

Queensland



# **GUARDIANSHIP AND ADMINISTRATION ACT 2000**

**Reprinted as in force on 8 March 2002  
(includes amendments up to Act No. 95 of 2001)**

**Reprint No. 1D**

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This Act is reprinted as at 8 March 2002. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
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The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

# Queensland



# GUARDIANSHIP AND ADMINISTRATION ACT 2000

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# **GUARDIANSHIP AND ADMINISTRATION ACT 2000**

[as amended by all amendments that commenced on or before 8 March 2002]

**An Act to consolidate, amend and reform the law relating to the appointment of guardians and administrators to manage the personal and financial affairs of adults with impaired capacity, to establish a Guardianship and Administration Tribunal, to continue the office of Adult Guardian, to create an office of Public Advocate, and for other purposes**

## **CHAPTER 1—PRELIMINARY**

### **1 Short title**

This Act may be cited as the *Guardianship and Administration Act 2000*.

### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

### **3 Definitions**

The dictionary in schedule 4 defines particular words used in this Act.

### **4 Act binds all persons**

This Act binds all persons, including the State, and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

## CHAPTER 2—EXPLANATION

### 5 Acknowledgments

This Act acknowledges the following—

- (a) an adult's right to make decisions is fundamental to the adult's inherent dignity;
- (b) the right to make decisions includes the right to make decisions with which others may not agree;
- (c) the capacity of an adult with impaired capacity to make decisions may differ according to—
  - (i) the nature and extent of the impairment; and
  - (ii) the type of decision to be made, including, for example, the complexity of the decision to be made; and
  - (iii) the support available from members of the adult's existing support network;
- (d) the right of an adult with impaired capacity to make decisions should be restricted, and interfered with, to the least possible extent;
- (e) an adult with impaired capacity has a right to adequate and appropriate support for decision making.

### 6 Purpose to achieve balance

This Act seeks to strike an appropriate balance between—

- (a) the right of an adult with impaired capacity to the greatest possible degree of autonomy in decision making; and
- (b) the adult's right to adequate and appropriate support for decision making.

### 7 Way purpose achieved

This Act—

- (a) provides that an adult is presumed to have capacity for a matter; and

- (b) together with the *Powers of Attorney Act 1998*, provides a comprehensive scheme to facilitate the exercise of power for financial matters and personal matters by or for an adult who needs, or may need, another person to exercise power for the adult; and
- (c) states principles to be observed by anyone performing a function or exercising a power under the scheme; and
- (d) encourages involvement in decision making of the members of the adult's existing support network; and
- (e) establishes a tribunal to administer particular aspects of the scheme; and
- (f) continues the office of adult guardian and provides for the adult guardian to be available as a possible guardian for an adult with impaired capacity, and for other purposes; and
- (g) recognises the public trustee is available as a possible administrator for an adult with impaired capacity; and
- (h) provides for the appointment of the public advocate for systemic advocacy; and
- (i) provides for the appointment of community visitors.

## **8 Relationship with Powers of Attorney Act 1998**

(1) This Act is to be read in conjunction with the *Powers of Attorney Act 1998* which provides a scheme by which—

- (a) by enduring power of attorney or advance health directive, an adult may authorise other persons to make particular decisions and do particular other things for the adult in relation to financial matters and personal matters<sup>1</sup> at a time when the adult does not have capacity to do those things; and
- (b) by advance health directive, an adult may make directions for the adult's future health care and special health care; and
- (c) a statutory health attorney is authorised to do particular things for an adult in particular circumstances in relation to health care.

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<sup>1</sup> Personal matters do not include special personal matters or special health matters—schedule 2, section 2.

(2) If there is an inconsistency between this Act and the *Powers of Attorney Act 1998*, this Act prevails.

## 9 Range of substitute decision makers

(1) This Act and the *Powers of Attorney Act 1998* authorise the exercise of power for a matter for an adult with impaired capacity for the matter.

(2) Depending on the type of matter involved, this may be done—

- (a) on an informal basis by members of the adult's existing support network;<sup>2</sup> or
- (b) on a formal basis by 1 of the following—
  - (i) an attorney for personal matters appointed by the adult under an enduring power of attorney or advance health directive under the *Powers of Attorney Act 1998*;
  - (ii) an attorney for financial matters appointed by the adult under an enduring power of attorney under the *Powers of Attorney Act 1998*;
  - (iii) a statutory health attorney under the *Powers of Attorney Act 1998*;
  - (iv) a guardian appointed under this Act;<sup>3</sup>
  - (v) an administrator appointed under this Act;<sup>4</sup>
  - (vi) the guardianship and administration tribunal;
  - (vii) the court.

## 10 Types of matter

This Act categorises matters as follows—

- personal matter
- special personal matter

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2 Although this Act deals primarily with formal substituted decision making, a decision or proposed decision of an informal decision maker may be ratified or approved under section 154.

3 A guardian may only be appointed for personal matters.

4 An administrator may only be appointed for financial matters.

- special health matter
- financial matter.<sup>5</sup>

## 11 Principles for adults with impaired capacity

(1) A person or other entity who performs a function or exercises a power<sup>6</sup> under this Act for a matter in relation to an adult with impaired capacity for the matter must apply the principles stated in schedule 1 (the “**general principles**” and, for a health matter or a special health matter, the “**health care principle**”).

### *Example 1—*

If an adult has impaired capacity for a matter, a guardian or administrator who may exercise power for the matter must—

- (a) apply the general principles; and
- (b) if the matter is a health matter, also apply the health care principle.

### *Example 2—*

The tribunal in deciding whether to consent to special health care for an adult with impaired capacity for the special health matter concerned, must apply the general principles and the health care principle.

(2) An entity authorised by an Act to make a decision for an adult about prescribed special health care must apply the general principles and the health care principle.

(3) The community is encouraged to apply and promote the general principles.

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<sup>5</sup> Schedule 2 contains definitions of types of matters.

<sup>6</sup> “**Function**” includes duty and “**power**” includes authority—see *Acts Interpretation Act 1954*, section 36.

## **CHAPTER 3—APPOINTMENT OF GUARDIANS AND ADMINISTRATORS**

### **PART 1—MAKING AN APPOINTMENT ORDER**

#### **12 Appointment**

(1) The tribunal may, by order, appoint a guardian for a personal matter, or an administrator for a financial matter, for an adult if the tribunal is satisfied—

- (a) the adult has impaired capacity for the matter; and
- (b) 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 involves, or is likely to involve, unreasonable risk to the adult's health, welfare or property; and
- (c) without an appointment—
  - (i) the adult's needs will not be adequately met; or
  - (ii) the adult's interests will not be adequately protected.

(2) The appointment may be on terms considered appropriate by the tribunal.

(3) The tribunal may make the order on its own initiative or on the application of the adult, the adult guardian or an interested person.

#### **13 Advance appointment**

(1) The tribunal may, by order, make an appointment of a guardian for a personal matter, or an administrator for a financial matter, for an individual who is at least 17<sup>1</sup>/<sub>2</sub> years but not 18 years if the tribunal is satisfied—

- (a) there is a reasonable likelihood, when the individual turns 18, the individual will have impaired capacity for the matter; and
- (b) there is a reasonable likelihood, when the individual turns 18—
  - (i) there will be a need to do something in relation to the matter; or

- (ii) the individual is likely to do something in relation to the matter that involves, or is likely to involve, unreasonable risk to the individual's health, welfare or property; and
- (c) there is a reasonable likelihood, without an appointment, when the individual turns 18—
  - (i) the individual's needs would not be adequately met; or
  - (ii) the individual's interests would not be adequately protected.

(2) This Act applies, with necessary changes, to an appointment under this section.

(3) The appointment begins when the individual turns 18.

(4) The appointment ends when the individual turns 19, unless the tribunal orders the appointment to be for a longer period.

(5) The tribunal may order the appointment for a longer period only if the tribunal considers—

- (a) the need for an appointment will continue for the longer period; and
- (b) the need for the tribunal to review the appointment is very limited.

(6) The longer period may be up to 5 years.

(7) The appointment may be on terms considered appropriate by the tribunal.

(8) The tribunal may make the order on its own initiative or on the application of the individual or an interested person.

## **14 Appointment of 1 or more eligible guardians and administrators**

(1) The tribunal may appoint a person as guardian or administrator for a matter only if—

- (a) for appointment as a guardian, the person is—
  - (i) a person who is at least 18 years and not a paid carer, or health provider, for the adult; or
  - (ii) the adult guardian; and
- (b) for appointment as an administrator, the person is—

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- (i) a person who is at least 18 years, not a paid carer, or health provider, for the adult and not bankrupt or taking advantage of the laws of bankruptcy as a debtor under the *Bankruptcy Act 1966* (Cwlth) or a similar law of a foreign jurisdiction; or
  - (ii) the public trustee or a trustee company under the *Trustee Companies Act 1968*; and
- (c) having regard to the matters mentioned in section 15(1), the tribunal considers the person appropriate for appointment.

(2) Subject to section 74,<sup>7</sup> no-one may be appointed as a guardian for a special personal matter or special health matter.<sup>8</sup>

(3) The tribunal may appoint 1 or more of the following—

- (a) a single appointee for a matter or all matters;
- (b) different appointees for different matters;
- (c) a person to act as appointee for a matter or all matters in a stated circumstance;
- (d) alternative appointees for a matter or all matters so power is given to a particular appointee only in stated circumstances;
- (e) successive appointees for a matter or all matters so power is given to a particular appointee only when power given to a previous appointee ends;
- (f) joint or several, or joint and several, appointees for a matter or all matters;
- (g) 2 or more joint appointees for a matter or all matters, being a number less than the total number of appointees for the matter or all matters.

(4) If the tribunal makes an appointment because an adult has impaired capacity for a matter and the tribunal does not consider the impaired capacity is permanent, the tribunal must state in its order when it considers it appropriate for the appointment to be reviewed.<sup>9</sup>

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7 Section 74 (Subsequent special health care for adult)

8 The tribunal may consent to particular special health care—see section 68 (Special health care).

9 Otherwise periodic reviews happen under section 28.



## 15 Appropriateness considerations

(1) In deciding whether a person is appropriate for appointment as a guardian or administrator for an adult, the tribunal must consider the following matters (“**appropriateness considerations**”)—

- (a) the general principles and whether the person is likely to apply them;
- (b) if the appointment is for a health matter—the health care principle and whether the person is likely to apply it;
- (c) the extent to which the adult’s and person’s interests are likely to conflict;
- (d) whether the adult and person are compatible including, for example, whether the person has appropriate communication skills or appropriate cultural or social knowledge or experience, to be compatible with the adult;
- (e) if more than 1 person is to be appointed—whether the persons are compatible;
- (f) whether the person would be available and accessible to the adult;
- (g) the person’s appropriateness and competence to perform functions and exercise powers under an appointment order.

(2) The fact a person is a relation of the adult does not, of itself, mean the adult’s and person’s interests are likely to conflict.

(3) Also, the fact a person may be a beneficiary of the adult’s estate on the adult’s death does not, of itself, mean the adult’s and person’s interests are likely to conflict.

(4) In considering the person’s appropriateness and competence, the tribunal must have regard to the following—

- (a) the nature and circumstances of any criminal history, whether in Queensland or elsewhere, of the person including the likelihood the commission of any offence in the criminal history may adversely affect the adult;
- (b) the nature and circumstances of any refusal of, or removal from, appointment, whether in Queensland or elsewhere, as a guardian, administrator, attorney or other person making a decision for someone else;

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- (c) if the proposed appointment is of an administrator and the person is an individual—
- (i) the nature and circumstances of the person having been a bankrupt or taking advantage of the laws of bankruptcy as a debtor under the *Bankruptcy Act 1966* (Cwlth) or a similar law of a foreign jurisdiction; and
  - (ii) the nature and circumstances of a proposed, current or previous arrangement with the person's creditors under the *Bankruptcy Act 1966* (Cwlth), part 10<sup>10</sup> or a similar law of a foreign jurisdiction; and
  - (iii) the nature and circumstances of a proposed, current or previous external administration of a corporation, partnership or other entity of which the person is or was a director, secretary or partner or in whose management, direction or control the person is or was involved.

(5) In this section—

“**attorney**” means—

- (a) an attorney under a power of attorney; or
- (b) an attorney under an advance health directive or similar document under the law of another jurisdiction.

“**power of attorney**” means—

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

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<sup>10</sup> *Bankruptcy Act 1966* (Cwlth), part 10 (Arrangements with creditors without sequestration)

## **16 Advice from proposed appointee about appropriateness and competence**

(1) An individual who has agreed to a proposed appointment (a “**proposed appointee**”) must advise the tribunal before the tribunal makes an order appointing the proposed appointee whether he or she—

- (a) is under 18 years; or
- (b) is a paid carer or health provider for the adult; or
- (c) has any criminal history, whether in Queensland or elsewhere; or
- (d) has been, whether in Queensland or elsewhere, refused, or removed from, appointment as a guardian, administrator, attorney or other person making a decision for someone else; or
- (e) for a proposed appointment as administrator—
  - (i) is bankrupt or taking advantage of the laws of bankruptcy as a debtor under the *Bankruptcy Act 1966* (Cwlth) or a similar law of a foreign jurisdiction; or
  - (ii) has ever been bankrupt or taken advantage of the laws of bankruptcy as a debtor under the *Bankruptcy Act 1966* (Cwlth) or a similar law of a foreign jurisdiction; or
  - (iii) is proposing to make, or has ever made, an arrangement with his or her creditors under the *Bankruptcy Act 1966* (Cwlth), part 10<sup>11</sup> or a similar law of a foreign jurisdiction; or
  - (iv) is or was a director, secretary or partner, or is or was involved in the management, direction or control of a corporation, partnership or other entity that is proposing to be, is or has been, under external administration.

Maximum penalty—40 penalty units.

(2) The proposed appointee must also advise the tribunal of any likely conflict between—

- (a) the duty of the proposed appointee if appointed as guardian or administrator towards the adult; and
- (b) either—

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11 *Bankruptcy Act 1966* (Cwlth), part 10 (Arrangements with creditors without sequestration)

- (i) the interests of the proposed appointee or a person in a close personal or business relationship with the proposed appointee; or
- (ii) another duty of the proposed appointee as guardian or administrator for another person.

Maximum penalty—40 penalty units.

(3) The proposed appointee must give the advice by statutory declaration or on oath or affirmation if required by the tribunal.

Maximum penalty—40 penalty units.

(4) In this section—

“attorney” means—

- (a) an attorney under a power of attorney; or
- (b) an attorney under an advance health directive or similar document under the law of another jurisdiction.

“power of attorney” means—

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

## **17 Guardian or administrator to update advice about appropriateness and competence**

(1) After appointment, a guardian or administrator is under a continuing duty to advise the tribunal of anything of which the guardian or administrator—

- (a) has not previously advised the tribunal; and
- (b) would be required to advise the tribunal under section 16 if the tribunal were considering whether to appoint the guardian or administrator.

Maximum penalty—40 penalty units.

(2) The guardian or administrator must give the advice by statutory declaration or on oath or affirmation if required by the tribunal.

Maximum penalty—40 penalty units.

## **18 Inquiries about appropriateness and competence**

(1) The tribunal may make inquiries about the appropriateness and competence to perform functions and exercise powers under an appointment order of a person who has agreed to a proposed appointment or who is a guardian or administrator.

(2) If asked by the tribunal, the commissioner of the police service must give the tribunal a written report about the criminal history of—

- (a) a person who has agreed to a proposed appointment; or
- (b) a person who is a guardian or administrator; or
- (c) if the person mentioned in paragraph (a) or (b) is a corporation—a director, secretary or person involved in the management, direction or control of the corporation.

## **19 Comply with other tribunal requirement**

(1) The tribunal may impose a requirement, including a requirement about giving security, on a guardian or administrator or a person who is to become a guardian or administrator.

(2) A guardian or administrator or person who is to become a guardian or administrator must comply with the requirement.

Maximum penalty—200 penalty units.

## **20 Management plan**

Unless the tribunal orders otherwise, a person who agrees to a proposed appointment as an administrator must give a management plan to the tribunal, or its nominee, for approval.

## **21 Advice to registrar of titles if appointment concerns land**

(1) If the tribunal appoints an administrator for a matter involving an interest in land, the tribunal must advise the registrar of titles.

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

(3) The administrator must pay the fee payable to the registrar of titles.<sup>12</sup>

## **PART 2—RELATIONSHIP BETWEEN APPOINTMENT AND ENDURING DOCUMENT**

### **22 Attorney’s power subject to tribunal authorisation**

(1) This section applies if—

- (a) an adult’s enduring document gives power for a matter to an attorney; and
- (b) after the enduring document is made, the tribunal, with knowledge of the existence of the enduring document, gives the power to a guardian or an administrator.

(2) The attorney may exercise power only to the extent authorised by the tribunal.

(3) Subsection (2) does not apply for power for a health matter.<sup>13</sup>

### **23 Appointment without knowledge of enduring document**

(1) This section applies if—

- (a) the tribunal gives power for a matter for an adult to a guardian or an administrator without knowledge of the existence of an enduring document giving power for the matter to an attorney for the adult; and
- (b) the guardian or administrator becomes aware of the existence or purported existence of the enduring document.

(2) If the guardian or administrator becomes aware of the existence or purported existence of the enduring document, the guardian’s or

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12 Note section 47 (Payment of expenses).

13 For health matters, see section 66 (Adult with impaired capacity—order of priority in dealing with health matter).

administrator's power for the matter is suspended pending review of the appointment of the guardian or administrator.<sup>14</sup>

(3) The guardian or administrator must advise the tribunal in writing of the existence or purported existence of the enduring document as soon as practicable.

Maximum penalty—40 penalty units.

(4) If the tribunal receives an advice under subsection (3), the tribunal must review the appointment of the guardian or administrator.

(5) Part 3, division 2<sup>15</sup> applies to the review.

## **24 Protection if unaware of appointment**

(1) An attorney who, without knowing power has been given by the tribunal to a guardian or administrator, purports to exercise the power does not incur any liability, either to the adult or anyone else, because of the appointment of the guardian or administrator.

(2) A transaction between—

- (a) an attorney who purports to exercise power for a matter; and
- (b) a person who does not know power for the matter has been given to a guardian or administrator;

is, in favour of the person, as valid as if the power had not been given to the guardian or administrator.

(3) In this section—

“**attorney**” means an attorney under an enduring document or a statutory health attorney.

“**know**”, power has been given by the tribunal, includes have reason to believe power has been given by the tribunal.

## **25 Protection if unaware power already exercised by advance health directive**

(1) This section applies if—

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14 Note section 56 (Protection if unaware of change of appointee's power).

15 Part 3 (Changing or revoking an appointment order), division 2 (Change or revocation at tribunal review of appointment)

- (a) an adult's advance health directive includes a direction about a matter; and
- (b) after the advance health directive is made, but without reference to it, the tribunal gives power for the matter to a guardian.

(2) The guardian who, without knowing a direction about the matter is included in an advance health directive, purports to exercise power for the matter does not incur any liability, either to the adult or anyone else, because of the direction being included in the advance health directive.

(3) If—

- (a) the guardian purports to exercise power for a matter; and
- (b) without knowing a direction about the matter is included in an advance health directive, a person acts in reliance on the purported exercise of power;

the person does not incur any liability, either to the adult or anyone else, because of the direction being included in the advance health directive.

(4) In this section—

“**know**”, a direction about a matter is included in an advance health directive, includes have reason to believe the matter is dealt with by an advance health directive.

## **PART 3—CHANGING OR REVOKING AN APPOINTMENT ORDER**

### *Division 1—Revocation by appointee*

#### **26 Automatic revocation**

(1) An appointment as a guardian or administrator for an adult for a matter ends if—

- (a) the guardian or administrator becomes a paid carer, or health provider, for the adult; or
- (b) if the guardian or administrator and the adult are married when the appointment is made—the marriage is dissolved; or



(c) the guardian or administrator dies.

(2) Also, an appointment as an administrator ends if the administrator becomes bankrupt or insolvent.

(3) If an appointment as a guardian or administrator ends under subsection (1)(a) or (b) or subsection (2), the former guardian or administrator must advise the tribunal in writing of the ending of the appointment.

(4) If an appointment as a guardian or administrator for a matter ends under subsection (1) or (2) and the guardian or administrator was a joint guardian or administrator for the matter—

- (a) if, of the joint guardians or administrators, there is 1 remaining guardian or administrator, the remaining guardian or administrator may exercise power for the matter; and
- (b) if, of the joint guardians or administrators, there are 2 or more remaining guardians or administrators, the remaining guardians or administrators may exercise power for the matter and, if exercising power, must exercise power jointly.

## **27 Withdrawal with tribunal's leave**

(1) An appointment as a guardian or administrator for an adult for a matter ends if, with the tribunal's leave, the guardian or administrator withdraws as guardian or administrator for the matter.

(2) If the tribunal gives leave for a guardian or administrator to withdraw for a matter—

- (a) the tribunal may appoint someone else to replace the withdrawing person as guardian or administrator for the matter; and
- (b) for a withdrawing administrator notice of whose appointment was given to the registrar of titles under section 21,<sup>16</sup> the registrar of the tribunal must take reasonable steps to advise the registrar of titles of the withdrawal.

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

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<sup>16</sup> Section 21 (Advice to registrar of titles if appointment concerns land)

(4) The withdrawing administrator must pay the fee payable to the registrar of titles, unless the tribunal orders otherwise.

### *Division 2—Change or revocation at tribunal review of appointment*

## **28 Periodic review of appointment**

The tribunal must review an appointment of a guardian or administrator—

- (a) for an appointment made because an adult has impaired capacity for a matter but the tribunal does not consider the impaired capacity is permanent—in accordance with an order of the tribunal, but at least every 5 years; or
- (b) otherwise—at least every 5 years.

## **29 Other review of appointment**

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.

## **30 Guardian or administrator to update advice about appropriateness and competence**

(1) For a review of an appointment, the tribunal may require the guardian or administrator to advise the tribunal of anything of which the guardian or administrator—

- (a) has not previously advised the tribunal; and
- (b) would be required to advise the tribunal under section 16<sup>17</sup> if the tribunal were considering whether to appoint the guardian or administrator.

(2) The guardian or administrator must give the advice by statutory declaration or on oath or affirmation if required by the tribunal.

Maximum penalty—40 penalty units.

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<sup>17</sup> Section 16 (Advice from proposed appointee about appropriateness and competence)

### **31 Appointment review process**

(1) The tribunal may conduct a review of an appointment of a guardian or administrator (an “**appointee**”) for an adult in the way it considers appropriate.

(2) At the end of the review, the tribunal must revoke its order making the appointment unless it is satisfied it would make an appointment if a new application for an appointment were to be made.

(3) If the tribunal is satisfied there are appropriate grounds for an appointment to continue, it may either—

- (a) continue its order making the appointment; or
- (b) change its order making the appointment, including, for example, by—
  - (i) changing the terms of the appointment; or
  - (ii) removing an appointee; or
  - (iii) making a new appointment.

(4) However, the tribunal may make an order removing an appointee only if the tribunal considers—

- (a) the appointee is no longer competent; or
- (b) another person is more appropriate for appointment.

(5) An appointee is no longer competent if, for example—

- (a) a relevant interest of the adult has not been, or is not being, adequately protected; or
- (b) the appointee has neglected the appointee’s duties or abused the appointee’s powers, whether generally or in relation to a specific power; or
- (c) the appointee has otherwise contravened this Act.

(6) The tribunal may include in its order changing or revoking the appointment of an administrator a provision as to who must pay the fee payable to the registrar of titles for advice of the change or revocation.

### **32 Tribunal to advise of change or revocation of appointment**

(1) This section applies if—

- (a) the tribunal changes or revokes the appointment for an adult of a guardian or administrator; or
  - (b) the tribunal is given advice of the ending of an appointment under section 26 or 57.<sup>18</sup>
- (2) The registrar of the tribunal must take reasonable steps to—
- (a) advise the adult and any remaining guardians and administrators of the change or revocation of appointment; and
  - (b) if the registrar of titles was advised of an appointment under section 21<sup>19</sup>—advise the registrar of titles of any change or revocation of the appointment.
- (3) If the registrar of titles receives an advice of the change or revocation of appointment, the registrar of titles must enter the advice in a file maintained for the purpose.

## **CHAPTER 4—FUNCTIONS AND POWERS OF GUARDIANS AND ADMINISTRATORS**

### **PART 1—GENERAL FUNCTIONS AND POWERS OF GUARDIAN OR ADMINISTRATOR**

#### **33 Power of guardian or administrator**

(1) Unless the tribunal orders otherwise, a guardian is authorised to do, in accordance with the terms of the guardian's appointment, anything in relation to a personal matter that the adult could have done if the adult had capacity for the matter when the power is exercised.

(2) Unless the tribunal orders otherwise, an administrator is authorised to do, in accordance with the terms of the administrator's appointment, 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.

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18 Section 26 (Automatic revocation) or 57 (Advice of change of successive appointee)

19 Section 21 (Advice to registrar of titles if appointment concerns land)

### **34 Apply principles**

(1) A guardian or administrator must apply the general principles.<sup>20</sup>

(2) In making a health care decision, a guardian must also apply the health care principle.

### **35 Act honestly and with reasonable diligence**

A guardian or administrator who may exercise power for an adult must exercise the power honestly and with reasonable diligence to protect the adult's interests.

Maximum penalty—200 penalty units.

### **36 Act as required by terms of tribunal order**

A guardian or administrator who may exercise power for an adult must, when exercising the power, exercise it as required by the terms of any order of the tribunal.

Maximum penalty—200 penalty units.

### **37 Avoid conflict transaction**

(1) An administrator for an adult may enter into a conflict transaction only if the tribunal authorises the transaction, conflict transactions of that type or conflict transactions generally.

(2) A “**conflict transaction**” is a transaction in which there may be conflict, or which results in conflict, between—

- (a) the duty of an administrator towards the adult; and
- (b) either—
  - (i) the interests of the administrator or a person in a close personal or business relationship with the administrator; or
  - (ii) another duty of the administrator.

*Examples—*

1. A conflict transaction happens if an administrator buys the adult's car.

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<sup>20</sup> See schedule 1 (Principles).

2. A conflict transaction does not happen if an administrator is acting under section 55 to maintain the adult's dependants.

(3) However, a transaction is not a conflict transaction only because by the transaction the administrator in the administrator's own right and on behalf of the adult—

- (a) deals with an interest in property jointly held; or
- (b) acquires a joint interest in property; or
- (c) obtains a loan or gives a guarantee or indemnity in relation to a transaction mentioned in paragraph (a) or (b).

(4) A conflict transaction between an administrator and a person who does not know, or have reason to believe, the transaction is a conflict transaction is, in favour of the person, as valid as if the transaction were not a conflict transaction.

(5) In this section—

“**joint interest**” includes an interest as a joint tenant or tenant in common.

### **38 Multiple guardians or administrators are joint if not otherwise stated**

Two or more guardians or administrators for a matter are appointed as joint guardians or joint administrators for the matter if the tribunal does not order otherwise.

### **39 Act together with joint guardians or administrators**

(1) Guardians or administrators for an adult who may exercise power for a matter jointly must exercise the power unanimously.

(2) If it is impracticable or impossible to exercise the power unanimously, 1 or more of the guardians or administrators, or another interested person for the adult, may apply for directions to the tribunal.

### **40 Consult with adult's other appointees or attorneys**

(1) If there are 2 or more persons who are guardian, administrator or attorney for an adult, the persons must consult with one another on a regular basis to ensure the adult's interests are not prejudiced by a breakdown in communication between them.

(2) However, failure to comply with subsection (1) does not affect the validity of an exercise of power by a guardian, administrator or attorney.

(3) In this section—

“**attorney**” means an attorney under an enduring document or a statutory health attorney.

#### **41 Disagreement about matter other than health matter**

(1) If—

- (a) a guardian, administrator or attorney for an adult disagrees with another person who is a guardian, administrator or attorney for the adult about the way power for a matter, other than a health matter, should be exercised; and
- (b) the disagreement can not be resolved by mediation by the adult guardian;

the adult guardian or any person mentioned in paragraph (a) may apply for directions to the tribunal.

(2) In this section—

“**attorney**” means an attorney under an enduring document.

#### **42 Disagreement about health matter**

(1) If there is a disagreement about a health matter for an adult and the disagreement can not be resolved by mediation by the adult guardian, the adult guardian may exercise power for the health matter.

(2) If the adult guardian exercises power under subsection (1), the adult guardian must advise the tribunal in writing of the following details—

- (a) the name of the adult;
- (b) an outline of the disagreement;
- (c) the name of each guardian, attorney or eligible statutory health attorney involved in the disagreement;
- (d) the decision made by the adult guardian.

(3) In this section—

“**attorney**” means an attorney under an enduring document or a statutory health attorney.

**“disagreement”** about a health matter means—

- (a) a disagreement between a guardian or attorney for an adult and another person who is a guardian or attorney for the adult about the way power for the health matter should be exercised; or
- (b) a disagreement between or among 2 or more eligible statutory health attorneys for an adult about which of them should be the adult’s statutory health attorney or how power for the health matter should be exercised.

**“eligible statutory health attorneys”** are persons eligible to be an adult’s statutory health attorney under the *Powers of Attorney Act 1998*, section 63(1)(a), (b) or (c).

#### **43 Acting contrary to health care principle**

(1) If a guardian or attorney for a health matter for an adult—

- (a) refuses to make a decision about the health matter for the adult and the refusal is contrary to the health care principle; or
- (b) makes a decision about the health matter for the adult and the decision is contrary to the health care principle;

the adult guardian may exercise power for the health matter.

(2) If the adult guardian exercises power under this section, the adult guardian must advise the tribunal in writing of the following details—

- (a) the name of the adult;
- (b) the name of the guardian or attorney;
- (c) a statement as to why the refusal or decision is contrary to the health care principle;
- (d) the decision made by the adult guardian.

(3) In this section—

**“attorney”** means an attorney under an enduring document or a statutory health attorney.

#### **44 Right of guardian or administrator to information**

(1) A guardian or administrator who has power for a matter for an adult has a right to all the information the adult would have been entitled to if the



adult had capacity and which is necessary to make an informed exercise of the power.

(2) At the guardian's or administrator's request, a person who has custody or control of the information must give the information to the guardian or administrator, unless the person has a reasonable excuse.

(3) If a person who has custody or control of the information does not comply with a request by a guardian or administrator to give information, the tribunal may, on application by the guardian or administrator, order the person to give the information to the guardian or administrator.

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

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

(6) This section overrides—

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

#### **45 Execution of instrument etc.**

(1) If necessary or convenient for the exercise of power given to a guardian or administrator (the “**appointee**”), the appointee may—

- (a) execute an instrument with the appointee's own signature or, if sealing is required or used, with the appointee's own seal; and
- (b) do any other thing in the appointee's own name.

(2) An instrument executed by an appointee must be executed in a way showing the appointee executes it as guardian or administrator for the adult.

(3) An instrument executed, or thing done, in the way mentioned in this section is as effective as if executed or done by the adult—

- (a) with the adult's signature; or
- (b) with the adult's signature and seal; or
- (c) in the adult's name.

(4) This section applies subject to the *Property Law Act 1974*, section 46.<sup>21</sup>

#### **46 Implied power to execute a deed**

If a tribunal order gives a guardian or administrator power to do a thing, the guardian or administrator is given power to execute a deed to do the thing.

#### **47 Payment of expenses**

A guardian or administrator for an adult is entitled to reimbursement from the adult of the reasonable expenses incurred in acting as guardian or administrator.

#### **48 Remuneration of professional administrators**

(1) If an administrator for an adult carries on a business of or including administrations under this Act, the administrator is entitled to remuneration from the adult if the tribunal so orders.

(2) The remuneration may not be more than the commission payable to a trustee company under the *Trustee Companies Act 1968* if the trustee company were administrator for the adult.

(3) Nothing in this section affects 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**

#### **49 Keep records**

(1) An administrator for an adult must—

- (a) keep records that are reasonable in the circumstances; and

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<sup>21</sup> *Property Law Act 1974*, section 46 (Execution of instruments by or on behalf of corporations)

- (b) if required by the tribunal—produce records of dealings and transactions involving the adult’s property that are reasonable for inspection at the time the tribunal decides.

Maximum penalty—100 penalty units.

(2) An administrator must also, if required by the tribunal—

- (a) keep the records the tribunal decides; and
- (b) produce the records for inspection at the time and in the way the tribunal decides.

Maximum penalty—100 penalty units.

## **50 Keep property separate**

(1) An administrator for an adult must keep the administrator’s property separate from the adult’s property.

(2) Subsection (1) does not apply to property owned jointly by the adult and administrator.

(3) Subsection (1) does not affect another obligation imposed by law.

## **51 Power to invest and continue investments**

(1) This section applies if an administrator for an adult has power to invest.

(2) The administrator may invest only in authorised investments.

(3) However, if, when the administrator is appointed, the adult had investments that were not authorised investments, the administrator may continue the investments, including by taking up rights to issues of new shares, or options for new shares, to which the adult becomes entitled by the adult’s existing shareholding.

## **52 Unauthorised real estate transaction only with approval**

An administrator who may undertake real estate transactions for an adult may undertake a real estate transaction that is not an authorised real estate transaction only with the tribunal’s approval.

**53 Unauthorised security transaction only with approval**

An administrator who may undertake security transactions for an adult may undertake a security transaction that is not an authorised security transaction only with the tribunal's approval.

**54 Gifts**

(1) Unless the tribunal orders otherwise, an administrator for an adult may give away the adult's property only if—

- (a) the gift is—
  - (i) a gift or donation of the nature the adult made when the adult had capacity; or
  - (ii) a gift or donation of the nature the adult might reasonably be expected to make; and
- (b) the gift's value is not more than what is reasonable having regard to all the circumstances and, in particular, the adult's financial circumstances.

(2) The administrator or a charity with which the administrator has a connection is not precluded from receiving a gift under subsection (1).

**55 Maintain adult's dependants**

(1) An administrator for an adult may provide from the adult's estate for the needs of a dependant of the adult.

(2) However, unless the tribunal orders otherwise, what is provided must not be 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****56 Protection if unaware of change of appointee's power**

(1) This section applies if—

- (a) the tribunal gives power for a matter to a guardian or administrator; and
- (b) the power is changed.

(2) The guardian or administrator who, without knowing of the change, purports to exercise power for the matter does not incur any liability, either to the adult or anyone else, because of the change.

(3) A transaction between—

- (a) the guardian or administrator who purports to exercise power for the matter; and
- (b) a person who does not know of the change;

is, in favour of the person, as valid as if the power had not been changed.

(4) In this section—

“**change**”, of power for a matter, includes—

- (a) suspension of power for the matter; and
- (b) removal as guardian or administrator for the matter.

“**know**”, of a change of a power, includes—

- (a) know of the happening of an event<sup>22</sup> that changes the power; and
- (b) have reason to believe the change has happened.

## **57 Advice of change of successive appointee**

(1) This section applies if the tribunal appoints successive guardians or administrators so power is given to a particular appointee only when the power of a previous appointee ends.

(2) If the power of a previous appointee ends—

- (a) the previous appointee must advise the next successive appointee of the ending of the previous appointment; and
- (b) the next successive appointee must advise the tribunal in writing of the change as soon as practicable.

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<sup>22</sup> For example, an appointment ends if a guardian or administrator for an adult becomes a paid carer, or health provider, for the adult—see section 26 (Automatic revocation).

## **58 Power to excuse failure**

If a guardian or administrator is prosecuted in a court for a failure to comply with this chapter, the court may excuse the failure if it considers the guardian or administrator has acted honestly and reasonably and ought fairly to be excused for the failure.

## **59 Compensation for failure to comply**

(1) A guardian or administrator for an adult (an **“appointee”**) may be ordered by the tribunal or a court to compensate the adult (or, if the adult has died, the adult’s estate) for a loss caused by the appointee’s failure to comply with this Act in the exercise of a power.

(2) Subsection (1) applies even if the appointee is convicted of an offence in relation to the appointee’s failure.

(3) If the adult or appointee has died, the application for compensation must be made to the tribunal or a court within 6 months after the death.

(4) If the adult and appointee have died, the application for compensation must be made to the tribunal or a court within 6 months after the first death.

(5) The tribunal or a court may extend the application time.

(6) If security has been given under section 19<sup>23</sup> and the tribunal or a court makes an order for compensation under this section, the tribunal or court may also order that the security be applied in satisfaction of the order for compensation.

(7) Compensation paid under a tribunal or court order must be taken into account in assessing damages in a later civil proceeding in relation to the appointee’s exercise of the power.

(8) In this section—

**“court”** means any court.

## **60 Power to apply to court for compensation for loss of benefit in estate**

(1) This section applies 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

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23 Section 19 (Comply with other tribunal requirement)

adult's death, is lost because of a sale or other dealing with the adult's property by an administrator of the adult.

(2) This section applies even if the person whose benefit is lost is the administrator by whose dealing the benefit is lost.

(3) The person, or the person's personal representative, may apply to the court<sup>24</sup> for compensation out of the adult's estate.

(4) The court may order that the person, or the person's estate, be compensated out of the adult's estate as the court considers appropriate, but the compensation must not be more than the value of the lost benefit.

(5) The *Succession Act 1981*, sections 41(2) to (8), (10) and (11) and 44 apply to an application and an order made on it as if the application were an application under part 4 of that Act<sup>25</sup> by a person entitled to make an application.

## **CHAPTER 5—HEALTH MATTERS AND SPECIAL HEALTH MATTERS**

### **PART 1—PHILOSOPHY AND PURPOSE**

#### **61 Purpose to achieve balance for health care**

This chapter seeks to strike a balance between—

- (a) ensuring an adult is not deprived of necessary health care only because the adult has impaired capacity for a health matter or special health matter; and
- (b) ensuring health care given to the adult is only—
  - (i) health care that is necessary and appropriate to maintain or promote the adult's health or wellbeing; or

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24 “**Court**” means the Supreme Court—see schedule 4 (Dictionary).

25 *Succession Act 1981*, sections 41 (Estate of deceased person liable for maintenance), 44 (Protection of personal representative) and part 4 (Family provision)

- (ii) health care that is, in all the circumstances, in the adult's best interests.<sup>26</sup>

## **PART 2—SCHEME FOR HEALTH CARE AND SPECIAL HEALTH CARE**

### *Division 1—Health care—no consent*

#### **62 Division's scope**

This division deals with when health care, other than special health care, may be carried out without consent.

#### **63 Urgent health care**

(1) Health care, other than special health care, of an adult may be carried out without consent if the adult's health provider reasonably considers—

- (a) the adult has impaired capacity for the health matter concerned; and
- (b) either—
  - (i) the health care should be carried out urgently to meet imminent risk to the adult's life or health; or
  - (ii) the health care should 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*.

(2) However, the health care mentioned in subsection (1)(b)(i) may not be carried out without consent if the health provider knows the adult objects to the health care in an advance health directive.

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<sup>26</sup> See also section 11 (Principles for adults with impaired capacity).



(3) However, the health care mentioned in subsection (1)(b)(ii) may not be carried out without consent if the health provider knows the adult objects to the health care unless—

- (a) the adult has minimal or no understanding of 1 or both of the following—
  - (i) what the health care involves;
  - (ii) why the health care is required; and
- (b) the health care is likely to cause the adult—
  - (i) no distress; or
  - (ii) temporary distress that is outweighed by the benefit to the adult of the health care.

(4) The health provider must certify in the adult’s clinical records as to the various things enabling the health care to be carried out because of this section.

(5) In this section—

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

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

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

- (a) the adult has impaired capacity for the health matter concerned; and
- (b) the commencement or continuation of the measure for the adult would be inconsistent with good medical practice; and
- (c) consistent with good medical practice, the decision to withhold or withdraw the measure must be taken immediately.

(2) However, the measure may not be withheld or withdrawn without consent if the health provider knows the adult objects to the withholding or withdrawal.<sup>27</sup>

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<sup>27</sup> “**Object**” is defined in schedule 4 (Dictionary).

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

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

#### **64 Minor, uncontroversial health care**

(1) Health care, other than special health care, of an adult may be carried out without consent if the adult’s health provider—

- (a) reasonably considers the adult has impaired capacity for the health matter concerned; and
- (b) reasonably considers the health care is—
  - (i) necessary to promote the adult’s health and wellbeing; and
  - (ii) of the type that will best promote the adult’s health and wellbeing; and
  - (iii) minor and uncontroversial; and
- (c) does not know, and can not reasonably be expected to know, of—
  - (i) 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
  - (ii) any dispute among persons the health provider reasonably considers have a sufficient and continuing interest in the adult about—
    - (A) the carrying out of the health care; or
    - (B) the capacity of the adult for the health matter.

*Examples of minor and uncontroversial health care mentioned in paragraph (b)(iii)—*

- the administration of an antibiotic requiring a prescription
- the administration of a tetanus injection

(2) However, the health care may not be carried out without consent if the health provider knows, or could reasonably be expected to know, the adult objects to the health care.

(3) The health provider must certify in the adult's clinical records as to the various things enabling the health care to be carried out because of this section.

*Division 2—Health care and special health care—consent*

**65 Adult with impaired capacity—order of priority in dealing with special health matter**

(1) If an adult has impaired capacity for a special health matter, the matter may only be dealt with under the first of the following subsections to apply.

(2) If the adult has made an advance health directive giving a direction about the matter, the matter may only be dealt with under the direction.

(3) If subsection (2) does not apply and an entity other than the tribunal is authorised to deal with the matter, the matter may only be dealt with by the entity.

(4) If subsections (2) and (3) do not apply and the tribunal has made an order about the matter, the matter may only be dealt with under the order.<sup>28</sup>

**66 Adult with impaired capacity—order of priority in dealing with health matter**

(1) If an adult has impaired capacity for a health matter, the matter may only be dealt with under the first of the following subsections to apply.

(2) If the adult has made an advance health directive giving a direction about the matter, the matter may only be dealt with under the direction.

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<sup>28</sup> However, the tribunal may not consent to electroconvulsive therapy or psychosurgery—section 68(1).

(3) If subsection (2) does not apply and the tribunal has appointed 1 or more guardians for the matter or made an order about the matter, the matter may only be dealt with by the guardian or guardians or under the order.<sup>29</sup>

(4) If subsections (2) and (3) do not apply and the adult has made 1 or more enduring documents appointing 1 or more attorneys for the matter, the matter may only be dealt with by the attorney or attorneys for the matter appointed by the most recent enduring document.

(5) If subsections (2) to (4) do not apply, the matter may only be dealt with by the statutory health attorney.

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

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

(1) This section applies if a matter concerning the withholding or withdrawal of a life-sustaining measure is to be dealt with under section 66(3), (4) or (5).<sup>30</sup>

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

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

(1) This section applies if a life-sustaining measure is withheld or withdrawn for an adult other than because of section 63A.<sup>31</sup>

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29 If, when appointing the guardian or guardians, the tribunal was unaware of the existence of an enduring document giving power for the matter to an attorney, see section 23 (Appointment without knowledge of enduring document), particularly subsection (2).

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

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

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

- (a) for a withholding or withdrawal under a direction in the adult's advance health directive—section 66(2) and the *Powers of Attorney Act 1998*, section 36;<sup>32</sup> or
- (b) for a withholding or withdrawal by consent—section 66(3), (4) or (5) and section 66A.

### 67 Effect of adult's objection to health care

(1) Generally, the exercise of power for a health matter or special health matter is ineffective to give consent to health care of an adult if the health provider knows, or ought reasonably to know, the adult objects to the health care.<sup>33</sup>

(2) However, the exercise of power for a health matter or special health matter is effective to give consent to the health care despite an objection by the adult to the health care if—

- (a) the adult has minimal or no understanding of 1 of the following—
  - (i) what the health care involves;
  - (ii) why the health care is required; and
- (b) the health care is likely to cause the adult—
  - (i) no distress; or
  - (ii) temporary distress that is outweighed by the benefit to the adult of the proposed health care.

(3) Subsection (2) does not apply to the following health care—

- (a) removal of tissue for donation;

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

33 “**Object**” is defined in schedule 4 (Dictionary). Note also the *Powers of Attorney Act 1998*, section 35(2)(a) (Advance health directives) provides that ‘by an advance health directive [a] principal may give a direction—

- (a) consenting, in the circumstances specified, to particular future health care of the principal when necessary and despite objection by the principal when the health care is provided’.

- (b) participation in special medical research or experimental health care or approved clinical research.

## **PART 3—CONSENT TO SPECIAL HEALTH CARE**

### **68 Special health care**

(1) The tribunal may consent to special health care, other than electroconvulsive therapy or psychosurgery, for an adult.

(2) To the extent another entity is authorised by an Act to make a decision for an adult about prescribed special health care, the tribunal does not have power to make the decision.<sup>34</sup>

### **69 Donation of tissue**

(1) The tribunal may consent, for an adult with impaired capacity for the special health matter concerned, to removal of tissue from the adult for donation to another person only if the tribunal is satisfied—

- (a) the risk to the adult is small; and
- (b) the risk of failure of the donated tissue is low; and
- (c) the life of the proposed recipient would be in danger without the donation; and
- (d) no other compatible donor is reasonably available; and
- (e) there is, or has been, a close personal relationship between the adult and proposed recipient.

(2) The tribunal may not consent if the adult objects<sup>35</sup> to the removal of tissue for donation.

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34 For the application of the general principles and the health care principle to the tribunal and to an entity authorised by an Act to make a decision for an adult about prescribed special health care, see section 11 (Principles for adults with impaired capacity).

35 Section 67, which effectively enables an adult's objection to be overridden in some cases, does not apply.

(3) If the tribunal consents to removal of tissue for donation, the tribunal's order must specify the proposed recipient.

## 70 Sterilisation

(1) The tribunal may consent, for an adult with impaired capacity for the special health matter concerned, to sterilisation of the adult only if the tribunal is satisfied—

- (a) one of the following applies—
  - (i) the sterilisation is medically necessary;
  - (ii) 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;
  - (iii) if the adult is female—the adult has problems with menstruation and cessation of menstruation by sterilisation is the only practicable way of overcoming the problems; and
- (b) the sterilisation can not reasonably be postponed; and
- (c) the adult is unlikely, in the foreseeable future, to have capacity for decisions about sterilisation.

(2) Sterilisation is not medically necessary if the sterilisation is—

- (a) for eugenic reasons;<sup>36</sup> or
- (b) to remove the risk of pregnancy resulting from sexual abuse.

(3) Also, in deciding whether to consent for the adult to a sterilisation procedure, the tribunal must take into account—

- (a) alternative forms of health care, including other sterilisation procedures, available or likely to become available in the foreseeable future; and
- (b) 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.

(4) An adult's sterilisation, to which the tribunal has consented for the adult, is not unlawful.

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36 Eugenics is 'the science of improving the qualities of the human race, especially the careful selection of parents'—*Macquarie Dictionary*, 3rd edition, 1997.

## **71 Termination of pregnancy**

(1) The tribunal may consent, for an adult with impaired capacity for the special health matter concerned, to termination of the adult's pregnancy only if the tribunal is satisfied the termination is necessary to preserve the adult from serious danger to her life or physical or mental health.

(2) Termination of an adult's pregnancy, to which the tribunal has consented for the adult, is not unlawful.

## **72 Special medical research or experimental health care**

(1) The tribunal may consent, for an adult with impaired capacity for the special health matter concerned, to the adult's participation in special medical research or experimental health care<sup>37</sup> relating to a condition the adult has or to which the adult has a significant risk of being exposed only if the tribunal is satisfied about the following matters—

- (a) the special medical research or experimental health care is approved by an ethics committee;
- (b) the risk and inconvenience to the adult and the adult's quality of life is small;
- (c) the special medical research or experimental health care may result in significant benefit to the adult;
- (d) the potential benefit can not be achieved in another way.

(2) The tribunal may consent, for an adult with impaired capacity for the matter, to the adult's participation in special medical research or experimental health care intended to gain knowledge that can be used in the diagnosis, maintenance or treatment of a condition the adult has or has had only if the tribunal is satisfied about the following matters—

- (a) the special medical research or experimental health care is approved by an ethics committee;
- (b) the risk and inconvenience to the adult and the adult's quality of life is small;

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37 "Special medical research or experimental health care" does not include—

- (a) psychological research; or
- (b) approved clinical research—see schedule 2, section 12(2).



- (c) the special medical research or experimental health care may result in significant benefit to the adult or other persons with the condition;
- (d) the special medical research or experimental health care can not reasonably be carried out without a person who has or has had the condition taking part;
- (e) the special medical research or experimental health care will not unduly interfere with the adult's privacy.

(3) The tribunal may not consent to the adult's participation in special medical research or experimental health care if—

- (a) the adult objects<sup>38</sup> to the special medical research or experimental health care; or
- (b) the adult, in an enduring document, indicated unwillingness to participate in the special medical research or experimental health care.

### **73 Prescribed special health care**

(1) Subject to section 68(2), the tribunal may consent, for an adult with impaired capacity for the special health matter concerned, to the adult having prescribed special health care.

(2) The tribunal may consent only if it is satisfied of the matters prescribed under a regulation.

### **74 Subsequent special health care for adult**

(1) If the tribunal consents to special health care for an adult, the tribunal may appoint 1 or more persons who are eligible for appointment as a guardian or guardians for the adult and give the guardian or guardians power to consent for the adult to—

- (a) continuation of the special health care; or
- (b) the carrying out on the adult of similar special health care.

(2) The appointment order may include a declaration, order, direction, recommendation, or advice about how the power given is to be used.

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38 Section 67, which effectively enables an adult's objection to be overridden in some cases, does not apply.

(3) The appointment order may be changed by the tribunal on its own initiative or on the application of an interested person.

(4) In deciding whether to consent, a guardian must apply the general principles and the health care principle.

## **PART 4—OTHER PROVISIONS ABOUT HEALTH CARE**

### **75 Use of force**

A health provider and a person acting under the health provider's direction or supervision may use the minimum force necessary and reasonable to carry out health care authorised under this Act.

### **76 Health providers to give information**

(1) The purpose of this section is to ensure—

- (a) a guardian or attorney who has power for a health matter for an adult has all the information necessary to make an informed exercise of the power; and
- (b) the tribunal, in deciding whether to consent to special health care for an adult with impaired capacity for a special health matter, has all the information necessary to make an informed decision.

(2) At the guardian's or attorney's request, a health provider who is treating the adult must give information to the guardian or attorney unless the health provider has a reasonable excuse.

(3) At the tribunal's request, a health provider who is treating the adult must give information to the tribunal unless the health provider has a reasonable excuse.

(4) The information to be given includes information about the following—

- (a) the nature of the adult's condition;
- (b) the alternative forms of health care available, or likely to be available in the foreseeable future, for the condition;
- (c) the general nature and effect of each form of health care;

- (d) the nature and extent of short-term, or long-term, significant risks associated with each form of health care;
- (e) the reasons why it is proposed a particular form of health care should be carried out.

(5) If a health provider does not comply with a request by a guardian or attorney to give information, the tribunal may, on application by the guardian or attorney, order the health provider to give the information to the guardian or attorney.

(6) If the tribunal orders a health provider to give information, the health provider must comply with the order, unless the health provider has a reasonable excuse.

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

(8) This section overrides—

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

(9) This section does not limit—

- (a) a guardian's right to information under section 44;<sup>39</sup> or
- (b) an attorney's right to information under the *Powers of Attorney Act 1998*, section 81.

(10) In this section—

“attorney” means an attorney under an enduring document or a statutory health attorney.

## **77 Protection of health provider**

(1) To the extent a health provider giving health care to an adult complies with a purported exercise of power for a health matter or special health matter by a person who represented to the health provider that the person had the right to exercise the power, the health provider is taken to have the adult's consent to the exercise of power.

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<sup>39</sup> Section 44 (Right of guardian or administrator to information)

(2) Subsection (1) does not apply if the health provider knew, or could reasonably be expected to have known, the person did not have the right to exercise the power.

### **78 Offence to exercise power for adult if no right to do so**

It is an offence for a person who knows he or she has no right to exercise power for a health matter or special health matter for an adult, or who is recklessly indifferent about whether he or she has a right to exercise power for a health matter or special health matter for the adult, to—

- (a) purport to exercise power for a health matter or special health matter for the adult; or
- (b) represent to a health provider for the adult that the person has a right to exercise power for a health matter or special health matter for the adult.

Maximum penalty—

- (a) for special health matter—300 penalty units; or
- (b) for health matter—200 penalty units.

### **79 Offence to carry out health care unless authorised**

(1) It is an offence for a person to carry out health care of an adult with impaired capacity for the health matter concerned unless—

- (a) this or another Act provides the health care may be carried out without consent;<sup>40</sup> or
- (b) consent to the health care is given under this or another Act; or
- (c) the health care is authorised by an order of the court made in its *parens patriae* jurisdiction.<sup>41</sup>

Maximum penalty—

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

41 **“Court”** means the Supreme Court—see schedule 4 (Dictionary). The *parens patriae* jurisdiction is based on the need to protect those who lack the capacity to protect themselves. It allows the Supreme Court to appoint decision makers for people who, because of mental illness, intellectual disability, illness, accident or old age, are unable to adequately safeguard their own interests.

- (a) if special health care is carried out—300 penalty units; or
  - (b) if other health care is carried out—200 penalty units.
- (2) This section has effect despite the Criminal Code, section 282.<sup>42</sup>

## **80 No less protection than if adult gave health consent**

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**

### **81 Tribunal**

- (1) A Guardianship and Administration Tribunal is established.
- (2) It consists of the president, deputy presidents and other members.

### **82 Functions**

(1) The tribunal has the functions given to it by this Act, including the following functions—

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42 Criminal Code, section 282—

#### **282 Surgical operations**

A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for the patient's benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time and to all circumstances of the case.

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- (a) making declarations about the capacity of an adult, guardian, administrator or attorney for a matter;
- (b) considering applications for appointment of guardians and administrators;
- (c) appointing guardians and administrators if necessary and reviewing the appointments;
- (d) making declarations, orders or recommendations, or giving directions or advice, in relation to the following—
  - (i) guardians and administrators;
  - (ii) attorneys;
  - (iii) enduring documents;
  - (iv) related matters;
- (e) ratifying an exercise of power, or approving a proposed exercise of power, for a matter by an informal decision maker for an adult with impaired capacity for the matter;
- (f) consenting to the withholding or withdrawal of a life-sustaining measure for adults with impaired capacity for the health matter concerned;
- (g) subject to section 68, consenting to special health care for adults with impaired capacity for the special health matter concerned;
- (h) registering an order made in another jurisdiction under a provision, Act or law prescribed under a regulation for section 167;
- (i) reviewing a matter in which a decision has been made by the registrar.

(2) The tribunal also has the other functions given to it by another Act.

(3) In this section—

“**attorney**” means an attorney under an enduring document or a statutory health attorney.

### **83 Powers**

(1) The tribunal has the powers given under this Act or another Act.<sup>43</sup>

(2) The tribunal also may do all things necessary or convenient to be done to perform the tribunal's functions.

### **84 Jurisdiction**

(1) Subject to section 245,<sup>44</sup> the tribunal has exclusive jurisdiction for the appointment of guardians and administrators for adults with impaired capacity for matters.

(2) The tribunal has concurrent jurisdiction with the court<sup>45</sup> for enduring documents and attorneys under enduring documents.

(3) The tribunal has the other jurisdiction given under this Act.

### **85 Powers of the registrar to perform tribunal's functions and exercise tribunal's powers in prescribed non-contentious matters**

(1) The registrar may perform the functions and exercise the powers of the tribunal in relation to a prescribed non-contentious matter.<sup>46</sup>

(2) In exercising powers in relation to a prescribed non-contentious matter—

- (a) subject to subsection (3), the registrar is not under the control or direction of the Minister or any other entity; and
- (b) the registrar is taken to be the presiding member; and
- (c) anything done by the registrar is taken to have been done by the tribunal.

(3) The president may direct the registrar to refer a particular prescribed non-contentious matter to the tribunal.

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43 See, for example, the *Powers of Attorney Act 1998*, section 109A (Guardianship and Administration Tribunal also has jurisdiction and powers about enduring documents).

44 Section 245 (Settlements or damages awards)

45 “**Court**” means the Supreme Court—see schedule 4 (Dictionary).

46 See section 99(3). For review of the registrar's decision, see chapter 7, part 7.

(4) The registrar may refer a particular prescribed non-contentious matter to the tribunal if the registrar considers it would be more appropriate for the tribunal to deal with the matter.

## **PART 2—ADMINISTRATIVE PROVISIONS**

### **86 Appointment of president and deputy presidents**

(1) The Governor in Council must appoint a president and 1 or more deputy presidents of the tribunal.

(2) An appointment may be on a full-time or part-time basis.

(3) The president and deputy presidents are members of the tribunal.

(4) A person is eligible for appointment as president only if the person is a lawyer of at least 5 years standing whom the Minister considers has—

- (a) an appropriate understanding of issues about impaired capacity; and
- (b) appropriate experience in mediation or alternative dispute resolution; and
- (c) other knowledge or experience making the person appropriate to be president.

(5) A person is eligible for appointment as a deputy president only if—

- (a) the person is a lawyer of at least 5 years standing whom the Minister considers has—
  - (i) appropriate experience in mediation or alternative dispute resolution; and
  - (ii) other knowledge or experience making the person appropriate to be a deputy president; or
- (b) the Minister considers the person has—
  - (i) extensive professional knowledge or experience of persons with impaired capacity; and
  - (ii) other knowledge or experience making the person appropriate to be a deputy president.



(6) A person ceases to be a tribunal member if the person ceases to be the president or a deputy president.

### **87 Not under Ministerial control**

In performing the president's functions and exercising the president's powers, the president is not under the control or direction of the Minister.

### **88 President may delegate to deputy president**

The president may delegate the president's powers under this Act to a deputy president.

### **89 Training**

It is the duty of the president to ensure tribunal members are adequately and appropriately trained to enable the tribunal to perform its functions effectively and efficiently.

### **90 Appointment of other tribunal members**

(1) This section applies to members of the tribunal other than the president or a deputy president.

(2) Tribunal members are to be appointed by the Governor in Council.

(3) An appointment may be on a full-time or part-time basis.

(4) A person is eligible for appointment as a tribunal member only if—

(a) the person is a lawyer of at least 5 years standing whom the Minister considers has—

(i) appropriate experience in mediation or alternative dispute resolution; and

(ii) other knowledge or experience making the person appropriate to be a tribunal member; or

(b) the Minister considers the person has extensive professional knowledge or experience of persons with impaired capacity for matters; or

(c) the Minister considers the person has experience of a person with impaired capacity for matters.

(5) The importance of the membership of the tribunal reflecting, to the greatest extent practicable, the social and cultural diversity of the general community must be taken into account in appointing tribunal members.

## **91 Selection**

(1) For selecting a person for recommendation for appointment as the president, a deputy president or other tribunal member, the Minister must advertise for applications from appropriately qualified persons to be considered for selection.

(2) The Minister may recommend to the Governor in Council a person for appointment as the president, a deputy president or other tribunal member only if subsection (1) has been complied with for the appointment.

## **92 Duration of appointment**

(1) The president or a deputy president holds office for a term of not longer than 5 years.<sup>47</sup>

(2) Another tribunal member holds office for a term of not longer than 3 years.

(3) The office of a tribunal member becomes vacant if the holder of the office resigns by signed notice of resignation given to the Minister.

(4) The Governor in Council may remove a tribunal member from office for—

- (a) physical or mental incapacity to satisfactorily perform official duties; or
- (b) neglect of duty; or
- (c) dishonourable conduct; or
- (d) being found guilty of an offence the Minister considers makes the person inappropriate to perform official duties.

## **93 Terms of appointment**

(1) A tribunal member is to be paid the remuneration and allowances decided by the Governor in Council.

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<sup>47</sup> A person may be reappointed—see *Acts Interpretation Act 1954*, section 25(1)(c).

(2) To the extent this Act does not state the terms on which a tribunal member holds office, the member holds office on the terms decided by the Governor in Council.

#### **94 Leave of absence**

The Minister may give a tribunal member leave of absence on the terms the Minister considers appropriate.

#### **95 Acting appointment**

The Governor in Council may appoint a person to act as president, a deputy president or other tribunal member during any or all periods—

- (a) the office is vacant; or
- (b) the president, a deputy president or other tribunal member is absent from duty or, for another reason, is unable to perform the duties of the office.

#### **96 Registrar and staff**

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*.

#### **97 Powers of the registrar**

The registrar has the powers given under this Act.

#### **98 Annual report**

(1) As soon as practicable after the close of each financial year but not later than 4 months after that close, the president must—

- (a) prepare a report on the tribunal's operations during the year; and
- (b) give a copy of the report to the Minister.

(2) The Minister must table a 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

#### 99 Rule-making power

(1) The Governor in Council may make rules (“**tribunal rules**”) about the practices and procedure of the tribunal or the tribunal registry.

(2) A rule is subordinate legislation.

(3) Rules made under this section may specify non-contentious matters that may be dealt with by the registrar (“**prescribed non-contentious matters**”).

(4) The Minister must consult with the president about any proposed rule changes.

#### 100 Tribunal’s business and approval of forms

(1) The president is responsible for ensuring the quick and efficient discharge of the tribunal’s business.

(2) For example, the president may give directions (“**presidential directions**”) about—

- (a) the arrangement of the tribunal’s business; and
- (b) the members who are to constitute the tribunal for a particular proceeding; and
- (c) the places the tribunal is to sit; and
- (d) the tribunal’s procedure.

(3) Directions under subsection (2) may be of general or limited application.

(4) The president may approve forms for use in tribunal proceedings.

#### 101 Members constituting tribunal

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

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

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

(3) If the president considers it appropriate for a proceeding to be heard by a single member—

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

(4) Despite subsections (2) and (3), when constituted to hear an application for a warrant to enter a place and to remove an adult,<sup>48</sup> the tribunal must be constituted by or include 1 of the following members—

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

### **102 Presiding member**

(1) This section applies if the tribunal is constituted by 3 members for a hearing.

(2) If the tribunal includes the president, the president presides at the hearing.

(3) If the tribunal does not include the president but includes 1 deputy president, the deputy president presides at the hearing.

(4) If, apart from this subsection, the application of subsections (2) and (3) does not decide who is to preside at a hearing, the tribunal member directed to preside by the president presides.

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<sup>48</sup> See chapter 7 (Tribunal proceedings), part 5 (Particular proceedings or orders), division 2 (Entry and removal warrant), particularly section 149 (Issue of entry and removal warrant).

**103 Disqualification from hearing**

(1) This section applies if—

- (a) a tribunal member has a personal interest, or a direct or indirect financial interest, in a matter before the tribunal; and
- (b) the interest could conflict with the proper performance of the member's duties on the matter.

(2) If this section applies for the president, the president must give written notice of the nature of the interest to a deputy president as soon as practicable after the relevant facts come to the president's attention.

(3) If this section applies for a deputy president or other tribunal member, the tribunal member must give written notice of the nature of the interest to the president as soon as practicable after the relevant facts come to the member's attention.

(4) The member giving notice must not—

- (a) be present when the tribunal considers the matter; or
- (b) take part in a tribunal decision about the matter.

(5) Subsection (4) does not apply to the member giving notice if the person to whom notice is given decides the interest is not of a material nature.

**104 Way procedure to be decided**

In a proceeding before the tribunal, procedure is within the presiding member's discretion if it is not provided for by—

- (a) this Act; or
- (b) tribunal rules; or
- (c) presidential directions.

**105 Way question of law to be decided**

(1) A question of law arising in a proceeding before the tribunal is to be decided according to the presiding member's opinion.

(2) If the presiding member is not a lawyer and the tribunal as constituted for a hearing includes 1 lawyer, it must be decided by the lawyer.

(3) If the presiding member is not a lawyer and the tribunal as constituted for a hearing includes 2 lawyers, it must be decided by the lawyer authorised by the president to decide questions of law arising in the proceeding.

(4) If the tribunal as constituted for a hearing does not include a lawyer, the presiding member must—

- (a) adjourn the hearing and obtain advice from a lawyer about the question; and
- (b) decide the question in accordance with the advice.

### **106 Way other question to be decided**

If the members constituting the tribunal for a particular proceeding are divided in opinion about the decision to be made on a question (other than a question of law)—

- (a) if there is a majority of the same opinion—the question is decided according to the majority opinion; or
- (b) otherwise—the question is decided according to the opinion of the presiding member.

### **107 Informal**

(1) A proceeding before the tribunal must be conducted as simply and quickly as the requirements of this Act and an appropriate consideration of the matters before the tribunal allow.

(2) The tribunal is not bound by the rules of evidence and may inform itself on a matter in a way it considers appropriate.

### **108 Procedural fairness**

(1) The tribunal must observe the rules of procedural fairness.

(2) Each active party in a proceeding must be given a reasonable opportunity to present the active party's case and, in particular, 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.

(3) However, the tribunal may displace the right to inspect in a confidentiality order.<sup>49</sup>

### **109 Open**

(1) Generally, a hearing by the tribunal of a proceeding must be in public.

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

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

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

(4) 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 any of the following persons to form and express a considered view about the special health care—

- (a) a guardian for the adult;

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<sup>49</sup> Section 109(2)(d) allows the tribunal to impose a prohibition or restriction on inspection of a document if this is desirable because of its confidential nature or for another reason.



- (b) an attorney for a health matter for the adult under an enduring document;
- (c) the statutory health attorney for the adult.

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

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

Maximum penalty—200 penalty units.

### **110 Procedural directions**

(1) Directions about the procedure to be followed for a proceeding may be given—

- (a) if the directions are of general application or apply to a class of proceeding—by the president; or
- (b) if the directions apply to a particular proceeding that has started—by the president or presiding member.

(2) Without limiting subsection (1), a procedural direction may—

- (a) join a person as a party to a proceeding before the tribunal; or
- (b) engage a person with appropriate knowledge or experience, including, for example, a person with appropriate communication skills or appropriate cultural or social knowledge or experience, to help the tribunal in a proceeding; or
- (c) require a person to undergo examination by a doctor or psychologist in the ordinary course of the doctor's medical practice or the psychologist's practice;<sup>50</sup> or
- (d) require the person the subject of the proceeding to be brought before the tribunal; or
- (e) require a person to prepare and produce a report or document to be given to the tribunal.

(3) A procedural direction may be changed or revoked by a person who has power to give the direction.

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<sup>50</sup> A “**doctor**” is a person registered as a medical practitioner and whose name remains on the register of medical practitioners, Queensland—see *Acts Interpretation Act 1954*, section 36 and *Medical Act 1939*, section 4.

(4) A person must comply with a procedural direction, unless the person has a reasonable excuse.

(5) It is a reasonable excuse for a person to fail to prepare and produce a report or document if the report or document might tend to incriminate the person.

(6) The tribunal must pay the amount prescribed under a regulation for—

- (a) help given by a person engaged, or a doctor or psychologist giving an examination, under this section; or
- (b) preparation and production of a report or document required under this section.

(7) In this section—

“**psychologist**” see *Psychologists Act 1977*, section 4.<sup>51</sup>

### **111 Use of technology**

(1) 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.

(2) A person who takes part in a proceeding under subsection (1) is taken to have attended in person at the proceeding.

### **112 Publication about proceeding or disclosure of identity**

(1) If the tribunal is satisfied publication of information about a proceeding is in the public interest, the tribunal may, by order, permit publication of the information.

(2) If the tribunal is satisfied publication of the identity of a person involved in a proceeding is in the public interest, the tribunal may, by order, permit disclosure of the person’s identity.

(3) 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.

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51 A “**psychologist**” is a person registered as a psychologist and whose name remains on the register—*Psychologists Act 1977*, section 4.

Maximum penalty—200 penalty units.

(4) In this section—

“**information**”, about a proceeding, includes—

- (a) information given before the tribunal; and
- (b) matters contained in documents filed with, or received by, the tribunal; and
- (c) the tribunal’s decision or reasons.

“**involved**”, in a proceeding, includes—

- (a) making an application in the proceeding to the tribunal; and
- (b) being a person about whom an application is made in a proceeding; and
- (c) being an active party for the proceeding; and
- (d) giving information or documents to a person who is performing a function under this Act relevant to the proceeding; and
- (e) appearing as a witness at the hearing of the proceeding.

### **113 Location**

A proceeding before the tribunal or a part of the proceeding may be conducted at any place in Queensland.

### **114 No filing fee payable**

A fee is not payable to the tribunal for making an application, or filing another document, under this Act.

## **PART 2—APPLICATIONS**

### **115 Scope of applications**

(1) 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*.

- (2) The application may be made by—
- (a) the adult concerned; or
  - (b) unless this Act or the *Powers of Attorney Act 1998* states otherwise—another interested person.

### **116 How to apply**

- (1) Unless the tribunal directs otherwise, an application must be—
- (a) written; and
  - (b) signed by the applicant; and
  - (c) filed with the tribunal.
- (2) The application must include the following—
- (a) the reasons for the application;
  - (b) to the best of the applicant's knowledge, information about the following persons—
    - (i) the applicant;
    - (ii) if the applicant is not the adult concerned in the application—the adult;
    - (iii) the members of the adult's family;
    - (iv) any primary carer of the adult;
    - (v) all current guardians, administrators and attorneys for the adult;
  - (c) other information relevant to an application that is prescribed under a regulation.
- (3) The information required under subsection (2)(b) is to enable the tribunal to give notice of the hearing and must consist of—
- (a) each person's name; and
  - (b) either—
    - (i) details the applicant knows of the person's address and telephone and facsimile number; or
    - (ii) if the applicant does not know the details—a way known to the applicant of contacting the person.
- (4) In this section—

**“attorney”** means—

- (a) an attorney under a power of attorney; or
- (b) an attorney under an advance health directive or similar document under the law of another jurisdiction.

**“power of attorney”** means—

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

### **117 Application for appointment of guardian or administrator**

An application for appointment of a guardian or administrator must include the proposed appointee’s written agreement to the appointment.

### **118 Tribunal advises persons concerned of hearing**

(1) At least 14 days before the hearing of an application about a matter, the tribunal must give notice of the hearing to the adult concerned in the matter and, as far as practicable, to the following—

- (a) if the adult concerned is not the applicant—the applicant;
- (b) the members of the adult’s family;
- (c) any primary carer of the adult;
- (d) all current guardians, administrators and attorneys for the adult;
- (e) the adult guardian;
- (f) the public trustee;
- (g) anyone else the tribunal considers should be notified.

(2) Notice to the adult must be given in the way the tribunal considers most appropriate having regard to the person’s needs.

(3) However, the adult’s failure to understand the notice does not affect its validity.

(4) The tribunal may, by direction under section 110<sup>52</sup>—

- (a) dispense with the requirement to give notice to all or any of the persons mentioned in subsection (1)(a) to (g); and
- (b) reduce the time stated in subsection (1).

(5) Failure to comply with the requirement to give notice to the adult invalidates a hearing and the tribunal’s decision about an application.

(6) Failure to comply with the requirement to give notice to all or any of the persons mentioned in subsection (1)(a) to (g) does not affect the validity of a hearing or the tribunal’s decision about an application.

(7) In this section—

“**attorney**” means—

- (a) an attorney under a power of attorney; or
- (b) an attorney under an advance health directive or similar document under the law of another jurisdiction.

“**power of attorney**” means—

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

### **119 Who is an “active party”**

Each of the following persons is an active party for a proceeding—

- (a) the adult concerned;
- (b) if the adult concerned is not the applicant—the applicant;
- (c) another person given notice under section 118 who gives notice to the tribunal of the person’s intention to be an active party in the proceeding;
- (d) a person joined as a party to the proceeding by the tribunal.

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52 Section 110 (Procedural directions)

### **120 Notice of intention to be an active party**

(1) A person given notice under section 118 may give notice to the tribunal of the person's intention to be an active party in the proceeding.

(2) The notice must be given at least 3 business days before the hearing of the application.

(3) However, the tribunal may, at any time, give a person who was given notice under section 118 leave to be an active party.

### **121 Protection if unaware of invalidity**

(1) A person appointed as a guardian or administrator for an adult by an invalid tribunal order who, without knowing of the order's invalidity, purports to use power given by the order does not incur any liability, either to the adult or anyone else, because of the invalidity.

(2) A transaction between—

- (a) a person appointed as guardian or administrator by an invalid tribunal order; and
- (b) a person who does not know of the invalidity;

is, in favour of the second person, as valid as if the tribunal order were valid.

(3) In this section—

“**know**”, of a tribunal order's invalidity, includes have reason to believe notice of the hearing of an application was not given to the adult as required.

### **122 Withdrawal of application**

(1) An applicant may withdraw an application by filing with the tribunal a notice of withdrawal.<sup>53</sup>

(2) If a notice of withdrawal is filed, the tribunal must give notice of the withdrawal to each active party.

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<sup>53</sup> Note that the tribunal may make an order appointing a guardian or administrator on its own initiative—section 12(3).

## **PART 3—PARTICIPATION**

### **123 Right of active party to appear**

(1) An active party in a proceeding before the tribunal may appear in person.

(2) If the active party is a corporation, the corporation may appear through an officer of the corporation.

### **124 Representative may be used with tribunal's leave**

(1) An active party may, with the tribunal's leave, be represented by a lawyer or agent.

(2) A person given notice to attend at a hearing to give evidence or produce things may, with the tribunal's leave, be represented by a lawyer or agent.

### **125 Representative may be appointed**

(1) If, in a proceeding before the tribunal—

- (a) the adult concerned in the proceeding is not represented in the proceeding; or
- (b) the adult is represented in the proceeding by an agent the president or presiding member considers to be inappropriate to represent the adult's interests;

the president or the presiding member may appoint a representative to represent the adult's views, wishes and interests.

(2) A proceeding may be adjourned to allow the appointment to be made.

### **126 Tribunal to decide who are interested persons**

(1) If necessary, the tribunal may decide whether a person is an interested person for another person under this Act or the *Powers of Attorney Act 1998*.<sup>54</sup>

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54 See “interested person”—schedule 4 (Dictionary).



(2) If the tribunal decides a person is not an interested person for the other person and the person asks for the tribunal's reasons, the tribunal must give the person written reasons for its decision.

(3) This section does not limit a court's power to decide whether a person is an interested person for another person under the *Powers of Attorney Act 1998*.

### **127 Costs**

(1) Each party in a proceeding is to bear the party's own costs of the proceeding.

(2) 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**

### **128 Tribunal may stay decision pending hearing**

(1) If a person applies to the tribunal in relation to a decision for an adult about a matter, the person may also apply to the tribunal for a stay of the decision.

(2) The tribunal may, by order, stay the decision to secure the effectiveness of the application.

(3) A stay—

- (a) may be given on the terms the tribunal considers appropriate; and
- (b) operates for the period specified by the tribunal.

(4) The period of a stay must not extend past the time when the tribunal decides the application.

(5) The tribunal may amend or revoke its order staying a decision.

**129 Interim order**

(1) If the tribunal is satisfied urgent action is required, it may make an interim order in a proceeding without hearing and deciding the proceeding or otherwise complying with the requirements of this Act, including section 118.<sup>55</sup>

(2) An interim order may not include consent to special health care.

(3) An interim order has effect for the period specified in the order.

(4) The maximum period that may be specified in an interim order is 28 days.

(5) An interim order may be renewed.

(6) In this section—

“**tribunal**” means the tribunal constituted by the president, a deputy president, a legal member or the registrar.

**130 Tribunal to ensure it has all relevant information and material**

To hear and decide a matter in a proceeding, the tribunal must ensure, as far as it considers it practicable, it has all the relevant information and material.

**131 Tribunal may proceed without further information**

(1) If the tribunal considers urgent or special circumstances justify it doing so, the tribunal may proceed to decide a matter on the information before it without receiving further information.

(2) 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.

(3) Before the active parties agree, the tribunal must ensure they are aware of the material on which the matter will be decided.

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55 Section 118 (Tribunal advises persons concerned of hearing)

**132 Tribunal may proceed in absence of an active party**

The tribunal may proceed in the absence of an active party who has had reasonable notice of a proceeding.

**133 Tribunal may adjourn proceeding**

The tribunal may adjourn a proceeding.

**134 Report by tribunal staff**

(1) The tribunal may—

- (a) receive in evidence in a proceeding a written report by tribunal staff on a matter in the proceeding; and
- (b) have regard to the report.

(2) Generally, if the tribunal receives the report in evidence in a proceeding, the adult concerned in the proceeding and each other active party in the proceeding must be—

- (a) advised of the contents of the report; and
- (b) upon request, given a copy of the report.

(3) However, the right to be given a copy may be displaced in a confidentiality order.

**135 Witnesses**

(1) The tribunal may receive evidence on oath or affirmation, by statutory declaration or in another way.

(2) In a proceeding, the president or the presiding member for a hearing may, by written notice given to a person, require the person to attend the hearing at a stated time and place to give evidence or produce stated documents or things.

(3) The presiding member at a hearing—

- (a) may require a witness at the hearing either to take an oath or make an affirmation; and
- (b) may administer an oath or affirmation to a witness at the hearing; and

- (c) for participation under section 111(1)<sup>56</sup>—may make the arrangements the member considers appropriate in the circumstances for administering an oath or affirmation to a witness.

(4) The presiding member may allow a witness at the hearing to give information by tendering a written statement, verified, if the member directs, by oath or affirmation.

### **136 Witness fees and expenses**

(1) The tribunal may make an order as to fees and expenses to be paid to a witness.

(2) The fees and expenses ordered must not be more than the fees and expenses allowable under the *Uniform Civil Procedure Rules 1999* if the witness were appearing as a witness in the Magistrates Court.

(3) In this section—

“**witness**” means a person attending in person at a proceeding under this Act or the *Powers of Attorney Act 1998* and includes an interpreter required to interpret the evidence of a witness to the tribunal.

### **137 Offences by witnesses**

(1) A person given notice under section 135(2) must not, unless the person has a reasonable excuse—

- (a) fail<sup>57</sup> to attend as required by the notice; or
- (b) fail to continue to attend as required by the presiding member at the hearing until excused from further attendance.

Maximum penalty—100 penalty units.

(2) A witness at a hearing must take an oath or make an affirmation or statutory declaration when required by the presiding member.

Maximum penalty—100 penalty units.

(3) Also, a witness at a hearing must not, unless the person has a reasonable excuse—

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<sup>56</sup> Section 111 (Use of technology)

<sup>57</sup> “**Fail**” includes refuse—see *Acts Interpretation Act 1954*, section 36.

- (a) fail to answer a question the person is required to answer by the presiding member; or
- (b) fail to produce a document or thing the person is required to produce by a notice under section 135(2).

Maximum penalty—100 penalty units.

(4) It is not a reasonable excuse for a person to fail to answer a question because answering the question might tend to incriminate the person.

(5) It is not a reasonable excuse for a person to fail to produce a document or thing because producing the document or thing might tend to incriminate the person.

(6) However, evidence of, or directly or indirectly derived from, a person's answer or production of a document or thing that might tend to incriminate the person is not admissible in evidence against the person in a civil or criminal proceeding, other than—

- (a) a proceeding for an offence against section 140, 141 or 142<sup>58</sup> or another offence about the falsity of the answer, document or thing; or
- (b) if the answer or production is relevant to the person's employment—a proceeding brought by or for the person against the person's employer; or
- (c) if the answer or production is relevant to the person's professional registration or licence—a proceeding about the registration, licence or approval; or
- (d) if the answer or production is relevant to the person's registration, licence or approval as proprietor or operator of a service or facility involved in the care of adults with impaired capacity for a matter—a proceeding about the registration, licence or approval.

### **138 Advice, directions and recommendations**

(1) Once an application about a matter has been made to the tribunal, the tribunal may—

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58 Section 140 (False or misleading statements), 141 (False or misleading documents) or 142 (Influencing participants)

*Guardianship and Administration Act 2000*

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- (a) give advice or directions about the matter it considers appropriate; or
- (b) make recommendations it considers appropriate about action an active party should take.

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

- (a) continue with the application; or
- (b) adjourn the application; or
- (c) dismiss the application.

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

(4) 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 1998* unless the person knowingly gave the tribunal false or misleading information relevant to the tribunal's advice, directions or recommendations.

(5) If the tribunal gives directions to a guardian, administrator or attorney, the person must comply with them, unless the person has a reasonable excuse.

(6) In this section—

**“attorney”** means—

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

**“power of attorney”** means—

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

**139 Fabricating evidence**

The tribunal is a tribunal for the Criminal Code, section 126.<sup>59</sup>

**140 False or misleading statements**

(1) A person must not state anything to the tribunal, registrar or another tribunal staff member the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

(2) It is enough for a complaint for an offence against subsection (1) to state the statement made was ‘false or misleading’ to the person’s knowledge, without stating which.

**141 False or misleading documents**

(1) 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.

Maximum penalty—100 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the tribunal, registrar or other tribunal staff member, to the best of the person’s ability, how it is false or misleading; and
- (b) if the person, has, or can reasonably obtain, the correct information—gives the correct information.

(3) It is enough for a complaint against a person for an offence against subsection (1) to state the document was ‘false or misleading’ to the person’s knowledge, without stating which.

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59 Criminal Code, section 126(1)—

**126 Fabricating evidence**

(1) Any person who, with intent to mislead any tribunal in any judicial proceeding—

- (a) fabricates evidence by any means other than perjury or counselling or procuring the commission of perjury; or
- (b) knowingly makes use of such fabricated evidence;

is guilty of a crime, and is liable to imprisonment for 7 years.

### **142 Influencing participants**

A person must not improperly influence a person in relation to the person's participation in a proceeding, whether as a tribunal member, an active party or a witness, to act other than in the course of the person's duty in relation to the proceeding.

Maximum penalty—100 penalty units.

### **143 Contempt of tribunal**

A person must not, without reasonable excuse—

- (a) insult a tribunal member in relation to the performance of the member's functions as a tribunal member; or
- (b) interrupt a tribunal proceeding; or
- (c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place the tribunal is sitting; or
- (d) do anything that would, if the tribunal were a court of record, be a contempt of court.

Maximum penalty—100 penalty units.

### **144 Obstructing tribunal**

(1) A person must not obstruct or improperly influence the conduct of a tribunal proceeding or attempt to do so.

Maximum penalty—100 penalty units.

(2) In this section—

“**influence**” includes attempt to influence.

“**obstruct**” includes hinder, resist and attempt to obstruct.

### **145 Protection of tribunal members, representatives and witnesses**

(1) In the performance or exercise of a tribunal member's functions or powers, the member has the same protection and immunity as a Supreme Court judge has in the performance or exercise of the judge's functions or powers.



(2) A person representing a party in a tribunal proceeding has the same protection and immunity as a barrister appearing for a party in a proceeding in the Supreme Court.

(3) A person given notice under section 135<sup>60</sup> or appearing at a tribunal proceeding 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*

#### **146 Declaration about capacity**

(1) The tribunal may make a declaration about the capacity of an adult, guardian, administrator or attorney for a matter.

(2) The tribunal may do this on its own initiative or on the application of the individual or another interested person.

(3) In deciding whether an individual is capable of communicating decisions in some way,<sup>61</sup> the tribunal must investigate the use of all reasonable ways of facilitating communication, including, for example, symbol boards or signing.

(4) In this section—

**“attorney”** means—

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

**“power of attorney”** means—

- (a) a general power of attorney made under the *Powers of Attorney Act 1998*; or

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60 Section 135 (Witnesses)

61 See definition **“capacity”**—schedule 4 (Dictionary).

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

### **147 Effect of declaration about capacity to enter contract**

A declaration about whether a person had capacity to enter a contract is, in a subsequent proceeding in which the validity of the contract is in issue, evidence about the person's capacity.

### *Division 2—Entry and removal warrant*

### **148 Application for entry and removal warrant**

(1) An application by the adult guardian for a warrant to enter a place and to remove an adult must be sworn and state the grounds on which the warrant is sought.

(2) Sections 116 and 118<sup>62</sup> do not apply to the application and the tribunal may issue a warrant without notice of the application having been given to the adult or any other person.

(3) The tribunal may refuse to consider the application until the adult guardian gives the tribunal all the information the tribunal requires about the application in the way the tribunal requires.

*Example—*

The tribunal may require additional information supporting the application be given by statutory declaration.

### **149 Issue of entry and removal warrant**

(1) The tribunal may issue a warrant only if the tribunal is satisfied 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.

(2) The warrant must state—

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62 Sections 116 (How to apply) and 118 (Tribunal advises persons concerned of hearing)

- (a) that the adult guardian may, with necessary and reasonable help and force, enter the place, and any other place necessary for entry, and remove the adult; and
- (b) that the adult guardian may ask a police officer to help in the exercise of the adult guardian's powers under the warrant; and
- (c) the hours of the day or night when the place may be entered; and
- (d) the date, within 14 days after the warrant's issue, the warrant ends.

### **150 Role of occupier if entry and removal warrant**

(1) 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.

(2) When making the requirement, the adult guardian must warn that it is an offence to fail to comply with the requirement, unless a person has a reasonable excuse.

(3) A person required to give reasonable help must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—100 penalty units.

### **151 Reporting requirement after removal of adult**

(1) As soon as practicable after the adult has been removed under the warrant, the adult guardian must apply to the tribunal for the orders the adult guardian considers appropriate about the following—

- (a) the adult's personal welfare;
- (b) a power of attorney or advance health directive of the adult;
- (c) a guardian, administrator or attorney of the adult.

(2) In this section—

“**attorney**” means—

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

“**power of attorney**” means—

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

### *Division 3—Miscellaneous*

#### **152 Tribunal authorisation or approval**

(1) The tribunal may authorise a conflict transaction, a type of conflict transaction or conflict transactions generally.

(2) The tribunal may approve—

- (a) an investment as an authorised investment; or
- (b) the undertaking of a real estate transaction that is not an authorised real estate transaction; or
- (c) the undertaking of a security transaction that is not an authorised security transaction.

(3) The tribunal, or its appropriately qualified nominee, may approve a management plan given to the tribunal for approval.

(4) In this section—

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

#### **153 Records and audit**

(1) The tribunal may order an adult’s administrator or adult’s attorney for a financial matter to file in the tribunal, and serve on the applicant, a summary of receipts and expenditure for the adult or more detailed accounts of dealings and transactions for the adult.

(2) The tribunal may—

- (a) order that the summary or accounts filed be audited by an auditor appointed by the tribunal and a copy of the auditor’s report be given to the tribunal and the applicant; and

(b) make an order about payment of the auditor's costs.

(3) The tribunal may make an order under subsection (1) or (2) on its own initiative or on the application of the adult or another interested person.

(4) In this section—

“attorney” means an attorney under an enduring power of attorney.

### **154 Ratification or approval of exercise of power by informal decision maker**

(1) The tribunal may, by order, 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.

(2) The tribunal may only approve or ratify the exercise of power for a matter if—

- (a) it considers the informal decision maker proposes to act, or has acted, honestly and with reasonable diligence; and
- (b) the matter is not a special personal matter, a health matter or a special health matter.

(3) The tribunal may make the order on its own initiative or on the application of the adult or informal decision maker.

(4) If the tribunal approves or ratifies the exercise of power for an adult for a matter—

- (a) the exercise of power is as effective as if the power were exercised by the adult and the adult had capacity for the matter when the power is or was exercised; and
- (b) the informal decision maker does not incur any liability, either to the adult or anyone else, for the exercise of power.

(5) In this section—

“informal decision maker”, for a matter for an adult, means a person who is—

- (a) a member of the adult's support network; and
- (b) not an attorney under an enduring document, administrator or guardian for the adult for the matter.

**155 Suspension of guardianship order or administration order**

(1) The tribunal may, by order, suspend the operation of all or some of the power of a guardian or administrator (an “**appointee**”) for an adult if the tribunal suspects, on reasonable grounds, that the appointed person is not competent.

(2) An appointee is not competent if, for example—

- (a) a relevant interest of the adult has not been, or is not being, adequately protected; or
- (b) the appointee has neglected the appointee’s duties or abused the appointee’s powers, whether generally or in relation to a specific power; or
- (c) the appointee has otherwise contravened this Act.

(3) The tribunal may make an order under subsection (1) in a proceeding without hearing and deciding the proceeding or otherwise complying with the requirements of this Act.

(4) The suspension may not be for more than 3 months.

(5) During the suspension of the operation of power of a guardian, the adult guardian is taken to be the guardian for the adult for the exercise of the suspended power.

(6) During the suspension of the operation of power of an administrator, the public trustee is taken to be the administrator for the adult for the exercise of the suspended power.

**PART 6—DECISION****156 Decision within reasonable time**

The tribunal must give its decision on a matter involved in a proceeding within a reasonable time after the matter is heard.

**157 Written reasons for decision**

(1) If directed by the president to give written reasons for a decision, the tribunal must give written reasons for the decision within 28 days after giving the decision.<sup>63</sup>

(2) Also, the tribunal must give written reasons for a decision if a person aggrieved by the decision gives the tribunal a written request for the reasons within 28 days after the person is given notice under subsection (3).

(3) When the tribunal gives a person a copy of a decision under section 158, the tribunal must also give the person a notice that, to obtain the tribunal's written reasons for the decision, the person must make a written request to the tribunal within 28 days after the notice is given.

(4) Subsection (3) does not apply if the tribunal gives the person a copy of its written reasons when the tribunal gives the person a copy of its decision.

(5) The tribunal must give the person the written reasons within 28 days after receiving the request.

**158 Decision and reasons to the adult and each active party**

(1) Generally, the tribunal must give a copy of its decision, and any written reasons for its decision, on an application about a matter to—

- (a) the adult concerned in the matter; and
- (b) each other active party in the proceeding.

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

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63 *Acts Interpretation Act 1954*, section 27B—

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

If an Act requires a tribunal, authority, body or person making a decision to give written reasons for the decision (whether the expression 'reasons', 'grounds' or another expression is used), the instrument giving the reasons must also—

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

(3) However, a confidentiality order may displace the requirement to give copies of its decision or reasons.<sup>64</sup>

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

### **159 Proof of orders and decisions**

A document purporting to be certified by the registrar of the tribunal and to be a copy of an order or decision of the tribunal, is, in a proceeding, whether or not before the tribunal, or for advice to the registrar of titles, evidence of the order or decision.

## **PART 7—REVIEW OF REGISTRAR’S DECISION**

### **160 Application for review of registrar’s decision**

(1) Any person aggrieved by a decision of the registrar in a matter<sup>65</sup> may apply to the tribunal to review the matter.

(2) The application must be made to the tribunal within 28 days after the day the person becomes aware of the decision.

(3) However, the tribunal may, at any time, give the person leave to apply for a review.

(4) A person aggrieved by a decision of the registrar may start an appeal under part 8 only if the aggrieved person has applied for a review under this part.

### **161 Review of registrar’s decision**

(1) On its own initiative or on an application under section 160, the tribunal may review a matter in which the registrar has made a decision.

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64 Section 109 allows the tribunal to impose a prohibition or restriction on access to its decision or reasons if this is desirable because of their confidential nature or for another reason. As to restricting access by the adult concerned, see section 109(3).

65 This includes a decision of the registrar in a prescribed non-contentious matter—section 85.



(2) Unless the tribunal orders otherwise, the tribunal must conduct the review on the evidence before the registrar.

(3) When reviewing a matter, the tribunal must be constituted by a single member who is the president or a legal member.

### **162 Effect of review on original decision of registrar**

(1) Unless the registrar otherwise orders, a decision made by the registrar in a matter to be reviewed remains in force until a decision is made at the review.

(2) However, to secure the effectiveness of a review, the registrar may, by order, stay a decision.

(3) A stay—

(a) may be given on the terms the registrar considers appropriate; and

(b) operates for the period specified by the registrar.

(4) The period of a stay must not extend past the time when a decision is made at the review.

(5) The registrar or the tribunal may amend or revoke an order staying a decision.

## **PART 8—APPEAL**

### **163 Tribunal may suspend decision pending appeal**

(1) To secure the effectiveness of an appeal against a tribunal decision, the tribunal making the decision under part 6 or 7<sup>66</sup> may, by order, stay the decision.

(2) A stay—

(a) may be given on the terms the tribunal considers appropriate; and

(b) operates for the period specified by the tribunal.

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66 Part 6 (Decision) or 7 (Review of registrar's decision)

(3) The period of a stay must not extend past the time when the appeal is decided.

(4) The tribunal may amend or revoke its order staying a tribunal decision.

(5) In this section—

**“tribunal decision”** includes an order or direction of the tribunal.

### 164 Appellant

(1) An eligible person may appeal against a tribunal decision in a proceeding to the court.<sup>67</sup>

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

(3) In this section—

**“eligible person”** means—

- (a) the person whose capacity for a matter was under consideration in the proceeding; or
- (b) the applicant in the proceeding; or
- (c) a person proposed for appointment by the proceeding; or
- (d) a person whose power as guardian, administrator or attorney was changed or removed by the tribunal decision; or
- (e) the adult guardian; or
- (f) the public trustee; or
- (g) the Attorney-General; or
- (h) a person given leave to appeal by the court.

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

### 165 Appeal costs

(1) Each party to an appeal is to bear the party’s own costs of the appeal.

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<sup>67</sup> **“Court”** means the Supreme Court—see schedule 4 (Dictionary).

(2) However, the court may order a party to an appeal to pay costs to another party if the court considers—

- (a) the appeal was frivolous or vexatious; or
- (b) the party has incurred costs because the appellant defaulted in the procedural requirements.

## **PART 9—RECOGNITION OF ORDER MADE UNDER ANOTHER LAW**

### **166 Definitions for pt 9**

In this part—

**“recognised provision”** means a provision, Act or law prescribed under a regulation for section 167.

**“registrable order”** means an order made under a recognised provision.

### **167 Regulation prescribing recognised provision**

If an Act, or provision of an Act, of the Commonwealth or another State, or a law, or provision of a law, of a foreign jurisdiction, allows an order to be made that is similar to an order that may be made under this Act or the *Powers of Attorney Act 1998*, the provision, Act or law may be prescribed under a regulation for this section.

### **168 Application to register**

A person may apply to the tribunal to register a registrable order.

### **169 Registration**

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.

**170 Effect of registration**

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

**171 Notice of registration and subsequent action to original maker**

(1) As soon as reasonably practicable after registering a registrable order, the tribunal must advise the entity that originally made the order of the registration.

(2) 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****172 Enforcement of orders**

(1) A tribunal order, other than an order entitling a person to payment, may be filed in a court having jurisdiction to make the order.

(2) 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.

(3) 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 POWERS

#### 173 Adult guardian

There must be an Adult Guardian.<sup>68</sup>

#### 174 Functions

(1) The adult guardian's role is to protect the rights and interests of adults who have impaired capacity for a matter.

(2) The adult guardian has the functions given to the adult guardian by this Act or another Act, including the following functions—

- (a) protecting adults who have impaired capacity for a matter from neglect, exploitation or abuse;
- (b) investigating complaints and allegations about actions by—
  - (i) an attorney; or
  - (ii) a guardian or administrator; or
  - (iii) another person acting or purporting to act under a power of attorney, advance health directive or order of the tribunal made under this Act;
- (c) mediating and conciliating between attorneys, guardians and administrators or between attorneys, guardians or administrators and others, for example, health providers, if the adult guardian considers this appropriate to resolve an issue;
- (d) acting as attorney—
  - (i) for a personal matter under an enduring power of attorney; or
  - (ii) under an advance health directive; or

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68 See part 4 (Administrative provisions), particularly section 199 (Appointment).

- (iii) for a health matter if authorised as a statutory health attorney; or
- (iv) if appointed by the court or the tribunal;
- (e) acting as guardian if appointed by the tribunal;
- (f) seeking help (including help from a government department, or other institution, welfare organisation or provider of a service or facility) for, or making representations for, an adult with impaired capacity for a matter;
- (g) educating and advising persons about, and conducting research into, the operation of this Act and the *Powers of Attorney Act 1998*.

(3) In performing a function or exercising a power, the adult guardian must apply the general principles and the health care principle.

(4) In subsection (2)(b) and (c)—

**“attorney”** means—

- (a) an attorney under a power of attorney; or
- (b) an attorney under an advance health directive or similar document under the law of another jurisdiction; or
- (c) a statutory health attorney.

**“power of attorney”** means—

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

## **175 Powers**

(1) The adult guardian has the powers given under this Act or another Act.

(2) Also, the adult guardian may do all things necessary or convenient to be done to perform the adult guardian’s functions.

## 176 Not under Ministerial control

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.

## 177 Delegation

(1) The adult guardian may delegate the adult guardian's powers,<sup>69</sup> other than the power to give notice under section 185(1) or 189,<sup>70</sup> to an appropriately qualified member of the adult guardian's staff.

(2) The adult guardian may also delegate the adult guardian's mediation and conciliation powers to an appropriately qualified person.

(3) A person exercising mediation or conciliation power must, if asked, produce evidence of the delegation.

(4) Also, if the adult guardian has power for a personal matter for an adult, the adult guardian may delegate the power to make day-to-day decisions about the matter to 1 of the following—

- (a) an appropriately qualified carer of the adult;
- (b) a health provider of the adult;<sup>71</sup>
- (c) an attorney under an enduring document;
- (d) 1 of the persons who could be eligible to be the adult's statutory health attorney.

(5) In this section—

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

*Example of 'standing' for a person working in a hospital or care facility—*

A person's level of authority in the hospital or care facility.

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69 The *Acts Interpretation Act 1954*, section 27A applies to the delegation.

70 Sections 185 (Witnesses) and 189 (Cost of investigations and audits)

71 This is despite an adult's paid carer or health provider not being eligible to be appointed as the adult's guardian or administrator (section 14(1) (Appointment of 1 or more eligible guardians and administrators)) or as the adult's attorney (*Powers of Attorney Act 1998*, section 29 (Meaning of “eligible attorney”)).

**“day-to-day decision”** means a minor, uncontroversial decision about day-to-day issues that involves no more than a low risk to the adult.

*Example of day-to-day decision—*

A decision about podiatry, physiotherapy, non-surgical treatment of pressure sores and health care for colds and influenza.

## **178 Consultation and employment of professionals**

(1) The adult guardian may consult with, employ, and remunerate, the medical, legal, accounting or other professionals the adult guardian considers necessary.

(2) The adult guardian is entitled to reimbursement from an adult for remuneration paid concerning the adult.

## **179 Advice and supervision**

(1) The adult guardian may—

- (a) give advice to an attorney, guardian or administrator; and
- (b) 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 including, for example, because the person has contravened this Act or the person’s duties but has not done this wilfully; and
- (c) require an attorney who may exercise power for a financial matter or an administrator to present a plan of management for approval.

(2) 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.

(3) In this section—

**“attorney”** means an attorney under an enduring document or a statutory health attorney.



## PART 2—INVESTIGATIVE POWERS

### 180 Investigate complaints

The adult guardian may investigate any complaint or allegation that an adult with impaired capacity for a matter—

- (a) is being or has been neglected, exploited or abused; or
- (b) has inappropriate or inadequate decision-making arrangements.

### 181 Delegate for investigation

(1) If the adult guardian decides to investigate a complaint or allegation, the adult guardian may delegate to an appropriately qualified person the adult guardian's powers under this part, other than the power to give notice under section 185(1) or 189.<sup>72</sup>

(2) Subsection (1) does not affect the adult guardian's power to delegate under section 177.

(3) A delegate exercising power under this part must, if asked, produce evidence of the delegation.

(4) If a delegate is given power to carry out an investigation, the delegate must, after carrying out the investigation, make a written report and give a copy of the report to the adult guardian.

(5) It is a lawful excuse for the publication of any defamatory statement made in the report that the publication is made in good faith and is, or purports to be, made for this Act.

(6) A delegate given power to carry out an investigation is entitled to the remuneration decided by the adult guardian.

(7) In this section—

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

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72 Section 185 (Witnesses) or 189 (Cost of investigations and audits)

## **182 Records and audit**

(1) The adult guardian may, by written notice to an attorney for an adult under an enduring power of attorney who has power for a financial matter or to an administrator for an adult, require that by the date stated in the notice the attorney or administrator file with the adult guardian a summary of receipts and expenditure, or more detailed accounts of dealings and transactions, for the adult for a specified period.

(2) The date by which the summary or accounts must be filed must be a date that the adult guardian considers gives the attorney or administrator reasonable time to comply with the notice.

(3) The attorney or administrator must comply with the notice, unless the attorney or administrator has a reasonable excuse.

Maximum penalty—100 penalty units.

(4) The summary or accounts filed may be audited by an auditor appointed by the adult guardian.<sup>73</sup>

## **183 Right to information**

(1) The adult guardian has a right to all information necessary to investigate a complaint or allegation or to carry out an audit.<sup>74</sup>

(2) The adult guardian may, by written notice given to a person who has custody or control of the information, require the person—

- (a) to give the information to the adult guardian; and
- (b) if the person is an attorney or administrator and the information is contained in a document—to give the document to the adult guardian; and
- (c) 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.

(3) The person must comply with the notice, unless the person has a reasonable excuse.

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73 See *Powers of Attorney Act 1998*, section 122 (Records and audit) which gives the court similar power in relation to an attorney for a financial matter.

74 In addition, the *Powers of Attorney Act 1998*, section 81 (Right of attorney to information) gives the adult guardian a right to information as an attorney.

Maximum penalty—100 penalty units.

(4) It is a reasonable excuse for a person to fail to comply with the notice because complying with the notice might tend to incriminate the person.

(5) However, this section overrides—

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

(6) In this section—

“attorney” means—

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

“power of attorney” means—

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

## **184 Information by statutory declaration**

(1) If a person is required to give information to the adult guardian under this Act, the adult guardian may, by written notice given to a person, require the person to give the information by statutory declaration.

(2) The person must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

## **185 Witnesses**

(1) For the performance of the adult guardian’s functions, the adult guardian may, by written notice given to a person, require the person to attend before the adult guardian at a stated time and place to give information and answer questions, or produce stated documents or things.

(2) The person must comply with the notice, unless the person has a reasonable excuse.<sup>75</sup>

Maximum penalty—100 penalty units.

(3) The adult guardian may—

- (a) require the person either to take an oath or make an affirmation; and
- (b) administer an oath or affirmation to the person, or, if technology allowing reasonably contemporaneous and continuous communication is to be used, make the arrangements the adult guardian considers appropriate in the circumstances for administering an oath or affirmation to the person; and
- (c) allow the person to give information by tendering a written statement, verified, if the adult guardian directs, by oath or affirmation.

(4) The person must comply with a requirement under subsection (3)(a), unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(5) The adult guardian must pay or tender to the person an amount equivalent to the fees and expenses allowable under the *Uniform Civil Procedure Rules 1999* if the person were a witness appearing in a Magistrates Court.

### **186 Power of court if noncompliance with attendance notice**

(1) This section applies if, without reasonable excuse, a person fails to comply with a notice given under section 185.

(2) A Magistrates Court, at the request of the adult guardian, may issue a subpoena requiring the attendance of the person before the court.

(3) The *Uniform Civil Procedure Rules 1999*, other than rules 417, 418 and 420, apply in relation to the subpoena.<sup>76</sup>

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75 See section 188 (Self-incrimination not a reasonable excuse).

76 See the *Uniform Civil Procedure Rules 1999*, chapter 11 (Evidence), part 4 (Subpoenas) and rules 417 (Order for cost of complying with subpoena), 418 (Cost of complying with subpoena if not a party) and 420 (Production by non-party).

(4) The court may require the person either to take an oath or make an affirmation.

(5) If the person attends before the court under a subpoena to give evidence or a subpoena for production and to give evidence, the adult guardian may examine the person.

(6) In this section—

“subpoena” means—

- (a) a subpoena for production; or
- (b) a subpoena to give evidence; or
- (c) a subpoena for production and to give evidence.

### **187 Power of court if failure to cooperate under subpoena**

(1) This section applies if a person subpoenaed under section 186 attends before a Magistrates Court and without reasonable excuse—

- (a) refuses to be sworn or to affirm; or
- (b) refuses to answer a question put to the person; or
- (c) fails to give an answer to the court’s satisfaction.

(2) The court may treat the person’s refusal or failure as a contempt of court.

### **188 Self-incrimination not a reasonable excuse**

(1) This section applies to—

- (a) a person who fails to comply with a notice under subsection 185(1) to give information and answer questions or to produce documents or things; or
- (b) a person subpoenaed under section 186 who attends before a Magistrates Court and refuses to answer a question put to the person or fails to give an answer to the court’s satisfaction.

(2) It is not a reasonable excuse for the person to—

- (a) fail to comply with the notice; or
- (b) refuse to answer the question or fail to give an answer to the court’s satisfaction;

because compliance with the notice, answering the question or giving an answer to the court's satisfaction might tend to incriminate the person.

(3) However, evidence of, or directly or indirectly derived from, a person's answer or production of a document or thing that might tend to incriminate the person is not admissible in evidence against the person in a civil or criminal proceeding, other than—

- (a) a proceeding for an offence about the falsity of the answer, document or thing; or
- (b) if the answer or production is relevant to the person's employment—a proceeding brought by or for the person against the person's employer; or
- (c) if the answer or production is relevant to the person's professional registration or licence—a proceeding about the registration, licence or approval; or
- (d) if the answer or production is relevant to the person's registration, licence or approval as proprietor or operator of a service or facility involved in the care of adults with impaired capacity for a matter—a proceeding about the registration, licence or approval.

### **189 Cost of investigations and audits**

(1) If—

- (a) the adult guardian undertakes an investigation concerning a financial matter or an audit at the request of a person; and
- (b) 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 to the adult guardian the amount the adult guardian considers appropriate for the cost of the investigation or audit.

(2) If—

- (a) the adult guardian undertakes an investigation concerning a financial matter or an audit; and
- (b) 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 amount the adult guardian considers appropriate for the cost of the investigation or audit.

(3) The adult guardian may, by written notice, require a person who requests an investigation or audit to pay to the adult guardian the amount the adult guardian considers appropriate as security for a payment under subsection (1).

(4) A person given notice under this section may apply to the tribunal and the tribunal may make the order it considers appropriate.

(5) In this section—

“**attorney**” means an attorney under a power of attorney.

“**power of attorney**” means—

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

### **190 False or misleading statements**

(1) A person must not state anything to the adult guardian the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

(2) It is enough for a complaint for an offence against subsection (1) to state the statement made was ‘false or misleading’ to the person’s knowledge, without stating which.

### **191 False or misleading documents**

(1) A person must not give the adult guardian a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the adult guardian, to the best of the person's ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

(3) It is enough for a complaint against a person for an offence against subsection (1) to state the document contained information that was 'false or misleading' to the person's knowledge, without stating which.

### **192 Obstructing investigation or audit**

(1) A person must not obstruct or improperly influence the conduct of an investigation or audit.

Maximum penalty—100 penalty units.

(2) In this section—

“**influence**” includes attempt to influence.

“**obstruct**” includes hinder, resist and attempt to obstruct.

### **193 Report after investigation or audit**

(1) After the adult guardian has carried out an investigation or audit in relation to an adult, the adult guardian must make a written report and give a copy of the report to any person at whose request the investigation or audit was carried out and to every attorney, guardian, or administrator, for the adult.

(2) It is a lawful excuse for the publication of a defamatory statement made in the report that the publication is made in good faith and is, or purports to be, made for this Act.

(3) The adult guardian must allow an interested person to inspect a copy of the report at all reasonable times and, at the person's own expense, to be given a copy of the report.

(4) In this section—

“**attorney**” means—

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

“**power of attorney**” means—



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

### **PART 3—PROTECTIVE POWERS**

#### **194 Proceedings for protection of property**

If the adult guardian considers—

- (a) property of an adult with impaired capacity is wrongfully held, detained, converted or injured; or
- (b) money is payable to the adult;

the adult guardian, either in the name of the adult guardian or the adult, may 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.

#### **195 Suspension of attorney's power**

(1) The adult guardian may, by written notice to an attorney, suspend the operation of all or some of an attorney's power for an adult if the adult guardian suspects, on reasonable grounds, that the attorney is not competent.

(2) An attorney is not competent if, for example—

- (a) a relevant interest of the adult has not been, or is not being, adequately protected; or
- (b) the attorney has neglected the attorney's duties or abused the attorney's powers, whether generally or in relation to a specific power; or
- (c) the attorney has otherwise contravened this Act or the *Powers of Attorney Act 1998*.

(3) The suspension may not be for more than 3 months.

(4) The adult guardian may lift the suspension on the terms the adult guardian considers appropriate.

(5) The attorney whose power has been suspended may apply to the tribunal and the tribunal may make the order it considers appropriate.

(6) In this section—

“attorney” means an attorney under an enduring document.

### **196 Exercise of power during suspension**

(1) During the suspension of the operation of power of an attorney, the attorney must not exercise the power.

Maximum penalty—100 penalty units

(2) During the suspension of the operation of power of an attorney for a personal matter, the adult guardian is taken to be the attorney for the adult for the exercise of the suspended power.

(3) During the suspension of the operation of power of an attorney for a financial matter, the public trustee is taken to be the attorney for the adult for the exercise of the suspended power.

### **197 Power to apply for entry and removal warrant**

(1) This section applies if 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.

(2) The adult guardian may apply to the tribunal for a warrant to enter a place and to remove the adult.<sup>77</sup>

### **198 Health providers may advise adult guardian**

(1) This section applies if a health provider who is treating an adult reasonably considers—

- (a) the adult has impaired capacity for a matter; and

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<sup>77</sup> See section 148 (Application for entry and removal warrant)

- (b) the adult does not have an attorney, guardian or administrator for the matter.

(2) The health provider may advise the adult guardian of the following details—

- (a) the adult’s name;
- (b) the adult’s current location and contact address;
- (c) the contact details for the adult’s nearest relative;
- (d) the health provider’s opinion about the adult’s capacity.

(3) This section overrides—

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

(4) In this section—

“**attorney**” means an attorney under an enduring document.

“**contact details**”, for a relative, means the relative’s address and telephone number or a way of contacting the relative.

## **PART 4—ADMINISTRATIVE PROVISIONS**

### **199 Appointment**

(1) The Governor in Council must appoint the adult guardian.

(2) The appointment must be on a full-time basis.

(3) A person is eligible for appointment as adult guardian only if the person has demonstrated commitment to the rights and interests of adults with impaired capacity for a matter.

(4) A person may not hold office as adult guardian while the person holds 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 for a matter.

**200 Selection**

(1) For selecting a person for recommendation for appointment as adult guardian, the Minister must advertise for applications from appropriately qualified persons to be considered for selection.

(2) The Minister may recommend to the Governor in Council a person for appointment as adult guardian only if subsection (1) has been complied with for the appointment.

**201 Duration of appointment**

(1) The adult guardian holds office for a term of not longer than 5 years.<sup>78</sup>

(2) The office of adult guardian becomes vacant if the adult guardian resigns by signed notice of resignation given to the Minister.

(3) The Governor in Council may remove the adult guardian from office for—

- (a) physical or mental incapacity to satisfactorily perform official duties; or
- (b) neglect of duty; or
- (c) dishonourable conduct; or
- (d) being found guilty of an offence the Minister considers makes the person inappropriate to perform official duties.

**202 Terms of appointment**

(1) The Governor in Council may decide the remuneration and allowances payable to the adult guardian.

(2) The adult guardian is to be paid the remuneration and allowances decided by the Governor in Council.

(3) To the extent 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.

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<sup>78</sup> However, the adult guardian may be reappointed—see *Acts Interpretation Act 1954*, section 25(1)(c).

**203 Leave of absence**

The Minister may give the adult guardian leave of absence on the terms the Minister considers appropriate.

**204 Acting adult guardian**

The Governor in Council may appoint a person to act as the adult guardian during any or all periods—

- (a) the office is vacant; or
- (b) the adult guardian is absent from duty or, for another reason, is unable to perform the duties of the office.

**205 Staff**

Staff necessary to enable the adult guardian to perform the adult guardian's functions are to be appointed under the *Public Service Act 1996*.

**206 Annual report**

(1) As soon as practicable after the close of each financial year but not later than 4 months after that close, the adult guardian must—

- (a) prepare a report on the performance of the adult guardian's functions during the year; and
- (b) give a copy of the report to the Minister.

(2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

**207 Not a statutory body for particular Acts**

To avoid doubt, it is declared that the adult guardian is not a statutory body for the *Statutory Bodies Financial Arrangements Act 1982* or the *Financial Administration and Audit Act 1977*.

## **CHAPTER 9—PUBLIC ADVOCATE**

### **PART 1—ESTABLISHMENT, FUNCTIONS AND POWERS**

#### **208 Public advocate**

There must be a Public Advocate.

#### **209 Functions—systemic advocacy**

The public advocate has the following functions—

- (a) promoting and protecting the rights of adults with impaired capacity for a matter;
- (b) promoting the protection of the adults from neglect, exploitation or abuse;
- (c) encouraging the development of programs to help the adults to reach the greatest practicable degree of autonomy;
- (d) promoting the provision of services and facilities for the adults;
- (e) monitoring and reviewing the delivery of services and facilities to the adults.

#### **210 Powers**

(1) The public advocate may do all things necessary or convenient to be done to perform the public advocate's functions.

(2) The public advocate may intervene in a proceeding before a court or tribunal, or in an official inquiry, involving protection of the rights or interests of adults with impaired capacity for a matter.

(3) However, intervention requires the leave of the court, tribunal or person in charge of the inquiry and is subject to the terms imposed by the court, tribunal or person in charge of the inquiry.

### **211 Not under Ministerial control**

In performing the public advocate's functions and exercising the public advocate's powers, the public advocate is not under the control or direction of the Minister.

### **212 Delegation**

(1) The public advocate may delegate the public advocate's powers to an appropriately qualified member of the public advocate's staff.

(2) In this section—

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

*Example of 'standing'—*

A person's level of authority.

## **PART 2—ADMINISTRATIVE PROVISIONS**

### **213 Appointment**

(1) The Governor in Council must appoint the public advocate.

(2) The appointment must be on a full-time basis.

(3) A person is eligible for appointment as public advocate only if the person has demonstrated commitment to advocacy for people with impaired capacity for a matter.

(4) A person may not hold office as public advocate while the person holds office as adult guardian or public trustee.

### **214 Selection**

(1) 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.

(2) The Minister may recommend to the Governor in Council a person for appointment as public advocate only if subsection (1) has been complied with for the appointment.

### **215 Duration of appointment**

(1) The public advocate holds office for a term of not longer than 5 years.<sup>79</sup>

(2) The office of public advocate becomes vacant if the public advocate resigns by signed notice of resignation given to the Minister.

(3) The Governor in Council may remove the public advocate from office for—

- (a) physical or mental incapacity to satisfactorily perform official duties; or
- (b) neglect of duty; or
- (c) dishonourable conduct; or
- (d) being found guilty of an offence the Minister considers makes the person inappropriate to perform official duties.

### **216 Terms of appointment**

(1) The Governor in Council may decide the remuneration and allowances payable to the public advocate.

(2) The public advocate is to be paid the remuneration and allowances decided by the Governor in Council

(3) To the extent this 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.

### **217 Leave of absence**

The Minister may give the public advocate leave of absence on the terms the Minister considers appropriate.

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<sup>79</sup> The public advocate may be reappointed—see *Acts Interpretation Act 1954*, section 25(1)(c).



**218 Acting public advocate**

The Governor in Council may appoint a person to act as the public advocate during any or all periods—

- (a) the office is vacant; or
- (b) the public advocate is absent from duty or, for another reason, is unable to perform the duties of the office.

**219 Staff**

Staff necessary to enable the public advocate to perform the public advocate's functions are to be appointed under the *Public Service Act 1996*.

**220 Annual report**

(1) As soon as practicable after the close of each financial year but not later than 4 months after that close, the public advocate must—

- (a) prepare a report on the performance of the public advocate's functions during the year; and
- (b) give a copy of the report to the Minister.

(2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

**221 Not a statutory body for particular Acts**

To avoid doubt, it is declared that the public advocate is not a statutory body for the *Statutory Bodies Financial Arrangements Act 1982* or the *Financial Administration and Audit Act 1977*.

## CHAPTER 10—COMMUNITY VISITORS

### PART 1—PRELIMINARY

#### 222 Definitions for ch 10

In this chapter—

**“complaint”** means a complaint about a matter mentioned in section 224(2) made by or for a consumer at a visitable site.

**“consumer”** means—

- (a) for a visitable site that is an authorised mental health service under the *Mental Health Act 2000*—any person who lives or receives services at the visitable site; or
- (b) for another visitable site—an adult—
  - (i) with impaired capacity for a personal matter or a financial matter or with a mental or intellectual impairment; and
  - (ii) who lives or receives services at the visitable site.

**“normal hours”** means the hours between 8 am and 6 pm.

**“private dwelling house”** means premises that are used, or are used principally, as a separate residence for 1 family or person.

**“visitable site”** means a place, other than a private dwelling house, where a consumer lives or receives services and that is prescribed under a regulation.

**“visitable site document”**, for a visitable site, means—

- (a) a document relating to the visitable site, including the visitable site’s records, policies and procedures; or
- (b) a document relating to a consumer at the visitable site, including a document in the consumer’s personal or medical file, regardless of who owns the file.

#### 223 Purpose and allocation of community visitors

(1) The purpose of providing community visitors for visitable sites is to safeguard the interests of consumers at the visitable sites.

(2) The chief executive may allocate 1 or more community visitors for a visitable site.

## **PART 2—FUNCTIONS AND POWERS**

### **224 Functions**

(1) A community visitor has inquiry and complaint functions.

(2) The inquiry functions of a community visitor for a visitable site are to inquire into, and report to the chief executive on—

- (a) the adequacy of services for the assessment, treatment and support of consumers at the visitable site; and
- (b) the appropriateness and standard of services for the accommodation, health and well-being of consumers at the visitable site; and
- (c) the extent to which consumers at the visitable site receive services in the way least restrictive of their rights; and
- (d) the adequacy of information given to consumers at the visitable site about their rights; and
- (e) the accessibility and effectiveness of procedures for complaints about services for consumers at the visitable site; and
- (f) at the request of the chief executive, another matter about the visitable site or consumers at the visitable site.

(3) The complaint functions of a community visitor for a visitable site are to—

- (a) inquire into, and seek to resolve, complaints; and
- (b) identify and make appropriate and timely referrals of unresolved complaints to appropriate entities for further investigation or resolution.

### **225 Requirement to regularly visit**

(1) A community visitor for a visitable site must regularly visit the visitable site to perform the functions of a community visitor.

(2) The chief executive may decide priorities for visiting particular visitable sites that affect the frequency of visits to a visitable site by a community visitor.

## **226 Requirement to visit if asked**

(1) A consumer at a visitable site, or a person for the consumer, may—

- (a) ask the chief executive to arrange for a community visitor to visit the visitable site to perform the functions of a community visitor; or
- (b) ask a person in charge of the visitable site to arrange for a community visitor to visit the visitable site to perform the functions of a community visitor.

(2) If the request is made to a person in charge of the visitable site, the person must, within 3 business days after the request is made, tell the chief executive about the request.

Maximum penalty—40 penalty units.

(3) A community visitor for the visitable site must visit the visitable site as soon as practicable if informed of a request to visit.

## **227 Powers**

(1) A community visitor for a visitable site may do all things necessary or convenient to be done to perform the community visitor's functions, including, for example, the following things—

- (a) enter the visitable site during normal hours without notice;
- (b) with the chief executive's authorisation, enter the visitable site outside normal hours without notice;
- (c) require a person in charge of, employed at, or providing services at, the visitable site to answer questions, and produce visitable site documents, relevant to the community visitor's functions;
- (d) subject to subsection (2), inspect and take extracts from, or make copies of, any visitable site document;
- (e) confer alone with a consumer or person in charge of, employed at, or providing services at, the visitable site;

- (f) require a person in charge of, employed at, or providing services at, the visitable site to give the community visitor reasonable help, if it is practicable to give the help, to enable the community visitor to do the things mentioned in paragraphs (a) to (e).

(2) A person who complies with a requirement under subsection (1)(c) or (f) does not incur any liability, either to the consumer or anyone else, because of the compliance.

(3) A person must not fail to comply with a requirement under subsection (1)(c) or (f) unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—40 penalty units.

(4) It is a reasonable excuse for a person to fail to comply with a requirement under subsection (1)(c) or (f) because compliance with the requirement might tend to incriminate the person.

## **228 Chief executive may authorise access outside normal hours**

(1) This section applies if the chief executive considers a community visitor can not adequately inquire into a complaint by entering a visitable site during normal hours.

(2) The chief executive may authorise the community visitor to enter the visitable site outside normal hours to inquire into the complaint.

(3) In authorising an entry outside normal hours, the chief executive must specify a period of not more than 2 hours during which the entry is authorised.

## **229 Consumer's views and wishes**

(1) To the greatest extent practicable, a community visitor must seek and take into account the views and wishes of a consumer before—

- (a) asking a person in charge of, employed at, or providing services at, a visitable site a question relevant to a function of the community visitor in relation to the consumer; or
- (b) inspecting, taking extracts from, or making copies of, a visitable site document relevant to a function of the community visitor in relation to the consumer.

(2) A consumer's views and wishes may be expressed orally, in writing or in another way, including, for example, by conduct.

(3) However, regardless of the consumer's views and wishes, the community visitor must act in a way consistent with the consumer's proper care and protection.

### **230 Reports by community visitors**

(1) As soon as practicable after a visit to a visitable site by a community visitor for the visitable site, the community visitor must—

- (a) prepare a report on the visit; and
- (b) give a copy of the report to the chief executive.

(2) If the community visitor entered the visitable site outside normal hours, the community visitor must state the authority for the entry.

(3) As soon as practicable after receiving a copy of a report in relation to a visitable site, the chief executive must give a copy of the report to a person in charge of the visitable site.

(4) The chief executive may also give a copy of the report to any of the following—

- (a) if the report relates to a complaint—the consumer;
- (b) the adult guardian;
- (c) the public advocate;
- (d) the director of mental health appointed under the *Mental Health Act 2000*.

## **PART 3—ADMINISTRATIVE PROVISIONS**

### **231 Appointment**

(1) The chief executive may appoint community visitors.

(2) An appointment may be on a full-time or part-time basis.

(3) A person is eligible for appointment as a community visitor only if the chief executive considers the person has knowledge, experience or skills relevant to the exercise of a community visitor's functions.

(4) However, a person may not hold office as a community visitor while the person—

- (a) is a public service employee of the department of government administered by the Minister administering the *Disability Services Act 1992* (the “department”); or
- (b) has a direct pecuniary interest in any contract with the department; or
- (c) has a direct pecuniary interest in any visitable site.

(5) In appointing community visitors, the chief executive must take into account the desirability of the community visitors appointed—

- (a) having a range of knowledge, experience or skills relevant to the exercise of the functions of community visitors; and
- (b) reflecting the social and cultural diversity of the general community; and
- (c) consisting of equal numbers of males and females.

(6) A community visitor is appointed under this Act and not under the *Public Service Act 1996*.

(7) For subsection (4), a person has a direct pecuniary interest if the person’s spouse has a direct pecuniary interest.

### **232 Duration of appointment**

(1) A community visitor holds office for a term of not longer than 3 years.<sup>80</sup>

(2) A community visitor may resign office by signed notice of resignation given to the chief executive.

(3) The chief executive may terminate the appointment of a community visitor if the chief executive is satisfied the community visitor—

- (a) has become physically or mentally incapable of satisfactorily performing the duties of a community visitor; or
- (b) has performed the community visitor’s duties carelessly, incompetently or inefficiently; or

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<sup>80</sup> A community visitor may be reappointed—see *Acts Interpretation Act 1954*, section 25(1)(c).

- (c) is guilty of misconduct that could warrant dismissal from the public service if the community visitor were a public service officer; or
- (d) has been found guilty of an offence the chief executive considers makes the person inappropriate to perform the duties of a community visitor.

(4) The chief executive must terminate the appointment of a community visitor if the chief executive is satisfied the community visitor is a person who may not hold office as a community visitor under section 231(4).

### **233 Terms of appointment**

(1) The chief executive may decide the remuneration and allowances payable to community visitors.

(2) A community visitor is to be paid the remuneration and allowances decided by the chief executive.

(3) To the extent this Act does not state the terms on which a community visitor holds office, the community visitor holds office on the terms decided by the chief executive.

### **234 Issue of identity cards**

(1) The chief executive must give each community visitor an identity card.

(2) The identity card must—

- (a) contain a recent photo of the community visitor; and
- (b) be in the approved form; and
- (c) be signed by the community visitor; and
- (d) identify the person as a community visitor under this Act; and
- (e) state when the appointment ends.

### **235 Production or display of identity card**

When exercising a power under this Act at a visitable site, a community visitor must—



- (a) first produce the community visitor's identity card for inspection;  
or
- (b) have the identity card displayed so that it is clearly visible.

### **236 Failure to return identity card**

A person who ceases to be a community visitor must return the person's identity card to the chief executive within 21 days after ceasing to be an community visitor, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

### **237 Annual report by chief executive**

The department's chief executive must include in the department's annual report for a financial year a report on the operations of community visitors during the year, including the number of entries of visitable sites outside normal hours authorised by the chief executive.

## **CHAPTER 11—MISCELLANEOUS PROVISIONS**

### **PART 1—RELATIONSHIP WITH CRIMINAL LAW**

#### **238 Act does not authorise euthanasia or affect particular provisions of Criminal Code**

To remove doubt it is declared that nothing in this Act—

- (a) authorises, justifies or excuses killing a person; or
- (b) affects the Criminal Code, section 284 or chapter 28.<sup>81</sup>

## **PART 2—RELATIONSHIP WITH COURT JURISDICTION**

### **239 Litigation guardian process not affected**

This Act does not affect rules of court of the Supreme Court, District Court or Magistrates Courts about a litigation guardian for a person under a legal incapacity.

### **240 Supreme Court’s inherent jurisdiction not affected**

This Act does not affect the court’s inherent jurisdiction,<sup>82</sup> including its *parens patriae* jurisdiction.

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81 Criminal Code—

#### **284 Consent to death immaterial**

Consent by a person to the causing of the person’s own death does not affect the criminal responsibility of any person by whom such death is caused.

Chapter 28 (Homicide—suicide—concealment of birth), including—

#### **296 Acceleration of death**

A person who does any act or makes any omission which hastens the death of another person who, when the act is done or the omission is made, is labouring under some disorder or disease arising from another cause, is deemed to have killed that other person.

#### **311 Aiding suicide**

Any person who—

- (a) procures another to kill himself or herself; or
- (b) counsels another to kill himself or herself and thereby induces the other person to do so; or
- (c) aids another in killing himself or herself;

is guilty of a crime, and is liable to imprisonment for life.

82 “**Court**” means the Supreme Court—see schedule 4 (Dictionary).

**241 Transfer of proceeding**

(1) The court may, if it considers it appropriate, transfer a proceeding within the tribunal's jurisdiction to the tribunal.

(2) The tribunal may, if it considers it appropriate, transfer a proceeding within the court's jurisdiction to the court.

(3) The transfer may be ordered on the court's or tribunal's initiative or on the application of an active party to the proceeding.

**242 Stay of proceeding concerning an enduring document**

If there is a Supreme Court proceeding, and a tribunal proceeding, about an enduring document or attorneys under an enduring document, other than to the extent necessary for section 243, the tribunal must stay the tribunal proceeding unless the court transfers the Supreme Court proceeding to the tribunal.

**243 Interim appointed decision maker if Supreme Court proceeding**

(1) If there is a Supreme Court proceeding about an adult's enduring document or attorneys under an enduring document, the tribunal may appoint guardians or administrators for the adult until the proceeding is resolved.

(2) The appointment may be made on the tribunal's initiative or on the application of the adult or anyone else.

**244 Chapter 3 applies for interim appointment**

Chapter 3<sup>83</sup> applies for the appointment under section 243.

**PART 3—SETTLEMENTS OR DAMAGES AWARDS****245 Settlements or damages awards**

(1) This section applies if, in a civil proceeding—

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83 Chapter 3 (Appointment of guardians and administrators)

(a) the court sanctions a settlement between another person and an adult or orders an amount to be paid by another person to an adult; and

(b) the court considers the adult is a person with impaired capacity for a matter.

(2) The court may exercise all the powers of the tribunal under chapter 3.

(3) Chapter 3 applies to the court in its exercise of these powers as if the court were the tribunal.

(4) As soon as practicable after a court makes an order under this section, the registrar of the court must give a copy of the order to the tribunal.

(5) In this section—

“**court**” means the Supreme Court or the District Court.

“**settlement**” includes compromise or acceptance of an amount paid into court.

## **PART 4—PROTECTION FROM LIABILITY AND DEALING WITH INFORMATION**

### **246 Definitions for pt 4**

In this part—

“**adult guardian’s delegate for an investigation**” means a delegate of the adult guardian under section 181(1).

“**tribunal expert**” means—

(a) a person engaged under a procedural direction to help the tribunal in a proceeding; or

(b) a person required under a procedural direction to prepare and produce a report or document to be given to the tribunal.

**247 Whistleblowers' protection**

(1) 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*.

(2) Without limiting subsection (1)—

- (a) in a proceeding for defamation the discloser has a defence of absolute privilege for publishing the disclosed information; and
- (b) if the discloser would otherwise be required to maintain confidentiality about the disclosed information under an Act, oath, rule of law or practice, the discloser—
  - (i) does not contravene the Act, oath, rule of law or practice for disclosing the information; and
  - (ii) is not liable to disciplinary action for disclosing the information.

(3) A person's liability for the person's own conduct is not affected only because the person discloses it to an official.

(4) In this section—

“official” means—

- (a) the registrar or a member of the tribunal staff; or
- (b) the adult guardian, a member of the adult guardian's staff or an adult guardian's delegate for an investigation; or
- (c) the public advocate or a member of the public advocate's staff; or
- (d) a community visitor.

**248 Protection from liability if honest and not negligent**

(1) A person is not civilly liable for an act done, or an omission made, honestly and without negligence under this Act or the *Powers of Attorney Act 1998*.

(2) If subsection (1) prevents a civil liability attaching to a person, the liability attaches instead to the State.

(3) However, no-one, including the State, is liable for an honest report by a community visitor under section 230.<sup>84</sup>

(4) In this section—

“**person**” means—

- (a) the president, a deputy president or another tribunal member; or
- (b) the registrar, a member of the tribunal staff or a tribunal expert; or
- (c) the adult guardian or a member of the adult guardian’s staff; or
- (d) a professional consulted or employed by the adult guardian or an adult guardian’s delegate for an investigation; or
- (e) the public advocate or a member of the public advocate’s staff; or
- (f) a community visitor.

## **249 Preservation of confidentiality**

(1) If a person gains confidential information because of the person’s involvement in this Act’s administration, the person must not make a record of the information or intentionally or recklessly disclose the information to anyone other than under subsection (3).

Maximum penalty—100 penalty units.

(2) A person gains information through involvement in this Act’s administration if the person gains the information because of being, or an opportunity given by being—

- (a) the president, a deputy president or another tribunal member; or
- (b) the registrar, a member of the tribunal staff or a tribunal expert; or
- (c) the adult guardian or a member of the adult guardian’s staff; or
- (d) a professional consulted or employed by the adult guardian or an adult guardian’s delegate for an investigation; or
- (e) the public advocate or a member of the public advocate’s staff; or
- (f) a guardian or administrator; or

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84 Section 230 (Reports by community visitors)

(g) a community visitor.

(3) A person may make a record of confidential information, or disclose it to someone else—

- (a) for this Act; or
- (b) to discharge a function under another law; or
- (c) for a proceeding in a court or relevant tribunal; or
- (d) if authorised under a regulation or another law; or
- (e) if authorised by the person to whom the information relates; or
- (f) if authorised by the tribunal in the public interest because a person's life or physical safety could otherwise reasonably be expected to be endangered.

(4) In this section—

**“confidential information”** includes information about a person's affairs but does not include—

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

## **250 Disclosure of information about investigations**

(1) Section 249 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 the disclosure is necessary and reasonable in the public interest.

(2) However, the adult guardian must not make the disclosure if it is likely to prejudice the investigation.

(3) In a disclosure under subsection (1), the adult guardian—

- (a) may express an opinion expressly or impliedly critical of an entity only if the adult guardian has given the entity an opportunity to answer the criticism; and
- (b) may identify the complainant, directly or indirectly, only if it is necessary and reasonable.

## **PART 5—FORMS AND REGULATIONS**

### **251 Chief executive may approve forms**

The chief executive may approve forms for use under this Act.

### **252 Regulation-making power**

The Governor in Council may make regulations under this Act.

## **CHAPTER 12—TRANSITIONAL PROVISIONS AND REPEAL**

### **PART 1—TRANSITIONAL PROVISIONS FOR ADULT GUARDIAN**

#### **253 Definitions for pt 1**

In this part—

“repealed chapter” means the *Powers of Attorney Act 1998*, chapter 7.<sup>85</sup>

#### **254 Appointment of adult guardian continues**

From the repeal of the repealed chapter, the person holding office as adult guardian immediately before the repeal of the repealed chapter continues in office for the balance of the person’s term as the adult guardian appointed under section 199.<sup>86</sup>

#### **255 Particular things continued**

From the repeal of the repealed chapter, a thing done under a provision of the repealed chapter mentioned in column 1 and in force immediately

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<sup>85</sup> *Powers of Attorney Act 1998*, chapter 7 (Adult guardian)

<sup>86</sup> Section 199 (Appointment)



*Guardianship and Administration Act 2000*

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before the repeal of the repealed chapter continues to have effect after the repeal as a thing done under the corresponding provision of this Act mentioned in column 2.

<b>Column 1—provisions of the repealed chapter</b>	<b>Column 2—corresponding provision in this Act</b>
section 130	section 177
section 131	section 178
section 132	section 179
section 134	section 180
section 135	section 182
section 136	section 183
section 137	sections 184 and 185
section 138	section 189
section 142	section 193
section 143	section 194
section 144	sections 195 and 196
section 145	sections 148 and 197
section 146	section 149
section 149	section 151
section 154	section 204

*Example—*

A notice given by the adult guardian under the *Powers of Attorney Act 1998*, section 144 suspending operation of an attorney's power and that is in force immediately before the repeal of the repealed chapter continues to have effect after the repeal for the remainder of the suspension period as a suspension under section 195 of this Act. Section 196 of this Act applies during the suspension.

## **PART 2—TRANSITIONAL PROVISIONS FOR COMMITTEE**

### **256 Power to apply to court for compensation for loss of benefit in estate because of committee**

(1) 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, section 60<sup>87</sup> applies as if references in the section to an administrator were references to the committee.

(2) Subsection (1) applies whether the sale or other dealing happens before or after the commencement of this section.

### **257 Tribunal's power if committee**

If a committee for a person continues after the commencement of this section, the tribunal may make an order setting aside the committee and may make any other appropriate order.

## **PART 3—TRANSITIONAL PROVISIONS FOR, AND REPEAL OF, INTELLECTUALLY DISABLED CITIZENS ACT 1985**

### **258 Definitions for pt 3**

In this part—

**“repealed Act”** means the *Intellectually Disabled Citizens Act 1985*.

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87 Section 60 (Power to apply to court for compensation for loss of benefit in estate)

**259 Adult guardian assumes legal friend responsibilities**

(1) If, immediately before the repeal of the repealed Act, the legal friend is authorised to act, or is acting, under section 26 of the repealed Act<sup>88</sup> for a person—

- (a) the adult guardian is taken to have been authorised to act for the person under section 26 of the repealed Act; and
- (b) 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.

(2) The adult guardian's authority under subsection (1) ends if the adult guardian receives a written request from the person's administrator that the adult guardian no longer act under the authority.

**260 Management by public trustee**

(1) If, immediately before the repeal of the repealed Act, the public trustee manages a person's estate under section 32(1) and (2) of the repealed Act,<sup>89</sup> then, on the 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.

(2) If, immediately before the repeal of the repealed Act, the public trustee manages a person's estate under section 32(1A) and (2) of the repealed Act, then, on the repeal of the repealed Act—

- (a) the public trustee is taken to be appointed by the tribunal as the person's administrator for all financial matters; and
- (b) the tribunal must review the appointment under chapter 3, part 3, division 2 as soon as practicable.

**261 Council records to be given to tribunal**

The records of the Intellectually Disabled Citizens Council of Queensland constituted under the repealed Act are to become the records of the tribunal.

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88 *Intellectually Disabled Citizens Act 1985*, section 26 (Legal friend)

89 *Intellectually Disabled Citizens Act 1985*, section 32 (Public trustee to manage estates of certain assisted citizens)

**262 Repeal**

The *Intellectually Disabled Citizens Act 1985* is repealed.

**PART 4—TRANSITIONAL PROVISION FOR  
GUARDIANSHIP AND ADMINISTRATION AND  
POWERS OF ATTORNEY AMENDMENT ACT 2001****262A Protection for health provider**

(1) This section applies if—

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

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

- (a) for section 79<sup>90</sup>—to have been health care for which consent was properly given under this Act; and
- (b) for section 80<sup>91</sup>—to have been health care authorised by this Act.

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

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

## **CHAPTER 13—AMENDMENTS**

### **263 Act amended in sch 3**

Schedule 3 amends the Acts it mentions.

## **SCHEDULE 1**

### **PRINCIPLES**

section 11

#### **PART 1—GENERAL PRINCIPLES**

##### **1 Presumption of capacity**

An adult is presumed to have capacity for a matter.

##### **2 Same human rights**

(1) The right of all adults to the same basic human rights regardless of a particular adult's capacity must be recognised and taken into account.

(2) The importance of empowering an adult to exercise the adult's basic human rights must also be recognised and taken into account.

##### **3 Individual value**

An adult's right to respect for his or her human worth and dignity as an individual must be recognised and taken into account.

##### **4 Valued role as member of society**

(1) An adult's right to be a valued member of society must be recognised and taken into account.

(2) Accordingly, the importance of encouraging and supporting an adult to perform social roles valued in society must be taken into account.

##### **5 Participation in community life**

The importance of encouraging and supporting an adult to live a life in the general community, and to take part in activities enjoyed by the general community, must be taken into account.

## SCHEDULE 1 (continued)

**6 Encouragement of self-reliance**

The importance of encouraging and supporting an adult to achieve the adult's maximum physical, social, emotional and intellectual potential, and to become as self-reliant as practicable, must be taken into account.

**7 Maximum participation, minimal limitations and substituted judgment**

(1) An adult's right to participate, to the greatest extent practicable, in decisions affecting the adult's life, including the development of policies, programs and services for people with impaired capacity for a matter, must be recognised and taken into account.

(2) Also, the importance of preserving, to the greatest extent practicable, an adult's right to make his or her own decisions must be taken into account.

(3) So, for example—

- (a) the adult must be given any necessary support, and access to information, to enable the adult to participate in decisions affecting the adult's life; and
- (b) to the greatest extent practicable, for exercising power for a matter for the adult, the adult's views and wishes are to be sought and taken into account; and
- (c) a person or other entity in performing a function or exercising a power under this Act must do so in the way least restrictive of the adult's rights.

(4) Also, the principle of substituted judgment must be used so that if, from the adult's previous actions, it is reasonably practicable to work out what the adult's views and wishes would be, a person or other entity in performing a function or exercising a power under this Act must take into account what the person or other entity considers would be the adult's views and wishes.

(5) However, a person or other entity in performing a function or exercising a power under this Act must do so in a way consistent with the adult's proper care and protection.

(6) Views and wishes may be expressed orally, in writing or in another way, including, for example, by conduct.

## SCHEDULE 1 (continued)

**8 Maintenance of existing supportive relationships**

The importance of maintaining an adult's existing supportive relationships must be taken into account.

**9 Maintenance of environment and values**

(1) The importance of maintaining an adult's cultural and linguistic environment, and set of values (including any religious beliefs), must be taken into account.

(2) For an adult who is a member of an Aboriginal community or a Torres Strait Islander, this means the importance of maintaining the adult's Aboriginal or Torres Strait Islander cultural and linguistic environment, and set of values (including Aboriginal tradition<sup>92</sup> or Island custom<sup>93</sup>), must be taken into account.

**10 Appropriate to circumstances**

Power for a matter should be exercised by a guardian or administrator for an adult in a way that is appropriate to the adult's characteristics and needs.

**11 Confidentiality**

An adult's right to confidentiality of information about the adult must be recognised and taken into account.

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92 “**Aboriginal tradition**” means the body of traditions, observances, customs and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people, and includes any such traditions, observances, customs and beliefs relating to particular persons, areas, objects or relationships—see *Acts Interpretation Act 1954*, section 36.

93 “**Island custom**”, known in the Torres Strait as Ailan Kastom, means the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally or of a particular community or group of Torres Strait Islanders, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships—see *Acts Interpretation Act 1954*, section 36.



## SCHEDULE 1 (continued)

**PART 2—HEALTH CARE PRINCIPLE****12 Health care principle**

(1) The “**health care principle**” means power for a health matter, or special health matter, for an adult should be exercised by a guardian, the adult guardian, the tribunal, or for a matter relating to prescribed special health care, another entity—

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

*Example of exercising power in the way least restrictive of the adult’s rights—*

If there is a choice between a more or less intrusive way of meeting an identified need, the less intrusive way should be adopted.

(2) In deciding whether the exercise of a power is appropriate, the guardian, the adult guardian, tribunal or other entity must, to the greatest extent practicable—

- (a) seek the adult’s views and wishes and take them into account; and
- (b) take the information given by the adult’s health provider<sup>94</sup> into account.

(3) The adult’s views and wishes may be expressed—

- (a) orally; or
- (b) in writing, for example, in an advance health directive; or
- (c) in another way, including, for example, by conduct.

(4) The health care principle does not affect any right an adult has to refuse health care.

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94 See section 76 (Health providers to give information).

## SCHEDULE 1 (continued)

(5) In deciding whether to consent to special health care for an adult, the tribunal or other entity must, to the greatest extent practicable, seek the views of the following person and take them into account—

- (a) a guardian appointed by the tribunal for the adult;
- (b) if there is no guardian mentioned in paragraph (a), an attorney for a health matter appointed by the adult;
- (c) if there is no guardian or attorney mentioned in paragraph (a) or (b), the statutory health attorney for the adult.

## SCHEDULE 2

### TYPES OF MATTERS

schedule 4

#### PART 1—FINANCIAL MATTER

##### 1 Financial matter

A “**financial matter**”, for an adult, is a matter relating to the adult’s financial or property matters, including, for example, a matter relating to 1 or more of the following—

- (a) paying maintenance and accommodation expenses for the adult and the adult’s dependants, including, for example, purchasing an interest in, or making another contribution to, an establishment that will maintain or accommodate the adult or a dependant of the adult;
- (b) paying the adult’s debts, including any fees and expenses to which an administrator is entitled under a document made by the adult or under a law;
- (c) receiving and recovering money payable to the adult;
- (d) carrying on a trade or business of the adult;
- (e) performing contracts entered into by the adult;
- (f) discharging a mortgage over the adult’s property;
- (g) paying rates, taxes, insurance premiums or other outgoings for the adult’s property;
- (h) insuring the adult or the adult’s property;
- (i) otherwise preserving or improving the adult’s estate;
- (j) investing for the adult in authorised investments;
- (l) continuing investments of the adult, including taking up rights to issues of new shares, or options for new shares, to which the adult becomes entitled by the adult’s existing shareholding;

## SCHEDULE 2 (continued)

- (m) undertaking an authorised real estate transaction for the adult;
- (n) with the tribunal’s approval, undertaking a real estate transaction for the adult that is not an authorised real estate transaction;
- (o) undertaking an authorised security transaction for the adult;
- (p) with the tribunal’s approval, undertaking a security transaction for the adult that is not an authorised security transaction;
- (q) a legal matter relating to the adult’s financial or property matters.

**PART 2—PERSONAL MATTER****2 Personal matter**

A “**personal matter**”, for an adult, is a matter, other than a special personal matter or special health matter, relating to the adult’s care, including the adult’s health care, or welfare, including, for example, a matter relating to 1 or more of the following—

- (a) where the adult lives;
- (b) with whom the adult lives;
- (c) whether the adult works and, if so, the kind and place of work and the employer;
- (d) what education or training the adult undertakes;
- (e) whether the adult applies for a licence or permit;
- (f) day-to-day issues, including, for example, diet and dress;
- (g) health care of the adult;
- (h) a legal matter not relating to the adult’s financial or property matters.

**3 Special personal matter**

A “**special personal matter**”, for an adult, is a matter relating to 1 or more of the following—

## SCHEDULE 2 (continued)

- (a) making or revoking the adult's will;
- (b) making or revoking a power of attorney, enduring power of attorney or advance health directive of the adult;
- (c) exercising the adult's right to vote in a Commonwealth, State or local government election or referendum;
- (d) consenting to adoption of a child of the adult under 18 years;
- (e) consenting to marriage of the adult.<sup>95</sup>

**4 Health matter**

A **“health matter”**, for an adult, is a matter relating to health care, other than special health care, of the adult.

**5 Health care**

(1) **“Health care”**, of an adult, is care or treatment of, or a service or a procedure for, the adult—

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

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

(3) **“Health care”**, of an adult, does not include—

- (a) first aid treatment; or
- (b) a non-intrusive examination made for diagnostic purposes; or
- (c) the administration of a pharmaceutical drug if—
  - (i) a prescription is not needed to obtain the drug; and

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<sup>95</sup> An attorney under an enduring document or a guardian may not be given power for a special personal matter.

## SCHEDULE 2 (continued)

- (ii) the drug is normally self-administered; and
- (iii) the administration is for a recommended purpose and at a recommended dosage level.

*Example of paragraph (b)—*

A visual examination of an adult's mouth, throat, nasal cavity, eyes or ears.

**5A Life-sustaining measure**

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

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

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

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

**5B Good medical practice**

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

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

## SCHEDULE 2 (continued)

**6 Special health matter**

A “**special health matter**”, for an adult, is a matter relating to special health care of the adult.<sup>96</sup>

**7 Special health care**

“**Special health care**”, of an adult, is health care of the following types—

- (a) removal of tissue from the adult while alive<sup>97</sup> for donation to someone else;
- (b) sterilisation of the adult;
- (c) termination of a pregnancy of the adult;
- (d) participation by the adult in special medical research or experimental health care;
- (e) electroconvulsive therapy or psychosurgery for the adult;
- (f) prescribed special health care of the adult.

**8 Removal of tissue for donation**

(1) For an adult, “**removal of tissue for donation**” to someone else includes removal of tissue from the adult so laboratory reagents, or reference and control materials, derived completely or partly from pooled human plasma may be given to the other person.

(2) “**Tissue**” is—

- (a) an organ, blood or part of a human body; or
- (b) a substance that may be extracted from an organ, blood or part of a human body.

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<sup>96</sup> An attorney under an enduring document or a guardian may not be given power for a special health matter.

However, an adult may give a direction about a special health matter in an advance health directive. Alternatively, in particular circumstances the tribunal may consent to particular special health care—see section 68.

<sup>97</sup> For the situation after the adult has died, see the *Transplantation and Anatomy Act 1979*, particularly section 22.

## SCHEDULE 2 (continued)

**9 Sterilisation**

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

*Examples of sterilisation—*

Endometrial ablation, hysterectomy, tubal ligation and vasectomy.

(2) Sterilisation does not include health care primarily to treat organic malfunction or disease of the adult.

**10 Termination**

**“Termination”**, of a pregnancy of an adult, does not include health care primarily to treat organic malfunction or disease of the adult.

**11 Primary reason for treatment**

**“Health care primarily to treat organic malfunction or disease”**, of an adult, 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.

*Examples—*

1. Health care involving sterilisation may be primarily to treat organic malfunction or disease if the adult has cancer affecting the reproductive system or cryptorchidism.
2. A procedure involving termination of a pregnancy may be primarily to treat organic malfunction if the adult is a pregnant woman requiring abdominal surgery for injuries sustained in an accident.

**12 Special medical research or experimental health care**

(1) **“Special medical research or experimental health care”**, for an adult, means—

- (a) 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



## SCHEDULE 2 (continued)

- (b) medical research or experimental health care intended to gain knowledge that can be used in the diagnosis, maintenance or treatment of a condition the adult has or has had.

(2) “**Special medical research or experimental health care**” does not include—

- (a) psychological research; or
- (b) approved clinical research.

### 13 Approved clinical research

(1) “**Clinical research**” is—

- (a) medical research intended to diagnose, maintain or treat a condition affecting the participants in the research; or
- (b) a trial of drugs or techniques involving the carrying out of health care that may include the giving of placebos to some of the participants in the trial.

(2) “**Approved clinical research**” is clinical research approved by the tribunal.

(3) The tribunal may approve clinical research only if the tribunal is satisfied about the following matters—

- (a) the clinical research is approved by an ethics committee;
- (b) any drugs or techniques on trial in the clinical research are intended to diagnose, maintain or treat a condition affecting the participants in the research;
- (c) the research will not involve any known substantial risk to the participants or, if there is existing health care for the particular condition, the research will not involve known material risk to the participants greater than the risk associated with the existing health care;
- (d) the development of any drugs or techniques on trial has reached a stage at which safety and ethical considerations make it appropriate for the drugs or techniques to be made available to the participants despite the participants being unable to consent to participation;

## SCHEDULE 2 (continued)

- (e) having regard to the potential benefits and risks of participation, on balance it is not adverse to the interests of the participants to participate.

(4) The fact that a trial of drugs or techniques will or may involve the giving of placebos to some of the participants does not prevent the tribunal from being satisfied it is, on balance, not adverse to the interests of the participants to participate.

(5) The tribunal's approval of clinical research does not operate as a consent to the participation in the clinical research of any particular person.<sup>98</sup>

**14 Electroconvulsive therapy**

**“Electroconvulsive therapy”** is the application of electric current to specific areas of the head to produce a generalised seizure that is modified by general anaesthesia and the administration of a muscle relaxing agent.

**15 Psychosurgery**

**“Psychosurgery”** is a neurosurgical procedure to diagnose or treat a mental illness, but does not include a surgical procedure for treating epilepsy, Parkinson's disease or another neurological disorder.

**17 Prescribed special health care**

**“Prescribed special health care”** means health care prescribed under a regulation for this section.

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<sup>98</sup> As to who may consent to participation in approved clinical research, see section 66 (Adult with impaired capacity—order of priority in dealing with health matter). As to participation in approved clinical research without consent, see sections 63 (Urgent health care) and 64 (Minor, uncontroversial health care).

## SCHEDULE 2 (continued)

**PART 3—LEGAL MATTER****18 Legal matter**

A “**legal matter**”, for an adult, includes a matter relating to—

- (a) use of legal services to obtain information about the adult’s legal rights; and
- (b) use of legal services to undertake a transaction; and
- (c) use of legal services to bring or defend a proceeding before a court, tribunal or other entity, including an application under the *Succession Act 1981*, part 4<sup>99</sup> or an application for compensation arising from a compulsory acquisition; and
- (d) bringing or defending a proceeding, including settling a claim, whether before or after the start of a proceeding.

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<sup>99</sup> This enables the Supreme Court to make provision for a dependant of a deceased person from the deceased person’s estate if adequate provision is not made from the estate for the dependant’s proper maintenance and support.

**SCHEDULE 3****ACTS AMENDED**

section 263

**POWERS OF ATTORNEY ACT 1998****10 Chapter 3, part 5, division 3—***insert—****‘59A Effect of revocation by joint attorney****‘If an attorney’s power for a matter ends under this division and the attorney was a joint attorney for the matter—*

- (a) if, of the joint attorneys, there is 1 remaining attorney, the remaining attorney may exercise power for the matter; and*
- (b) if, of the joint attorneys, there are 2 or more remaining attorneys, the remaining attorneys may exercise power for the matter and, if exercising power, must exercise power jointly.’*

**13 Section 68—***omit.<sup>100</sup>***PUBLIC TRUSTEE ACT 1978****5 Section 63A—***omit.<sup>101</sup>*

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100 These provisions have not yet commenced.

101 This provision has not yet commenced.

**SCHEDULE 4****DICTIONARY**

section 3

**“abuse”**, for power, includes contravene this Act in relation to the power.

**“active party”** see section 119.

**“administrator”** means an administrator appointed under this Act.

**“adult guardian”** means the adult guardian appointed under section 199.

**“advance health directive”** means an advance health directive under the *Powers of Attorney Act 1998*.<sup>102</sup>

**“approved clinical research”** see schedule 2, section 13.

**“approved form”** means a form approved under section 251.

**“authorised investment”** means—

- (a) an investment which, if the investment were of trust funds by a trustee, would be an investment by the trustee exercising a power of investment under the *Trusts Act 1973*, part 3; or
- (b) an investment approved by the tribunal.

**“authorised real estate transaction”**, for an adult, is a transaction involving—

- (a) the sale of some or all of the adult’s existing real property to enable an appropriate home to be supplied for the adult or a dependant of the adult that is reasonable having regard to all the circumstances and, in particular, the adult’s financial circumstances; or
- (b) the purchase of real property as a home for the adult or a dependant of the adult that is reasonable having regard to all the circumstances and, in particular, the adult’s financial circumstances; or

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<sup>102</sup> See *Powers of Attorney Act 1998*, section 35 (Advance health directives).

## SCHEDULE 4 (continued)

- (c) the purchase of real property to protect the value of some or all of the adult's existing real property.

**“authorised security transaction”**, for an adult, is a security transaction in which—

- (a) the transaction is to meet the needs of the adult or a dependant of the adult; and
- (b) the amount involved is not more than what is reasonable having regard to all the circumstances and, in particular, the adult's financial circumstances.

**“capacity”**, for a person for a matter, means the person is capable of—

- (a) understanding the nature and effect of decisions about the matter; and
- (b) freely and voluntarily making decisions about the matter; and
- (c) communicating the decisions in some way.

**“clinical research”** see schedule 2, section 13(1).

**“close friend”**, of a person, means another person who has a close personal relationship with the first person and a personal interest in the first person's welfare.

**“community visitor”** means a community visitor appointed under section 231.

**“complaint”**, for chapter 10,<sup>103</sup> see section 222.

**“conflict transaction”** see section 37(2).

**“consumer”**, for chapter 10, see section 222.

**“court”** means the Supreme Court.

**“criminal history”**, of a person, means—

- (a) the person's criminal record within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986*; and

## SCHEDULE 4 (continued)

- (b) despite the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6,<sup>104</sup> any conviction of the person to which that section applies; and
- (c) charges made against the person for an offence committed in Queensland or elsewhere and results of those charges; and
- (d) a finding of guilt against the person, or the acceptance of a plea of guilty by the person, by a court.

**“dependant”**, of an adult, means a person who is completely or mainly dependent on the adult.

**“deputy president”** means a deputy president of the tribunal.

**“electroconvulsive therapy”** see schedule 2, section 14.

**“enduring document”** means an enduring power of attorney or an advance health directive.

**“enduring power of attorney”** means an enduring power of attorney under the *Powers of Attorney Act 1998*.<sup>105</sup>

**“ethics committee”** means—

- (a) a Human Research Ethics Committee registered by the Australian Health Ethics Committee established under the *National Health and Medical Research Council Act 1992* (Cwlth); or
- (b) if there is no committee mentioned in paragraph (a)—
  - (i) an ethics committee established by a public sector hospital under the *Health Services Act 1991*, section 2;<sup>106</sup> or
  - (ii) an ethics committee established by a university and concerned, wholly or partly, with medical research; or
  - (iii) an ethics committee established by the National Health and Medical Research Council.

104 *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6 (Non-disclosure of convictions upon expiration of rehabilitation period)

105 See *Powers of Attorney Act 1998*, section 32 (Enduring powers of attorney).

106 **“Public sector hospital”** means a hospital operated by the State—see *Health Services Act 1991*, section 2.

## SCHEDULE 4 (continued)

**“financial matter”** see schedule 2, section 1.

**“general principles”** see schedule 1, part 1.

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

**“guardian”** means a guardian appointed under this Act.

**“health care”** see schedule 2, section 5.

**“health care primarily to treat organic malfunction or disease”** see schedule 2, section 11.

**“health care principle”** see schedule 1, section 12.

**“health matter”** see schedule 2, section 4.

**“health provider”** means a person who provides health care, or special health care, in the practice of a profession or the ordinary course of business.

*Example—*

dentist

**“impaired capacity”**, for a person for a matter, means the person does not have capacity for the matter.

**“insolvent”** includes external administration, for example, liquidation, receivership or compromise entered into with creditors, under the Corporations Act or a similar law of a foreign jurisdiction.

**“interested person”**, for a person, means a person who has a sufficient and continuing interest in the other person.<sup>107</sup>

**“legal matter”** see schedule 2, section 18.

**“legal member”** means a tribunal member who was eligible for appointment under section 90(4)(a).

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

**“management plan”** means—

- (a) for an administrator—a document stating how the administrator plans to manage the administration; and

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<sup>107</sup> See section 126 (Tribunal to decide who are interested persons)



## SCHEDULE 4 (continued)

- (b) for an attorney who may exercise power for a financial matter—a document stating how the attorney plans to manage exercising the power.

**“matter”** includes a type of matter.

**“normal hours”**, for chapter 10,<sup>108</sup> see section 222.

**“object”**, by an adult, to health care means—

- (a) the adult indicates the adult does not wish to have the health care; or
- (b) the adult previously indicated, in similar circumstances, the adult did not then wish to have the health care and since then the adult has not indicated otherwise.

*Example—*

An indication may be given in an enduring power of attorney or advance health directive or in another way, including, for example, orally or by conduct.

**“paid carer”**, for an adult, means someone who—

- (a) performs services for the adult’s care; and
- (b) receives remuneration from any source for the services, other than—
- (i) a carer payment or other benefit received from the Commonwealth or a State for providing home care for the adult; or
- (ii) remuneration attributable to the principle that damages may be awarded by a court for voluntary services performed for the adult’s care.<sup>109</sup>

**“personal experience member”** means a tribunal member who was eligible for appointment under section 90(4)(c).

<sup>108</sup> Chapter 10 (Community visitors)

<sup>109</sup> This principle was established in *Griffiths v Kerkemeyer* (1977) 139 CLR 161—see Queensland Law Reform Commission Report No. 45, *The assessment of damages in personal injury and wrongful death litigation, Griffiths v Kerkemeyer, Section 15C Common Law Practice Act 1867*, October 1993. The *Common Law Practice Act 1867*, section 15C has been relocated to the *Supreme Court Act 1995* as section 23.

## SCHEDULE 4 (continued)

- “personal matter”** see schedule 2, section 2.
- “power”**, for a matter, means power to make all decisions about the matter and otherwise exercise the power.
- “prescribed non-contentious matter”** see section 99(3).
- “prescribed special health care”** see schedule 2, section 17.
- “president”** means the president of the tribunal.
- “presidential directions”** see section 100(2).
- “presiding member”**, for a proceeding, means the member presiding at the proceeding under section 102.
- “primary carer”**, of an adult, means a person who is primarily responsible for providing support or care to the adult.
- “private dwelling house”**, for chapter 10,<sup>110</sup> see section 222.
- “professional member”** means a tribunal member who was eligible for appointment under section 90(4)(b).
- “psychosurgery”** see schedule 2, section 15.
- “public advocate”** means the public advocate appointed under section 213.
- “real estate transaction”** means a transaction involving the sale or purchase of real property.
- “reasonably considers”** means considers on grounds that are reasonable in the circumstances.
- “recognised provision”**, for chapter 9, see section 166.
- “registrable order”**, for chapter 9, see section 166.
- “registrar”** means the registrar of the tribunal.
- “removal of tissue for donation”** see schedule 2, section 8(1).
- “repealed Act”**, for chapter 12, part 3, see section 258.
- “repealed chapter”**, for chapter 12, part 1, see section 253.

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110 Chapter 10 (Community visitors)

## SCHEDULE 4 (continued)

“**security transaction**”, for an adult, is a transaction involving the use of the adult’s property as security, for example, for a loan.

“**special health care**” see schedule 2, section 7.

“**special health matter**” see schedule 2, section 6.

“**special medical research or experimental health care**” see schedule 2, section 12.

“**special personal matter**” see schedule 2, section 3.

“**statutory health attorney**” see *Powers of Attorney Act 1998*, section 63.

“**sterilisation**” see schedule 2, section 9.

“**support network**”, for an adult, consists of the following people—

- (a) members of the adult’s family;
- (b) close friends of the adult;
- (c) other people the tribunal decides provide support to the adult.

“**term**” includes condition, limitation and instruction.

“**termination**” see schedule 2, section 10.

“**tissue**” see schedule 2, section 8(2).

“**tribunal**” means the Guardianship and Administration Tribunal.

“**tribunal rules**” see section 99.

“**visitable site**”, for chapter 10,<sup>111</sup> see section 222.

“**visitable site document**”, for chapter 10, see section 222.

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 8 March 2002. Future amendments of the Guardianship and Administration Act 2000 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	prev	= previous
amd	= amended	(prev)	= previously
amdt	= amendment	proc	= proclamation
ch	= chapter	prov	= provision
def	= definition	pt	= part
div	= division	pubd	= published
exp	= expires/expired	R[X]	= Reprint No.[X]
gaz	= gazette	RA	= Reprints Act 1992
hdg	= heading	reloc	= relocated
ins	= inserted	renum	= renumbered
lap	= lapsed	rep	= repealed
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 1992
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered

## 4 Table of earlier reprints

### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 16 of 2000	7 July 2000
1A	to Act No. 46 of 2000	8 November 2000
1B	to Act No. 46 of 2000	8 June 2001
1C	to Act No. 95 of 2001	15 February 2002

## 5 List of legislation

### **Guardianship and Administration Act 2000 No. 8**

date of assent 20 April 2000

ss 1–2 commenced on date of assent

ch 10 commenced 21 April 2001 (automatic commencement under AIA s 15DA(2))

sch 3 amdts 10, 13 (to the extent it omits s 68) of the Powers of Attorney Act 1998, sch 3 amdt 5 of the Public Trustee Act 1978 not yet proclaimed into force (automatic commencement under AIA s 15DA(2) deferred to 21 April 2002 (2001 SL No. 34 s 2))

remaining provisions commenced 1 July 2000 (2000 SL No. 125)

amending legislation—

### **Mental Health Act 2000 No. 16 ss 1–2, 590 sch 1 pt 2**

date of assent 8 June 2000

ss 1–2, 590 commenced on date of assent (see s 2(1))

remaining provisions commenced 28 February 2002 (2002 SL No. 27) (provisions were to commence 8 June 2002 (automatic commencement under AIA s 15DA(2) (2001 SL No. 46 s 2)))

### **Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch**

date of assent 25 October 2000

commenced on date of assent

### **Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3**

date of assent 28 June 2001

ss 1–2 commenced on date of assent

sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

**Guardianship and Administration and Other Acts Amendment Act 2001 No. 95 ss 1, 2(2), pt 2**

date of assent 10 December 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 15 February 2002 (2002 SL No. 15)

**6 List of annotations****Principles for adults with impaired capacity**

s 11 amd 2001 No. 95 s 4

**Purpose to achieve balance for health care**

s 61 amd 2001 No. 95 s 5

**Urgent health care**

s 63 amd 2001 No. 95 s 6

**Life-sustaining measure in an acute emergency**

s 63A ins 2001 No. 95 s 7

**Minor, uncontroversial health care**

s 64 amd 2001 No. 95 s 8

**Adult with impaired capacity—order of priority in dealing with health matter**

s 66 amd 2001 No. 95 s 9

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

s 66A ins 2001 No. 95 s 10

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

s 66B ins 2001 No. 95 s 10

**Effect of adult’s objection to health care**

s 67 amd 2001 No. 95 s 11

**Offence to carry out health care unless authorised**

s 79 amd 2001 No. 95 s 12

**Functions**

s 82 amd 2001 No. 95 s 13

**Health providers may advise adult guardian**

s 198 amd 2001 No. 95 s 14

**Definitions for ch 10**

s 222 def “consumer” sub 2000 No. 16 s 590 sch 1 pt 2

**Reports by community visitors**

s 230 amd 2000 No. 16 s 590 sch 1 pt 2

**CHAPTER 12—TRANSITIONAL PROVISIONS AND REPEAL****PART 4—TRANSITIONAL PROVISION FOR GUARDIANSHIP AND****ADMINISTRATION AND POWERS OF ATTORNEY AMENDMENT****ACT 2001**

pt 4 (s 262A) ins 2001 No. 95 s 15

**SCHEDULE 1—PRINCIPLES****Health care principle**

s 12            amd 2001 No. 95 s 16

**SCHEDULE 2—TYPES OF MATTERS****Health care**

s 5            amd 2001 No. 95 s 17

**Life-sustaining measure**

s 5A          ins 2001 No. 95 s 18

**Good medical practice**

s 5B          ins 2001 No. 95 s 18

**Special health care**

s 7            amd 2001 No. 95 s 19

**Special life-sustaining measures**

s 16          om 2001 No. 95 s 20

**SCHEDULE 3—ACTS AMENDED**

sch 3 (other than amdts 10 and 13 (to the extent it omits s 68) of the Powers of Attorney Act 1998 and amdt 5 of the Public Trustee Act 1978) om R1 (see RA s 40)

**SCHEDULE 4—DICTIONARY**def “**approved form**” amd 2000 No. 46 s 3 schdef “**good medical practice**” ins 2001 No. 95 s 21(2)def “**insolvent**” amd 2001 No. 45 s 29 sch 3def “**life-sustaining measure**” ins 2001 No. 95 s 21(2)def “**reasonably considers**” ins 2001 No. 95 s 21(2)def “**special life-sustaining measures**” om 2001 No. 95 s 21(1)**7            List of forms****Form 1 Version 1—Application for the appointment of a guardian and/or administrator**

pubd gaz 30 June 2000 p 717

**Form 2 Version 1—Application for a review of guardianship and/or administration orders**

pubd gaz 30 June 2000 p 717

**Form 3 Version 1—Application to be joined as an active party**

pubd gaz 30 June 2000 p 717

**Form 4 Version 1—Application for a stay of decision pending a hearing**

pubd gaz 30 June 2000 p 717

**Form 5 Version 1—Application on miscellaneous matters**

pubd gaz 30 June 2000 p 717

**Form 7 Version 1—Application for a declaration about capacity**

pubd gaz 30 June 2000 p 717

**Form 8 Version 1—Application for recognition of an order made under another law**

pubd gaz 30 June 2000 p 717