

GUARDIANSHIP AND ADMINISTRATION BILL 1999

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The objective of the Bill is to establish a comprehensive regime for the appointment of guardians and administrators to manage the personal and financial affairs of adults with impaired capacity in Queensland. The Bill establishes and regulates the operations of the Guardianship and Administration Tribunal, maintains the office of the adult guardian and establishes the office of the public advocate. The Bill also provides for community visitors to safeguard the interests of adults who live or receive services at visitable sites.

Reasons for the Bill

The Bill will implement those aspects of the Queensland Law Reform Commission Report Number 49 “Assisted and Substituted Decisions: Decision-making by and for people with a decision-making disability” released in June 1996 (QLRC Report 49) that were not implemented in the *Powers of Attorney Act 1998*.

QLRC Report 49 was the product of extensive research and consultation with the community in relation to substituted decision-making for persons with impaired capacity in Queensland. That Report found that Queensland legislation failed to provide a simple and inexpensive way of meeting the decision-making needs of adults with impaired capacity.

How the Bill’s Objectives will be Achieved

The objective of the implementation of a substitute decision-making regime in Queensland will be achieved by the establishment of an independent Guardianship and Administration Tribunal which will be empowered to make guardianship and administration appointment orders, and to review such orders on a regular basis.

The Bill recognises the right of an adult with impaired capacity to be involved in decisions that affect the adult's life. It also enables members of an adult's support network to be involved in decision-making by and for the adult.

The provisions establishing the office of the adult guardian will be transferred from the *Powers of Attorney Act 1998* so as to preserve the investigative and protective powers of the adult guardian in relation to persons with impaired capacity. The Bill also establishes an office of the public advocate, which will have the function of providing systematic advocacy for persons with impaired capacity.

Administrative cost to Government of implementation

The Queensland Government has allocated a budget to the proposed Guardianship and Administration tribunal at an average of \$2,234,000 per annum over the next three years.

The Queensland Government has funded the establishment of the public advocate with the budget of \$516,000 per annum over the next three years.

Anticipated costs inherent in the tribunal are the payment of tribunal members to sit at hearings, administrative costs of holding the hearings and reviews and the administrative costs of maintaining a register of tribunal orders

Anticipated costs for the public advocate are the administrative costs associated with the provision of systematic advocacy for persons with impaired capacity.

Consistency with Fundamental Legislative Principles

While the Bill is generally consistent with the fundamental legislative principles set out in section 4 of the *Legislative Standards Act 1992*, particular clauses of the Bill are arguably not consistent with these principles. The inconsistencies that have occurred can be justified on the basis that persons with impaired capacity need protection from neglect, abuse, and exploitation when they are not able to exercise their right to make decisions on their own behalf. In balancing the rights of persons with impaired capacity with the rights of others, the Bill favours the rights of persons with impaired capacity.

The Bill also seeks to balance the right of an adult with impaired capacity to exercise autonomy in decision-making with their right to adequate and appropriate support for decision-making. Clause 11 requires the general principles and the health care principle stated in schedule 1 to be applied by a person or other entity who exercises a power under the Bill for a matter in relation to an adult with impaired capacity.

Does the Bill provide appropriate protection against self-incrimination?

Both the tribunal (clause 135) and the adult guardian (clause 185) have the power to require people to answer questions and produce documents. The Bill makes it an offence to fail to comply with these requirements without reasonable excuse. It is not a reasonable excuse to fail to comply on the ground that compliance might tend to incriminate the person.

Any information obtained under these powers can only be used in the limited circumstances set out in clauses 137(6) and 188(3). These include proceedings about the relevant person's employment, proceedings about the person's professional registration or licence or proceedings about the registration, licence or approval of the person as proprietor or operator of service or facility involved in the care of adults with impaired capacity.

While these provisions curtail the protection against self-incrimination, in the case of the tribunal they are consistent with the recommendations of the QLRC, which considered the removal of privilege against self-incrimination as necessary to protect the interests of people at risk because of impaired capacity. These provisions are also consistent with similar provisions in other States' guardianship legislation. QLRC Report 49, at pages 256 to 259 contains the QLRC's justification for the removal of the privilege.

As the adult guardian has the responsibility to protect adults with impaired capacity from neglect, exploitation and abuse, these powers were also given to the Adult Guardian by the Parliament under section 136 of the *Powers of Attorney Act 1998*.

Adults with impaired capacity will often not be in the position to speak for themselves. As a consequence, individuals directly involved in the care of the adult will be the only source of the information required by the tribunal or the adult guardian. In the absence of a requirement to answer questions and produce documents the work of the tribunal and adult guardian would be easily frustrated. The Bill contains appropriate safeguards in relation to the use of the information obtained in this manner.

Does the Bill have sufficient regard to the rights and liberties of individuals—privacy and confidentiality?

A number of clauses of the Bill (including 44, 76(8), 183(5) and 198(3)) also override other claims of confidentiality or privilege, including doctor/patient privilege and legal professional privilege. The justification for the removal of these privileges in the context of the Bill is the same as that outlined above for the removal of the privilege against self-incrimination.

QLRC Report 49 noted, at page 255:

The Commission remains of the view that while proceedings of the tribunal should be conducted in as informal a manner as possible, it is still essential for the tribunal to have the legal authority necessary to enable it to obtain the information it requires in order to ensure that the interests of people with a decision-making disability are properly safeguarded. Access to the system will prove meaningless if the tribunal does not have the powers it needs to perform its role properly.

Does the Bill have sufficient regard to the rights and liberties of individuals—reports about a person’s criminal history?

Clause 18(2) of the Bill requires the commissioner of the police service to provide the tribunal with a report of a person's criminal history. “Criminal history” is defined to mean convictions, including offences for which the rehabilitation period under section 6 of the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired, and charges. This provision deprives a person whose suitability as a guardian or administrator is under consideration by the tribunal of the benefit of the *Criminal Law (Rehabilitation of Offenders) Act 1986* and may also result in unproven charges being taken into account by the tribunal when making an appointment decision.

Analogous provisions are contained in the *Child Protection Act 1999*. It is necessary that the tribunal have all relevant information at its disposal when deciding whether a person is suitable for appointment as a guardian or administrator. An appointment as guardian may involve decisions about where and with whom the adult lives.

A criminal history will not automatically render a person inappropriate for appointment as a guardian or administrator. However, under clause 15(4) the tribunal is required to have regard to the nature and circumstances of a person’s criminal history.

Clause 108 requires the tribunal to act in accordance with the rules of procedural fairness. Clause 108(2) gives parties the opportunity to inspect documents which the tribunal proposes to have regard in reaching a decision and to make submissions about the document. Accordingly, in those cases where an “expired” conviction or an unproven charge was considered to be relevant by the tribunal, the proposed appointee will have the opportunity to make submissions on this point.

Does the Bill have sufficient regard to the institution of Parliament?

Clause 73 allows health care to be prescribed by regulation as “prescribed special health care” and thus requiring tribunal consent.

Under clause 222, the definition of “visitable site” for the community visitors scheme is a place, other than a private dwelling house, where a consumer lives or receives services that is prescribed under a regulation.

These provisions arguably conflict with the fundamental legislative principle that the exercise of delegated legislative power should be sufficiently subjected to the scrutiny of the Legislative Assembly.

However, clause 73 is consistent with the recommendations of the QLRC and ensures the legislative scheme can respond in a timely manner to ensure the protection of persons with impaired capacity. The QLRC considered that it was necessary for the legislation to include a regulation making power to allow additional forms of treatment to be identified as requiring special consent procedures, with criteria for such treatment also to be prescribed.

The prescription of visitable sites by regulation enables similar flexibility in terms of the services that are to be targeted by community visitors.

Does the legislation confer power to enter premises or other property, only with a warrant issued by a judge or other judicial officer?

Clause 227 gives a community visitor power to enter a visitable site during normal hours (8 a.m. to 6 p.m.) without notice. A community visitor also has the power to inspect, take extracts from, and copy documents at the visitable site.

In order to enter after normal hours the consent of the chief executive is required. Clause 237 requires the chief executive’s annual report to set out particulars of the number of entries outside normal hours.

The exercise of powers by the community visitor in relation to particular consumers is subject to clause 229. That clause requires that the consumer's views and wishes must be taken into account before the community visitor asks questions about the consumer or inspects or copies documents about the consumer.

As private dwelling houses are excluded from the definition of "visitable site", these powers are not considered to be unreasonable. Visitable sites will generally be places that are funded to provide accommodation and other services for adults with impaired capacity or another form of mental or intellectual impairment. In order to achieve the objective of the community visitors scheme to safeguard the interests of consumers at visitable sites, it is necessary that community visitors have reasonable access to the places that the consumers live or receive services, and to documents about a consumer that are kept at these places.

Consultation

The Queensland Law Reform Commission Report was written after extensive public consultation and consideration of over 112 written submissions.

Consultation has also been undertaken during the drafting of the Bill with the Chief Justice of the Supreme Court of Queensland, Queensland Health, the adult guardian, the Manager and Chairperson of the Intellectually Disabled Citizens Council of Queensland, the Department of Premier and Cabinet, Queensland Treasury, Queensland Advocacy Incorporated, Mr John Briton, Public Trustee, the Legal Friend, the Department of Housing, Registrar of Titles, Department of Natural Resources, Queensland Association for Mental Health, Older Persons Advocacy Inc., Queensland Association for Gay and Lesbian Law Reform, the Women Lawyers' Association, the Queensland Bar Association, the Queensland Law Society and the Queensland Council for Civil Liberties.

NOTES OF PROVISION

CHAPTER 1—PRELIMINARY

Clause 1 sets out the short title of the Act as the *Guardianship and Administration Act 1999*.

Clause 2 provides that the Act commences on a date to be fixed by proclamation.

Clause 3 provides that the dictionary for the words used in the Act is in Schedule 4 and that definitions found elsewhere in the Act are signposted in the dictionary.

Clause 4 provides that the Act binds all persons including the State of Queensland and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.

CHAPTER 2—EXPLANATION

Clause 5 acknowledges a number of rights of adults with impaired capacity. This clause reflects clause 4 of the QLRC draft Bill on assisted and substituted decision-making.

Clause 6 provides that this Act seeks to strike a balance between the right of the adult to the greatest possible degree of autonomy in decision-making and their right to adequate and appropriate support for decision-making.

Clause 7 provides that the Act presumes capacity for an adult and provides a scheme to facilitate the exercise of powers for financial and personal matters, in conjunction with the *Powers of Attorney Act 1998*, for persons who need or may need another person to exercise power for them. The Act also provides for the appointment of the public advocate and of community visitors.

Clause 8 provides that the Act is to be read in conjunction with the *Powers of Attorney Act 1998*. If there is inconsistency between the two Acts, the *Guardianship and Administration Act* is to prevail. This ensures that the complete scheme of substituted decision-making as recommended by the QLRC is implemented through the operation of these two Acts.

Clause 9 recognises the range of substituted decision-makers available under the *Powers of Attorney Act 1998* and the *Guardianship and Administration Bill 1999*. These include informal decision-makers who are members of the adult's existing support network. Formal decision-making is undertaken on behalf of persons with impaired capacity by attorneys under enduring powers of attorney or advanced health directives, statutory health attorneys, guardians, administrators, the Guardianship and Administration Tribunal and the Supreme Court

Clause 10 notes the types of matters provided for under the Act, being personal matters, special personal matters, special health matters, and financial matters. A definition of each is found in Schedule 2 of the Act.

Clause 11 requires a person or other entity who performs a function or exercises a power under the Act for a matter in relation to an adult with impaired capacity to apply the general principles and the health care principle stated in Schedule 1 of the Act. Any entity authorised by an Act to make a decision for an adult about prescribed special health care must also apply the general principles and the health care principle. The community is also encouraged to apply and promote the general principles.

CHAPTER 3—APPOINTMENT OF GUARDIANS AND ADMINISTRATORS

Part 1—Making an appointment order

Clause 12 empowers the tribunal to appoint guardians for personal matters and administrators for financial matters for adults provided it is satisfied that the adult has impaired capacity for the relevant matter and, that there is a need for a decision in relation to the matter, or the adult is likely to do something in relation to the matter that is likely to involve unreasonable risk to the adult's health, welfare or property. The tribunal must also be

satisfied that without an appointment the adult's needs will not be adequately met or the adult's interests will not be adequately protected. An appointment can be on terms considered appropriate by the tribunal. Appointment orders can be made on the tribunal's own initiative or on the application of the adult, the adult guardian or an interested person. A definition of "interested person" is provided in the dictionary.

Clause 13 empowers the tribunal to appoint guardians or administrators for matters for a person who is at least 17½ years but not 18 years provided the tribunal is satisfied of the matters set out in the clause. The appointment order can be subject to terms considered appropriate by the tribunal.

Clause 14 sets out eligibility criteria for appointment as a guardian or administrator. Persons are eligible for appointment if the tribunal, having regard to clause 15(1), considers that the person is appropriate for appointment. The clause provides for the appointment of multiple appointees for similar, different or all matters. The clause also provides that where the tribunal does not consider that the impaired capacity is permanent, it must state when it is appropriate for the appointment to be reviewed.

Clause 15 states the matters the tribunal must consider in deciding whether a person is appropriate for appointment as guardian or administrator for an adult. Due to the operation of Clause 11, the tribunal is itself bound by the general principles, and, if relevant, the health care principle.

Clause 16 states that an individual who has agreed to a proposed appointment as guardian or administrator must give certain information to the tribunal before the tribunal makes the appointment order. This advice relates to the appropriateness considerations set out in clause 15 and the eligibility criteria set out in clause 14. The individual also has an obligation to provide advice of any likely conflict of interest.

Clause 17 provides that a guardian or administrator is under a continuing duty after appointment to advise the tribunal of anything which they have not previously advised the tribunal and would be required, under clause 16, to advise if the tribunal were considering whether to make the appointment.

Clause 18 empowers the tribunal to inquire into the appropriateness and competence of appointed or proposed guardians or administrators to perform functions and exercise powers under this Act. The tribunal can obtain a written report about the criminal history of a proposed appointee or a guardian or administrator from the Commissioner of the Police Service.

Clause 19 allows the tribunal to impose other requirements (including a requirement to give security) on a guardian or administrator or a person who is to become a guardian or administrator. The clause requires that that person comply with the requirements.

Clause 20 requires a person who agrees to a proposed appointment as an administrator to give to the tribunal or its nominee for approval, a document stating how the person proposes to manage the administration, unless the tribunal otherwise orders.

Clause 21 provides that where an administrator has been appointed by the tribunal for a matter involving an interest in land, the tribunal must advise the Registrar of Titles who must enter the advice in a file maintained for that purpose. The administrator is required to pay the fee payable to the Registrar of Titles.

Part 2—Relationship between Appointment and Enduring Document

Clause 22 provides that where the tribunal, with the knowledge of the existence of a pre-existing enduring document giving power for a matter to an attorney, appoints a guardian or administrator for the adult for the same matter the attorney can only exercise the power to the extent authorised by the tribunal. This provision does not apply to a health matter, as clause 66 applies to health matters.

Clause 23 provides that where the tribunal has given power for a matter to a guardian or administrator without knowledge of a pre-existing enduring document, the guardian or administrator, if they become aware of the document must notify the tribunal (in writing) which must review the appointment. The power of the guardian or administrator is suspended for that matter pending the outcome of the review.

Clause 24 provides that where an attorney is unaware that the power has been given by the tribunal to a guardian or administrator and exercises the power, the attorney does not incur any liability, either to the adult or to anyone else because of the appointment of the guardian or administrator. Further, a transaction undertaken by the attorney when exercising power for the matter and any person who does not know (or does not have reason to believe) of the appointment of the guardian or administrator, is, in favour of

that person, as valid as if the power had not been given to the guardian or administrator.

Clause 25 provides that if the adult's advance health directive includes a direction about a matter and after this, but without reference to the directive, the tribunal gives power for that matter to a guardian, the guardian, who, without knowing of the direction, exercises power for that matter does not incur any liability either to the adult or to anyone else because of that direction. Further a person who (without knowing, or having reason to believe there is such a direction) acts in reliance of the exercise of power by the guardian does not incur liability, either to the adult or to anyone else because of that direction.

Part 3—Changing or Revoking an Appointment Order

Division 1—Revocation by appointee

Clause 26 sets out the circumstances in which an appointment as guardian or administrator ends automatically. An appointment ends where the guardian or administrator becomes the paid carer or health provider for the adult. Where the guardian or administrator and the adult are married when the appointment is made, an appointment ends if the marriage is dissolved. The appointment also ends if the guardian or administrator dies. An appointment as administrator also ends if the administrator becomes bankrupt or insolvent. Where the appointment ends in this way, any remaining guardians or administrators may exercise the power and, if there are two or more remaining guardians or administrators, they must exercise the power jointly. Other than where the guardian or administrator dies, the former guardian or administrator must advise the tribunal when their appointment has ended under this provision.

Clause 27 provides for the withdrawal of a guardian or administrator with the leave of the tribunal and provides for the appointment of a replacement and the advising of the registrar of titles of any change where the appointment has concerned land.

Division 2—Change or revocation at tribunal review of appointment

Clause 28 provides for the review of appointment orders in accordance with an order of the tribunal, but at least every 5 years.

Clause 29 allows the tribunal to review an appointment at any time on its own initiative or on the application of an interested person.

Clause 30 provides that for the purpose of a periodic review, the tribunal can require the guardian or administrator to advise the tribunal of any of the matters under clause 16 that they had not previously advised the tribunal.

Clause 31 enables the tribunal to conduct the review in the way it considers appropriate. At the end of the review, the tribunal must revoke the appointment order unless it is satisfied it would make an appointment if a new application for an appointment were to be made. If the tribunal is satisfied there are appropriate grounds for an appointment to continue, the tribunal can either continue the order or change the order by changing the terms, removing the appointee or making a new appointment. The tribunal can only remove an appointee if the appointee is no longer competent or another person is more appropriate. An appointee would only be no longer competent if the circumstances stated in the clause exist.

Clause 32 provides that if the tribunal changes or revokes the appointment of a guardian or administrator under an order, the registrar of the tribunal must take reasonable steps to advise the adult and all guardians and administrators under the previous order and the Registrar of Titles where appropriate.

**CHAPTER 4—FUNCTIONS AND POWERS OF
GUARDIANS AND ADMINISTRATORS****Part 1—General Functions and Powers of Guardian or
Administrator**

Clause 33 provides that, unless the tribunal orders otherwise, a guardian is authorised to do anything in relation to a personal matter, and an administrator is authorised to do anything in relation to a financial matter

that the adult could have done if the adult had capacity for the matter when the power is exercised.

Clause 34 provides that a guardian or administrator must apply the general principles. In making health care decisions the guardian must also apply the health care principle. These principles are contained in Schedule 1.

Clause 35 states that a guardian or administrator exercising a power for an adult must exercise the power honestly and with reasonable diligence to protect the adult's interests.

Clause 36 states that a guardian or administrator is required, when exercising a power for an adult, to exercise it as required by the terms of any order by the tribunal.

Clause 37 enables an administrator to enter into a conflict transaction only if the tribunal authorises the transaction, conflict transactions of that type or conflict transactions generally. A "conflict transaction" is defined in this section. An exception is made to *prima facie* exclude transactions where the administrator deals with property held jointly (as either joint tenants or tenants in common) with the adult.

Clause 38 provides that if the tribunal does not order otherwise, two or more guardians or administrators for a matter are appointed as joint guardians or joint administrators for the matter.

Clause 39 provides that guardians or administrators who may make a decision jointly for an adult must exercise the power unanimously. If this is impracticable or impossible, one or more of the guardians or administrators, or another interested person, may apply to the tribunal for directions.

Clause 40 requires two or more persons who are guardian, administrator or attorney for an adult, to consult with each other on a regular basis to ensure the adult's interests are not prejudiced by a breakdown in communication between them. Failure to comply with this requirement, however, does not affect the validity of an exercise of power by an attorney, guardian or administrator.

Clause 41 sets out what is to happen if there is disagreement between guardians, administrators or attorneys about the way a power for a matter other than a health matter should be exercised. If the disagreement cannot be resolved by mediation by the adult guardian any of the guardians, administrators or attorneys (or the adult guardian) can apply for directions to

the tribunal.

Clause 42 sets out what is to happen if there is a disagreement about a health matter. If the disagreement cannot be resolved by mediation by the adult guardian, the adult guardian may exercise the power. When the adult guardian exercises power under this section advice must be given to the tribunal in writing of the details of the disagreement leading to the exercise of power. The disagreement may be about how the power for the health matter should be exercised or may be about who is to be the adult's statutory health attorney.

Clause 43 provides that where a guardian or attorney for a health matter for an adult refuses to make a decision and the refusal is contrary to the health care principle or makes a decision contrary to the health care principle, the adult guardian may exercise power for the matter. When the adult guardian exercises power under this section advice must be given to the tribunal in writing of the details of the disagreement leading to the exercise of power.

Clause 44 provides that a guardian or administrator has a right to all the information that the adult would have been entitled to if the adult had capacity and which is necessary to make, for the adult, an informed exercise of the power. A person with custody or control of the information must disclose the information to the guardian or administrator on request unless they have a reasonable excuse. If the person with custody or control of the information fails to comply with the request the tribunal may, on application by the guardian or administrator, order the person to disclose the information to the guardian or administrator. Where the tribunal has made the order, the person must comply with the order unless they have a reasonable excuse, including self-incrimination. This provision expressly overrides any restriction in an Act or the common law about the disclosure or confidentiality of information and any claim of confidentiality or privilege including legal professional privilege.

Clause 45 provides that where it is necessary or convenient for the exercise of power given to a guardian or administrator, they may execute an instrument with their own signature or seal and do any other thing in their own name. An instrument so executed must be executed in a way showing that they executed as a guardian or administrator for the adult. An instrument executed in this way is as effective as if it had been executed or done by the adult with the adult's signature or with the adult's signature and seal or in the adult's name. This section is subject to section 46 of the

Property Law Act 1974 which deals with the execution of documents by corporations.

Clause 46 provides that if a tribunal order gives a guardian or administrator power to do a thing, they have the power to execute a deed to do the thing.

Clause 47 provides that a guardian or administrator is entitled to reimbursement for reasonable expenses incurred in acting as a guardian or administrator.

Clause 48 provides that if an administrator for an adult is a professional administrator carrying on a business of or including administration under this Act, they are entitled to remuneration from the adult if the tribunal so orders. The level of remuneration is limited to the commission payable to a trustee company under the *Trustee Companies Act 1968* as if the trustee company were an administrator for the adult. The clause does not affect the right of the Public Trustee or a trustee company to remuneration or commission under another Act.

Part 2—Particular Functions and Powers of Administrators

Clause 49 provides that an administrator must keep records and, if required by the tribunal, produce records of dealings and transactions involving the adult's property for inspection at the time the tribunal decides as set out in the clause.

Clause 50 requires an administrator to keep their property separate from the adult's property. This requirement does not apply to property owned jointly by the adult and administrator or affect any other obligation imposed by law.

Clause 51 enables an administrator with power to invest to continue the investments if, when the administrator was appointed, the adult had investments that were not authorised investments,.

Clause 52 provides that an administrator with power to undertake real estate transactions may undertake an unauthorised real estate transaction only with tribunal's approval.

Clause 53 provides that an administrator who has power to undertake security transactions may undertake an unauthorised security transaction only with the tribunal's approval.

Clause 54 gives a limited power to administrators to make gifts (including donations) of the adult's property. A gift or donation of the adult's property can only be made if it is of the nature the adult made when the adult had capacity, or if it is of the nature the adult might reasonably be expected to make. Its value must be reasonable. This power is subject to any tribunal order. This clause also provides that such gifts and donations can be made to the administrator or a charity with which the administrator has a connection.

Clause 55 empowers the administrator to provide for the needs of a dependent of the adult from the adult's estate. Unless the tribunal orders otherwise, such provision must be not more than what is reasonable having regard to all the circumstances and, in particular, the adult's financial circumstances.

Part 3—Other Provisions applying to Guardians and Administrators

Clause 56 provides that if the tribunal gives power for a matter to a guardian or administrator and the power is changed and the guardian or administrator, without knowing or having reason to believe the change has occurred, purports to exercise power for the matter, the guardian or attorney does not incur any liability, either to the adult or anyone else because of the change. A transaction between the guardian or administrator and a person who does not know or have reason to believe the change has occurred is as valid as if the change had not occurred.

Clause 57 provides that if the tribunal appoints successive guardians or administrators (that is, the power of the successive appointee does not commence until the first appointment ends), the previous appointee must tell the next successive appointee when their appointment ends and the next successive appointee must advise the tribunal in writing of the change as soon as practicable.

Clause 58 provides that where a guardian or administrator is prosecuted for a failure to comply with this Chapter, the court may excuse the failure where it considers they have acted honestly and reasonably and ought fairly to be excused for the failure. Time limits are set for certain actions and the clause allows compensation to be paid out of any security taken from the appointee under clause 19.

Clause 59 provides that the tribunal or any court can order a guardian or administrator to compensate the adult or the adult's estate (where the adult has died) for loss caused by their failure to comply with this Act in the exercise of a power. This order can be made even if the guardian or administrator is convicted of an offence in relation to the failure.

Clause 60 allows a person, or the person's personal representative, to apply to the Supreme Court for compensation out of the adult's estate where that person's benefit in the adult's estate under the adult's will, on intestacy or by another disposition taking effect on an adult's death, is lost because of a sale or other dealing with the adult's property by an administrator of the adult. This clause applies even if the person whose benefit is lost is the administrator by whose dealing the benefit is lost. The court may order that the person or the person's estate be compensated as the court considers appropriate but the compensation must not be more than the value of the lost benefits. Provisions of the *Succession Act 1981* (family provision) apply to the application and any order made. This clause reflects section 89 of the *Public Trustee Act 1978*.

CHAPTER 5—HEALTH MATTERS AND SPECIAL HEALTH MATTERS

Part 1—Philosophy and Purpose

Clause 61 sets out the philosophy and purpose of this Chapter. The Chapter seeks to strike a balance between ensuring an adult is not deprived of necessary health care only because of their impaired capacity for a health matter or special health matter, and ensuring health care given to the adult is only for promoting and maintaining the adult's health and wellbeing.

Part 2—Scheme for Health Care and Special Health Care

Division 1—Health care—No consent

Clause 62 sets out the scope of the Division; that is, when health care other than special health care may be carried out without consent.

Clause 63 provides for the provision of urgent health care, other than special health care, without consent. This section covers two situations. Firstly, if a health provider considers that an adult has impaired capacity for the health matter and the health care needs to be carried out urgently to meet imminent risk to the adult's life or health, the health care can be carried out unless the health provider knows that the adult has given a direction in an advance health directive objecting to the health care.

Secondly, if the health provider considers that the adult has impaired capacity for the health matter, and the health care has to be carried out urgently to prevent significant pain or distress to the adult, and it is not reasonably practicable to get consent from a person who may give it under this Act or the *Powers of Attorney Act 1998*, the health care can be carried out. However, this health care cannot be carried out without consent if the health provider knows that the adult objects to the health care unless the adult has minimal or no understanding of what the health care involves and/or why the health care is required, and the health care is likely to cause the adult no distress or only temporary distress that is outweighed by the benefit to the adult.

The details of the carrying out of the urgent health care in both situations must be listed in the adult's clinical record.

Clause 64 allows minor and uncontroversial health care to be carried out without consent for an adult with impaired capacity where the health provider considers the health care is necessary to promote the adult's health and wellbeing, if it is of the type that will best promote the adult's health and wellbeing and is minor and uncontroversial. In addition, the adult must not object to the health care and the health provider should not know or cannot be reasonably expected to know of:

- a decision about the health care made by a person who is able to make the decision under this Act or the *Powers of Attorney Act 1998*; or
- any dispute among persons with a sufficient and continuing interest in the adult about the carrying out of the health care or the capacity of the adult for the health matter.

The health provider must certify the details of this health care in the adult's clinical records.

Division 2—Health care and special health care—consent

Clause 65 provides a hierarchy for dealing with special health matters. Firstly, if an adult has made an advance health directive giving directions about a special health matter, the matter can only be dealt with under that direction. If there is no advance health directive and another entity is authorised to deal with the matter, the matter may only be dealt with by that entity. Finally, if there is no advance health directive or another authorised entity, and the tribunal has made an order about the matter, the matter may only be dealt with under that order.

Clause 66 provides a hierarchy for dealing with health matters for an adult with impaired capacity. If the adult has made an advance health directive giving a direction about a health matter, the matter can only be dealt with under that direction. If there is no advance health directive and the tribunal has appointed one or more guardians for the matter or made an order about the matter, the matter can only be dealt with by the guardian or guardians or under the order.

If there is no advance health directive or tribunal-appointed guardian or tribunal order and the adult has made one or more enduring documents appointing attorneys for the matter, the matter can only be dealt with by the attorney or attorneys for the matter appointed by the most recent enduring document. If there is no advance health directive, tribunal-appointed guardian or tribunal order or attorney appointed under an enduring document, the matter can only be dealt with by the statutory health attorney.

Clause 67 provides that consent for a health matter for an adult with impaired capacity is generally ineffective if the adult objects to the health care. Such objection can be overridden, however, if the adult has minimal or no understanding of what the health care involves and/or why the health care is required and the proposed health care is likely to cause the adult no distress or temporary distress that is outweighed by the benefit to the adult of the proposed health care. This power to override the objection does not however, apply to objections to tissue donation, participation in special medical research or experimental health care or approved clinical research or the withholding or withdrawal of life sustaining measures.

Part 3—Consent to Special Health Care

Clause 68 empowers the tribunal to consent to special health care (other than electroconvulsive therapy or psychosurgery) for an adult. “Special health care” is defined in Schedule 2. This clause also provides that if another entity is authorised by an Act to make a decision about prescribed special health care (that is further special health care to be prescribed by regulation) the tribunal does not have the power to make the decision.

Clause 69 allows the tribunal to consent to the removal of tissue from an adult with impaired capacity for donating to another person only if the tribunal is satisfied of the matters specified. The tribunal cannot consent if the adult objects to the health care. Where the tribunal does consent to the removal of tissue for donation, the tribunal order must specify the proposed recipient.

Clause 70 empowers the tribunal to consent to the sterilisation of an adult with impaired capacity only if the tribunal is satisfied of certain matters. A prerequisite for such consent is that one of the three following scenarios applies:

- the sterilisation is medically necessary; or
- the adult is or is likely to be sexually active and there is no method of contraception that could reasonably be expected to be successfully applied; or

- if the adult is female, she has problems with menstruation and cessation of menstruation, and sterilisation is the only practicable way of overcoming the problems.

The tribunal is required to take into account alternative forms of health care including other sterilisation procedures available or likely to become available in the foreseeable future and the nature and extent of short term, or long term, significant risks associated with the proposed procedure and available alternative forms of health care including other sterilisation procedures. The sterilisation, for which the tribunal has consented, is not unlawful.

Clause 71 provides the tribunal may consent for an adult with impaired capacity for the matter to the termination of the adult's pregnancy only if the tribunal is satisfied that termination is necessary to preserve the adult from serious danger to her life or physical or mental health. Such a termination to which the tribunal has consented for the adult is not unlawful.

Clause 72 provides that the tribunal may consent to participation by an adult with impaired capacity in special medical research or experimental health care either relating to a condition the adult has or to which the adult has a significant risk of being exposed, or to gain knowledge that can be used in the diagnosis and treatment of a condition affecting the adult. The tribunal can only consent to the adult's participation in special medical research or experimental health care to diagnose or treat the adult if it is satisfied of the matters specified in this clause.

The tribunal cannot consent if the adult objects to the research or health care or if in an enduring document the adult has indicated unwillingness to participate in the research or health care.

Clause 73 provides that provided another entity has not been authorised to consent to any prescribed special health care, the tribunal is empowered to do so. Such consent is subject to any matters prescribed under a regulation.

Clause 74 provides that where the tribunal has consented to particular special health care, it may appoint one or more persons who are eligible for appointment as a guardian for the adult and give them the power to consent to the continuation of the special health care or the carrying out on the adult of similar special health care. In exercising a consent power under this section, a guardian must apply the general principles and health care principle set out in Schedule 1.

Part 4—Other Provisions about Health Care

Clause 75 empowers a health provider and anyone acting under their direction or supervision to use the minimum force necessary and reasonable to carry out the health care authorised under this Act.

Clause 76 requires a health provider, on request, who is treating an adult with impaired capacity for a special matter or special health matter to give information to the guardian or attorney who is authorised to exercise the power or, in the case of a special health matter, the tribunal, unless they have a reasonable excuse.

If the health provider does not comply with the request by a guardian or attorney to give the information, they can apply to the tribunal to order the health provider to give the information. If the tribunal so orders, the health provider must provide the information unless they have a reasonable excuse. Self-incrimination is a reasonable excuse. The section overrides any restriction about the disclosure or confidentiality of any information and any claim or confidentiality or privilege. It does not limit the guardian or attorney's right to information under section 44.

Clause 77 provides that to the extent that a health provider complies with the purported exercise of power for a health matter or special health matter by a person who represented to the health provider that they had the right to exercise the power, the health provider is taken to have the adult's consent to the exercise of power. However, this provision does not apply where the health provider knew or could reasonably be expected to have known that the person did not have the right to exercise the power.

Clause 78 makes it an offence for a person who knows they have no right to exercise power for a health matter or special health matter for an adult, or is recklessly indifferent about whether they have that right to exercise the power for a health matter or special health matter or to represent to a health provider for the adult that the person has the right to exercise power for a health matter or special health matter for the adult.

Clause 79 provides that it is an offence for a person to carry out health care of an adult with impaired capacity unless this or another Act provides the health care can be carried out without consent, or consent to the health care is given under this or another Act, or the health care is authorised by an order of the Supreme Court made in its *parens patriae* jurisdiction. This

clause has effect despite section 282 of the *Criminal Code*, which provides a defence for surgical operations.

Clause 80 provides that a person carrying out health care of an adult that is authorised by this or another Act is not liable for an act or omission to any greater extent than if the act or omission happened with the adult's consent and the adult had capacity to consent.

CHAPTER 6—GUARDIANSHIP AND ADMINISTRATION TRIBUNAL

Part 1—Establishment, Functions and Powers

Clause 81 establishes the Guardianship and Administration Tribunal which is stated to consist of the president, deputy presidents and other members.

Clause 82 provides that the tribunal has the functions given to it by this Act and provides an inclusive list of the tribunal's functions under the Act. The clause also provides that the tribunal has other functions given to it by another Act.

Clause 83 provides that the tribunal has the powers given under this Act or another Act and that the tribunal may do all things necessary or convenient to be done for performing the tribunal's functions.

Clause 84 provides that subject to clause 245 (which gives the court power to appoint guardians or attorneys when awarding damages to a person with impaired capacity or sanction settlements of claims for such damages) the tribunal has exclusive jurisdiction for the appointment of guardians and administrators for adults with impaired capacity for matters. The tribunal has concurrent jurisdiction with the Supreme Court for enduring documents and attorneys under enduring documents, and the tribunal has the other jurisdiction given under this Act.

Clause 85 provides that the registrar may perform the functions and exercise the powers of the tribunal in relation to prescribed non-contentious matters. The President may direct the registrar to refer a particular prescribed non-contentious matter to the tribunal. The registrar may also refer a particular prescribed non-contentious matter to the tribunal if they

consider that it would be more appropriate for the tribunal to deal with the matter.

Part 2—Administrative Provisions

Clause 86 provides that the Governor in Council must appoint a president and one or more deputy presidents of the tribunal. The appointments may be on a full-time or part-time basis. The president and deputy presidents are members of the tribunal. Eligibility criteria are given for the position of president and deputy president. The clause also provides that a person ceases to be a tribunal member if they cease to be president or deputy president.

Clause 87 provides that in performing the president's functions and exercising their powers, the president is not under the control or direction of the Minister.

Clause 88 provides that the president can delegate their powers to a deputy president.

Clause 89 provides that the president has a duty to ensure tribunal members are adequately and appropriately trained to enable the tribunal to perform its functions effectively and efficiently.

Clause 90 provides for the appointment of tribunal members other than the deputy presidents or president. Tribunal members are appointed by the Governor in Council. They may be appointed as full-time or part-time members. Eligibility criteria for tribunal members are provided in the clause.

Clause 91 provides that for the selection of persons for recommendation for appointment as president, deputy president or other tribunal member, the Minister must advertise for applications from appropriately qualified persons to be considered for selection.

Clause 92 sets out the duration of appointment of the president, deputy presidents and tribunal members and provides the criteria for their removal.

Clause 93 provides that tribunal members are to be paid the remuneration and allowances decided by the Governor in Council. Where the Act does not state the terms on which the tribunal member holds office, they hold office on terms decided by the Governor in Council.

Clause 94 provides the Minister can give a tribunal member leave of absence on the terms the Minister considers appropriate.

Clause 95 provides that the Governor in Council can appoint persons to act as president, deputy president or other tribunal member when the office is vacant, or if the president, deputy president or other tribunal member is absent from duty, or for another reason is unable to perform the duties of the office.

Clause 96 provides that the registrar of the tribunal and other staff necessary to enable the tribunal to perform its functions are to be appointed under the *Public Service Act 1996*.

Clause 97 provides that the registrar has the powers given under this Act.

Clause 98 provides that the president must give a copy of a report of the tribunal's operations during the year to the Minister not later than 4 months after the close of each financial year. The Minister must table the copy of the report in the Legislative Assembly within 14 sitting days after the Minister receives the report.

CHAPTER 7—TRIBUNAL PROCEEDINGS

Part 1—General

Clause 99 provides that the Governor in Council may make “tribunal rules” about the practices and procedures of the tribunal or the tribunal registry. These rules are subordinate legislation and may specify non-contentious matters that may be dealt with by the registrar. The Minister must consult with the president about any proposed rule changes.

Clause 100 provides that the president is responsible for ensuring the quick and efficient discharge of the tribunal's business. The president can give “presidential directions” about the arrangement of the tribunal's business and the members who are to constitute the tribunal for a particular proceeding, the places the tribunal needs to sit, and the tribunal's procedures. These directions can be of a general or limited application. The president can approve forms for use in tribunal proceedings.

Clause 101 requires that at a hearing the tribunal must be constituted by three members unless the president considers it appropriate for the proceeding to be held by a single member. When the tribunal is constituted by three members it must, to the extent practicable, include the president, a deputy president or a legal member and a professional member and a personal experience member. If the president considers it appropriate for a proceeding to be heard by a single member, the tribunal may be constituted by a legal member or a professional member and the single member is taken to be the presiding member.

Clause 102 provides that where there is a three-member panel and the president is a member of the panel, the president is to preside. If there is no president on the panel but it does include one deputy-president, the deputy president presides. If there is neither or a deputy president on the panel, the tribunal member directed to preside by the president presides.

Clause 103 provides for the situation where a tribunal member has a personal interest, or a direct or indirect financial interest in the matter before the tribunal and such interest would conflict with the proper performance of their duties in the matter.

Clause 104 provides that procedure for a proceeding before a tribunal is within the presiding member's discretion if it is not provided for by this Act, tribunal rules or presidential directions.

Clause 105 provides how questions of law are to be decided in proceedings before the tribunal. If there is no lawyer on the tribunal, the presiding member must adjourn the hearing and obtain advice from a lawyer about the question and decide the question in accordance with the advice.

Clause 106 provides that where there is a division of opinion on a tribunal about a question other than a question of law, the question is decided according to the majority opinion. Otherwise, the question is decided according to the opinion of the presiding member.

Clause 107 provides that the proceedings before the tribunal must be conducted as simply and quickly as the requirements of this Act and an appropriate consideration of the matter before the tribunal allows. The tribunal is not bound by the rules of evidence and may inform itself in a way that it considers appropriate.

Clause 108 provides that the tribunal must observe the rules of procedural fairness. More particularly, each active party in a proceeding must be given a reasonable opportunity to present their case and in particular to inspect a document to which the tribunal proposes to have regard in reaching a decision in the proceeding and to make submissions about the document. However, the right to inspect can be displaced by the tribunal in a confidentiality order.

Clause 109 provides that generally, hearings by the tribunal of a proceeding must be in public. However, if the tribunal is satisfied that 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, give directions about who may or may not be present at a hearing, direct a hearing or part of a hearing take place in private and give directions prohibiting or restricting the publication of information given before the tribunal or documents filed with or received by the tribunal. The tribunal can also give directions prohibiting or restricting the disclosure to some or all of the active parties in a proceeding of information given before the tribunal or matters contained in documents filed with or received by the tribunal. However, the tribunal can make a confidentiality order prohibiting or restricting disclosure of the tribunal's decision or reasons to the adult concerned only if the tribunal considers disclosure of the decision or reasons to the adult might be prejudicial to the physical or mental health or well-being of the adult. Further, in a proceeding to obtain the tribunal's consent to special health care for an adult, the tribunal may not make a confidentiality order that is likely to affect the ability of specified persons to form and express a considered view about the special health care.

Clause 110 provides for the giving of procedural directions, both general and particular.

Clause 111 provides that the tribunal may allow a person to take part in a proceeding by using any technology allowing reasonably contemporaneous and continuous communication between persons taking part in the proceeding. A person who takes part in a proceeding under this clause is taken to have attended in person at the proceeding.

Clause 112 provides that the tribunal may by order permit publication of information about a proceeding if they are satisfied it is in the public interest. The tribunal may also release the identity of a person involved in a proceeding if it is satisfied publication is in the public interest. However, a person must not without reasonable excuse publish information about a

proceeding, or disclose the identity of a person involved in a proceeding unless the tribunal has, by order, permitted the publication or disclosure.

Clause 113 provides that a proceeding before the tribunal or part of a proceeding may be conducted at any place in Queensland.

Clause 114 provides that a fee is not payable to the tribunal for making an application or filing another document under this Act.

Part 2—Applications

Clause 115 provides that an application may be made to the tribunal for a declaration, order, direction, recommendation or advice in relation to an adult about something in or related to this Act or the *Powers of Attorney Act 1998*. The application may be made by the adult concerned or, unless this Act or the *Powers of Attorney Act 1998* states otherwise, another interested person.

Clause 116 provides that unless the tribunal directs otherwise, an application must be written, signed by the applicant and filed with the tribunal. The application must include certain information required by the tribunal to advise the tribunal of the grounds for the application and to enable the tribunal to contact interested persons prior to the hearing.

Clause 117 requires an application for appointment as guardian and administrator to include the proposed appointee's written agreement to the appointment.

Clause 118 provides that the tribunal must give notice of the hearing to the adult concerned and to certain other persons at least 14 days before the hearing. Notice must be given in a way that the tribunal considers most appropriate having regard to the person's needs. However, the adult's failure to understand the notice does not affect its validity. Failure to comply with the requirement to give notice to the adult invalidates the hearing and the tribunal's decision about a matter. However, failure to comply with the requirement to give notice to the other persons does not affect the validity of the hearing or the tribunal's decision.

Clause 119 provides that an “active party” is the adult concerned, the applicant, another person who has been given notice who gives notice to the tribunal of their intention to be an active party in the proceeding, and a person joined as a party to the proceeding by the tribunal.

Clause 120 provides that a person given notice under clause 118 may give notice to the tribunal of their intention to be an active party. This notice must be given at least three business days before the hearing. However, the tribunal may at any time give the person leave to be an active party.

Clause 121 provides that any one appointed as guardian or administrator by an invalid tribunal order who, without knowing (or having reason to believe) of the invalidity purports to use the power given by the order, does not incur any liability either to the adult or to anyone else because of the invalidity. A transaction between a person appointed as guardian or administrator by an invalid tribunal order and a person who does not know of the invalidity, is in favour of the second person, as valid as if a tribunal order were valid.

Clause 122 provides that an applicant may withdraw an application by filing with the tribunal a notice of withdrawal. If the notice is filed, the tribunal must give notice of the withdrawal to each active party.

Part 3—Participation

Clause 123 provides that an active party may appear before the tribunal in person. If the active party is a corporation it may appear through an officer of the corporation.

Clause 124 provides that an active party may with the leave of the tribunal, be represented by a lawyer or agent. A person given notice to attend at a hearing, may with the tribunal’s leave, be represented by a lawyer or agent.

Clause 125 provides that if an adult is not represented in a proceeding before the tribunal or is represented in a proceeding by an agent the president or presiding member considers to be inappropriate to represent the adult’s interest, the president or presiding member may appoint a representative to represent the adult’s views, wishes and interests. A proceeding may be adjourned to allow the appointment to be made.

Clause 126 provides that, if necessary, the tribunal can decide whether the person is an interested person for another person under this Act or the *Powers of Attorney Act*.

Clause 127 provides that each party in a proceeding is to bear their own costs of the proceeding. However, the tribunal may order an applicant to pay an active party's costs and the costs of the tribunal in exceptional circumstances, including, for example, if the tribunal considers the application is frivolous or vexatious.

Part 4—Proceeding

Clause 128 provides that if a person applies to the tribunal in relation to a decision for an adult about a matter, they can also apply for a stay of the decision. The tribunal may stay the decision to secure the effectiveness of the application.

Clause 129 provides for the making of interim orders by the tribunal where it is satisfied that urgent action is required. An interim order can be made without hearing and deciding the proceeding, or otherwise complying with the requirements of the Act. An interim order does not include a consent to a special health matter. The order has effect for the period stated in the order and the maximum period for an interim order is 28 days. Interim orders may be renewed and the “tribunal” under this clause means the tribunal constituted by the president, a deputy president, a legal member or the registrar.

Clause 130 provides that in order to hear and decide a matter in a proceeding, the tribunal must ensure as far as it considers it practicable that it has all the relevant information and material.

Clause 131 provides that if the tribunal considers urgent or special circumstances justify it doing so, it can proceed to decide a matter on the information before it without receiving further information. If all the active parties in a proceeding agree, the tribunal may also proceed to decide a matter in the proceeding on the information before it when the agreement was reached without receiving further information.

Clause 132 provides that the tribunal can proceed in the absence of an active party who has had reasonable notice of proceedings.

Clause 133 enables the tribunal to adjourn a proceeding.

Clause 134 provides that the tribunal may receive in evidence a written report by tribunal staff on a matter in the proceeding and have regard to the report. Generally, if it receives this report, the adult concerned in the proceeding and each active party must be advised of the contents of the report and upon request given a copy. However, the right to be given a copy may be displaced by a confidentiality order.

Clause 135 provides the tribunal can receive evidence on oath or affirmation, by statutory declaration or in another way. Further, in a proceeding, the president or the presiding member for a hearing may by written notice given to the person require them to attend the hearing at a stated time and place to give evidence or produce stated documents or things.

Clause 136 provides that the tribunal may make an order as to fees and expenses to be paid to a witness. These must be no more than the fees and expenses allowable under the *Uniform Civil Procedure Rules 1999* as if the witness were appearing as a witness in the Magistrates Court. “Witness” is defined in this section to mean a person actually in attendance in a proceeding and includes an interpreter.

Clause 137 provides that a person given notice to give evidence or produce documents must not without reasonable excuse fail to attend as required by the notice or fail to continue to attend as required by the presiding member at the hearing until excused from further attendance.

This clause also provides that a witness at a hearing must not without reasonable excuse fail to answer a question the person is required to answer by the presiding member or fail to produce a document or thing the person is required to produce under section 135. The clause provides it is not a reasonable excuse to fail to answer a question or produce a document because doing so might tend to incriminate the person. However, evidence directly or indirectly derived from that person’s answer or from the production of the document is not admissible in any other civil or criminal proceeding except those defined.

Clause 138 provides that once an application about a matter has been made to the tribunal, the tribunal may give advice or directions about the matters it considers appropriate, or make recommendations it considers appropriate about an action an active party should take. If the tribunal gives advice or a direction or makes a recommendation it can also continue,

adjourn or dismiss the application. The tribunal can give leave for an active party to apply to the tribunal for directions about implementing the recommendation. A guardian, administrator or attorney who acts under the tribunal's advice, directions or recommendations is taken to have complied with this Act or the *Powers of Attorney Act* unless the person knowingly gave the tribunal false or misleading information relevant to the tribunal's advice, directions or recommendations. If the tribunal gives directions to a guardian, administrator or attorney, the person must comply with them unless the person has a reasonable excuse.

Clause 139 provides that that the tribunal is a tribunal for the *Criminal Code* section 126 which makes it a crime to fabricate evidence or knowingly make use of fabricated evidence.

Clause 140 creates the offence of stating to the tribunal, registrar or another tribunal staff member anything that the person knows is false and misleading in a material particular.

Clause 141 provides that a person must not give the tribunal registrar or another tribunal staff member a document containing information the person knows is false or misleading in a material particular. However, there is an exception where the person giving the document tells the tribunal registrar or tribunal staff member to the best of their ability how the document is false, misleading or incomplete and, if the person has in his possession or can reasonably obtain the correct information, gives the correct information.

Clause 142 provides that a person must not improperly influence a person in relation to their participation in a proceeding whether as a tribunal member, an active party or a witness to act other than in the course of their duty in relation to the proceedings.

Clause 143 sets out the conduct which will amount to contempt of the tribunal.

Clause 144 provides that a person must not obstruct or improperly influence the conduct of a tribunal proceeding or attempt to do so.

Clause 145 provides a tribunal member, in the performance of their duties, with the same protection and immunity as a Supreme Court Judge. Further, a person representing a party in a proceeding under this Act or the *Powers of Attorney Act* is given the same protection and immunity as a barrister appearing for a party in a proceeding in the Supreme Court.

Further, a person given a notice to produce documents, give evidence under clause 135, or who appears at the proceeding under this Act, or the *Powers of Attorney Act*, has the same protection and immunity as a witness in a proceeding in the Supreme Court.

Part 5—Particular Proceedings or Orders

Division 1—Declaration about Capacity

Clause 146 gives the tribunal the power to make declarations about an individual's capacity for a matter. This can be done on the tribunal's own initiative or on the application of the individual or another interested person. Further, in deciding whether an individual is capable of communicating the decision in some way, the tribunal is required to investigate the use of all reasonable ways of facilitating communications including, for example, symbol boards or signing.

Clause 147 provides that a declaration about whether an adult had capacity to enter into a contract is, in a subsequent proceeding in which the validity of the contract is an issue, evidence about capacity.

Division 2—Entry and Removal Warrants

Clause 148 provides for an application by the adult guardian to the tribunal for a warrant to enter a place and remove an adult. Such an application must be sworn and state the grounds on which the warrant is sought. The warrant can be issued without complying with section 116 and 118, and the warrant can be issued without notice having been given to the adult or to any other person. The tribunal may refuse to consider the application until the adult guardian gives the tribunal all the information it needs about the application in the way that the tribunal requires.

Clause 149 enables the tribunal to issue an entry and removal warrant if it is satisfied there are reasonable grounds for suspecting there is immediate risk of harm because of neglect (including self neglect), exploitation or abuse to an adult with impaired capacity for a matter. The clause provides what must be stated in the warrant.

Clause 150 provides that the adult guardian may require the occupier of the place or another person at the place to help in the exercise of the adult guardian's powers under the warrant. When making the request, the adult guardian must warn that it is an offence to fail to comply with the requirement unless they have a reasonable excuse.

Clause 151 provides that as soon as practicable after the adult has been removed under the entry and removal warrant, the adult guardian must apply to the tribunal for orders that the adult guardian considers appropriate.

Division 3—Miscellaneous

Clause 152 empowers the tribunal to authorise conflict transactions, approve various other transactions and approve management plans.

Clause 153 provides that the tribunal may order an administrator or attorney for a financial matter to file in the tribunal and serve on the applicant (being an applicant for such an order) a summary of receipts and expenditure for the adult or more detailed accounts of dealings and transactions for the adult. The tribunal can also order the appointment of an auditor to audit the accounts and to give a copy of the auditor's report to the tribunal and the applicant. Such an order can be made by the tribunal on its own initiative or on the application of the adult or another interested person. The tribunal may make an order about payment of the auditor's costs. In this section an attorney means an attorney under an enduring of power of attorney.

Clause 154 provides that the tribunal can ratify an exercise of power or approve a proposed exercise of power for a matter by an informal decision-maker for an adult with impaired capacity for the matter. An informal decision-maker for a matter for an adult is a person who exercises power for the matter for the adult and is a member of their support network, and is not an attorney under an enduring document, administrator or guardian for the adult for the matter.

The tribunal can only approve or ratify the exercise of power if it considers that the informal decision-maker proposes to act or has acted honestly and with reasonable diligence and the matter is not a special personal matter or a special health matter.

Clause 155 provides the tribunal with the power to suspend the operation of all or some of the powers of the guardian or an administrator for an adult if it suspects on reasonable grounds that the appointed person is not competent.

A suspension order can be made without a hearing or otherwise complying with the requirements of this Act. Suspension can be for no longer than 3 months. During the suspension the adult guardian becomes the guardian for the adult and the Public Trustee becomes the administrator for the adult.

Part 6—Decision

Clause 156 provides that the tribunal must give its decisions within a reasonable time after the matter is heard.

Clause 157 provides that if the tribunal is directed by the president to give written reasons, the reasons must be given within 28 days after the giving of the decision.

The tribunal is also required to give written reasons for a decision if a person aggrieved by the decision gives the tribunal a written request for reasons within 28 days after the person has been given notice under this section. The tribunal must also give that person notice of their right to obtain reasons.

Clause 158 provides that generally the tribunal must give copy of its decisions and any written reasons for the decision on an application about a matter to the adult concerned in the matter and each active party in the proceedings. The tribunal must also give a copy of its decision to each person given notice of the hearing of the application. These general requirements are however subject to any confidentiality order which can displace the requirement. The tribunal may also give a copy of its decision or reasons to anyone else as required by a tribunal order.

Clause 159 provides that a document purporting to be certified by the registrar to be a copy of an order or decision of the tribunal is evidence of the order or decision.

Part 7—Review of Registrar’s Decision

Clause 160 provides that any person aggrieved by a decision by the registrar may apply to the tribunal to review the matter. This must be done within 28 days after the day the person becomes aware of the decision. However, the tribunal may at any time give the person leave to apply for a review. This clause provides that a review must be undertaken before appeal rights can be exercised under Part 8.

Clause 161 allows the tribunal to review a matter in which the registrar has made a decision, either on its own initiative or upon application. Unless the tribunal orders otherwise, the tribunal must conduct the review on the evidence which was considered by the registrar. When conducting a review, the tribunal must be constituted by a single member who is either the president or a legal member.

Clause 162 provides that unless the registrar orders otherwise a decision of the registrar remains in force until a decision is made at the review, unless the decision is stayed in order to secure the effectiveness of a review.

Part 8—Appeal

Apart from this appeal process, the tribunal has the power to review its own appointment orders under clause 29 on its own initiative or upon the application of an interested person

Clause 163 enables the tribunal making the decision under Part 6 or 7 to stay the decision to secure the effectiveness of an appeal against a tribunal decision.

Clause 164 provides that an eligible person may appeal against a tribunal decision to the Supreme Court. The Supreme Court’s leave is required for an appeal except for an appeal on a question of law only. A tribunal decision includes a declaration or direction of the tribunal. An “eligible person” is defined in the clause.

Clause 165 provides that each party to an appeal is to bear their own costs of the appeal. However, the Supreme Court can order a party to an appeal to pay the costs of another party if the Supreme Court considers that the appeal was frivolous or vexatious or the party has incurred costs because the appellants defaulted in the procedural requirements.

Part 9—Recognition of Order Made Under Another Law

Clause 166 provides that in this part a “notified law” is an Act or law of a foreign jurisdiction notified under section 167. Also, a “registrable order” means an order under a notified law.

Clause 167 provides that if the Minister considers an Act of the Commonwealth or another State, or a law of a foreign jurisdiction allows an order to be made that this similar to an order that may be made under this Act or the *Powers of Attorney Act 1998*, the Minister may notify the Act or law by Gazette Notice.

Clause 168 provides that a person may apply to the tribunal to register a registrable order.

Clause 169 provides that the tribunal may register a registrable order only if the original order or a certified copy of the order has been filed with the tribunal.

Clause 170 provides that the effect of registration of a registrable order is that the order is treated, other than for an appeal, as if it were an order made by the tribunal.

Clause 171 provides that as soon as reasonably practicable after registering the registrable order, the tribunal must advise the original entity that made the order of the registration. Further, as soon as reasonably practicable after the tribunal takes any subsequent action about the order including, for example, making a further order the tribunal must advise the entity that originally made the order of the action.

Part 10—Other Provisions about Proceedings

Clause 172 provides that a tribunal order other than an order entitling the person to payment, may be filed in a court having jurisdiction to make the order. Further, a tribunal order entitling a person to payment may be filed in a court having jurisdiction for the recovery of debts up to the amount remaining unpaid. Proceedings for the enforcement of a tribunal order may be taken as if the tribunal order were an order of the court in which the tribunal order is filed.

CHAPTER 8—ADULT GUARDIAN

Part 1—Establishment, Functions and Power

Clause 173 provides that there must be an adult guardian.

Clause 174 sets out the role of the adult guardian as protecting the rights and interests of adults who have impaired capacity. Further, the adult guardian has the functions given under this Act or another Act including protecting adults who have impaired capacity from neglect, exploitation, or abuse and investigating complaints and allegations about actions by an attorney or guardian or administrator or another person acting or purporting to act under a power of attorney, advance health directive or order of the tribunal made under this Act.

Clause 175 provides that the adult guardian has the powers given under this Act or another act and may do all things necessary or convenient to be done for performing the adult guardian's functions.

Clause 176 provides that in performing the adult guardian's functions and exercising the adult guardian's powers, the adult guardian is not under the control or direction of the Minister.

Clause 177 allows the adult guardian to delegate the adult guardian's powers, other than a power to give notice to attend and give evidence or produce documents or require the payment of costs, to an appropriately qualified member of the adult guardian's staff.

The adult guardian is also empowered to delegate the mediation and conciliation powers to an appropriately qualified person. A person exercising such powers must, if asked, produce evidence of the delegation. Where the adult guardian has powers for a personal matter for an adult, the adult guardian may delegate that power to make day-to-day decisions about the matter to listed persons.

Clause 178 empowers the adult guardian to consult with, employ and remunerate medical, legal, accounting or other professionals the adult guardian considers necessary. The adult guardian can receive reimbursement from an adult for remuneration paid concerning the adult.

Clause 179 provides that the adult guardian may give advice to an attorney, guardian or administrator and by written notice, make an attorney, guardian or administrator subject to the adult guardian's supervision for a reasonable period if the adult guardian believes, on reasonable grounds, it is necessary in the adult's interests. An attorney, guardian or administrator may apply to the tribunal about the adult guardian's advice, notice or requirement and the tribunal may make the order it considers appropriate. In this section "attorney" means an attorney under an enduring document or statutory health attorney.

Part 2—Investigative Powers

Clause 180 provides the adult guardian may investigate a complaint or allegation that an adult with impaired capacity for a matter is being or has been neglected, exploited or abused or has inappropriate or inadequate decision-making arrangements.

Clause 181 provides that the adult guardian may delegate his powers to investigate to appropriately qualified persons. However, the powers to examine witnesses under section 185(1) and order payment of costs under section 189 cannot be delegated.

Clause 182 provides that the adult guardian may, by written notice, require an enduring attorney who has power for a financial matter, or an administrator, to file with the adult guardian (by a stated date) a summary of receipts and expenditure or more detailed accounts of dealings and transactions for the adult for a specified period or, that these accounts be audited by an auditor appointed by the adult guardian. The stated date must give the person reasonable time to comply with the notice. The adult guardian can appoint an auditor and have the summary or the accounts audited.

Clause 183 provides that the adult guardian has a right to all information necessary to investigate a complaint or allegation or to carry out an audit. The adult guardian may by written notice given to a person who has custody or control of the information require the person to disclose the information to the adult guardian and if the person is an attorney or an administrator and the information is contained in a document—to give the document to the adult guardian and if the person is not an attorney or administrator and the

information is contained in a document—to allow the adult guardian to inspect the document and take a copy of it. The person must comply with the notice unless they have a reasonable excuse.

Clause 184 provides that in performing the adult guardian’s functions the adult guardian may by written notice require a person to give information by statutory declaration. To fail to comply with this requirement is an offence unless the person has a reasonable excuse.

Clause 185 provides that in performing the adult guardian’s functions, the adult guardian can give written notice requiring a person to attend before the adult guardian at a stated time or place to give information and answer questions or produce stated documents or things. Failure to comply with the notice without a reasonable excuse is an offence.

Clause 186 provides that where a person fails to comply with a notice under section 185 without a reasonable excuse, a Magistrates Court, at the request of the adult guardian, can issue a subpoena requiring the attendance of the person before the court. The *Uniform Civil Procedure Rules 1999* other than Rules 417, 418 and 420 apply in relation to the subpoena. The court can require the person to take an oath or affirmation. If the person attends in answer to the subpoena the adult guardian may examine the person. “Subpoena” is defined in this section as a subpoena for production, or subpoena to give evidence, or a subpoena for production and to give evidence.

Clause 187 provides that if a person is subpoenaed under clause 186 and attends before the Magistrates Court and without reasonable excuse refuses to be sworn or to affirm or refuses to answer a question put to the person or fails to give an answer to the court satisfaction, the court may treat the person’s refusal or failure as a contempt of court.

Clause 188 applies to a person who fails to comply with a notice under 185(1) or who is summoned under 186 and attends the Magistrates Court but refuses to answer a question put to him or fails to give an answer to the court’s satisfaction. The clause provides self-incrimination is not a reasonable excuse for failing to comply with the notice or for refusing to answer a question or failing to give an answer to the court’s satisfaction. Evidence directly or indirectly obtained from that person’s answer which may incriminate them can only be used in the limited circumstances outlined in the clause.

Clause 189 provides that if the adult guardian undertakes an investigation concerning a financial matter, or an audit at the request of a person and the adult guardian is satisfied the request was frivolous or vexatious or otherwise without good cause, the adult guardian may, by written notice, require the person to pay what the adult guardian considers to be appropriate costs of the investigation or audit. Further if the adult guardian undertakes an investigation concerning a financial matter or an audit, and the adult guardian considers the attorney or administrator concerned has contravened this Act or the *Powers of Attorney Act 1998*, the adult guardian may by written notice require the attorney or administrator to personally pay to the adult guardian the costs of the investigation or audit that the adult guardian considers appropriate. The adult guardian may also by written notice require a person who has requested an investigation or audit to pay to the adult guardian an amount as security that the adult guardian considers appropriate. A person given notice under this section may apply to the tribunal and the tribunal may make the order it considers appropriate.

Clause 190 provides that a person must not state anything to the adult guardian the person knows is false or misleading in a material particular. It is enough for a complaint for this offence to state that the statement made was “false or misleading” to the person’s knowledge without stating which.

Clause 191 provides that a person must not give to the adult guardian a document containing information the person knows is false or misleading in a material particular. A person is excused from liability if, when giving the document, they tell the adult guardian to the best of their ability how the document is false or misleading, and, if they have or can reasonably obtain the correct information, they give the correct information.

Clause 192 provides that a person must not obstruct or improperly influence the conduct of an investigation or audit.

Clause 193 provides that 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. 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. The adult guardian is required to 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.

Part 3—Protective Powers

Clause 194 provides a remedy where the adult guardian considers the property of an adult with impaired capacity is wrongfully held, detained, converted or injured or that money is payable to the adult. The adult guardian may, in the name of the adult guardian or the adult, claim and recover possession of the property, damages for conversion of or injury to the property or payment of the money, by application to the court.

Clause 195 provides the adult guardian with the power by written notice to an attorney to suspend the operation of all or some of an attorney's power for an adult where the adult guardian suspects on reasonable grounds that the attorney is not competent. A suspension can be for no more than 3 months. The adult guardian may lift the suspension with or without conditions. An attorney whose power has been suspended may apply to the tribunal and the tribunal may make the order it considers appropriate. In this section an attorney means an attorney under an enduring document.

Clause 196 provides that during the suspension of the operation of the power of attorney, the attorney must not exercise the power. During the suspension of a power of attorney for a financial matter, the Public Trustee is to be the attorney for the suspended power. During the suspension of a power of attorney for a personal matter, the adult guardian is taken to be the attorney for the adult for the personal matter.

Clause 197 provides that where the adult guardian considers there are reasonable grounds for suspecting there is an immediate risk of harm, because of neglect (including self-neglect), exploitation or abuse, to an adult with impaired capacity for a matter, the adult guardian may apply to the tribunal for a warrant to enter a place and remove the adult.

Clause 198 provides that if a health provider who is treating an adult considers the adult has impaired capacity for a matter and does not have an attorney, guardian or administrator for the matter, the health provider may advise the adult guardian of the adult's name, current location and contact address, contact details for the adults' nearest relative and the health providers opinion about the adults' capacity. This section overrides any restriction, in an Act or the common law, about the disclosure or confidentiality of information and any claim of confidentiality or privilege.

Part 4—Administrative Provisions

Clause 199 provides that the adult guardian is appointed on a full-time basis by the Governor-in-Council. A person is eligible for appointment as adult guardian only if they have demonstrated commitment to the rights and interests of people with impaired capacity. A person may not hold the office of adult guardian while they hold another office having functions concerning the protection of the rights and interests of, or the provision of services or facilities to adults with impaired capacity.

Clause 200 provides that the Minister must advertise for applications from appropriately qualified persons to be considered for selection and can only recommend a person for appointment if the position has been so advertised.

Clause 201 sets out the term of the adult guardian and criteria for removal by the Governor-in-Council.

Clause 202 provides that the adult guardian is to be paid the remuneration and allowances decided by the Governor-in-Council. To the extent that this Act does not state the terms on which the adult guardian holds office, the adult guardian holds office on the terms decided by the Governor-in-Council.

Clause 203 provides that the Minister may give the adult guardian leave of absence on the terms the Minister considers appropriate.

Clause 204 provides that the Governor-in-Council may appoint a person to act as the adult guardian.

Clause 205 provides that the staff necessary to enable the adult guardian to perform the adult guardian's functions are to be appointed under the *Public Service Act 1996*.

Clause 206 provides that the adult guardian must, as soon as practicable after the close of each financial year, but not later than 4 months after that close prepare a report on the exercise of the adult guardian's functions during the year and give a copy of the report to the Minister. The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

Clause 207 declares that the adult guardian is not a statutory body for the *Statutory Bodies Financial Administration Act 1992* or the *Financial Administration and Audit Act 1997*.

CHAPTER 9—PUBLIC ADVOCATE

Part 1—Establishment, Functions and Powers

Clause 208 provides that there must be a public advocate.

Clause 209 sets out the functions of the public advocate which include promoting and protecting the rights of adults with impaired capacity, promoting the protection of adults from neglect, exploitation or abuse and encouraging the development of programs to help the adults to reach the greatest practicable degree of autonomy.

Clause 210 provides the powers of the public advocate. The public advocate may do all things necessary or convenient to be done for performing his or her role. The public advocate also has a power to intervene in a proceeding before a court or tribunal or in an official inquiry involving protection of the rights and interests of adults with impaired capacity. Such intervention requires leave of the court or tribunal or person in charge of the inquiry and is subject to any conditions imposed by them.

Clause 211 provides in performing the public advocate's functions and exercising his or her powers, the public advocate is not under the control or the direction of the Minister.

Clause 212 provides that the public advocate can delegate his or her powers to an appropriately qualified member of his or her staff.

Part 2—Administrative Provisions

Clause 213 provides that the Governor-in-Council must appoint the public advocate and the appointment must be on a full time basis. A person

is eligible for appointment as public advocate only if they have demonstrated commitment to advocacy for people with impaired capacity. A person must not hold office as public advocate while they hold office as adult guardian or Public Trustee.

Clause 214 provides that for selecting a person for recommendation for appointment as public advocate, the Minister must advertise for applications from appropriately qualified persons to be considered for selection. A recommendation can only be made to the Governor-in-Council for a person's appointment as public advocate if such advertising has taken place.

Clause 215 sets out the term of the public advocate and criteria for removal by the Governor-in-Council.

Clause 216 provides that the Governor-in-Council may decide the remuneration and allowances payable to the public advocate and the public advocate is to be paid the remuneration and allowances so decided. To the extent that the Act does not state the terms on which the public advocate holds office, the public advocate holds office on the terms decided by the Governor-in-Council.

Clause 217 provides that the Minister may give the public advocate leave of absence on the terms the Minister considers appropriate.

Clause 218 provides that the Governor-in-Council may appoint a person to act as the public advocate.

Clause 219 provides the staff necessary to enable the public advocate to perform the public advocate's functions are appointed under the *Public Service Act 1996*.

Clause 220 provides that as soon as practicable after the close of each financial year but not later than 4 months after that close, the public advocate must prepare a report on the exercise of the public advocate's functions during the year and give a copy of the report to the Minister. The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

Clause 221 provides that to avoid doubt, it is declared that the public advocate is not a statutory body for the *Statutory Bodies Financial Administration Act 1992* or the *Financial Administration and Audit Act 1997*.

CHAPTER 10—COMMUNITY VISITORS

Part 1—Preliminary

Clause 222 provides definitions of the terms use in this chapter.

Clause 223 provides that the purpose of providing community visitors for visitable sites is to safeguard the interests of consumers at the visitable sites. The chief executive may allocate one or more community visitors for a visitable site.

Part 2—Functions And Powers

Clause 224 provides that a community visitor has inquiry and complaint functions. The inquiry functions of a community visitor include inquiring into and reporting to the chief executive on the adequacy of services for the assessment, treatment and support of consumers at the visitable site and the appropriateness and standard of services for the accommodation, health and well-being of consumers at the visitable site.

The complaint functions of the community visitor for a visitable site are to inquire into and seek to resolve complaints about a matter made by or for a consumer at the visitable site and to identify and make appropriate and timely referrals of unresolved complaints to appropriate entities for further investigation or resolution.

Clause 225 provides that a community visitor must, for performing the functions of a community visitor, regularly visit the visitable site. However, the chief executive may decide priorities for visiting particular visitable sites that affect the frequency of visits.

Clause 226 provides that a consumer at a visitable site or a person for the consumer may ask the chief executive for a community visitor to visit the visitable site for performing the functions of a community visitor or ask a person in charge the visitable site to arrange for a community visitor to visit. A request made to the person at the visitable site must be passed on to the chief executive within 3 business days after the request is made.

Clause 227 provides that a community visitor may do all things necessary or convenient to be done for performing their functions including entering the visitable site at any reasonable hour without notice. Entry outside normal hours can only be done with the authorisation of the chief executive officer. A community visitor can also require a person in charge of, employed at, or providing services at the visitable site to answer questions and produce documents relevant to the community visitor's functions.

The community visitor has other powers set out in this clause including a power to inspect and take extracts or make copies of any visitable site document, and to confer alone with a consumer, or person in charge of employed at, or providing services at the visitable site.

Clause 228 enables the chief executive to authorise a community visitor to enter a visitable outside normal hours where the community visitor cannot adequately inquire into the complaint by entering the visitable site during normal hours.

Clause 229 requires a community visitor to seek and take into account the views and wishes of the consumer, to the greatest extent practicable, before asking persons in charge of, employed at, or providing services at the visitable site a question relevant to a function of the community visitor or inspecting, taking extracts from, or making copies of, a visitable site document. However, regardless of the consumers' views and wishes, the community visitor must act in a way consistent with the consumer's proper care and protection.

Clause 230 provides that as soon as practicable after a visit the community visitor must prepare a report on the visit and give a copy to the chief executive. The chief executive is then required as soon as practicable after receiving the report give a copy to the person in charge of the visitable site. The chief executive may also give a copy to the consumer, the adult guardian or the public advocate.

Part 3—Administrative Provisions

Clause 231 provides that the chief executive can appoint community visitors whom the chief executive considers has appropriate knowledge, experience or skills relevant to the exercise of the community visitor's

functions. Certain persons can not be appointed as a community visitor because of a likely conflict of interest.

Clause 232 provides that a community visitor holds office for a term not longer than 3 years and may resign by signed notice given to the chief executive. The chief executive may terminate the appointment of a community visitor if satisfied the community visitor has become physically or mentally incapable of satisfactorily performing the duties of the community visitor, has performed the community visitor's duties carelessly, incompetently or inefficiently, is guilty of misconduct that could warrant dismissal from the public service if the community visitor were a public service officer, or has been found guilty of an offence the chief executive considers makes a person inappropriate to perform official duties.

The chief executive must terminate the appointment of the community visitor if the chief executive is satisfied the community visitor is a person who may not hold office as a community visitor under clause 221(2).

Clause 233 provides that the fees and allowances payable to a community visitor are decided by the chief executive. To the extent that this Act does not state the terms on which the community visitor holds office, the community visitor, holds office on the terms decided by the chief executive.

Clause 234 provides that the chief executive must give each community visitor an identity card which must contain a recent photo of the community visitor, be in a form approved by the chief executive, signed by the community visitor and identify the person as a community visitor under this Act.

Clause 235 provides that the community visitor must first produce the identity card for inspection or have the identity card displayed so that it is clearly visible when exercising a power under this Act at a visitable site.

Clause 236 provides that a person who ceases to be a community visitor must return their identity card to the chief executive within 21 days after ceasing, unless they have a reasonable excuse.

Clause 237 provides that the department's chief executive must include in the department's annual report for a financial year a report on the operations of the community visitors during the year.

CHAPTER 11—MISCELLANEOUS PROVISIONS

Part 1—Relationship with Criminal Law

Clause 238 provides that, to remove doubt, it is declared that nothing in this Act authorises, justifies or excuses killing a person or affects the *Criminal Code*, sections 284 or chapter 28 which relate to consent to death being immaterial, acceleration of death and aiding suicide.

Part 2—Relationship with Court Jurisdiction

Clause 239 provides that this Act does not affect the Rules of Court of the Supreme Court, District Court or Magistrates' Court about a litigation guardian for a person under a legal incapacity.

Clause 240 provides that the inherent jurisdiction of the Supreme Court, including its *parens patriae* jurisdiction, is not affected by this Act.

Clause 241 provides that the Supreme Court may, if it considers appropriate, transfer a proceeding within the tribunal's jurisdiction to the tribunal and that the tribunal may, if it considers it appropriate, transfer a proceeding within the Supreme Courts' jurisdiction to the Supreme Court. The transfer may be ordered on the Court's or tribunal's initiative or on the application of an active party to the proceeding.

Clause 242 provides that where there is a Supreme Court proceeding and a tribunal proceeding about an enduring document, the tribunal must stay the proceeding, unless the Supreme Court's transfers its proceeding to the tribunal.

Clause 243 provides that where there is a Supreme Court proceeding about an adult's enduring document, the tribunal may appoint guardians or administrators for the adult until the proceeding is resolved. The appointment may be made on the tribunal's initiative or on the application of the adult or anyone else.

Clause 244 provides that Chapter 3 applies to an appointment under clause 243.

Part 3—Settlements or Damages Awards

Clause 245 provides that where, in a civil proceeding, the Supreme Court or the District Court sanction a settlement between another person and an adult or orders an amount to be paid by another person to an adult and considers that the adult is a person with impaired capacity for the matter, the court may exercise all the powers of the tribunal in relation to the appointment of guardians and administrators. The provisions of this Act relating to the appointment of guardians and administrators applies to the court as if it were the tribunal.

Part 4—Protection from Liability and Dealing with Information

Clause 246 provides definitions for terms used in this Part.

Clause 247 provides that a person is not liable civilly, criminally or under an administrative process for disclosing to an official information about a person's conduct that breaches this Act or the *Powers of Attorney Act 1998*. Without limiting that wide protection, the section provides that in a proceeding for defamation the discloser has a defence of absolute privilege for publishing the disclosed information.

If the discloser would otherwise be required to maintain confidentiality about the disclosed information under an Act, oath, rule of law or practice then they do not contravene that Act, oath, rule of law or practice for disclosing the information and are not liable to disciplinary action for disclosing the information. Further, a person's liability for their own conduct is not affected only because the persons discloses it to an official, as defined in the clause.

Clause 248 provides that an official is not civilly liable for an Act done or an omission made honestly and without negligence under this Act or under the *Powers of Attorney Act 1998*. The clause also provides that if civil liability attaching to an official is prevented by the section, then liability attaches to the State.

Clause 249 provides that if a person gains confidential information because of their involvement in this Act's administration they must not make a record of the information or intentionally or recklessly disclose it to anyone other than under this section 249(3).

Clause 250 provides that the requirement to preserve confidentiality in the previous clause does not prevent the adult guardian from disclosing information to a person or to members of the public about an issue the subject of an investigation by the adult guardian if the adult guardian is satisfied that the disclosure is necessary and reasonable in the public interest.

Part 5—Forms and Regulations

Clause 251 provides that the chief executive may approve forms for use under this Act.

Clause 252 provides that the Governor-in-Council may make regulations under this Act.

CHAPTER 12—TRANSITIONAL PROVISIONS AND REPEAL

Part 1—Transitional Provisions For Adult Guardian.

Clause 253 defines “repealed chapter” in this part as the *Powers of Attorney Act 1998*, Chapter 7.

Clause 254 provides that the adult guardian appointed immediately before the repeal of the repealed chapter continues in office for the balance of their term.

Clause 255 provides that things done in the list in column 1 and in force immediately before the repeal of the repealed chapter continue to have effect after the repeal as a thing done under the corresponding provision of this Act mentioned in column 2.

Part 2—Transitional Provisions For Committee

Clause 256 provides that if a person's benefit in an adult's estate under the adult's will on intestacy or by another disposition taking effect on the adult's death is lost because of a sale or other dealing with the adult's property by a committee of the adult, the power under this Act to apply to the court for compensation for loss of benefit of estate (clause 60) applies as if a reference in the section to an administrator were a reference to the committee. This section applies whether the sale or other dealing happens before or after the commencement of this section.

Clause 257 provides that if a committee for a person continues after the commencement of this Act, the tribunal may make an order setting aside the committee and make any other appropriate order.

Part 3—Transitional Provisions for, and repeal of, *Intellectually Disabled Citizens Act 1985*

Clause 258 provides that "repealed Act" in this part means the *Intellectually Disabled Citizens Act 1985*.

Clause 259 provides for the adult guardian to take over the responsibilities of the Legal Friend under section 26 of the repealed Act where there is no administrator appointed for the person. The clause also provides that the adult guardian is taken to have been authorised to act under section 26. The repealed Act applies to the adult guardian as if references to the Legal Friend were references to the adult guardian and the repealed Act had not been repealed. The adult guardian's authority ceases if he or she receives a written request from the person's administrator that the adult guardian no longer act under the authority.

Clause 260 provides that if the Public Trustee managed a person's estate under section 32(1) of the repealed Act immediately before its repeal, on its repeal the Public Trustee is taken to be appointed by the tribunal as the person's administrator for all financial matters. Where the Public Trustee has been appointed under s 32(1A) immediately before the repeal, on repeal of the repealed Act the Public Trustee is taken to be appointed by the tribunal as the person's administrator for all financial matters and the

tribunal must review the appointment under Chapter 3—Part 3, Division 2 as soon as practicable.

Clause 261 provides that the records of the Intellectually Disabled Citizens Council of Queensland are to become the records of the tribunal.

Clause 262 provides that the *Intellectually Disabled Citizens Act 1985* is repealed.

CHAPTER 13—AMENDMENTS

Clause 263 provides that Schedule 3 of the Bill amends the Acts it mentions.

SCHEDULE 1

Part 1—General Principles

This part sets out the general principles which must, under clause 11 of the Bill, be applied by an entity exercising a power or function for a person with impaired capacity. These include a presumption of capacity, recognition of the fact that all adults have the same basic rights regardless of capacity, the importance of empowering the adult to exercise their basic human rights, respect for the individual value of the adult, and the valued role of the adult as a member of society.

Part 2—Health Care Principle

Clause 12 sets out the health care principle which is to be taken into account and by a person exercising power for a health matter under this Act. Power for a health matter must be exercised in a way least restrictive of the adult's rights and only if it is appropriate to promote and maintain the adult's health and wellbeing.

To the greatest extent practicable the adult's views and wishes need to be taken into account together with information given by the adult's health provider. The adult's views and wishes can be expressed orally and in writing or in another way including conduct. The health care principle does not affect the right of an adult to refuse health care. In deciding whether to consent to a special health matter the tribunal or other entity must, to the greatest extent practicable, seek the views of the adult's guardian, attorney or statutory health attorney and take them into account.

SCHEDULE 2—TYPES OF MATTERS

Part 1—Financial Matters

Clause 1 sets out the types of financial matters which can be dealt with by a person with power for financial matters. A financial matter is a matter relating to the adult's financial and property matters and includes legal matters relating to the adult's financial or property matters.

Part 2—Personal Matter

Clause 2 provides a definition of the personal matters for an adult which can be exercised by a person with power for a personal matter. These include matters relating to the adult's care including their health care, welfare and other matters and legal matters which do not relate to the adult's financial or property matters.

Clause 3 provides a definition of a "special personal matter". This is defined as a matter relating to making and revoking a will, making or revoking of a power of attorney, enduring power of attorney or advance health directive, exercising the adult's right to vote, consenting to the adoption of a child under 18 years and consenting to the marriage of the adult.

Clause 4 provides a definition of "health matter" which excludes special health care.

Clause 5 provides a definition of “health care” as being care or treatment of, or a service or a procedure for the adult to diagnose, maintain or treat the adult’s physical or mental condition carried out by or under the direct supervision of a health provider. Health care does not however include first aid treatment, a non-intrusive examination made for diagnostic purposes or the administration of a pharmaceutical drug which is non-prescription, is normally self-administered and administration is for a recommended purpose and at a recommended dosage level.

Clause 6 provides a definition of a “special health matter” which is defined as a matter relating to special health care.

Clause 7 provides a definition of “special health care”.

Clause 8 defines “removal of tissue for donation”. This is defined as including the removal of tissue so laboratory reagents or reference and control materials, derived completely or partly from pooled human plasma may be given to the other person. “Tissue” is defined in this section as an organ, blood or part of a human body or a substance that may be extracted from an organ, blood or part of a human body.

Clause 9 provides a definition of “sterilisation”. This is health care of an adult who is or who is reasonably likely to be fertile that is intended or reasonably likely to make the adult, or ensure the adult is, permanently infertile. Sterilisation in this definition does not include health care primarily to treat organic malfunction or disease of the adult.

Clause 10 defines “termination” as not including health care primarily to treat organic malfunction or disease of the adult.

Clause 11 provides that “health care primarily to treat organic malfunction or disease” is health care without which an organic malfunction or disease of the adult is likely to cause serious or irreversible damage to the adult’s physical health.

Clause 12 provides a definition of “special medical research or experimental health care”, being medical research or experimental health care relating to a condition the adult has or to which the adult has a significant risk of being exposed or which is intended to gain knowledge in the diagnosis, maintenance or treatment of a condition affecting the adult but excludes psychological research or approved clinical research.

Clause 13 gives a definition of “clinical research” and “approved clinical research”. Approved clinical research is research approved by the tribunal, where the tribunal is satisfied of the matters listed in the clause. Approved clinical research is not special health care but is health care which can be consented to under the other provisions of the Act.

Clause 14 provides a definition of “electroconvulsive therapy”.

Clause 15 provides a definition of “psychosurgery”.

Clause 16 provides a definition of “special life-sustaining measures” as health care intended to sustain or prolong life and which supplants or maintains the operation of vital bodily functions that are temporarily or permanently incapable of independent operation including cardiopulmonary resuscitation, assisted ventilation and artificial nutrition and hydration.

Clause 17 provides a definition of “prescribed special health care” which is health care prescribed under a regulation for this section.

Part 3—Legal Matter

Clause 18 provides a definition of legal matter as including the use of legal services to obtain information or undertake transactions, to bring or defend a proceeding including an application under the *Succession Act 1981* or application for compensation, and bringing or defending a proceeding including settling a claim whether before or after the start of the proceeding.

SCHEDULE 3—ACTS AMENDED

This schedule provides for consequential amendments to the *Anti-Discrimination Act 1991*, the *Health Act 1937*, the *Health Rights Commission Act 1991*, the *Land Act 1994*, the *Land Title Act 1994*, the *Legal Aid Queensland Act 1997*, the *Medical Act 1939*, the *Mental Health Act 1974*, the *Powers of Attorney Act 1998*, the *Property Law Act 1974*, the *Public Trustee Act 1978*, the *Supreme Court Act 1995*, and the *Transplantation and Anatomy Act 1979*.

SCHEDULE 4—DICTIONARY

The Dictionary provides definitions for terms used throughout the Bill.