GUARDIANSHIP AND ADMINISTRATION AND OTHER ACTS AMENDMENT BILL 2003

EXPLANATORY NOTES

General Outline

Objectives of the Legislation

The objectives of the Bill are to-

- amend the *Guardianship and Administration Act 2000,* the *Powers of Attorney Act 1998* and the *Children Services Tribunal Act 2000* to make the Acts more workable and efficient in operation; and
- to give the Guardianship and Administration Tribunal (the Tribunal) the jurisdiction to consent to the sterilisation of children with an intellectual impairment.

Reasons for the objectives and how they will be achieved

Reasons for the objectives

The *Guardianship and Administration Act 2000* (GAA) and the *Children Services Tribunal Act 2000* (CSTA) commenced approximately three years ago. The Tribunal and the Children Services Tribunal (CST) were established under the above Acts. The Tribunal and the CST have applied the respective Acts in the many matters brought before the tribunals. It has become apparent through the day to day application of the Acts that some provisions of the Acts can be improved. The *Guardianship and Administration and Other Acts Amendment Bill 2003* contains various amendments to the Acts to make the Acts more workable and efficient in application.

The GAA is read in conjunction with the *Powers of Attorney Act 1998* (PAA). As a result, some minor amendments to the *PAA* are to be made to retain consistency between the two Acts.

GAA

The jurisdiction of the Tribunal is mainly concerned with the appointment of guardians and administrators to make health, personal and financial decisions for adults with impaired capacity. Most of the applications before the Tribunal are related to adults with dementia, a mental illness, an intellectual disability or acquired brain injury.

The Tribunal has now completed its first three years of operation. The Tribunal is well used. To date, it has dealt with over nine thousand applications. This is a growing jurisdiction and there is clear evidence that the number of elderly Australians is increasing as a percentage of the population. In the last financial year, the Tribunal finalised 3660 applications. The amendments in the Bill have the purpose of streamlining legislative procedures to reduce costs of the Tribunal without sacrificing client service or adult protection in any way.

As Queensland's population ages and more Queenslanders face impaired capacity in their later years, the workload of the Tribunal will increase further. The proposed amendments will ensure that the GAA will remain a viable response to the challenge of ensuring that adults with impaired capacity have access to justice.

CSTA

The CST was established in June 2001. Its main jurisdiction is to review some Department of Families decisions about children in the care of the Department. In reviewing these decisions, the CST's primary concern is the best interests of the child. The CST encourages children and young people to participate in decision making and seeks to resolve matters through alternative dispute resolution rather than adversarial means. The Bill contains two amendments to the CSTA to streamline the CST's and the registry's procedures.

How the objectives will be achieved

The major reforms contained in the Bill are set out below.

GAA

- Omitting the mandatory Tribunal reviews of the Public Trustee and trustee companies under the *Trustee Companies Act 1968*

  Currently under section 28 of the GAA, the Tribunal must review an appointment of a guardian or administrator every five years. Under transitional provisions, the Tribunal inherited nearly 5000 Public Trustee administration orders on the repeal of previous legislative

substituted decision making schemes. The Tribunal will not be able to complete the inherited reviews within the five year timeframe as presently contained in the GAA, as well as continue to hear new applications and review current matters. This means the Tribunal's statutory obligations under the GAA will not be fulfilled.

The Bill solves this problem by amending section 28 to omit the Tribunal's obligation to review the appointment as administrators of the Public Trustee and trustee companies registered under the *Trustee Companies Act 1968* (corporate trustees) every five years.

Administration by corporate trustees can still be reviewed under section 29 of the GAA. Section 29 provides that the Tribunal may review an appointment of a guardian or administrator for an adult at any time on its own initiative or on the application of an interested person for the adult.

The Bill amends section 29 to give the adult and the corporate trustees the right to seek a review of the administration order. This amendment compensates for the loss of the automatic five year review.

There are no sound policy reasons for the Tribunal to double check the Public Trustee's and trustee companies' administration of an adult's financial affairs every five years, when the Public Trustee and trustee companies already have strict accountability measures. Such a task takes away from the Tribunal's higher priorities.

The Public Trustee is subject to high levels of scrutiny. As a statutory body, it is subject to audits by the Auditor-General and the Attorney-General, investigations by the Crime and Misconduct Commission and must comply with the requirements of the *Financial Administration and Audit Act 1977.* Trustee companies must comply with the *Trustee Companies Act 1968* and the corporations' legislation. Both the Public Trustee and the trustee companies must comply with the *Trusts Act 1973*.

In addition to the strengthening of section 29 to provide an adult with greater rights of review of an administration order, the Tribunal has also developed a policy of random review of corporate trustees to identify any systemic flaws in the administration by corporate trustees and to ensure that their work is of the highest standard.

- Reducing the Notice period for a hearing

Currently under section 118 of the GAA, the Tribunal must give 14 days notice of a hearing and must give notice of the hearing to the

adult with the impairment who is the subject of the application. If the adult is not given notice, the subsequent hearing is invalid. The Bill reduces the notice period so that the Tribunal must give seven days notice of a hearing (instead of 14 days). Further, as a general principle, the concerned adult continues to be notified as of right. However, the Bill includes an amendment to allow the Tribunal to dispense with the requirement to give notice to the adult where the notice will be detrimental to the adult's health or where the adult is evading the hearing, is unconscious, or is unable to be found.

The shorter notification time will give the Tribunal the ability to hear a matter quickly if the facts of the case warrant early intervention. The new provision maintains the principle that the adult is to be notified of the hearing but provides some exceptions that address the needs of the adult and the reality of the adult's situation.

- Extending the period of Interim Orders

Under section 129 of the GAA, if the Tribunal is satisfied that urgent action is required, it may make an interim order without a hearing. Under this section, the maximum period for the interim order is 28 days. The GAA currently does not have a combined maximum period for interim orders so that interim orders can be renewed month after month. The Bill amends section 129 to limit the combined period of interim orders in a particular matter to six months. This means that the adult and other interested parties are assured that the Tribunal will commence hearing a matter within six months of an interim order/s being made.

However, the Bill removes the requirement that each interim order be a maximum 28 days. A 28 day limit makes the current renewal process cumbersome and wastes the resources of the Tribunal and the interim administrator as the matter has to be revisited on an interim basis every month. Orders have to be registered and fees paid to the Registrar of Titles every time an interim order is extended if it involves land.

- Other amendments to GAA to streamline procedures

The Bill omits the necessity for the Tribunal to approve investment real estate and security transactions. The PAA was amended last year to omit this approval process. It is important to keep the obligations of attorneys and administrators consistent in the Queensland substituted decision making regime. However, to deter attorneys and administrators from undertaking these transactions improperly, both

the GAA and the PAA are to be amended to include a 300 penalty unit fine if an attorney or administrator do not keep the adult's property separate from their own property.

The Bill places a statutory obligation on the administrator to advise the Registrar of Titles of the administrator's appointment or change of appointment if the adult has land. This is currently an administrative obligation. Because of its importance in protecting the adult from unauthorised dealings with their land, this obligation is to be legislative in nature.

The Bill gives the President the ability to constitute a tribunal of two members so that a tribunal can now consist of one, two or three members depending on the complexity and sensitivity of the case. This gives the President more flexibility and the ability to be more responsive to fit a Tribunal to a particular application.

The Bill increases the Tribunal's power to seek information from people to ensure they have access to all relevant information in deciding an application. Particularly, the Bill also allows the Tribunal to access information from past as well as present health providers.

The Bill limits the ability of any person to become an active party in an application as of right. Instead, as is usual in other Tribunal procedures, the Tribunal can determine who should be involved in an application.

The Bill allows the Tribunal to refer a question of law to the Supreme Court. This will save the parties the costs of a full appeal or transfer to the Supreme Court in cases where the Tribunal needs guidance from the Supreme Court.

The Bill streamlines active parties' right of access to documents in preparing for their case so that now only documents that are directly related to an issue in the proceeding can be accessed by the parties. This reform better protects the adults' rights to privacy.

The Bill allows the Tribunal to use mediation as a tool to resolving disputes between active parties and provides legislative guidelines for its use. This gives the Tribunal greater flexibility in dealing with the disputes that come before it.

The Bill amends section 174 of the Act to give the Adult Guardian, guardians and attorneys the additional function of consenting to the conduct of forensic examinations of adults with impaired capacity. This clarifies the legislative intent that such a procedure is a personal

matter and can be consented to by the authorised substituted decision maker. This consent procedure will not apply to an adult with an impairment who is an alleged perpetrator of a crime, who may only be examined if the person gives express consent or a warrant for the examination is obtained under the *Police Powers and Responsibilities Act 2000*.

- Giving the Tribunal the jurisdiction to approve the sterilisation of children with an intellectual impairment

The Bill contains a new Chapter 5A that gives the Tribunal the jurisdiction to consent to the sterilisation of children with an intellectual impairment. The Tribunal already has this jurisdiction in relation to adults with impaired capacity. The Family Court of Australia may consent to the sterilisation of any child. It is proposed that the Tribunal's jurisdiction in this area will provide parents and doctors with a specialised jurisdiction (in addition to the Family Court of Australia) in relation to children with an intellectual impairment.

Chapter 5A provides that the Tribunal may only consent to the sterilisation of a child with an intellectual impairment if it is satisfied that the sterilisation is in the child's best interests. The chapter then sets out the factors that the Tribunal must take into account to determine whether the sterilisation is in the child's best interests, for example, the child has menstrual problems and cessation of menstruation by sterilisation is the only practical way of overcoming the problem and that alternative forms of treatment have proven to be inadequate.

The chapter provides for a child focus in this very sensitive jurisdiction. Examples of the child focus within the chapter are that a paediatrician is to be appointed as a member of the Tribunal when hearing the application and a child representative who is legally qualified must be appointed to represent the child in the hearing.

Further, the Tribunal's jurisdiction has a threshold test - the Tribunal can only consent to the sterilisation if it is unlikely that the child will have capacity to consent when the child becomes an adult. This threshold test ensures that children who may have capacity as an adult will be not be denied the opportunity to make this major decision later in life.

In 1992, the High Court decided in *Re Marion* (1992) 175 CLR 218 that the scope of parental authority does not extend to specialised (or invasive and irreversible) medical procedures like sterilisation (except

to treat organic disease) and that only a court has the authority to decide if such procedures should take place. Marion's case set out principles for a court to apply in considering whether to consent to a sterilisation procedure. The Bill lists factors the Tribunal must take into account in deciding whether to consent to the sterilisation procedure. The factors are a simplified codification of the principles in Marion's case, taking into account the more recent case law on sterilisation procedures.

In 2002 the Human Rights and Equal Opportunity Commission (HREOC) published a report by Brady, Briton and Grover called *The Sterilisation of Girls and Young Women in Australia – issues and progress* that strongly advocated that State Guardianship Tribunals be granted jurisdiction to authorise the sterilisation of young women with intellectual disabilities.

The benefit of this reform is:

(1.) official data suggests that parents and doctors will use this jurisdiction. The New South Wales and South Australian Tribunals (who currently have the jurisdiction) are well used and hear the greatest number of cases in Australia;

(2.) the Tribunal is free without the need for legal representation and therefore reduces costs for families;

(3.) the Tribunal style is inquisitorial rather than adversarial so that all information and views can be accessed by the Tribunal prior to making a decision;

(4.) the Tribunal is specialised to deal with disability issues;

(5.) the Tribunal has links with disability services to provide a holistic service; and

(6.) the Tribunal already has jurisdiction to determine whether an adult with impaired capacity should be sterilised for health reasons.

- Child Protection (International Measures) Act 2003

The Tribunal's jurisdiction to consent to the sterilisation of children with an intellectual impairment necessitates an amendment to the newly passed *Child Protection (International Measures) Act 2003* (CPA). This Act establishes rules about jurisdiction of authorities in relation to child protection and family law matters involving children across international borders. Since the Tribunal will have jurisdiction

over some children, it needs to be named as an authority under the CPA and comply with the rules set out in the CPA.

The CSTA is amended to clarify the CST's procedures when it is asked to stay (or suspend) a Department of Families decision until the matter has been heard fully by the CST.

Administrative cost to Government of implementation

The amendments contained in the Bill do not have financial implications for the Queensland government.

Consistency with Fundamental Legislative Principles

The Bill generally complies with the fundamental legislative principles (FLPs) as set out in section 4 of the *Legislative Standards Act 1992*. However, there are three potential breaches of the FLPs.

The proposed amendment to the GAA omitting the five year review period for transitional reviews and administration orders in favour of corporate trustees could be considered a potential breach of fundamental legislative principles.

It could be argued that some adults' rights have been reduced as the right to a five year review by the Tribunal is to be repealed. The reduction of this right can be justified as the adults subject to these orders continue to be protected within the strict accountability measures in place for corporate trustees, as managers of their financial affairs.

Further, the GAA continues to provide for reviews of these cases at the request of the Tribunal or an interested party, such as the Adult Guardian, the Public Trustee or a trustee company. The Tribunal will continue to randomly and regularly audit transitional appointments and other corporate trustee administration appointments under section 29. The random nature of the reviews will ensure that the Tribunal will discover any systemic failures in the corporate trustees' administration of an adult's affairs and enable a correction. This audit function is a better use of the Tribunal's review function in relation to corporate trustee administration orders

The Bill amends section 50 of the GAA and section 86 of the *Powers of Attorney Act 1998* to impose a penalty of 300 penalty units if an administrator or attorney fails to keep their property and the adult's

property separate. This may be considered a heavy maximum penalty and so adversely affects the rights of the administrator or attorney.

However, the maximum penalty can be justified in view of the consequences of an administrator mixing the adult's and the administrator's personal funds. This could result in the administrator misappropriating the adult's funds. A heavy fine may deter administrators from this type of activity and so minimise the likelihood of misappropriation occurring. The heavy penalty is further justified as the Bill omits the Tribunal's role in approving unauthorised real estate and security transactions.

The Bill amends section 118, and inserts some exemptions to the general principle that the adult is to be notified of the hearing. It could be argued that this amendment reduces the adult's right to natural justice (or the right to be heard.) However, in practice, the adult has not lost a substantive right to be heard. In fact the new notice provision has been tailored to fit an adult with impaired capacity. The provision has been carefully drafted to cover the specific circumstances where the Tribunal has found it is unable to notify the adult in the past and so has been unable to legally convene a hearing, when it was the adult's best interests to do so. The proposal maintains the principle that an adult is to be notified of the hearing but provides some exceptions to meet the best interests of the adult and the reality of their situation.

CONSULTATION

Community

All relevant community and peak bodies were consulted in relation to the major reforms to be implemented:

- Queensland Council of Carers;
- the Australian Pensioners and Superannuants League;
- the Alzheimer's Association of Queensland;
- the Australian Medical Association Queensland;
- the Royal Australian and New Zealand College of Obstetricians and Gynaecologists;
- Queensland State Committee of the Royal Australian College of Physicians (Paediatric Division);
- Queensland Advocacy Incorporated;

- CREATE Foundation
- Foster Care Queensland; and
- Queensland Law Society.

Government

Relevant government departments and the following agencies were consulted in relation to the major reforms to be implemented:

- Commission for Children and Young People;
- the Public Advocate;
- Legal Aid Queensland;
- the Public Trustee;
- the Adult Guardian;
- the Children Services Tribunal stakeholders group;
- Chief Justice of Queensland.

The Presidents and Registrar of the Tribunal and CST agree with all the proposed initiatives contained in this submission that affect the respective Tribunals.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Act.

PART 2—AMENDMENT OF THE GUARDIANSHIP AND ADMINISTRATION ACT 2000

Clause 2 provides that this Part amends the *Guardianship and Administration Act 2000*.

Clause 3 inserts a new section 11A stating that the Act's primary focus is on adults with impaired capacity but that Chapter 5A deals with children with impairment.

Clause 4 amends section 20 to clarify that a proposed administrator's management plan can be given to the Tribunal or its appropriately qualified nominee for approval.

Clause 5 amends section 21 to provide that the administrator as well as the Tribunal must advise the Registrar of Titles if the administrator is appointed in relation to a matter that involves an interest in land within three months of the administrator's appointment.

Clause 6 amends section 28 to omit the Tribunal's obligation to review the appointment as administrators of the Public Trustee and trustee companies registered under the *Trustee Companies Act 1968* every five years.

Clause 7 amends section 29 to extend the categories of people who have the right to request the Tribunal to review the appointment of the guardian or administrator at any time. The additional categories are the concerned adult, the Public Trustee and the Trustee company.

Clause 8 amends section 31 to provide for a further potential ground of an administrator's incompetence, that is, the administrator failed to notify the Registrar of Titles of the administrator's appointment if the matter involved an interest in land.

Clause 9 omits the current section 32 and replaces it with section 32 and section 32A. The substantive amendment is within the new section 32A that provides that the remaining administrator as well as the Tribunal must advise the Registrar of Titles of any change or revocation of the administrator's appointment within three months of the change.

Clause 10 amends section 44 to clarify that subsection (6) is subject to subsection (5).

Clause 11 amends section 50 to provide for a maximum 300 penalty unit offence against an administrator who fails to keep the property of the administrator separate from the adult's property. The penalty consequence

will be an extra check on the administrator to deter personal financial gain when dealing with the adult's property.

Clause 12 omits section 52 and section 53 so that there is no requirement for the Tribunal to approve unauthorised real estate transactions. In 2002, the definition of "financial matter" was amended in the PAA to remove the requirement that an attorney appointed under a Power of Attorney must seek the authority of the Tribunal before dealing in real property for the principal. The proposed amendment to GAA will place attorneys and administrators on the same footing in relation to dealing with the principal's investment properties.

Clause 13 amends section 68 to clarify a technicality that the Tribunal consents to an adult's special health care through an order.

Clause 14 amends section 76(2) and (3) to provide that both past and present health providers have an obligation to give the Tribunal and the adult's guardian or attorney information about the adult's health. The clause also adapts section 76(4) so that the types of information to be given are relevant for both present and past health providers. Section 76(9) is amended to clarify that this obligation does not affect the Tribunal's right to information under section 130 (that is, the Tribunal may order any person to give the Tribunal information) or the attorney's right to information under section 81.

Clause 15 inserts a new chapter 5A -"Consent to sterilisation of child with impairment." The purpose of the Chapter is to give the Tribunal the jurisdiction to consent to the sterilisation of children with an intellectual impairment. Chapter 5A is a detailed framework for the consent procedure.

The new section 80A defines the key terms for use in the chapter.

The new section 80B sets out the definition of sterilisation for a child with an intellectual impairment.

The new section 80C provides that the Tribunal may only consent to the sterilisation of a child with an impairment if it is satisfied that the sterilisation is in the best interests of the child. The section also provides that a child's sterilisation, to which the Tribunal has consented to, is not unlawful.

The new section 80D sets out that the sterilisation is in the best interests of the child if the sterilisation is medically necessary, or the child is likely to be sexually active and there is no method of contraception that could be

successfully applied, or the child has problems with menstruation and sterilisation is the only practical way of overcoming the problem.

The Tribunal must also be satisfied that the child is a child with an intellectual impairment, the child's impairment results in a substantial reduction of the child's capacity to interact in everyday life with the world around them, the child's impairment is likely to be permanent and the sterilisation cannot be reasonably postponed. The Tribunal must to the greatest extent possible, take the child's views, the parents' views, the primary carer's views, the child representative's views and the health provider's views into account.

In hearing the application, the Tribunal must ensure that the child is treated in a way that respects the child's dignity and privacy.

The new section 80E sets out those sections in Chapter 7 that do not apply to Chapter 5A.

The new section 80F provides for the constitution of the Tribunal when hearing an application for the sterilisation of a child. The Tribunal must be constituted by three members. To the greatest extent practicable, a paediatrician is to be a member on the Tribunal to hear the application.

The new section 80G provides that generally the hearing of a sterilisation application will be in public but the Tribunal may make a confidentiality order in relation to a sterilisation application.

The new section 80H provides that an application for the sterilisation of a child can only be made by the parent or guardian of the child, or another interested person (such as a health provider).

The new section 80I provides how to apply. The application must provide details for the reasons the proposed sterilisation would be in the child's best interests and a detailed description of the child's impairment. Further, the application must include a report prepared by the child's treating doctor as to the medical need for the sterilisation and the details of the proposed procedure.

The new section 80J provides that at least 7 days before the application, the Tribunal must give notice of the application to the child concerned and as far as practicable, to the parent or guardian of the child, the primary carer, the health provider, and the child representative. However, the Tribunal is not required to give notice to the child if it may be prejudicial to the child's health.

The new section 80K provides for who is an active party to the application.

The new section 80L provides that the Tribunal must appoint a child representative to separately represent the child before the Tribunal and provides that the child representative must be legally qualified. The role of the separate representative is to act in the best interests of the child and, if possible, present the views of the child to the Tribunal. The Tribunal may order a person, for example, a parent or health provider to give the separate representative information about the child. This is subject to the person's protection against self incrimination.

The new section 80M provides that once an application is made to the Tribunal, the Tribunal may make advice, directions and recommendations about the application. Further the Tribunal may adjourn or dismiss the application.

The new section 80N provides that the Tribunal must give a copy of its decision and any written reasons for its decision to each active party but a confidentiality order may displace this requirement.

The new section 80O provides that an active party may appeal to the Supreme Court against the Tribunal's decision in a proceeding in relation to the application.

The new section 80P provides that the child's health providers must give the Tribunal all the information it requires to make an informed decision in relation to the sterilisation. This is subject to the health provider's protection against self incrimination.

The new section 80Q gives the person carrying out the sterilisation for which the tribunal consented, no less protection in liability for an act or omission than if an adult with capacity consented.

Clause 16 amends section 82 to include the consent to the sterilisation of a child with an impairment as a function of the tribunal.

Clause 17 amends section 101 to provide that the President may constitute the Tribunal with two members. This is in addition to the current configurations of 1 and 3 members. This will give the President greater flexibility in determining panel configurations. This amendment does not apply to Chapter 5A.

Clause 18 amends section 102 to apply to both two or three member Tribunals consequential to the amendment in the above clause.

Clause 19 amends section 105 to provide that the Tribunal's procedure in relation to a question of law as prescribed in section 105 does not apply if the Tribunal has referred a question of law to the Supreme Court for its opinion.

Clause 20 inserts a new section 105A to provide that the Tribunal may refer a question of law relevant to the proceedings to the Supreme Court for an opinion and the Tribunal must give effect to the Supreme Court's opinion.

The amendment will provide the Tribunal with a direct avenue to the Supreme Court to decide questions of law. This avenue is consistent with the Supreme Court's overarching inherent parens patriae jurisdiction. Whilst the tribunal has the power to refer the entire proceedings to the Supreme Court, the Tribunal sometimes only wishes to refer a question of law to the Supreme Court so as to save expense for the parties.

Clause 21 amends section 108 to provide that an active party must be given a reasonable opportunity to inspect a document that is directly relevant to an issue in the proceeding. This clause clarifies when the Tribunal must give access to documents. The Tribunal has found the existing disclosure provision too wide and may infringe unnecessarily on the adult's right to privacy.

Clause 22 amends section 110 to rationalise how the Tribunal obtains expert assistance in a matter. It provides that the Tribunal must pay an expert who helps the Tribunal in a proceeding. However, if it requires an adult to undergo an examination by a doctor or psychologist and for the doctor or psychologist to prepare a report to submit to the Tribunal, the Tribunal may direct that a party pay for the associated costs.

Clause 23 amends section 118 to provide that persons are to have 7 days notice of ahearing (instead of the current 14). The shorter minimum notice timeframe gives the Tribunal the discretion to hear a matter quickly if the facts of the case warrant it.

Section 118 is further amended to provide that the Tribunal is not required to give notice to an adult in certain narrow circumstances. Further, in some limited circumstances, it is proposed that the adult does not need to be notified by the Tribunal prior to the hearing.

Clause 24 amends section 119 to expand further categories of persons who are active parties. Under the amended section 119, the following categories of people are active parties:

- the adult concerned;
- if the adult concerned is not the applicant, the applicant;
- the person proposed for appointment or reappointment;
- a person named by the Tribunal as an active party;

- the adult's guardian, administrator or attorney;
- the Adult Guardian; and
- the Public Trustee.

Clause 25 omits section 120 that allows any concerned person to become an active party. The new section 119 (as set out in the clause above) better prescribes those categories of persons who should be active parties. Further, under section 119, the Tribunal can join any other person as an active party. The amendments to section 119 and the omission of section 120 allow the Tribunal to better control its proceedings and have the appropriate people participating in the hearing.

Clause 26 amends section 122 to provide that an application before the Tribunal can only be withdrawn with the Tribunal's leave.

Clause 27 amends section 129 to provide that the maximum period that may be specified in an interim order is 6 months. Further, section 129(6) is amended to provide that an interim order can only be renewed if the combined period of the initial interim order and any renewals does not exceed 6 months.

Clause 28 amends section 130 to allow the Tribunal to order persons to give information to it, if the Tribunal considers the information is necessary to make an informed decision about a matter. This power is subject to the person's protection against self incrimination.

Clause 29 omits section 138(2)(c) (the power to dismiss an application) as it has been redrafted in the clause below.

Clause 30 inserts a new section 138A to clarify that the tribunal can specifically dismiss vexatious and frivolous applications. The Anti-Discrimination Commission and the Industrial Relations Commission have such a legislative power. Whilst the Tribunal can dismiss the application under the existing law, it is preferable to provide for the particular ground of the dismissal.

Clause 31 inserts a new part 4A titled Dispute Resolution. This part gives the Tribunal the power to refer active parties to mediation to resolve issues in dispute, where appropriate. For example, parents of an adult child with an impairment may disagree on the residence of the adult. Such issue may be resolved through the assistance of a mediator. Under the scheme, only Tribunal members who are not hearing the matter are eligible to be mediators.

The new section 145A defines dispute resolution as dispute resolution under the Act. The term "dispute resolution" rather than "alternative dispute resolution" has been used to reflect that mediation is no longer an alternative form of dispute resolution but is now mainstream.

The new section 145B sets out the purpose of dispute resolution, that is to identify, reduce and promote the settlement of the issues in dispute between the active parties (the parties) to a dispute.

The new section 145C provides that at any stage of a proceeding, the Tribunal, may, with the President's approval, refer the parties to dispute resolution.

The new section 145D provides that the President must only appoint a Tribunal member as a mediator to conduct the dispute resolution.

The new section 145E provides that a mediator must disclose a conflict of interest.

The new section 145F provides that subject to any directions given by the Tribunal, the procedure for the mediation is at the mediator's discretion.

The new section 145G provides that evidence of anything said or done in the course of dispute resolution is inadmissible in a proceeding, except if the parties agree, or if a party makes a threat against another person or if one of the parties admits to physically or emotionally abusing the adult.

The new section 145H provides that the mediator must not disclose information obtained during dispute resolution without a reasonable excuse.

The new section 145I provides that the mediator must report to the Tribunal on the dispute resolution and whether or not the active parties participating in the dispute resolution reached a settlement of issues in dispute.

The new section 145J provides for the procedure to follow if the parties reached a settlement of the issues in dispute and that the settlement is to be filed with the Tribunal.

Clause 32 amends section 152 to omit references to unauthorised real estate and security transactions as such concepts have been omitted in this Bill. Further, the reference to the approval of management plans has been included in the amended section 20.

Clause 33 amends section 163 to allow the Tribunal to suspend its decision relating to consenting to the sterilisation of a child under Chapter 5A pending an appeal to the Supreme Court.

Clause 34 amends section 164 to clarify an appeal to the Supreme Court must be by way of notice.

Clause 35 inserts a new section 164A to clarify when a notice of appeal must be filed with the court registry, that is, 28 days from the date of decision or the date of the reasons for the decision, whichever date is the later.

Clause 36 amends section 174 to give the Adult Guardian the power to consent to the conduct of a forensic examination of an adult under section 198A.

Clause 37 amends section 183 to clarify that section 183(5) is subject to section 183(4).

Clause 38 Inserts a new chapter 8 part 3 titled "Power to consent to forensic examination".

The clause inserts a new section 198A that provides that the Adult Guardian may consent to a forensic examination of an adult with impaired capacity if the examination is in the adult's best interests and no guardian or attorney is appointed or the appointed guardian or attorney has failed or refused to consent.

This consent procedure will not apply to an adult with an impairment who is an alleged perpetrator of a crime, who may only be examined under the *Police Powers and Responsibilities Act 2000*.

Clause 39 inserts a new section 248A that gives a person carrying out an authorised forensic examination protection from liability as if the adult were an adult with capacity to consent and the act or omission happened with the adult's consent

Clause 40 amends section 260 to omit section 260(2)b.

Clause 41 inserts a new chapter 12, part 6 which provide for transitional provisions for the application of the amended section 29 to reviews of existing appointments, the effect of contravention of the repealed section 52 and 53, the requirement to give notice under section 118 and the effect of the new section 129 on interim orders made before commencement.

Clause 42 amends schedule 2 in relation to financial matters. It omits the reference to authorised real estate and security transactions as such concepts are omitted through the Bill.

Clause 43 amends schedule 2 to include consenting to a forensic examination of the adult, as a personal matter. This gives guardians the power to consent to a forensic examination of an adult.

Clause 44 amends the definition of "approved clinical research" to clarify that comparative assessment of health care already known or proven to be beneficial to adults is not medical research.

Clause 45 amends terms in the dictionary in schedule 4.

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

Clause 46 provides that this Part amends the *Child Protection (International Measures) Act 2003* (CPA).

Clause 47 inserts a definition of the "Guardianship and Administration Tribunal" in the dictionary. Since the Tribunal will have jurisdiction to consent to the sterilisation of children with impairments, it needs to be named as an court under the CPA and comply with the rules set out in the CPA. This Act establishes rules about jurisdiction of authorities in relation to child protection and family law matters involving children across international borders.

The clause also omits the current definition of "registrar" and inserts a new definition of registrar to provide a definition of "registrar" for both the Tribunal and the CST.

PART 4—AMENDMENT OF CHILDREN SERVICES TRIBUNAL ACT 2000

Clause 48 provides that this Part amends the *Children Services Tribunal Act 2000*.

Clause 49 amends section 24 to provide that the registrar may delegate the registrar's powers to another appropriately qualified staff member of the Tribunal.

Clause 50 amends section 28 to allow the Tribunal to be constituted by a single member or two members for a child related employment review or for an unopposed stay application at a preliminary conference. The clause

also provides that a lawyer of least 5 years standing must be one of the members of the Tribunal if constituted by one or two members.

Clause 51 amends section 32 to update a section reference.

Clause 52 amends section 79 to clarify that an application for a stay of a reviewable decision under section 70 can be heard in a preliminary conference.

Clause 53 amends section 80 to provide for the constitution of the Tribunal in a preliminary conference. Generally, the President may direct that for a preliminary conference, the Tribunal may be constituted by a single or two members. Where the Tribunal is hearing an application for a stay of a reviewable decision and the decision maker opposes the stay, the Tribunal is to be constituted by three members.

PART 5—AMENDMENT OF POWERS OF ATTORNEY ACT 1998

Clause 54 provides that Part 5 amends the *Powers of Attorney Act 1998*.

Clause 55 amends section 86 to provide for a maximum 300 penalty unit offence against an attorney who fails to keep the property of the attorney separate from the principal. The penalty consequence will be an extra check on the principal to deter personal financial gain when dealing with the principal's property. This provision is inserted to mirror the provision the amended section 50 in the GAA.

Clause 56 inserts a new section 104 that gives a person carrying out a forensic examination protection from liability as if the principal were a principal with capacity to consent and the act or omission happened with the principal's consent.

Clause 57 amends section 123 to allow the Supreme Court to dismiss trivial applications as well as frivolous and vexatious applications.

Clause 58 amends schedule 2 in relation to financial matters to clarify that the attorney's power to deal with land is in relation to the principal's land only.

Clause 59 amends schedule 2 to include consenting to a forensic examination of the principal, as a personal matter. This gives attorneys the power to consent to the forensic examination of an principal.

Clause 60 amends the definition of "approved clinical research" to clarify that comparative assessment of health care already known or proven to be beneficial to adults is not medical research.

Clause 61 Inserts a definition of forensic examination in schedule 3 (the dictionary).

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