2005.

**use**, confidential information, includes disclose or publish.'.

## 20 Replacement of ss 249 and 250

Sections 249 and 250—

*omit, insert—*

[s 20]

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## **‘249 Protected use of confidential information**

- ‘(1) Despite section 249A, a relevant person may disclose confidential information that relates only to a particular person to the particular person.
- ‘(2) If a relevant person gains confidential information because of being a relevant person, or because of an opportunity given by being a relevant person, the person may use the information for the purposes of this Act or as provided under subsection (3).
- ‘(3) Confidential information may be used—
  - (a) if authorised or required under a regulation or another law; or
  - (b) for a proceeding arising out of or in connection with this Act; or
  - (c) if authorised by the person to whom the information relates; or
  - (d) if authorised by the court or the tribunal in the interests of justice; or
  - (e) if necessary to prevent a serious risk to a person’s life, health or safety; or
  - (f) for the purpose of obtaining legal or financial advice; or
  - (g) if reasonably necessary to obtain counselling, advice or other treatment; or
  - (h) in reporting a suspected offence to a police officer or assisting a police officer in the investigation of a suspected offence; or
  - (i) in assisting the adult guardian, the public advocate or a public service officer in the performance of functions under this Act or the *Powers of Attorney Act 1998*; or
  - (j) for the substituted decision-making review.

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**‘249A Prohibited use of confidential information**

‘A relevant person must not use confidential information gained because of being a relevant person, or because of an opportunity given by being a relevant person, other than as provided under section 249, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

**‘250 Disclosure of information about investigations**

- ‘(1) Section 249A does not prevent the adult guardian from disclosing information to the public or a section of the public about an issue the subject of an investigation by the adult guardian if the adult guardian is satisfied the disclosure is necessary and reasonable in the public interest.
- ‘(2) In deciding whether the disclosure is necessary and reasonable in the public interest, the adult guardian must have regard to the following—
- (a) any likely prejudice to the investigation;
  - (b) any need to protect the identity of a complainant or another entity;
  - (c) any circumstances of urgency.
- ‘(3) Also, if the disclosure would include information adverse to an entity and procedural fairness would ordinarily require the adult guardian to give the entity notice of the information and an opportunity to comment on it, the adult guardian—
- (a) must have regard to this fact in deciding whether the disclosure is necessary and reasonable in the public interest; but
  - (b) may decide the disclosure is necessary and reasonable in the public interest despite the entity not being given notice of the information and an opportunity to comment on it.’.

[s 21]

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**21 Insertion of new ch 12, pt 9**

Chapter 12—

*insert—*

**‘Part 9 Transitional provision for  
Guardianship and  
Administration and Other Acts  
Amendment Act 2008**

**‘267 Directions to former attorney**

‘Section 138AA also applies in relation to a person whose appointment as attorney for a matter ended before the commencement of this section.’.

**22 Amendment of sch 4 (Dictionary)**

(1) Schedule 4, definitions *confidentiality order* and *forensic examination*—

*omit.*

(2) Schedule 4—

*insert—*

‘*adult*, for chapter 7 provisions applied under section 80E, means a child with an impairment.

*adult evidence order* see section 109B.

*closure order* see section 109C.

*confidentiality order* see section 109E.

*document*, for chapter 7, part 1, see section 99A.

*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.

*Note—*

For procedures in relation to an adult suspected of having committed an indictable offence, see the *Police Powers and Responsibilities Act 2000*, chapter 17 (Forensic procedures), part 3 (Forensic procedure orders).

***guardianship proceeding—***

- (a) means—
  - (i) a tribunal proceeding; or
  - (ii) an appeal to the court under chapter 7, part 8; or
  - (iii) a referral to the court under section 105A; or
  - (iv) a proceeding in which the court is exercising concurrent jurisdiction with the tribunal; or
  - (v) a proceeding in a court, taken under section 172, for the enforcement of a tribunal order; but
- (b) does not include a proceeding in which the court is exercising the powers of the tribunal under section 245.

***health information***, for chapter 7, part 1, see section 99A.

***limitation order*** see section 99B.

***non-publication order*** see section 109D.

***power of attorney*** means—

- (a) a general power of attorney made under the *Powers of Attorney Act 1998*; or
- (b) an enduring power of attorney; or
- (c) a power of attorney made otherwise than under the *Powers of Attorney Act 1998*, whether before or after its commencement.

***significant health detriment***, for chapter 7, part 1, see section 99A.’.

- (3) Schedule 4, definition *management plan*, before ‘*management*’—

*insert—*

‘*financial*’.

[s 23]

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## **Part 3**

# **Amendment of Powers of Attorney Act 1998**

### **23 Act amended in pt 3**

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

### **24 Replacement of s 74 (Preservation of confidentiality)**

Section 74—

*omit, insert—*

#### **‘74 Protected use of confidential information**

- ‘(1) Despite section 74A, an attorney, including a statutory health attorney, may disclose confidential information that relates only to a particular person to the particular person.
- ‘(2) If an attorney, including a statutory health attorney, gains confidential information because of being an attorney, or because of an opportunity given by being an attorney, the person may use the information for the purposes of this Act or as provided under subsection (3).
- ‘(3) Confidential information may be used—
  - (a) if authorised or required under a regulation or another law; or
  - (b) for a proceeding arising out of or in connection with this Act; or
  - (c) if authorised by the person to whom the information relates; or
  - (d) if authorised by the court or the tribunal in the interests of justice; or
  - (e) if necessary to prevent a serious risk to a person’s life, health or safety; or
  - (f) for the purpose of obtaining legal or financial advice; or
  - (g) if reasonably necessary to obtain counselling, advice or



other treatment; or

- (h) in reporting a suspected offence to a police officer or assisting a police officer in the investigation of a suspected offence; or
- (i) in assisting the adult guardian, the public advocate or a public service officer in the performance of functions under this Act or the *Guardianship and Administration Act 2000*; or
- (j) for the substituted decision-making review.

‘(4) In this section—

**commission** means the Law Reform Commission established under the *Law Reform Commission Act 1968*.

**confidential information** includes information about a person’s affairs but does not include—

- (a) information within the public domain unless further disclosure of the information is prohibited by law; or
- (b) statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates; or
- (c) information about a guardianship proceeding.

**guardianship proceeding** see *Guardianship and Administration Act 2000*, schedule 4.

**substituted decision-making review** means the review of particular matters under this Act and the *Guardianship and Administration Act 2000* referred to the commission by the Minister on 14 October 2005.

**use**, confidential information, includes disclose or publish.

#### ‘74A Prohibited use of confidential information

- ‘(1) An attorney, including a statutory health attorney, must not use confidential information gained because of being an attorney, or because of an opportunity given by being an

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attorney, other than as provided under section 74, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

‘(2) In this section—

*confidential information* see section 74.

*use*, confidential information, see section 74.’

## Part 4    Amendment of Jury Act 1995

### 25          Act amended in pt 4

This part amends the *Jury Act 1995*.

### 26          Replacement of s 53 (Jury not to separate)

Section 53—

*omit, insert—*

### ‘53         Separation of jury

‘(1) After the jury in a criminal trial has been sworn, the jury must not separate until it has given its verdict or has been discharged by the judge.

‘(2) However, a jury may separate in accordance with this section.

‘(3) Before a jury retires to consider its verdict, the judge must allow the jury to separate during a lunch or dinner adjournment to obtain meals.

‘(4) However, if the judge considers that allowing the jury to separate during a lunch or dinner adjournment may prejudice a fair trial, the judge may order the jury not to separate.

‘(5) Subsection (6) applies subject to subsections (3) and (4).

- ‘(6) Also, before a jury retires to consider its verdict, the judge may, if the judge considers that allowing the jury to separate would not prejudice a fair trial, allow the jury to separate—
- (a) during an adjournment of the court; or
  - (b) while proceedings are held in the jury’s absence.
- ‘(7) After the jury has retired to consider its verdict, the judge—
- (a) may allow the jury to separate, or an individual juror to separate from the jury, if the judge considers that allowing the jury or juror to separate would not prejudice a fair trial; and
  - (b) may impose conditions to be complied with by the jurors or juror.
- ‘(8) A juror must comply with any conditions imposed by the judge under subsection (7)(b), unless the juror has a reasonable excuse.
- Maximum penalty—10 penalty units or 2 months imprisonment.
- ‘(9) If a juror separates from the rest of the jury in contravention of a provision of this section, the juror may be punished summarily for contempt of the court.
- ‘(10) The validity of proceedings is not affected if a juror contravenes a provision of this section but, if the contravention is discovered before the verdict is given, the judge may discharge the jury if the judge considers that the contravention appears likely to prejudice a fair trial.’.

**27 Insertion of new s 78**

After section 77—

*insert—*

**‘78 Transitional provision for Guardianship and Administration and Other Acts Amendment Act 2008**

‘Section 53(7) and (8) applies only if a jury retires to consider its verdict on or after the commencement of this section.’.

[s 28]

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## **Part 5** **Amendment of Status of Children Act 1978**

### **28 Act amended in pt 5**

This part amends the *Status of Children Act 1978*.

### **29 Amendment of s 14 (Application)**

(1) Section 14(1), after ‘division 2’—

*insert—*

‘, subdivision 2 and section 18’.

(2) Section 14(1)(a) and (b), ‘or 17’—

*omit, insert—*

‘, 17 or 18’.

(3) Section 14(2), after ‘division 2’—

*insert—*

‘, subdivision 2 or section 18’.

(4) Section 14—

*insert—*

‘(2A) The provisions of division 2, subdivision 3 (other than section 18) apply—

(a) in relation to a pregnancy mentioned in section 18AA or 18AB, whether the pregnancy happened before or after the commencement of the *Guardianship and Administration and Other Acts Amendment Act 2008*, part 5 and whether or not it resulted from a procedure carried out in Queensland; and

(b) in relation to any child born as a result of a pregnancy mentioned in section 18AA or 18AB, whether or not the child was born before or after the commencement of the *Guardianship and Administration and Other Acts Amendment Act 2008*, part 5.

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‘(2B) Nothing in any provision of division 2, subdivision 3 (other than section 18) affects the vesting in possession or in interest of any property that happened before the commencement of the *Guardianship and Administration and Other Acts Amendment Act 2008*, part 5.’.

**30 Insertion of new pt 3, div 2, sdiv 1 hdg**

Part 3, division 2, before section 14A—

*insert—*

**‘Subdivision 1 Interpretation’.**

**31 Insertion of new pt 3, div 2, sdiv 2 hdg and new s 14B**

Part 3, division 2, after section 14A—

*insert—*

**‘Subdivision 2 Fertilisation procedures—married women with husband’s consent**

**‘14B Application of sdiv 2**

‘This subdivision applies if a married woman, in accordance with the consent of her husband, undergoes a fertilisation procedure.’.

**32 Amendment of s 15 (Artificial insemination—Presumption as to status)**

Section 15(2), ‘, in accordance with the consent of her husband,’—

*omit.*

[s 33]

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**33 Amendment of s 16 (Implantation procedure—Presumption as to status where donor semen used)**

Section 16(2), ‘, in accordance with the consent of her husband,’—

*omit.*

**34 Amendment of s 17 (Implantation procedure—Presumption as to status where donor ovum used)**

Section 17(2), ‘, in accordance with the consent of her husband,’—

*omit.*

**35 Insertion of new pt 3, div 2, sdiv 3 hdg and new s 17A**

After section 17—

*insert—*

**‘Subdivision 3 Fertilisation procedures—other married women and unmarried women**

**‘17A Application of sdiv 3**

‘This subdivision applies if—

- (a) a woman who is not married undergoes a fertilisation procedure; or
- (b) a married woman, otherwise than in accordance with the consent of her husband, undergoes a fertilisation procedure.’.

**36 Amendment of s 18 (Donor of semen used in artificial insemination of certain women)**

- (1) Section 18, heading—

*omit, insert—*

**‘18 Artificial insemination’.**

(2) Section 18(1), from ‘who is’ to ‘her husband’—

*omit.*

(3) Section 18(2), after ‘who’—

*insert—*

‘produced the semen and’.

**37 Insertion of new ss 18AA and 18AB**

Part 3, division 2, subdivision 3, after section 18—

*insert—*

**‘18AA Implantation procedure—Presumption as to status where donor semen used**

- ‘(1) A reference in this section to a fertilisation procedure is a reference to the procedure of implanting in the womb of a woman an embryo derived from an ovum produced by her and fertilised outside her body by semen produced by a man who is not her husband.
- ‘(2) If a woman has undergone a fertilisation procedure as a result of which she has become pregnant, the man who produced the semen has no rights or liabilities in relation to any child born as a result of the pregnancy happening because of the use of the semen unless, at any time, he becomes the husband of the child’s mother.
- ‘(3) The rights and liabilities of a man who produced the semen and becomes the husband of the mother of a child born as a result of a pregnancy mentioned in subsection (2) are the rights and liabilities of a father of a child but, in the absence of agreement to the contrary, are restricted to rights and liabilities that arise after the man becomes the husband of the child’s mother.

[s 37]

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**‘18AB Implantation procedure—Presumption as to status where donor ovum used**

- ‘(1) A reference in this section to a fertilisation procedure is a reference to the procedure of implanting in the womb of a woman an embryo derived from an ovum produced by another woman and fertilised by semen produced by a man who is not the husband of the first mentioned woman.
- ‘(2) If a woman has undergone a fertilisation procedure as a result of which she has become pregnant—
- (a) the woman who has undergone the fertilisation procedure is presumed, for all purposes, to have become pregnant as a result of the fertilisation of an ovum produced by her and to be the mother of any child born as a result of the pregnancy; and
  - (b) the woman who produced the ovum from which the embryo used in the procedure was derived is presumed, for all purposes, not to be the mother of any child born as a result of the pregnancy.
- ‘(3) A presumption of law that arises by virtue of subsection (2) is irrebuttable.
- ‘(4) Also, the man who produced the semen has no rights or liabilities in relation to any child born as a result of the pregnancy happening because of the use of the semen unless, at any time, he becomes the husband of the child’s mother.
- ‘(5) The rights and liabilities of a man who produced the semen and becomes the husband of the mother of a child born as a result of a pregnancy mentioned in subsection (2) are the rights and liabilities of a father of a child but, in the absence of agreement to the contrary, are restricted to rights and liabilities that arise after the man becomes the husband of the child’s mother.’.