



# Guardianship and Administration Act 2000

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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 1 July 2008]

**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.
- (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>

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

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.

- (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
- 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.

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4 An administrator may only be appointed for financial matters.

5 Schedule 2 contains definitions of types of matters.

6 *Function* includes duty and *power* includes authority—see the *Acts Interpretation Act 1954*, section 36.

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

### **11A Primary focus—adults**

- (1) Adults with impaired capacity are the primary focus of this Act.
- (2) However, chapter 5A<sup>7</sup> deals with children with an impairment.

## **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.

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<sup>7</sup> Chapter 5A (Consent to sterilisation of child with impairment)



- (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.
- (4) This section does not apply for the appointment of a guardian for a restrictive practice matter under chapter 5B.

*Note—*

Section 80ZD provides for the appointment of guardians for restrictive practice matters.

### **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—
  - (a) if the administrator is the public trustee or a trustee company under the *Trustee Companies Act 1968*—the period decided by the tribunal; or
  - (b) otherwise—a period of not more than 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.
- (9) This section does not apply for the appointment of a guardian for a restrictive practice matter under chapter 5B.

**13A Advance appointment—guardian for restrictive practice matter**

- (1) The tribunal may, by order, make an appointment of a guardian for a restrictive practice matter under chapter 5B for an individual who is at least 17½ 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) the individual’s behaviour has previously resulted in harm to the individual or others; and
  - (c) there is a reasonable likelihood, when the individual turns 18—
    - (i) there will be a need for a decision about the restrictive practice matter; and

- (ii) without the appointment—
  - (A) the individual's behaviour is likely to cause harm to the individual or others; and
  - (B) 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—
  - (a) on the day ordered by the tribunal, which must not be later than the day the individual turns 19; or
  - (b) if no day is ordered by the tribunal—when the individual turns 19.
- (5) The appointment may be on terms considered appropriate by the tribunal.
- (6) The tribunal may make the order on its own initiative or on the application of any of the following—
  - (a) the individual;
  - (b) an interested person for the individual;
  - (c) a relevant service provider under chapter 5B;
  - (d) the chief executive (disability services);
  - (e) the adult guardian;
  - (f) if the individual is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—the director of mental health.

## **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

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- (ii) the adult guardian; and
  - (b) for appointment as an administrator, the person is—
    - (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) Despite subsection (1)(a)(ii), the tribunal may appoint the adult guardian as guardian for a matter only if there is no other appropriate person available for appointment for the matter.
- (3) Subject to section 74,<sup>8</sup> no-one may be appointed as a guardian for a special personal matter or special health matter.<sup>9</sup>
- (4) 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;

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8 Section 74 (Subsequent special health care for adult)

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

- (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.
- (5) 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>10</sup>

## 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.

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<sup>10</sup> Otherwise periodic reviews happen under section 28.

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- (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;
  - (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>11</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

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11 *Bankruptcy Act 1966* (Cwlth), part 10 (Personal insolvency agreements)

- (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.

## **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

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- (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>12</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—
    - (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—

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12 *Bankruptcy Act 1966* (Cwlth), part 10 (Personal insolvency agreements)



- (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, or the registrar acting either at the direction of the tribunal or on the registrar's own initiative, 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 or registrar, the commissioner of the police service must give the tribunal or registrar 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.
- (3) If the registrar makes the inquiries, the registrar must advise the tribunal of the results of the inquiries before the tribunal makes an appointment order.

## **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**

- (1) 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 appropriately qualified nominee, for approval.
- (2) The tribunal, or its appropriately qualified nominee, may approve a management plan.
- (3) In this section—  
*appropriately qualified*, for a nominee in relation to a management plan, means having the qualifications or experience appropriate to approve the plan.

## **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 and the administrator must each, within 3 months of the appointment, 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>13</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>14</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

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<sup>13</sup> Note section 47 (Payment of expenses).

<sup>14</sup> For health matters, see section 66 (Adult with impaired capacity—order of priority in dealing with health matter).

- (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 administrator's power for the matter is suspended pending review of the appointment of the guardian or administrator.<sup>15</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>16</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—

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<sup>15</sup> Note section 56 (Protection if unaware of change of appointee's power).

<sup>16</sup> Part 3 (Changing or revoking an appointment order), division 2 (Change or revocation at tribunal review of appointment)

*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—
  - (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
  - (aa) the guardian or administrator becomes the service provider for a residential service where the adult is a resident; 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; or
  - (d) the adult dies; or
  - (e) for a guardian for a restrictive practice matter under chapter 5B—the tribunal gives a containment or seclusion approval under chapter 5B in relation to the adult.
- (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), (aa), (b) or (d) 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.

- (5) In this section—

*resident* has the meaning given by the *Residential Services (Accreditation) Act 2002*.

*residential service* has the meaning given by the *Residential Services (Accreditation) Act 2002*.

*service provider* has the meaning given by the *Residential Services (Accreditation) Act 2002*.

## **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>17</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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17 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**

- (1) The tribunal must review an appointment of a guardian or administrator (other than the public trustee or a trustee company under the *Trustee Companies Act 1968*)—
- (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.
- (2) This section does not apply for a guardian for a restrictive practice matter under chapter 5B.

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

- (1) The tribunal may review an appointment of a guardian or administrator for an adult at any time—
- (a) on its own initiative; or
  - (b) for a guardian other than a guardian for a restrictive practice matter under chapter 5B—on the application of any of the following—
    - (i) the adult;
    - (ii) an interested person for the adult;
    - (iii) the public trustee;
    - (iv) a trustee company under the *Trustee Companies Act 1968*; or
  - (c) for a guardian for a restrictive practice matter under chapter 5B—on the application of any of the following—



- (i) the adult;
  - (ii) an interested person for the adult;
  - (iii) a relevant service provider under chapter 5B providing disability services to the adult;
  - (iv) the chief executive (disability services);
  - (v) the adult guardian;
  - (vi) if the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—the director of mental health.
- (2) However, the tribunal must review the appointment of a guardian for a restrictive practice matter under chapter 5B at least once before the term of the appointment ends.

### **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>18</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.

### **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.

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<sup>18</sup> Section 16 (Advice from proposed appointee about appropriateness and competence)

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

- (1) This section applies if—
  - (a) the tribunal changes or revokes the appointment for an adult of a guardian or administrator; or
  - (b) the tribunal is given advice of the ending of an appointment under section 26 or 57.<sup>19</sup>
- (2) The registrar of the tribunal must take reasonable steps to advise the adult and any remaining guardians and administrators of the change, revocation or ending of the appointment.

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

- (1) This section applies if—
  - (a) an administrator was appointed for a matter involving an interest in land; and
  - (b) either—
    - (i) the tribunal changes or revokes the appointment; or
    - (ii) the tribunal is given advice of the ending of the appointment under section 26 or 57.
- (2) The registrar of the tribunal and any remaining administrator appointed for a matter involving an interest in land must, within 3 months of the change, revocation or ending of the appointment, advise the registrar of titles of the change, revocation or ending of the appointment.
- (3) If the registrar of titles receives an advice, the registrar of titles must enter the advice in a file maintained for the purpose.

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<sup>19</sup> Section 26 (Automatic revocation) or 57 (Advice of change of successive appointee)

## **Division 3                      Directions**

### **32B      Directions to former guardian or administrator**

- (1) This section applies if an appointment as a guardian or administrator ends under section 26, 27 or 31.
- (2) The tribunal may give directions to the former guardian or administrator that the tribunal considers necessary because of the ending of the appointment.
- (3) The tribunal may give the directions to the former guardian or administrator—
  - (a) if the appointment ends under section 27—when the tribunal gives leave to withdraw as guardian or administrator for a matter; or
  - (b) if the appointment ends under section 31—when the tribunal revokes the order that made the appointment or makes an order removing the guardian or administrator; or
  - (c) in all cases—at any hearing of a proceeding relating to the adult for whom the person was formerly a guardian or administrator.
- (4) However, the directions may relate only to a matter for which the former guardian or administrator was appointed immediately before the appointment ends.

## **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.
- (3) For a guardian for a restrictive practice matter under chapter 5B, this section applies subject to sections 80ZE and 80ZF.

#### **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.

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20 See schedule 1 (Principles).

**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.
  - 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) Subject to subsection (5), this section overrides—
  - (a) any restriction, in an Act or the common law, about the disclosure or confidentiality of information; and
  - (b) any claim of confidentiality or privilege, including a claim based on legal professional privilege.

**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.

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

- (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
  - (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.

Maximum penalty—300 penalty units.

- (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.

**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.

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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).

**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.

**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 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.

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23 Section 19 (Comply with other tribunal requirement)

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)



## **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
  - (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.

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

**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.
- (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>
- (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

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

- (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.
- (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.

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

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).

**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>
- (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

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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)

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

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;
  - (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, by order, consent to special health care, other than electroconvulsive therapy or psychosurgery, for an adult.

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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’.

- (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.
- (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;

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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.



- (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; 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.

## **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>36</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;
  - (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.

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36 *Special medical research or experimental health care* does not include—

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

- (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>37</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.
- (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.

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<sup>37</sup> Section 67, which effectively enables an adult's objection to be overridden in some cases, does not apply.

## **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, or has treated, 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, or has treated, the adult must give information to the tribunal unless the health provider has a reasonable excuse.
- (4) The information to be given by a health provider who is treating, or has treated, the adult includes information about—
  - (a) the nature of the adult's condition at the time of the treatment; and
  - (b) the particular form of health care being, or that was, carried out; and
  - (c) the reasons why the particular form of health care is being, or was, carried out; and
  - (d) the alternative forms of health care available for the condition at the time of the treatment; and

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- (e) the general nature and effect of each form of health care at the time of the treatment; and
  - (f) the nature and extent of short-term, or long-term, significant risks associated with each form of health care; and
  - (g) for a health provider who is treating the adult—the reasons why it is proposed a particular form of health care should be carried out.
- (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) Subject to subsection (7), 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>38</sup> or
    - (b) the tribunal’s right to information under section 130;<sup>39</sup> or
    - (c) an attorney’s right to information under the *Powers of Attorney Act 1998*, section 81.<sup>40</sup>
  - (10) In this section—
 

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

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

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

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

**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.
- (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>41</sup> or

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

- (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>42</sup>

Maximum penalty—

- (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>43</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.

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42 **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.

43 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.

# Chapter 5A Consent to sterilisation of child with impairment

## Part 1 Preliminary

### 80A Definitions for ch 5A

In this chapter—

*active party* see section 80K.<sup>44</sup>

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

*chapter 5A application* means an application under this chapter for consent to the sterilisation of a child<sup>45</sup> with an impairment.

*child representative* see section 80L.<sup>46</sup>

*confidentiality order* see section 80G(2).<sup>47</sup>

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

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

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

*sterilisation* see section 80B.

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44 Section 80K (Who is an *active party*)

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

46 Section 80L (Child representative must be appointed)

47 Section 80G (Open)



**80B Sterilisation**

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

*Examples of sterilisation—*

endometrial ablation, hysterectomy, tubal ligation and vasectomy

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

*Example—*

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

## **Part 2 Consent by tribunal**

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

- (1) On an application made under part 3,<sup>48</sup> the tribunal may, by order, consent to the sterilisation of a child with an impairment.
- (2) The tribunal may consent to the sterilisation only if the tribunal is satisfied the sterilisation is in the best interests of the child.
- (3) A child's sterilisation, to which the tribunal has consented, is not unlawful.

**80D Whether sterilisation is in child's best interests**

- (1) The sterilisation of a child with an impairment is in the child's best interests only if—
- (a) one or more of the following applies—

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48 Part 3 (Tribunal proceedings)

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- (i) the sterilisation is medically necessary;
  - (ii) the child is, or is likely to be, sexually active and there is no method of contraception that could reasonably be expected to be successfully applied;
  - (iii) if the child is female—the child has problems with menstruation and cessation of menstruation by sterilisation is the only practicable way of overcoming the problems; and
- (b) the child's impairment results in a substantial reduction of the child's capacity for communication, social interaction and learning; and
  - (c) the child's impairment is, or is likely to be, permanent and there is a reasonable likelihood, when the child turns 18, the child will have impaired capacity<sup>49</sup> for consenting to sterilisation; and
  - (d) the sterilisation can not reasonably be postponed; and
  - (e) the sterilisation is otherwise in the child's best interests.
- (2) Sterilisation is not in the child's best interests if the sterilisation is—
    - (a) for eugenic reasons; or
    - (b) to remove the risk of pregnancy resulting from sexual abuse.
  - (3) In deciding whether the sterilisation is in the child's best interests, the tribunal must—
    - (a) ensure the child is treated in a way that respects the child's dignity and privacy; and
    - (b) do each of the following—
      - (i) in a way that has regard to the child's age and impairment, seek the child's views and wishes and take them into account;
      - (ii) to the greatest extent practicable, seek the views of each of the following persons and take them into account—

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49 See schedule 4 (Dictionary).

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- (A) any parent or guardian of the child;
- (B) if a parent or guardian is not the child's primary carer, the child's primary carer;
- (C) the child representative for the child;
- (iii) take into account the information given by any health provider who is treating, or has treated, the child; and
- (c) take into account—
  - (i) the wellbeing of the child; and
  - (ii) alternative forms of health care that have proven to be inadequate in relation to the child; and
  - (iii) alternative forms of health care that are available, or likely to become available, in the foreseeable future; and
  - (iv) the nature and extent of short-term, or long-term, significant risks associated with the proposed sterilisation and available alternative forms of health care.
- (4) The child's views and wishes may be expressed in the following ways—
  - (a) orally;
  - (b) in writing;
  - (c) in another way including, for example, by conduct.

## **Part 3                      Tribunal proceedings**

### **Division 1                General**

#### **80E      Relationship with ch 7**

- (1) The following provisions of chapter 7<sup>50</sup> apply in relation to a chapter 5A application and a proceeding under this part—
  - part 1 (other than sections 101 and 109)
  - section 122
  - part 3 (other than section 125)
  - part 4 (other than sections 128, 129, 134, 138 and 138A)
  - part 6 (other than section 158)
  - part 8 (other than section 164)
  - part 10.<sup>51</sup>
- (2) The remaining provisions of chapter 7 do not apply in relation to a chapter 5A application or a proceeding under this part.
- (3) However, this part contains additional provisions that apply in relation to a chapter 5A application and a proceeding under this part.

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

- (1) At a hearing of a chapter 5A application, the tribunal must be constituted by 3 members.
- (2) To the extent practicable, the tribunal must include—

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50 Chapter 7 (Tribunal proceedings)

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

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

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

### **80G Open**

- (1) Generally, a hearing by the tribunal of a proceeding in relation to a chapter 5A application must be in public.
- (2) However, if the tribunal is satisfied it is desirable to do so because of the confidential nature of particular information or matter or for another reason, the tribunal may, by order (a *confidentiality order*)—
  - (a) give directions about the persons who may or may not be present; and
  - (b) direct a hearing or part of a hearing take place in private; and
  - (c) give directions prohibiting or restricting the publication of information given before the tribunal, whether in public or in private, or of matters contained in documents filed with, or received by, the tribunal; and
  - (d) give directions prohibiting or restricting the disclosure to some or all of the active parties in a proceeding of—
    - (i) information given before the tribunal; or
    - (ii) matters contained in documents filed with, or received by, the tribunal; or
    - (iii) subject to subsection (3), the tribunal's decision or reasons.
- (3) The tribunal may make a confidentiality order prohibiting or restricting disclosure of the tribunal's decision or reasons to the child only if the tribunal considers disclosure to the child might be prejudicial to the physical or mental health or wellbeing of the child.

- (4) The tribunal may not make a confidentiality order that is likely to affect the ability of an active party to form and express a considered view about the proposed sterilisation.
- (5) The tribunal may make a confidentiality order on its own initiative or on the application of an active party.
- (6) A person must not contravene a confidentiality order, unless the person has a reasonable excuse.

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

## **Division 2                      Applications**

### **80H      Who may apply**

- (1) An application may be made to the tribunal for consent to the sterilisation of a child with an impairment.
- (2) The application may only be made by—
  - (a) a parent or guardian of the child; or
  - (b) another interested person.<sup>52</sup>

### **80I      How to apply**

- (1) Unless the tribunal directs otherwise, a chapter 5A application must—
  - (a) be written; and
  - (b) be signed by the applicant; and
  - (c) be filed with the tribunal; and
  - (d) comply with subsections (2) to (5).
- (2) The application must include all of the following information—
  - (a) the reason for the application, including information about why the proposed sterilisation would, in the applicant's view, be in the child's best interests;<sup>53</sup>

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<sup>52</sup> See schedule 4 (Dictionary).

<sup>53</sup> See section 80C (When tribunal may consent and effect of consent).

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- (b) a detailed description of—
    - (i) the child’s impairment; and
    - (ii) how the child communicates; and
    - (iii) the impact of the impairment on the child’s capacity for communication, social interaction and learning;
  - (c) whether the child has been informed of the application;
  - (d) whether the child has indicated the child does not wish to have the proposed sterilisation;<sup>54</sup>
  - (e) information about the help, if any, the child might need at the hearing of the application;
  - (f) if urgent action is required—an explanation of the urgency;
  - (g) any other information in relation to the wellbeing of the child the applicant considers relevant;
  - (h) to the best of the applicant’s knowledge, information about the following persons—
    - (i) the applicant;
    - (ii) the child;
    - (iii) any parent or guardian of the child;
    - (iv) if a parent or guardian of the child is not the primary carer of the child, the primary carer of the child;
    - (v) a doctor who is treating the child.
- (3) The information required under subsection (2)(h) is to enable the tribunal to give notice of the hearing and must consist of—
- (a) each person’s name; and
  - (b) either—
    - (i) details the applicant knows of the person’s address and telephone and facsimile number; or

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54 See section 80D(4) (Whether sterilisation is in child’s best interests).

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- (ii) if the applicant does not know the details—a way known to the applicant of contacting the person.
- (4) The application must also include a report by a doctor who is treating the child.
- (5) The report must state in detail information about—
  - (a) the child’s impairment and the impact of the impairment on the child’s capacity for communication, social interaction and learning; and
  - (b) the proposed sterilisation, including information about—
    - (i) the reason for the proposed sterilisation, including information about why the proposed sterilisation would, in the doctor’s view, be in the child’s best interests; and
    - (ii) whether the child is, or is reasonably likely to be, fertile; and
    - (iii) the type of proposed sterilisation and a description of the procedure; and
    - (iv) when and where the proposed sterilisation would be carried out; and
    - (v) why the sterilisation can not be reasonably postponed; and
    - (vi) any alternative forms of health care that have proven to be inadequate in relation to the child; and
    - (vii) alternative forms of health care that are available, or likely to become available, in the foreseeable future; and
    - (viii) any risks to the child if the proposed sterilisation is carried out; and
    - (ix) any risks to the child if the proposed sterilisation is not carried out; and
    - (x) the likely long term social and psychological effects of the sterilisation on the child; and
    - (xi) whether the child’s impairment is, or is likely to be, permanent.



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

- (1) At least 7 days before the hearing of a chapter 5A application, the tribunal must give notice of the hearing to the child and, as far as practicable, to—
  - (a) the applicant; and
  - (b) any parent or guardian of the child; and
  - (c) if a parent or guardian of the child is not the primary carer of the child, the primary carer; and
  - (d) a doctor who is treating the child; and
  - (e) the child representative for the child; and
  - (f) anyone else the tribunal considers should be notified.
- (2) However, the tribunal is not required to give notice to the child if the tribunal considers that notice to the child might be prejudicial to the physical or mental health or wellbeing of the child.
- (3) Also, if the president or presiding member of the tribunal is satisfied urgent action is required, the president or presiding member may, by direction under section 110,<sup>55</sup> direct that the time stated in subsection (1) be reduced.

**80K Who is an *active party***

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

- (a) the child;
- (b) the applicant;
- (c) any parent or guardian of the child;
- (d) if a parent or guardian of the child is not the primary carer of the child, the primary carer of the child;
- (e) a doctor who is treating the child;
- (f) the child representative for the child;

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55 Section 110 (Procedural directions)

- (g) a person joined as a party to the proceeding by the tribunal.

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

- (1) As soon as possible after a chapter 5A application is made, the tribunal must appoint a person to separately represent the child before the tribunal (a *child representative*).
- (2) A person is eligible for appointment as a child representative only if the person is a lawyer<sup>56</sup> who has experience in dealing with children with an impairment.
- (3) The child representative must—
  - (a) act in the child's best interests; and
  - (b) have regard to any expressed views or wishes of the child; and
  - (c) to the greatest extent practicable, present the child's views and wishes to the tribunal.
- (4) To ensure the child representative has all the information necessary to act in the child's best interests, the tribunal may order a person, for example, a parent or a doctor who is treating, or has treated, the child, to give the child representative information about the child.
- (5) If the tribunal orders a person to give information under subsection (4), the person must comply with the order unless the person has a reasonable excuse.
- (6) It is a reasonable excuse for a person to fail to give information because giving the information might tend to incriminate the person.
- (7) Subject to subsection (6), this section overrides—
  - (a) any restriction, in an Act or the common law, about the disclosure or confidentiality of information; and
  - (b) any claim of confidentiality or privilege, including a claim based on legal professional privilege.

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<sup>56</sup> *Lawyer* means a barrister, solicitor, barrister and solicitor or legal practitioner of the High Court or the Supreme Court of a State—*Acts Interpretation Act 1954*, section 36 (Meaning of commonly used words and expressions).

## **Division 3                      Proceeding**

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

- (1) Once a chapter 5A application is made to the tribunal, the tribunal may—
  - (a) give the advice or directions about the application it considers appropriate; or
  - (b) make the recommendations it considers appropriate about action an active party should take.
- (2) If the tribunal gives advice or a direction or makes a recommendation, it may also—
  - (a) continue with the application; or
  - (b) adjourn the application; or
  - (c) dismiss the application.
- (3) The tribunal may also give leave for an active party to apply to the tribunal for directions about implementing the recommendation.

## **Division 4                      Decision**

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

- (1) Generally, the tribunal must give a copy of its decision, and any written reasons for its decision, on a chapter 5A application to each active party in the proceeding.
- (2) Generally, the tribunal must also give a copy of its decision to each person given notice of the hearing of the application.
- (3) However, a confidentiality order may displace the requirement to give copies of its decision or reasons.<sup>57</sup>
- (4) The tribunal may also give a copy of its decision or reasons to anyone else as required by a tribunal order.

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<sup>57</sup> See section 80G (Open).

## **Division 5                      Appeal**

### **80O    Appellant**

- (1) An active party for a proceeding under this part may, by notice, appeal to the court against a tribunal decision in relation to the proceeding.
- (2) The court's leave is required for an appeal other than an appeal on a question of law only.
- (3) In this section—

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

## **Part 4                              Other provisions about consent to sterilisation of child**

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

- (1) The purpose of this section is to ensure the tribunal, in deciding whether to consent to sterilisation of a child, has all the information necessary to make an informed decision.
- (2) The tribunal may order a health provider who is treating, or has treated, the child to give information to the tribunal, including—
  - (a) the type of information mentioned in section 80I(5); and
  - (b) any other relevant information.
- (3) The health provider must comply with the order, unless the health provider has a reasonable excuse.
- (4) It is a reasonable excuse for a health provider to fail to give information because giving the information might tend to incriminate the health provider.
- (5) Subject to subsection (4), this section overrides—

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

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

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

## **Chapter 5B Restrictive practices**

### **Part 1 Preliminary**

#### **80R Application of ch 5B**

This chapter applies to an adult with an intellectual or cognitive disability who receives disability services from a funded service provider within the meaning of the DSA (a *relevant service provider*).

#### **80S Purpose of ch 5B**

- (1) The purpose of this chapter is to enable the tribunal to—
  - (a) give approval for a relevant service provider to contain or seclude an adult, and to review the approval; and
  - (b) if the tribunal has given, or proposes to give, an approval mentioned in paragraph (a) in relation to an adult—give approval for a relevant service provider to use restrictive practices other than containment or seclusion in relation to the adult, and to review the approval; and
  - (c) appoint a guardian for a restrictive practice matter for an adult, and to review the appointment.

- (2) Also, this chapter—
- (a) enables the adult guardian to approve the use of particular restrictive practices on a short term basis; and
  - (b) provides criteria for guardians for a restrictive practice matter and informal decision makers for deciding whether to consent to the use of particular restrictive practices.

**80T Effect of ch 5B on substitute decision maker’s ability to make health care decision**

This chapter does not limit the extent to which a substitute decision maker is authorised under a provision of this Act or the *Powers of Attorney Act 1998* to make a health care decision in relation to an adult to whom this chapter does not apply.

**80U Definitions for ch 5B**

In this chapter—

*active party* see section 80ZQ.

*adult with an intellectual or cognitive disability* see the DSA, section 123E.

*assessment*, of an adult, see the DSA, section 123E.

*authorised psychiatrist* see the *Mental Health Act 2000*, schedule 2.

*chemical restraint* see the DSA, section 123E.

*chemical restraint (fixed dose)* see the DSA, section 123E.

*community access services* see the DSA, section 123E.

*contain* see the DSA, section 123E.

*containment or seclusion approval*—

- (a) means approval given by the tribunal under part 2, division 1 for a relevant service provider to contain or seclude an adult; and

- (b) includes an approval given under that part for a relevant service provider to use a restrictive practice other than containment or seclusion in relation to the adult.

***disability services*** see the DSA, section 12.

***DSA*** means the *Disability Services Act 2006*.

***harm*** see the DSA, section 123E.

***informal decision maker***, for an adult, see the DSA, section 123E.

***least restrictive*** see the DSA, section 123E.

***mechanical restraint*** see the DSA, section 123E.

***physical restraint*** see the DSA, section 123E.

***positive behaviour support plan*** see the DSA, section 123E.

***relevant service provider*** see section 80R.

***respite/community access plan*** see the DSA, section 123E.

***respite services*** see the DSA, section 123E.

***restrictive practice*** see the DSA, section 123E.

***restrictive practice (general) matter***, for an adult, means a matter relating to the use of a restrictive practice in relation to the adult by a relevant service provider, other than—

- (a) containment or seclusion; or
- (b) any restrictive practice used in the course of providing respite services or community access services to the adult.

***restrictive practice matter*** means—

- (a) a restrictive practice (general) matter; or
- (b) a restrictive practice (respite) matter.

***restrictive practice (respite) matter***, for an adult, means a matter relating to the use of a restrictive practice in relation to the adult by a relevant service provider in the course of providing respite services or community access services to the adult.

*seclude* see the DSA, section 123E.

*short term plan* see the DSA, section 123E.

## Part 2 Containment or seclusion approvals

### Division 1 Giving containment or seclusion approvals

#### **80V When tribunal may approve use of containment or seclusion**

- (1) The tribunal may, by order, give approval for a relevant service provider to contain or seclude an adult, subject to the conditions stated in the order.
- (2) The tribunal may give the approval only if the tribunal is satisfied—
  - (a) the adult has impaired capacity for making decisions about the use of restrictive practices in relation to the adult; and
  - (b) there is a need for the relevant service provider to contain or seclude the adult because—
    - (i) the adult’s behaviour has previously resulted in harm to the adult or others; and
    - (ii) there is a reasonable likelihood that, if the approval is not given, the adult’s behaviour will cause harm to the adult or others; and
  - (c) a positive behaviour support plan has been developed for the adult that provides for the containment or seclusion; and
  - (d) containing or secluding the adult in compliance with the approval is the least restrictive way of ensuring the safety of the adult or others; and



- (e) the adult has been adequately assessed by appropriately qualified persons, within the meaning of the DSA, section 123E, in the development of the positive behaviour support plan for the adult; and
  - (f) if the positive behaviour support plan for the adult is implemented—
    - (i) the risk of the adult’s behaviour causing harm will be reduced or eliminated; and
    - (ii) the adult’s quality of life will be improved in the long-term; and
  - (g) the observations and monitoring provided for under the positive behaviour support plan for the adult are appropriate.
- (3) The tribunal may make the order on its own initiative or on an application under section 80ZO.

### **80W Matters tribunal must consider**

In deciding whether to give a containment or seclusion approval, the tribunal must consider each of the following—

- (a) the suitability of the environment in which the adult will be contained or secluded;
- (b) if the tribunal is aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—
  - (i) the terms of the order; and
  - (ii) the views of the authorised psychiatrist responsible for treatment of the adult under that Act about the containment or seclusion of the adult;
- (c) any strategies, including restrictive practices, previously used to manage or reduce the behaviour of the adult that causes harm to the adult or others, and the effectiveness of those strategies;
- (d) the type of disability services provided to the adult.

**80X When tribunal may approve use of other restrictive practices**

- (1) This section applies if—
  - (a) an approval given under section 80V is in effect in relation to an adult; or
  - (b) the tribunal proposes to give an approval under section 80V in relation to an adult.
- (2) The tribunal may, by order, give approval for a relevant service provider to use a restrictive practice other than containment or seclusion (the *other restrictive practice*) in relation to the adult, subject to the conditions stated in the order.
- (3) The tribunal may make the order only if the tribunal is satisfied of the matters stated in section 80V(2)(a) to (g) in relation to the other restrictive practice.
- (4) In deciding whether to make the order, the tribunal must consider—
  - (a) the matters stated in section 80W; and
  - (b) if the other restrictive practice is chemical restraint—the views of the adult’s treating doctor about the use of the chemical restraint.
- (5) For subsections (3) and (4)(a), sections 80V(2)(a) to (g) and 80W apply as if a reference in the sections to containing or secluding the adult were a reference to using the other restrictive practice in relation to the adult.
- (6) An order made under this section is taken to be part of the approval given under section 80V in relation to the adult.
- (7) The tribunal may make the order on its own initiative or on an application under section 80ZO.

## **Division 2                      Period of containment or seclusion approval**

### **80Y      Period for which containment or seclusion approval has effect**

- (1) A containment or seclusion approval has effect for the period stated in the order.
- (2) The total period for which the approval has effect must be not more than 12 months from the day the order is made.
- (3) This section applies subject to sections 80Z and 80ZB.

### **80Z      Automatic revocation of containment or seclusion approval**

- (1) A containment or seclusion approval ends if—
  - (a) the adult dies; or
  - (b) for a relevant service provider—the adult stops receiving disability services from the provider.
- (2) The relevant service provider must notify the tribunal in writing if an event mentioned in subsection (1)(a) or (b) happens.

## **Division 3                      Reviewing a containment or seclusion approval**

### **80ZA    When containment or seclusion approval may be reviewed**

The tribunal may review a containment or seclusion approval at any time—

- (a) on its own initiative; or
- (b) on the application of any of the following—
  - (i) the adult;
  - (ii) an interested person for the adult;

- (iii) a relevant service provider to which the approval applies;
- (iv) the chief executive (disability services);
- (v) the adult guardian;
- (vi) if the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—the director of mental health.

**80ZB Review process**

- (1) The tribunal may conduct a review of a containment or seclusion approval in the way it considers appropriate.
- (2) At the end of the review, the tribunal must revoke the containment or seclusion approval unless it is satisfied it would give the containment or seclusion approval if a new application for the approval were made.
- (3) If the tribunal is satisfied it would give the containment or seclusion approval if a new application for the approval were made, it may—
  - (a) continue its order giving the containment or seclusion approval; or
  - (b) change its order giving the containment or seclusion approval; or
  - (c) make an order giving a new containment or seclusion approval.

**Part 3 Guardians for a restrictive practice matter****80ZC Application of pt 3**

This part does not apply if a containment or seclusion approval is in effect in relation to an adult.

**80ZD Appointment**

- (1) The tribunal may, by order, appoint a guardian for a restrictive practice matter for an adult if the tribunal is satisfied—
  - (a) the adult has impaired capacity for the matter; and
  - (b) the adult's behaviour has previously resulted in harm to the adult or others; and
  - (c) there is a need for a decision about the matter; and
  - (d) without the appointment—
    - (i) the adult's behaviour is likely to cause harm to the adult or others; and
    - (ii) the adult's interests will not be adequately protected.
- (2) The appointment may be on terms considered appropriate by the tribunal.
- (3) The appointment has effect for the period stated in the order.
- (4) The period for which the appointment has effect must not be more than 12 months from the day the order is made.
- (5) Subsections (3) and (4) apply subject to sections 26 and 31.
- (6) The tribunal may make the appointment on its own initiative, or on an application under section 80ZP.
- (7) This section does not limit the application of chapter 3 to the appointment.

**80ZE Requirements for giving consent—guardian for restrictive practice (general) matter**

- (1) The purpose of this section is to state requirements for a guardian for a restrictive practice (general) matter about consenting to the use of a restrictive practice in relation to the adult by a relevant service provider.
- (2) The guardian may consent to use of the restrictive practice by the relevant service provider in compliance with a positive behaviour support plan for the adult.
- (3) The consent may be given subject to conditions.
- (4) The guardian may give the consent only if satisfied—

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- (a) the adult's behaviour has previously resulted in harm to the adult or others; and
  - (b) there is a reasonable likelihood that, if the consent is not given, the adult's behaviour will cause harm to the adult or others; and
  - (c) using the restrictive practice in compliance with the positive behaviour support plan mentioned in subsection (2) is the least restrictive way of ensuring the safety of the adult or others; and
  - (d) the adult has been adequately assessed for developing or changing the positive behaviour support plan; and
  - (e) use of the restrictive practice is supported by the recommendations of the person who assessed the adult; and
  - (f) if the restrictive practice is chemical restraint—in developing the positive behaviour support plan, the relevant service provider consulted the adult's treating doctor; and
  - (g) if the positive behaviour support plan is implemented—
    - (i) the risk of the adult's behaviour causing harm will be reduced or eliminated; and
    - (ii) the adult's quality of life will be improved in the long-term; and
  - (h) the observations and monitoring provided for under the positive behaviour support plan are appropriate.
- (5) In deciding whether to give the consent, the guardian must consider the following—
- (a) if the guardian is aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—
    - (i) the terms of the order; and
    - (ii) the views of the authorised psychiatrist responsible for treatment of the adult under that Act about the use of the restrictive practice;
  - (b) any information available to the guardian about strategies, including restrictive practices, previously

used to manage the behaviour of the adult that causes harm to the adult or others, and the effectiveness of those strategies;

- (c) the type of disability services provided to the adult;
- (d) the suitability of the environment in which the restrictive practice is to be used;
- (e) if the restrictive practice is chemical restraint—the views of the adult’s treating doctor about the use of the chemical restraint.

### **80ZF Requirements for giving consent—guardian for restrictive practice (respite) matter**

- (1) The purpose of this section is to state requirements for a guardian for a restrictive practice (respite) matter about consenting to the use of a restrictive practice in relation to the adult by a relevant service provider.
- (2) The guardian may consent to use of the restrictive practice by the relevant service provider in compliance with a respite/community access plan for the adult.
- (3) The consent may be given subject to conditions.
- (4) The guardian may give the consent only if satisfied—
  - (a) there is a reasonable likelihood that, if the consent is not given, the adult’s behaviour will cause harm to the adult or others; and
  - (b) the relevant service provider has complied with the DSA, part 10A, division 5; and
  - (c) if the respite/community access plan is implemented—
    - (i) the risk of the adult’s behaviour causing harm will be reduced or eliminated; and
    - (ii) the adult’s quality of life will be improved in the long-term; and
  - (d) the observations and monitoring provided for under the respite/community access plan are appropriate.
- (5) For giving consent to the use of chemical restraint (fixed dose)—

- (a) subsections (2) and (4) do not apply; and
- (b) the guardian may give the consent only if satisfied there is a reasonable likelihood that, if the consent is not given, the adult's behaviour will cause harm to the adult or others.

## **Part 4**

### **Short term approval of adult guardian for use of particular restrictive practices**

#### **80ZG Application of pt 4**

This part does not apply for an adult if—

- (a) there is a containment or seclusion approval in relation to the adult; or
- (b) both of the following apply—
  - (i) there is a guardian for a restrictive practice (respite) matter for the adult;
  - (ii) a relevant service provider proposes to contain or seclude the adult in the course of providing respite services or community access services to the adult.

#### **80ZH When adult guardian may give short term approval for use of containment or seclusion**

- (1) The adult guardian may give approval for a relevant service provider to contain or seclude an adult if satisfied—
  - (a) the adult has impaired capacity for making decisions about the use of restrictive practices in relation to the adult; and
  - (b) the adult's behaviour has previously resulted in harm to the adult or others; and
  - (c) there is an immediate and serious risk that, if the approval is not given, the adult's behaviour will cause harm to the adult or others; and



- (d) using the restrictive practice is the least restrictive way of ensuring the safety of the adult or others.
- (2) In deciding whether to give the approval, the adult guardian must, unless it is not practicable in the circumstances, consult with and consider the views of the following persons about the use of the restrictive practice—
  - (a) the adult;
  - (b) a guardian or informal decision maker for the adult;
  - (c) if the adult guardian is aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—the authorised psychiatrist responsible for treatment of the adult under that Act.
- (3) If the adult guardian has previously given an approval under this section in relation to the adult, the adult guardian may give the approval only if satisfied exceptional circumstances justify giving a subsequent approval under this section.
- (4) An approval given under this section may not have effect for more than 3 months.
- (5) The approval ends if—
  - (a) the relevant service provider does not comply with the condition of the approval mentioned in section 80ZI(a);  
or
  - (b) the adult guardian gives the relevant service provider written notice under section 80ZJ that the adult guardian does not approve a short term plan for the adult given to the adult guardian by the provider.
- (6) The relevant service provider or a person consulted under subsection (2) may apply to the tribunal in relation to a decision of the adult guardian to give, or refuse to give, the approval, and the tribunal may make the order it considers appropriate.

**80ZI Conditions to which s 80ZH approval is subject**

An approval given by the adult guardian under section 80ZH—

- (a) is subject to the condition that, within 14 days after receiving notice that the approval has been given, the relevant service provider must give the adult guardian a short term plan for the adult; and
- (b) may be subject to other conditions considered appropriate by the adult guardian.

**80ZJ Adult guardian's decision about whether to approve short term plan**

- (1) This section applies if the adult guardian is given a short term plan for an adult by a relevant service provider under section 80ZI(a).
- (2) As soon as practicable after receiving the short term plan, the adult guardian must decide whether to approve it.
- (3) The adult guardian must approve the short term plan if satisfied—
  - (a) the information in the plan is consistent with the information considered by the adult guardian in deciding whether to give the relevant short term approval; and
  - (b) there is an immediate and serious risk that, if the short term approval does not continue in effect, the adult's behaviour will cause harm to the adult or others; and
  - (c) use of the restrictive practices in compliance with the short term approval and the plan is the least restrictive way of ensuring the safety of the adult or others.
- (4) The adult guardian must, as soon as practicable after deciding whether to approve the short term plan, notify the relevant service provider about the adult guardian's decision.
- (5) If the adult guardian does not approve the short term plan—
  - (a) the relevant service provider may apply to the tribunal; and
  - (b) the tribunal may make the order it considers appropriate.

**80ZK When adult guardian may give short term approval for use of other restrictive practices**

- (1) While an approval given under section 80ZH is in effect, the adult guardian may give approval for a relevant service provider to use another restrictive practice in relation to the adult if satisfied of the matters stated in section 80ZH(1)(a) to (d) for the restrictive practice.
- (2) Also, if the restrictive practice is chemical restraint, the adult guardian must be satisfied the relevant service provider has consulted with, and considered the views of, the adult's treating doctor.
- (3) The adult guardian may not give approval under this section for use of a restrictive practice if there is a guardian for a restrictive practice (general) matter for the adult.
- (4) Subsection (5) applies if, when an approval is given under this section, a short term plan for the adult has already been developed by the relevant service provider.
- (5) The approval given under this section is subject to the condition that, within 14 days after the approval is given, the relevant service provider must—
  - (a) amend the short term plan for the adult to include use of the restrictive practice; and
  - (b) give the amended plan to the adult guardian for approval.
- (6) Section 80ZJ applies, with any necessary changes, to the adult guardian for deciding whether to approve an amended short term plan mentioned in subsection (5).
- (7) An approval given under this section ends—
  - (a) if the relevant service provider is notified by the adult guardian that an amended short term plan mentioned in subsection (5) is not approved—on receipt of the notice; or
  - (b) otherwise—on the day the approval given under section 80ZH ends.

**80ZL Right of adult guardian to information for making decision**

- (1) This section applies to the adult guardian for deciding whether to give approval under this part for a relevant service provider to use a restrictive practice in relation to an adult.
- (2) The adult guardian has a right to all the information that—
  - (a) the adult would have been entitled to if the adult had capacity; and
  - (b) is necessary for the adult guardian to make an informed decision.
- (3) At the adult guardian's request, a person who has custody or control of the information must give the information to the adult guardian, unless the person has a reasonable excuse.
- (4) If a person who has custody or control of the information does not comply with a request by the adult guardian to give information, the tribunal may, on application by the adult guardian, order the person to give the information to the adult guardian.
- (5) If the tribunal orders a person to give information to the adult guardian, the person must comply with the order, unless the person has a reasonable excuse.
- (6) It is a reasonable excuse for a person to fail to give information because giving the information might tend to incriminate the person.
- (7) Subject to subsection (6), this section overrides—
  - (a) any restriction, in an Act or the common law, about the disclosure or confidentiality of information; and
  - (b) any claim of confidentiality or privilege, including a claim based on legal professional privilege.

**80ZM Requirement for adult guardian to give notice of decision**

- (1) As soon as practicable after the adult guardian decides to give, or refuse to give, an approval under this part, the adult guardian must give written notice of the decision to the following—
  - (a) the relevant service provider;

- (b) the adult;
  - (c) the tribunal;
  - (d) the chief executive (disability services);
  - (e) a guardian for a restrictive practice (general) matter for the adult;
  - (f) any other person consulted by the adult guardian under section 80ZH(2).
- (2) The notice must state the following—
- (a) the name of the adult;
  - (b) the name of the relevant service provider;
  - (c) the adult guardian's decision, including, if the decision is to give the approval, the terms of the approval;
  - (d) the reasons for the adult guardian's decision.

## **Part 5                      Tribunal proceedings**

### **Division 1                General**

#### **80ZN Relationship with ch 7**

- (1) The following provisions of chapter 7 apply for a proceeding under this chapter—
- part 1
  - part 2 (other than section 119)
  - part 3
  - part 4 (other than section 129)
  - part 4A
  - sections 154 and 155
  - parts 6 to 8
  - part 10.

- (2) The remaining provisions of chapter 7 do not apply for a proceeding under this chapter.
- (3) This part contains additional provisions that apply for a proceeding under this chapter.

## **Division 2                      Applications**

### **80ZO Who may apply for a containment or seclusion approval**

An application for a containment or seclusion approval may be made—

- (a) if the department responsible for administering the DSA is not the relevant service provider to which the application relates—jointly by the chief executive (disability services) and the relevant service provider; or
- (b) otherwise—by the chief executive (disability services).

### **80ZP Who may apply for appointment of guardian for restrictive practice matter**

An application for appointment of a guardian for a restrictive practice matter may be made by any of the following—

- (a) an adult;
- (b) an interested person for an adult;
- (c) a relevant service provider providing disability services to an adult;
- (d) the chief executive (disability services);
- (e) the adult guardian;
- (f) if the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—the director of mental health.

## Division 3                      Other matters

### 80ZQ Who is an *active party*

Each of the following persons is an *active party* for a proceeding under this chapter—

- (a) the chief executive (disability services);
- (b) the applicant;
- (c) the adult concerned in the proceeding;
- (d) any current guardian or administrator for the adult;
- (e) if the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—the director of mental health;
- (f) a relevant service provider providing disability services to the adult;
- (g) the adult guardian;
- (h) a person joined as a party to the proceeding by the tribunal.

*Example of a person who might be joined as a party—*

a member of the adult's family

### 80ZR Interim orders

- (1) This section applies for a proceeding under this chapter if the tribunal is satisfied, on reasonable grounds—
  - (a) there is an immediate risk of harm to the adult concerned in the proceeding or others; and
  - (b) using a restrictive practice is the least restrictive way of ensuring the safety of the adult or others.
- (2) The tribunal may make an interim order in the proceeding without hearing and deciding the proceeding or otherwise complying with the requirements of this Act, including section 118.
- (3) The interim order has effect for the period stated in the order.

- (4) The period stated in the order must not be more than 3 months.
- (5) In this section—  
*tribunal* means the tribunal constituted by the president, a deputy president or a legal member.

## **Part 6                      Miscellaneous provisions**

### **80ZS Requirements for informal decision makers—consenting to use of restrictive practices**

- (1) This section applies to an informal decision maker for deciding whether to consent to—
  - (a) a relevant service provider restricting access of an adult other than in the course of providing respite services or community access services to the adult; or
  - (b) the use of a restrictive practice in relation to an adult by a relevant service provider in the course of providing respite services or community access services to the adult.
- (2) For giving consent to use of a restrictive practice mentioned in subsection (1)(a), the informal decision maker must—
  - (a) apply the general principles; and
  - (b) be satisfied—
    - (i) the adult’s behaviour has previously resulted in harm to the adult or others; and
    - (ii) there is a reasonable likelihood that, if the consent is not given, the adult’s behaviour will cause harm to the adult or others; and
    - (iii) using the restrictive practice in compliance with the positive behaviour support plan for the adult is the least restrictive way of ensuring the safety of the adult or others; and



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- (iv) if the positive behaviour support plan for the adult is implemented—
    - (A) the risk of the adult’s behaviour causing harm will be reduced or eliminated; and
    - (B) the adult’s quality of life will be improved in the long-term; and
  - (v) if the informal decision maker is aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—the authorised psychiatrist responsible for treatment of the adult under that Act has been given an opportunity to participate in the development of the positive behaviour support plan.
- (3) For giving consent to use of a restrictive practice mentioned in subsection (1)(b), the informal decision maker must—
- (a) apply the general principles; and
  - (b) be satisfied—
    - (i) the adult’s behaviour has previously resulted in harm to the adult or others; and
    - (ii) there is a reasonable likelihood that, if the consent is not given, the adult’s behaviour will cause harm to the adult or others; and
    - (iii) using the restrictive practice in compliance with the respite/community access plan for the adult is the least restrictive way of ensuring the safety of the adult or others; and
    - (iv) if the respite/community access plan for the adult is implemented—
      - (A) the risk of the adult’s behaviour causing harm will be reduced or eliminated; and
      - (B) the adult’s quality of life will be improved in the long-term.
- (4) However, subsection (3)(b)(iii) and (iv) do not apply for giving consent to the use of chemical restraint (fixed dose) in the course of providing respite services to the adult.

- (5) In this section—  
*restricting access*, of an adult, see the DSA, section 123E.

### **80ZT Informal decision makers must maintain confidentiality**

- (1) This section applies if an informal decision maker gains confidential information under the DSA, part 10A about an adult with an intellectual or cognitive disability.

*Note—*

A guardian who gains confidential information is subject to confidentiality requirements under section 249.

- (2) The informal decision maker must not disclose the information to anyone other than under subsection (3).
- (3) The informal decision maker may disclose the information to someone else—
- (a) for this Act or the DSA; or
  - (b) to discharge a function under another law; or
  - (c) for a proceeding in a court or tribunal; or
  - (d) if authorised under another law or a regulation made under this Act; or
  - (e) if authorised in writing by the adult to whom the information relates; or
  - (f) to protect a person with a disability, within the meaning of the DSA, section 11, from abuse, neglect or exploitation.
- (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.

**80ZU Review of ch 5B**

The DSA, section 233A provides for the efficacy and efficiency of this chapter to be reviewed by the Minister and the Minister responsible for administering that Act, acting jointly.

*Note—*

The review must be conducted when the DSA is reviewed under section 233 of that Act.

## **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—
  - (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—

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- (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) consenting to the sterilisation of a child with an impairment;<sup>58</sup>
  - (ha) giving approvals under chapter 5B for the use by a relevant service provider of a restrictive practice in relation to an adult to whom the chapter applies, and reviewing the approvals;
  - (i) registering an order made in another jurisdiction under a provision, Act or law prescribed under a regulation for section 167;
  - (j) 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.

*Note—*

See for example the *Disability Services Act 2006*, sections 123ZK(8) and 123ZN(5).

- (3) In this section—

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

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

**83 Powers**

- (1) The tribunal has the powers given under this Act or another Act.<sup>59</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>60</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>61</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>62</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.

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

60 Section 245 (Settlements or damages awards)

61 *Court* means the Supreme Court—see schedule 4 (Dictionary).

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

- (3) The president may direct the registrar to refer a particular prescribed non-contentious matter to the tribunal.
- (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.
- (7) The president or a deputy president may be reappointed to office without the vacancy in the office being advertised.

### **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.
- (6) A member may be reappointed to office without the vacancy in the office being advertised.

## **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.
- (3) This section does not apply to the reappointment of a person as the president, a deputy president or other tribunal member.

## **92 Duration of appointment**

- (1) The president or a deputy president holds office for a term of not longer than 5 years.<sup>63</sup>
- (2) Another tribunal member holds office for a term of not longer than 3 years.

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<sup>63</sup> A person may be reappointed—see the *Acts Interpretation Act 1954*, section 25(1)(c).



- (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.
- (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**

- (1) 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.
- (2) Despite subsection (1), a deputy president designated by the Minister may act as president whenever—

- (a) no-one holds a current appointment from the Governor in Council to act as president; or
  - (b) someone holds a current appointment from the Governor in Council to act as president, but is not immediately available to act under the appointment.
- (3) While acting as president, a deputy president designated by the Minister under subsection (2) is to be paid the remuneration and allowances that were payable to—
- (a) the person who holds the current appointment as president; or
  - (b) if no-one holds a current appointment as president—the person who last held an appointment as president.
- (4) In subsection (2)—
- deputy president* does not include a person who is acting as a deputy president.

## **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, including the number of applications, approvals and orders made under chapter 5B; 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 the tribunal constituted by 2 members or a single member.
- (2) To the extent practicable, the tribunal when constituted by 3 members must include—
- (a) the president, a deputy president or a legal member; and
  - (b) a professional member; and
  - (c) a personal experience member.
- (3) To the extent practicable, the tribunal when constituted by 2 members must be constituted by—
- (a) the president, a deputy president or a legal member; and
  - (b) a professional member or a personal experience member.
- (4) When constituted by a single member—
- (a) the tribunal must be constituted by a legal member or a professional member; and
  - (b) the single member is taken to be the presiding member.
- (5) Despite subsections (2), (3) and (4), when constituted to hear an application for a warrant to enter a place and to remove an adult,<sup>64</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.

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<sup>64</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).

**102 Presiding member**

- (1) This section applies if the tribunal is constituted by 2 or 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.

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

**105A Court's opinion on question of law**

- (1) The tribunal may, at any stage of a proceeding and on the terms it considers appropriate, refer a question of law relevant to the proceeding to the court for opinion.
- (2) The court may—
  - (a) hear and decide the question; and
  - (b) remit the question, with its opinion, to the tribunal.
- (3) The tribunal must give effect to the court's opinion.

**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 before the tribunal directly relevant to an issue in the proceeding and to make submissions about the document.
- (3) However—
  - (a) the tribunal may displace the right to inspect the document in a confidentiality order;<sup>65</sup> and
  - (b) the tribunal rules may prescribe conditions in relation to inspection of the document.

**109 Open**

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

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<sup>65</sup> See section 109 (Open).

- (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;
  - (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<sup>66</sup> or psychologist in the ordinary course of the doctor's medical practice or the psychologist's practice; 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.
- (4) A person must comply with a procedural direction, unless the person has a reasonable excuse.

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<sup>66</sup> Under the *Acts Interpretation Act 1954*, section 36 (Meaning of commonly used words and expressions), **doctor** means medical practitioner. Section 36 also provides that **medical practitioner** has the meaning given by the *Medical Practitioners Registration Act 2001*, schedule 3.

- (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) If the tribunal engages a person under subsection (2)(b), the tribunal must pay the person an amount prescribed under a regulation.
- (7) If the tribunal gives a direction under subsection (2)(c) or (e), the tribunal may direct that a party pay for the examination or for the preparation and production of the report or document.
- (8) In this section—

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

### **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.
- (3) This section does not prevent the tribunal receiving evidence that is recorded on audiotape, videotape or another medium.

### **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.

Maximum penalty—200 penalty units.

(3A) Subsection (3) does not apply to the publication of information about a proceeding, or to the disclosure of the identity of a person involved in a proceeding, to a reviewer for the purposes of the substituted decision-making review.

(3B) Subsection (3) does not apply to the publication of information about a proceeding by a reviewer for the purposes of the substituted decision-making review.

(4) In this section—

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

**consultant** means a person engaged under the *Law Reform Commission Act 1968*, section 9.<sup>67</sup>

**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.

**reviewer** means a member of the commission or its staff, or a consultant, involved in the substituted decision-making review.

**substituted decision-making review** means the review of particular matters under this Act and the *Powers of Attorney*

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<sup>67</sup> *Law Reform Commission Act 1968*, section 9 (Specialised assistance)

*Act 1998* referred to the commission by the Minister on 14 October 2005.

- (5) The following provisions expire on 1 January 2009—
  - (a) subsections (3A), (3B) and (6);
  - (b) subsection (4), definitions *commission*, *consultant*, *reviewer* and *substituted decision-making review*;
  - (c) this subsection.
- (6) However, before 1 January 2009, a regulation may extend the period before expiry to not later than 1 January 2010.

### **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 7 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;
  - (fa) for a proceeding under chapter 5B—
    - (i) the chief executive (disability services); and
    - (ii) a relevant service provider providing disability services to the adult; and

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- (iii) if the tribunal is aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—the director of mental health;
  - (g) anyone else the tribunal considers should be notified.
- (2) However, the tribunal is not required to give notice to the adult if any of the following apply—
- (a) the tribunal considers that notice to the adult might be prejudicial to the physical or mental health or wellbeing of the adult;
  - (b) the tribunal considers the adult is evading the hearing;
  - (c) the adult is—
    - (i) temporarily or permanently unconscious; or
    - (ii) unable to be located after the tribunal has made reasonable inquiries into the adult’s whereabouts.
- (3) Notice to the adult must be given in the way the tribunal considers most appropriate having regard to the person’s needs.
- (4) However, the adult’s failure to understand the notice does not affect its validity.
- (5) The tribunal may, by direction under section 110<sup>68</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).
- (6) Subject to subsection (2), failure to comply with the requirement to give notice to the adult invalidates a hearing and the tribunal’s decision about an application.
- (7) 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.

(8) 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 in relation to an adult—

- (a) the adult;
- (b) if the adult is not the applicant—the applicant;
- (c) if the proceeding is for the appointment or reappointment of a guardian, administrator or attorney for the adult—the person proposed for appointment or reappointment;
- (d) any current guardian, administrator or attorney for the adult;
- (e) the adult guardian;
- (f) the public trustee;
- (g) a person joined as a party to the proceeding by the tribunal.



**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 by leave**

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

**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>69</sup>
- (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.

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<sup>69</sup> See *interested person*—schedule 4 (Dictionary).

- (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) This section applies if the tribunal is satisfied, on reasonable grounds, there is an immediate risk of harm to the health, welfare or property of the adult concerned in an application, including because of the risk of abuse, exploitation or neglect of, or self-neglect by, the adult.
- (2) The tribunal may make an interim order in the proceeding without hearing and deciding the proceeding or otherwise complying with the requirements of this Act, including section 118.

- (3) An interim order may not include consent to special health care.
- (4) An interim order has effect for the period specified in the order.
- (5) The maximum period that may be specified in an interim order is 3 months.
- (6) An interim order may be renewed, but only if the tribunal is satisfied there are exceptional circumstances justifying the renewal.
- (7) 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**

- (1) 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.
- (2) At the tribunal's request, a person who has custody or control of information or material that the tribunal considers is necessary to make an informed decision about the matter must give the information or material to the tribunal, unless the person has a reasonable excuse.
- (3) The tribunal may order a person to give information or material to the tribunal.
- (4) If the tribunal orders a person to give it information or material, the person must comply with the order, unless the person has a reasonable excuse.
- (5) It is a reasonable excuse for a person to fail to give information or material because giving the information or material might tend to incriminate the person.
- (6) Subject to subsection (5), this section overrides—
  - (a) any restriction, in an Act or the common law, about the disclosure or confidentiality of information; and

- (b) any claim of confidentiality or privilege, including a claim based on legal professional privilege.

### **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.

### **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>70</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.

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70 Section 111 (Use of technology)

**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>71</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—

- (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—

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71 *Fail* includes refuse—see the *Acts Interpretation Act 1954*, section 36.

- (a) a proceeding for an offence against section 140, 141 or 142<sup>72</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—
  - (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.
- (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

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<sup>72</sup> Section 140 (False or misleading statements), 141 (False or misleading documents) or 142 (Influencing participants)



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.

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

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

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

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

**139 Fabricating evidence**

The tribunal is a tribunal for the Criminal Code, section 126.<sup>73</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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<sup>73</sup> 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) disobey a lawful order or direction of the tribunal; or
- (e) 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>74</sup> or appearing at a tribunal proceeding has the same protection and immunity as a witness in a proceeding in the Supreme Court.

## **Part 4A                      Dispute resolution**

### **145A Definition for pt 4A**

In this part—

*dispute resolution* means dispute resolution under this Act.

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

The purpose of dispute resolution is—

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

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

- (1) At any stage of a proceeding, the tribunal may, with the president's approval, refer the active parties to dispute resolution.
- (2) The tribunal may give directions and make orders about the conduct of a dispute resolution.

*Example of tribunal direction—*

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

**145D Appointment of mediator**

- (1) This section applies if the active parties to a proceeding are referred to dispute resolution.
- (2) The president must appoint a tribunal member, other than the president, as mediator to conduct the dispute resolution.
- (3) A tribunal member, other than a tribunal member hearing the proceeding, may be appointed as the mediator.

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

- (1) This section applies if—
  - (a) a mediator appointed to conduct a dispute resolution becomes aware the mediator has an interest in an issue being considered in the dispute resolution; and
  - (b) the interest could conflict with the proper performance of the mediator's functions for the dispute resolution.
- (2) The mediator must disclose the issue giving rise to the conflict to the president.
- (3) After making the disclosure—
  - (a) the mediator may disqualify himself or herself; or
  - (b) may continue to conduct the dispute resolution only with the agreement of the president and the active parties.
- (4) In this section—

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

**145F Procedure at dispute resolution**

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

**145G Evidence from dispute resolution inadmissible**

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

(2) However—

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

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

- (1) A mediator must not disclose information about a matter coming to the mediator's knowledge during dispute resolution, unless the mediator has a reasonable excuse.
- (2) Without limiting what is a reasonable excuse, it is a reasonable excuse to disclose information if—
  - (a) the disclosure is permitted under section 145G; or
  - (b) the disclosure is made under section 145I.

### **145I Mediator's report**

The mediator must report to the tribunal on the following—

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

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

- (1) This section applies if the active parties to a proceeding in relation to an application reach a settlement of the issues in dispute during a dispute resolution.
- (2) The settlement must be—
  - (a) in writing; and
  - (b) signed by each of the active parties; and
  - (c) filed with the tribunal.
- (3) Without conducting a hearing or further hearing, the tribunal may decide the application in terms of the settlement if the tribunal—
  - (a) considers the terms of the settlement are in the best interests of the adult about whom the application was made; and
  - (b) could otherwise give a decision in those terms under this or another Act.

**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>75</sup> the tribunal must

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<sup>75</sup> See definition *capacity*—schedule 4 (Dictionary).

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
- (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>76</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.

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<sup>76</sup> Sections 116 (How to apply) and 118 (Tribunal advises persons concerned of hearing)



- (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—
- (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 an investment as an authorised investment.

**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 the direction is given.<sup>77</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.

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<sup>77</sup> *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.

- (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.
- (3) However, a confidentiality order may displace the requirement to give copies of its decision or reasons.<sup>78</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.

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<sup>78</sup> 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).

## **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>79</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.
- (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—

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<sup>79</sup> This includes a decision of the registrar in a prescribed non-contentious matter—section 85.

- (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 chapter 5A<sup>80</sup> or part 6 or 7<sup>81</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.
- (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.

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

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



**164 Appellant**

- (1) An eligible person may, by notice, appeal against a tribunal decision in a proceeding to the court.<sup>82</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.

**164A Notice of appeal**

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

- (a) be filed in the court registry within 28 days after the date of the tribunal decision appealed from, or the date of the written reasons for the tribunal's decision, whichever is later; and
- (b) be served as soon as practicable on all active parties to the proceeding.<sup>83</sup>

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<sup>82</sup> *Court* means the Supreme Court—see schedule 4 (Dictionary).

<sup>83</sup> See the *Uniform Civil Procedures Rules 1999*, rules 784 (Procedure for appeals to a court from other entities) and 785 (Application of rules to appeals and cases stated under this part).

**165 Appeal costs**

- (1) Each party to an appeal is to bear the party's own costs of the appeal.
- (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 section 84 order may be filed in the court.
- (2) A tribunal order, other than a section 84 order or an order entitling a person to payment, may be filed in a court having jurisdiction to make the order.
- (3) 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.

- (4) 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.
- (5) In this section—  
**section 84 order** means a tribunal order in relation to a matter for which the tribunal has exclusive jurisdiction under section 84(1).

## Chapter 8      **Adult guardian**

### Part 1              **Establishment, functions and powers**

#### 173      **Adult guardian**

There must be an Adult Guardian.<sup>84</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

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

- (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
    - (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;
  - (ea) approving, under chapter 5B, part 4, the use of a restrictive practice in relation to an adult to whom that chapter applies;
  - (f) consenting to a forensic examination under section 198A;<sup>85</sup>
  - (g) 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;
  - (h) 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)—

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85 Section 198A (Consent to forensic examination)

**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>86</sup> other than the power to give notice under section

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<sup>86</sup> The *Acts Interpretation Act 1954*, section 27A applies to the delegation.

185(1) or 189,<sup>87</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>88</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

***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

87 Section 185 (Witnesses) or 189 (Cost of investigations and audits)

88 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*)).

**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>89</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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89 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>90</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>91</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

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90 See the *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.

91 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.

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.

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

- (a) any restriction, in an Act or the common law, about the disclosure or confidentiality of information; and  
(b) any claim of confidentiality or privilege, 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>92</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.

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92 See section 188 (Self-incrimination not a reasonable excuse).

**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>93</sup>
- (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.

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<sup>93</sup> 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).

**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>94</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
  - (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—

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94 See section 148 (Application for entry and removal warrant).

- (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 3A                      Power to consent to forensic examination**

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

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

- (a) the adult guardian reasonably considers the examination is in the adult's best interests; and
- (b) any of the following apply—
  - (i) no guardian or attorney for the adult is appointed or available to consent for the adult to the examination;
  - (ii) any guardian or attorney for the adult who is available has failed to consent;
  - (iii) the adult guardian reasonably considers the adult's interests would not be adequately protected if the consent of any guardian or attorney for the adult were sought.<sup>95</sup>

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

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

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<sup>95</sup> See also section 248A (Protection for person carrying out forensic examination with consent).

## **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.
- (3) Subsections (1) and (2) do not apply to the reappointment of a person as the adult guardian.

### **201      Duration of appointment**

- (1) The adult guardian holds office for a term of not longer than 5 years.<sup>96</sup>
- (2) The office of adult guardian becomes vacant if the adult guardian resigns by signed notice of resignation given to the Minister.

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<sup>96</sup> However, the adult guardian may be reappointed—see the *Acts Interpretation Act 1954*, section 25(1)(c).

- (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.

## **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.
- (3) Subsections (1) and (2) do not apply to the reappointment of a person as the public advocate.

### **215      Duration of appointment**

- (1) The public advocate holds office for a term of not longer than 5 years.<sup>97</sup>

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<sup>97</sup> The public advocate may be reappointed—see the *Acts Interpretation Act 1954*, section 25(1)(c).

- (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.

## **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 8a.m. and 6p.m.

**private dwelling house** means premises that are used, or are used principally, as a separate residence for—

- (a) if a restrictive practice under chapter 5B is being used at the premises—1 family; or
- (b) otherwise—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 wellbeing 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 employed at 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 employed at 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*;
  - (e) if a restrictive practice under chapter 5B is being used at the visitable site—
    - (i) the tribunal; or



- (ii) a guardian or administrator for an adult in relation to whom the restrictive practice is used; or
- (iii) the chief executive (disability services).

## **Part 3                      Administrative provisions**

### **230A   Investigations about suitability of applicant to be community visitor**

- (1) The chief executive may make investigations about a person to help the chief executive decide whether the person is suitable to be a community visitor.
- (2) Without limiting subsection (1), the chief executive may ask the commissioner of the police service for a written report about the criminal history of the person.
- (3) The commissioner must give the report to the chief executive.
- (4) However, the report is required to contain only criminal history the commissioner has, or has access to.

### **230B   Use of information obtained under this part**

- (1) This section applies to the chief executive in considering information about a person received under this part.
- (2) The information must not be used for any purpose other than assessing the person's suitability to be a community visitor.
- (3) When making the assessment, the chief executive must have regard to the following matters relating to the person's criminal history—
  - (a) when the offence was committed or was alleged to have been committed;
  - (b) the nature of the offence and its relevance to the person's proposed duties as a community visitor;
  - (c) anything else the chief executive considers relevant to the assessment of the person.

**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 in which any of the following Acts is administered (the *department*)—
    - (i) the *Disability Services Act 2006*;
    - (ii) the *Health Act 1937*;
    - (iii) the *Mental Health Act 2000*; 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>98</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
  - (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) Also, the chief executive may, by written notice given to a person, suspend the appointment of the person as a community visitor if—
  - (a) the chief executive reasonably suspects a ground mentioned in subsection (3) may exist in relation to the person; and
  - (b) the chief executive needs to make investigations about the person to help the chief executive decide whether the person is suitable to continue to be a community visitor.
- (5) A suspension under subsection (4) starts on the day the person is given written notice of the suspension and ends on the earlier of the following—
  - (a) the day the chief executive gives the person written notice that the suspension has ended;

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<sup>98</sup> A community visitor may be reappointed—see the *Acts Interpretation Act 1954*, section 25(1)(c).

- (b) the day the chief executive terminates the person's appointment as a community visitor;
  - (c) the day that is 30 days after the day the suspension starts.
- (6) 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>99</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>100</sup> including its *parens patriae* jurisdiction.

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<sup>99</sup> 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.

<sup>100</sup> *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>101</sup> applies for the appointment under section 243.

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101 Chapter 3 (Appointment of guardians and administrators)

## Part 3                      Settlements or damages awards

### 245      Settlements or damages awards

- (1) This section applies if, in a civil proceeding—
  - (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>102</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.

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

- (1) A person carrying out an authorised forensic examination of an adult is not liable for an act or omission to any greater extent than if the adult were an adult with capacity to consent and the act or omission happened with the adult's consent.
- (2) An authorised forensic examination is not unlawful.
- (3) In this section—

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102 Section 230 (Reports by community visitors)

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

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

## **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
  - (g) a community visitor; or
  - (h) a reviewer.
- (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; or
  - (g) for the substituted decision-making review.
- (4) In this section—

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

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

- (a) information 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.

**consultant** means a person engaged under the *Law Reform Commission Act 1968*, section 9.<sup>103</sup>

**reviewer** means a member of the commission or its staff, or a consultant, involved in the substituted decision-making review.

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

## 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

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103 *Law Reform Commission Act 1968*, section 9 (Specialised assistance)

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>104</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>105</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 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.

### Column 1—provisions of the repealed chapter

section 130  
section 131  
section 132  
section 134  
section 135  
section 136  
section 137  
section 138  
section 142  
section 143

### Column 2—corresponding provision in this Act

section 177  
section 178  
section 179  
section 180  
section 182  
section 183  
sections 184 and 185  
section 189  
section 193  
section 194

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104 *Powers of Attorney Act 1998*, chapter 7 (Adult guardian)

105 Section 199 (Appointment)

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>106</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

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106 Section 60 (Power to apply to court for compensation for loss of benefit in estate)

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*.

#### **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<sup>107</sup> of the repealed Act 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.

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107 Section 26 (Legal friend) of the repealed Act



**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)<sup>108</sup> of the repealed Act, 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, the public trustee is taken to be appointed by the tribunal as the person's administrator for all financial matters.

**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.

**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

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108 Section 32 (Public trustee to manage estates of certain assisted citizens) of the repealed Act

- (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>109</sup>—to have been health care for which consent was properly given under this Act; and
  - (b) for section 80<sup>110</sup>—to have been health care authorised by this Act.

## **Part 5**

### **Transitional provision for Discrimination Law Amendment Act 2002**

#### **262B Application of amendments made by Discrimination Law Amendment Act 2002**

- (1) This section applies for the reference to a community visitor's spouse in section 231(7) if—
  - (a) the community visitor was appointed before the commencement of the *Acts Interpretation Act 1954*, section 32DA<sup>111</sup> (*section 32DA*); and
  - (b) the spouse was, immediately before the commencement, a de facto partner of the person as defined under section 32DA.
- (2) While the spouse continues to be a de facto partner of the person, section 231(7) does not apply for the spouse.

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109 Section 79 (Offence to carry out health care unless authorised)

110 Section 80 (No less protection than if adult gave health consent)

111 *Acts Interpretation Act 1954*, section 32DA (Meaning of *de facto partner*)

- (3) However, subsection (2) applies only for the person's term of holding office as a community visitor that was current at the commencement of section 32DA.

## **Part 6**

# **Transitional provision for Guardianship and Administration and Other Acts Amendment Act 2003**

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

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

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

- (1) This section applies if, before the commencement of this section (the *commencement*), an administrator contravened section 52 or 53<sup>112</sup> as in force before the commencement.
- (2) For the purposes of deciding whether the administrator is no longer competent,<sup>113</sup> the contravention may be taken into account as a contravention of the Act as if the *Guardianship and Administration Act and Other Acts Amendment Act 2003*, section 12 had not been enacted.

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112 Section 52 (Unauthorised real estate transaction only with approval) or 53 (Unauthorised security transaction only with approval)

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

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

- (1) This section applies if before the commencement of this section (the *commencement*)—
  - (a) a person is given a notice under section 118<sup>114</sup> as in force immediately before the commencement; and
  - (b) the person had not, under section 120<sup>115</sup> as in force immediately before the commencement (the *repealed section*), given the tribunal a notice as permitted under the repealed section.
- (2) After the commencement—
  - (a) the repealed section continues to apply in relation to the person as if it had not been repealed; and
  - (b) if the person gives the tribunal a notice as permitted under the repealed section, the person is taken to be an active party in the proceeding.

**262F Interim orders**

- (1) This section applies in relation to an interim order made before the commencement of this section (the *commencement*) under section 129.<sup>116</sup>
- (2) Section 129, as in force immediately before the commencement, continues to apply in relation to the order as if the *Guardianship and Administration Act and Other Acts Amendment Act 2003*, section 27 had not been enacted.

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114 Section 118 (Tribunal advises persons concerned of hearing)

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

116 Section 129 (Interim order)

## **Part 7**                      **Transitional provisions for Justice and Other Legislation Amendment Act 2007**

### **263**    **Directions to former guardian or administrator**

Section 32B also applies if an appointment mentioned in section 32B(1) ended before the commencement of this section.

### **264**    **Interim orders**

An interim order made under section 129 before the commencement of this section continues to have effect for the period specified in the order.

## **Part 8**                      **Transitional provisions for Disability Services and Other Legislation Amendment Act 2008**

### **265**    **Powers of guardians—use of restrictive practices**

- (1) This section applies to a guardian for an adult to whom chapter 5B applies if the guardian was—
  - (a) appointed before the commencement; and
  - (b) immediately before the commencement, authorised in accordance with the terms of the guardian's appointment to make decisions for the adult about the use of a restrictive practice in relation to the adult.
- (2) Despite chapter 5B, the guardian may continue to make decisions for the adult about use of the restrictive practice in relation to the adult.
- (3) This section stops applying on the earlier of—

- (a) the guardian's appointment being reviewed by the tribunal; or
  - (b) the first day after the transitional period ends.
- (4) In this section—

*commencement* means the commencement of this section.

*restrictive practice* see section 80U.

*transitional period* means the period starting on the commencement and ending 18 months after the commencement.

**266 Short term approvals not to be given during transitional period**

Chapter 5B, part 4 does not apply during the transitional period within the meaning of section 265.

## **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

**Schedule 1 (continued)**

enjoyed by the general community, must be taken into account.

**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



**Schedule 1 (continued)**

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.

**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>117</sup> or Island custom<sup>118</sup>), must be taken into account.

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117 **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 the *Acts Interpretation Act 1954*, section 36.

118 **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 the *Acts Interpretation Act 1954*, section 36.

## Schedule 1 (continued)

**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.

**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

**Schedule 1 (continued)**

- (b) take the information given by the adult's health provider<sup>119</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.
- (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.

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119 See section 76 (Health providers to give information).

## 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;
- (m) undertaking a real estate transaction for the adult;

**Schedule 2 (continued)**

- (n) dealing with land for the adult under the *Land Act 1994* or *Land Title Act 1994*;
- (o) undertaking a transaction for the adult involving the use of the adult's property as security (for example, for a loan or by way of a guarantee) for an obligation the performance of which is beneficial to the adult;
- (p) a legal matter relating to the adult's financial or property matters;
- (q) withdrawing money from, or depositing money into, the adult's account with a financial institution.

## **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;

### Schedule 2 (continued)

- (h) whether to consent to a forensic examination of the adult;<sup>120</sup>
- (i) a legal matter not relating to the adult's financial or property matter;
- (j) a restrictive practice matter under chapter 5B;
- (k) seeking help and making representations about the use of restrictive practices for an adult who is the subject of a containment or seclusion approval under chapter 5B.

### 3 Special personal matter

A *special personal matter*, for an adult, is a matter relating to 1 or more of the following—

- (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>121</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—

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

121 An attorney under an enduring document or a guardian may not be given power for a special personal matter.

## Schedule 2 (continued)

- (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
    - (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**.

## Schedule 2 (continued)

**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.

**6 Special health matter**

A *special health matter*, for an adult, is a matter relating to special health care of the adult.<sup>122</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>123</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.

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<sup>122</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>123</sup> For the situation after the adult has died, see the *Transplantation and Anatomy Act 1979*, particularly section 22.



## Schedule 2 (continued)

**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.

**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.

## Schedule 2 (continued)

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

*Examples—*

- a comparative assessment of the effects of different forms of administration of a drug proven to be beneficial in the treatment of a condition, for example, a continuous infusion, as opposed to a once-a-day administration, of the drug

**Schedule 2 (continued)**

- a comparative assessment of the angle at which to set a tilt-bed to best assist an adult's breathing.
- (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;
    - (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>124</sup>

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124 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)

**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.

**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>125</sup> or

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125 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 2 (continued)**

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.

## Schedule 4 Dictionary

### section 3

***abuse***, for power, includes contravene this Act in relation to the power.

***active party***—

- (a) for chapter 5A, see section 80K; or
- (b) for chapter 5B, see section 80U; or
- (c) otherwise, see section 119.

***administrator*** means an administrator appointed under this Act.

***adult guardian*** means the adult guardian appointed under section 199.

***adult with an intellectual or cognitive disability***, for chapter 5B, see section 80U.

***advance health directive*** means an advance health directive under the *Powers of Attorney Act 1998*.<sup>126</sup>

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

***approved clinical research*** see schedule 2, section 13.

***approved form*** means a form approved under section 251.

***assessment***, for chapter 5B, see section 80U.

***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 psychiatrist***, for chapter 5B, see section 80U.

<sup>126</sup> See the *Powers of Attorney Act 1998*, section 35 (Advance health directives).

## Schedule 4 (continued)

**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.

**chapter 5A application**, for chapter 5A, see section 80A.

**chemical restraint**, for chapter 5B, see section 80U.

**chemical restraint (fixed dose)**, for chapter 5B, see section 80U.

**chief executive (disability services)** means the chief executive of the department in which the *Disability Services Act 2006* is administered.

**child representative**, for chapter 5A, see section 80L.

**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 access services**, for chapter 5B, see section 80U.

**community visitor** means a community visitor appointed under section 231.

**complaint**, for chapter 10, see section 222.

**confidentiality order**—

- (a) for chapter 5A, see section 80G(2); or
- (b) otherwise, see section 109(2).

**conflict transaction** see section 37(2).

**consumer**, for chapter 10, see section 222.

**contain**, for chapter 5B, see section 80U.

**containment or seclusion approval**, for chapter 5B, see section 80U.

## Schedule 4 (continued)

**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
- (b) despite the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6,<sup>127</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.

**director of mental health** means the director under the *Mental Health Act 2000*.

**disability services**, for chapter 5B, see section 80U.

**dispute resolution**, for chapter 7, part 4A, see section 145A.

**DSA**, for chapter 5B, see section 80U.

**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>128</sup>

**ethics committee** means—

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127 *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6 (Non-disclosure of convictions upon expiration of rehabilitation period)

128 See the *Powers of Attorney Act 1998*, section 32 (Enduring powers of attorney).



## Schedule 4 (continued)

- (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>129</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.

***financial matter*** see schedule 2, section 1.

***forensic examination*** of an adult means a medical or dental procedure for the adult that is carried out for forensic purposes, other than because the adult is suspected of having committed a criminal offence.<sup>130</sup>

***general principles*** see schedule 1, part 1.

***good medical practice*** see schedule 2, section 5B.

***guardian*** means a guardian appointed under this Act.

***harm***, for chapter 5B, see section 80U.

***health care***—

- (a) for chapter 5A, see section 80A; or
- (b) otherwise, see schedule 2, section 5.

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129 ***Public sector hospital*** means a hospital operated by the State—see the *Health Services Act 1991*, section 2.

130 For procedures in relation to an adult suspected of having committed an indictable offence, see the *Police Powers and Responsibilities Act 2000*, chapter 8 (Search powers for persons in custody), part 3 (Forensic procedure orders).

However, now see the *Acts Interpretation Act 1954*, section 14H and the *Police Powers and Responsibilities Act 2000*, chapter 17 (Forensic procedures), part 3 (Forensic procedure orders).

## Schedule 4 (continued)

***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.

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

***informal decision maker***, for chapter 5B, see section 80U.

***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>131</sup>

***least restrictive***, for chapter 5B, see section 80U.

***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
- (b) for an attorney who may exercise power for a financial matter—a document stating how the attorney plans to manage exercising the power.

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131 See section 126 (Tribunal to decide who are interested persons).

## Schedule 4 (continued)

**matter** includes a type of matter.

**mechanical restraint**, for chapter 5B, see section 80U.

**normal hours**, for chapter 10, 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>132</sup>

**personal experience member** means a tribunal member who was eligible for appointment under section 90(4)(c).

**personal matter** see schedule 2, section 2.

**physical restraint**, for chapter 5B, see section 80U.

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132 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)

**positive behaviour support plan**, for chapter 5B, see section 80U.

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

**private dwelling house**, for chapter 10, 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 7, part 9, see section 166.

**registrable order**, for chapter 7, part 9, see section 166.

**registrar** means the registrar of the tribunal.

**relevant service provider**, for chapter 5B, see section 80U.

**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.

**respite/community access plan**, for chapter 5B, see section 80U.

## Schedule 4 (continued)

*respite services*, for chapter 5B, see section 80U.

*restrictive practice*, for chapter 5B, see section 80U.

*restrictive practice (general) matter*, for chapter 5B, see section 80U.

*restrictive practice matter*, for chapter 5B, see section 80U.

*restrictive practice (respite) matter*, for chapter 5B, see section 80U.

*seclude*, for chapter 5B, see section 80U.

*short term plan*, for chapter 5B, see section 80U.

*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*—

- (a) for chapter 5A, see section 80B; or
- (b) otherwise, 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.

## Schedule 4 (continued)

*tribunal rules* see section 99.

*visitable site*, for chapter 10, see section 222.

*visitable site document*, for chapter 10, see section 222.

## 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 1 July 2008. 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)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	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 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	2000 Act No. 16	1 July 2000	7 July 2000
1A	2000 Act No. 46	25 October 2000	8 November 2000
1B	2000 Act No. 46	21 April 2001	8 June 2001
1C	2001 Act No. 95	15 February 2002	15 February 2002
1D	2001 Act No. 95	28 February 2002	8 March 2002

Reprint No.	Amendments included	Effective	Notes
1E	2002 Act No. 34	16 August 2002	
1F	2002 Act No. 74	1 April 2003	
1G	2003 Act No. 87	18 November 2003	R1G withdrawn, see R2
2	—	18 November 2003	
2A	2004 Act No. 43	3 December 2004	
2B	2004 Act No. 43	11 April 2005	
2C	2005 Act No. 70	8 December 2005	
2D	2006 Act No. 12	1 July 2006	
2E	2007 Act No. 3	16 February 2007	
2F	2007 Act No. 37	28 September 2007	R2F withdrawn, see R3
3	—	28 September 2007	
3A	2008 Act No. 23	1 July 2008	

## 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 commenced 21 April 2002

(automatic commencement under AIA s 15DA(2) (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)



**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)

**Justice and Other Legislation (Miscellaneous Provisions) Act 2002 No. 34 s 1, pt 7**

date of assent 16 August 2002  
 commenced on date of assent

**Discrimination Law Amendment Act 2002 No. 74 pts 1, 5**

date of assent 13 December 2002  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 April 2003 (2003 SL No. 51)

**Guardianship and Administration and Other Acts Amendment Act 2003 No. 87 pts 1–2**

date of assent 18 November 2003  
 commenced on date of assent

**Justice and Other Legislation Amendment Act 2004 No. 43 pts 1, 10, s 3 sch**

date of assent 18 November 2004  
 ss 1–2 commenced on date of assent  
 s 3 sch commenced 3 December 2004 (2004 SL No. 263)  
 remaining provisions commenced 11 April 2005 (2005 SL No. 26)

**Justice and Other Legislation Amendment Act 2005 No. 70 s 1, pt 13A**

date of assent 8 December 2005  
 commenced on date of assent

**Disability Services Act 2006 No. 12 ss 1–2, 241 sch 1**

date of assent 4 April 2006  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 July 2006 (2006 SL No. 160)

**State Penalties Enforcement and Other Legislation Amendment Act 2007 No. 3 s 1, pt 4**

date of assent 16 February 2007  
 commenced on date of assent

**Justice and Other Legislation Amendment Act 2007 No. 37 pts 1, 14**

date of assent 29 August 2007

ss 1–2 commenced on date of assent

remaining provisions commenced 28 September 2007 (2007 SL No. 241)

**Disability Services and Other Legislation Amendment Act 2008 No. 23 pts 1, 3**

date of assent 9 May 2008

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2008 (2008 SL No. 201)

## **6 List of annotations**

**Principles for adults with impaired capacity**

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**Primary focus—adults**

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**Appointment**

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**Advance appointment**

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**Advance appointment—guardian for restrictive practice matter**

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

s 14 amd 2007 No. 37 s 75

**Inquiries about appropriateness and competence**

s 18 amd 2004 No. 43 s 45

**Management plan**

s 20 amd 2003 No. 87 s 4

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

s 21 amd 2003 No. 87 s 5

**Automatic revocation**

s 26 amd 2004 No. 43 s 46; 2008 No. 23 s 18

**Periodic review of appointment**

s 28 amd 2003 No. 87 s 6; 2008 No. 23 s 19

**Other review of appointment**

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amd 2008 No. 23 s 20

**Appointment review process**

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**Tribunal to advise of change, revocation or ending of appointment**

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

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**Division 3—Directions**

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**Keep property separate**

s 50 amd 2003 No. 87 s 11

**Unauthorised real estate transaction only with approval**

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**Unauthorised security transaction only with approval**

s 53 om 2003 No. 87 s 12

**Purpose to achieve balance for health care**

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**Urgent health care**

s 63 amd 2001 No. 95 s 6

**Life-sustaining measure in an acute emergency**

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**Minor, uncontroversial health care**

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

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s 112(3A), (3B), (4) defs “**commission**”, “**consultant**”, “**reviewer**”  
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**Purpose of dispute resolution**

s 145B ins 2003 No. 87 s 31

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s 145C ins 2003 No. 87 s 31

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**Procedure at dispute resolution**

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**Evidence from dispute resolution inadmissible**

s 145G ins 2003 No. 87 s 31

**Mediator to maintain secrecy**

s 145H ins 2003 No. 87 s 31

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s 145J ins 2003 No. 87 s 31

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**Use of information obtained under this part**

s 230B    ins 2002 No. 34 s 23

**Appointment**

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**Protection for person carrying out forensic examination with consent**

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

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def “**director of mental health**” ins 2008 No. 23 s 31(1)

def “**disability services**” ins 2008 No. 23 s 31(1)

def “**dispute resolution**” ins 2003 No. 87 s 45(2)

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def “**health care**” sub 2003 No. 87 s 45(1)–(2)

def “**impairment**” ins 2003 No. 87 s 45(2)

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def “**physical restraint**” ins 2008 No. 23 s 31(1)

def “**positive behaviour support plan**” ins 2008 No. 23 s 31(1)

def “**primary carer**” sub 2003 No. 87 s 45(1)–(2)

def “**reasonably considers**” ins 2001 No. 95 s 21(2)

def “**recognised provision**” amd 2004 No. 43 s 3 sch

def “**registrable order**” amd 2004 No. 43 s 3 sch

def “**relevant service provider**” ins 2008 No. 23 s 31(1)

def “**respite/community access plan**” ins 2008 No. 23 s 31(1)

def “**respite services**” ins 2008 No. 23 s 31(1)



def “**restrictive practice**” ins 2008 No. 23 s 31(1)  
 def “**restrictive practice (general) matter**” ins 2008 No. 23 s 31(1)  
 def “**restrictive practice matter**” ins 2008 No. 23 s 31(1)  
 def “**restrictive practice (respite) matter**” ins 2008 No. 23 s 31(1)  
 def “**seclude**” ins 2008 No. 23 s 31(1)  
 def “**security transaction**” om 2003 No. 87 s 45(1)  
 def “**short term plan**” ins 2008 No. 23 s 31(1)  
 def “**special life-sustaining measures**” om 2001 No. 95 s 21(1)  
 def “**sterilisation**” sub 2003 No. 87 s 45(1)–(2)

## **7 List of forms notified or published in the gazette**

(The following information about forms is taken from the gazette and is included for information purposes only. Because failure by a department to notify or publish a form in the gazette does not invalidate the form, you should check with the relevant government department for the latest information about forms (see Statutory Instruments Act, section 58(8)).)

**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