



# Public Guardian Act 2014

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Queensland

# Public Guardian Act 2014

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# Public Guardian Act 2014

**An Act to provide for a Public Guardian to promote and protect the rights and interests of adults with impaired capacity for a matter, relevant children and children staying at visitable sites**

## Chapter 1 Preliminary

### Part 1 Introduction

#### 1 Short title

This Act may be cited as the *Public Guardian Act 2014*.

#### 2 Commencement

- (1) This Act, other than sections 252, 254 and chapter 8, part 17, commences on 1 July 2014.
- (2) Sections 252 and 254 commence on assent.
- (3) Chapter 8, part 17 commences on the commencement of the *Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2014*, section 26.

#### 3 Definitions

The dictionary in schedule 1 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.

## **Part 2 Purpose and principles of Act**

#### **5 Purpose**

The purpose of this Act is to establish the public guardian to promote and protect the rights and interests of—

- (a) adults with impaired capacity for a matter; and
- (b) relevant children and children staying at visitable sites.

#### **6 Principles for adults with impaired capacity for a matter**

- (1) The principles to be applied by persons performing functions or exercising powers under this Act for a matter in relation to an adult with impaired capacity for the matter are—
  - (a) the general principles stated in the Guardianship Act, section 11B (the *general principles*); and
  - (b) for a health matter—the general principles and the health care principles stated in the Guardianship Act, section 11C (the *health care principles*).
- (2) Persons performing functions or exercising powers under this Act for a matter in relation to an adult with impaired capacity must also have regard to the acknowledgements stated in the Guardianship Act, section 5 when performing the functions or exercising the powers.

#### **7 Principles for relevant children and children staying at visitable sites**

- (1) The main principle to be applied by persons performing functions or exercising powers under this Act in relation to a

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relevant child or a child staying at a visitable site is that the best interests of the child are paramount.

- (2) The persons must also apply the following general principles when performing functions or exercising powers under this Act in relation to the child—
- (a) the child's family has primary responsibility for the child's upbringing and development and should be supported in that role;
  - (b) the child is a valued member of society;
  - (c) the child is—
    - (i) to be treated in a way that respects the child's dignity and privacy; and
    - (ii) to be cared for in a way that protects the child from harm, promotes the child's wellbeing and allows the child to reach his or her full potential;
  - (d) the child's emotional, moral, social and intellectual development is important and must be taken into account;
  - (e) the child is entitled to be heard, even if others may not agree with the views expressed by the child;
  - (f) the child should be able to exercise his or her rights and participate in decisions that affect his or her life;
  - (g) the child should be able to access available services necessary to meet his or her needs;
  - (h) an ongoing relationship between the child and the child's family is important for the child's welfare and wellbeing and must be taken into account;
  - (i) an ongoing connection with the child's culture, traditions, language and community is important for the child's welfare and wellbeing and must be taken into account.

## Part 3 Relationship with other Acts

### 8 Relationship with Guardianship and Administration Act 2000 and Powers of Attorney Act 1998

- (1) This Act, to the extent it relates to an adult with impaired capacity for a matter, is to be read in conjunction with the Guardianship Act and the Powers of Attorney Act.
- (2) The Guardianship Act provides a scheme by which the tribunal may do the following—
  - (a) appoint a guardian for an adult with impaired capacity for personal matters to make particular decisions and do particular other things for the adult in relation to the matters;
  - (b) appoint an administrator for an adult with impaired capacity for financial matters to make particular decisions and do particular other things for the adult in relation to the matters;
  - (c) consent to the withholding or withdrawal of a life-sustaining measure and to particular special health care.
- (3) The Guardianship Act also provides a scheme for health care for adults with impaired capacity for the matter concerned, including an order of priority for dealing with health care.
- (4) The Powers of Attorney Act 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 at a time when the adult does not have capacity to do those things; and

*Note—*

Personal matters do not include special personal matters or special health matters—Powers of Attorney Act, schedule 2, section 2.

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- (b) by advance health directive, an adult may make directions for the adult's future 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.
- (5) If there is an inconsistency between this Act and the Guardianship Act, the Guardianship Act prevails.

## Chapter 2 Public guardian

### 9 Establishment

There must be a Public Guardian.

### 10 Role

- (1) The public guardian's role in relation to adults who have impaired capacity for a matter is to protect their rights and interests.
- (2) The public guardian's role in relation to relevant children and children staying at a visitable site is to protect their rights and interests.

### 11 Functions—general

The public guardian has the functions given to the public guardian by this Act or another Act.

### 12 Functions—adult with impaired capacity for a matter

- (1) The public guardian has the following functions (*adult guardian functions*) in relation to an adult with impaired capacity for a matter—
  - (a) protecting the adult from neglect, exploitation or abuse;

- (b) providing a program called the community visitor program to protect the rights and interests of the adult if the adult resides at a visitable site;
- (c) investigating complaints and allegations about actions by—
  - (i) an attorney; or
  - (ii) a guardian or administrator; or
  - (iii) another person acting or purporting to act under a power of attorney, advance health directive or order of the tribunal made under this Act or the Guardianship Act;
- (d) mediating and conciliating between attorneys, guardians or administrators or between attorneys, guardians or administrators and others, for example, health providers, if the public guardian considers this appropriate to resolve an issue;
- (e) 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;
- (f) acting as guardian if appointed by the tribunal;
- (g) approving, under the Guardianship Act, chapter 5B, part 4 the use of a restrictive practice in relation to an adult to whom that chapter applies;
- (h) consenting to a forensic examination under section 38;
- (i) seeking help (including help from a government agency, or other institution, welfare organisation or provider of a service or facility) for, or making representations for, an adult with impaired capacity;



- (j) educating and advising persons about, and conducting research into, the operation of this Act, the Guardianship Act and the Powers of Attorney Act.

(2) 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; or
- (c) a statutory health attorney.

***power of attorney*** means—

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

### **13 Functions—relevant child, etc.**

(1) The public guardian has the following functions in relation to a relevant child (***child advocate functions***)—

- (a) developing a trusting and supportive relationship with the child, so far as is possible;
- (b) providing advice and information to the child about matters the child is concerned about;
- (c) supporting the child at, and participating in—
  - (i) conferences or mediations ordered or facilitated by a court or the tribunal at which the child may attend; or
  - (ii) family group meetings; or

- (iii) any other meetings;
- (d) helping the child to resolve issues or disputes with others;
- (e) monitoring any plan prepared for the child's health, education or benefit to ensure it is being adhered to;
- (f) working with government agencies that provide a service or facility to the child and other non-government providers of a service or facility to the child;
- (g) seeking to resolve, with the chief executive (child safety), disputes about reviewable decisions as defined under section 128(1);
- (h) helping the child to make an official complaint about a matter to someone;
- (i) helping the child to seek, or respond to, the revocation or variation of an order made under, or taken to be an order for, the Child Protection Act affecting the child;
- (j) helping the child to initiate or, on the child's behalf, initiating an application to the tribunal for review of a child protection matter;
- (k) helping an independent Aboriginal or Torres Strait Islander entity for the child to support the child in referring a matter to the tribunal;
- (l) supporting the child at a proceeding before a court or the tribunal;
- (m) for a proceeding before a court relating to a court assessment order or child protection order—making submissions, calling witnesses and testing evidence in the proceeding, including by cross-examining witnesses;
- (n) for a proceeding before the tribunal relating to a child protection matter—making submissions, calling witnesses and testing evidence in the proceeding, including by cross-examining witnesses.

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- (2) The public guardian also has the following additional functions (also *child advocate functions*)—
- (a) for a child under care staying at a visitable home or a child staying at a visitable site—providing a program called the community visitor program for the child to promote and protect the rights and interests of the child;
  - (b) for a child mentioned in the Child Protection Act, section 74(1)—to help the child if the child considers that the charter of rights set out in the Child Protection Act, schedule 1 is not being complied with in relation to the child.

- (3) In this section—

*child protection order* means a child protection order under the Child Protection Act, chapter 2, part 4, including—

- (a) an order extending, varying or revoking a child protection order; and
- (b) a child protection order that continues in force—
  - (i) under a transition order made under section 65A of that Act; or
  - (ii) by operation of section 65A(4) of that Act; and
- (c) an interim order under section 67 of that Act in relation to a proceeding for a child protection order.

*child under care* see section 51.

*court assessment order* see the Child Protection Act, schedule 3.

*visitable home* see section 51.

*visitable site* see section 51.

## 14 Powers

- (1) The public guardian has the powers given under this Act or another Act, including the powers of a community visitor, or child advocacy officer, given under this Act.

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- (2) Also, the public guardian may do all things necessary or convenient to be done to perform the public guardian's functions.
- (3) Without limiting subsection (2), the public guardian may ask the NDIS agency or NDIS commissioner for information the public guardian considers necessary or convenient to perform the public guardian's functions.

## 15 Not under Ministerial control

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

# Chapter 3 Provisions relating to adults with impaired capacity

## Part 1 Preliminary

### 16 Overview of ch 3

This chapter contains provisions relating to the public guardian's functions and powers for adults with impaired capacity for a matter.

### 17 Definitions for ch 3

In this chapter—

***adult*** means an adult with impaired capacity for a matter.

***power of attorney*** means—

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

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

## Part 2                      Advice and supervision

### 18      Public guardian may give advice and impose supervision

- (1) The public guardian may do any of the following—
  - (a) give advice to an adult’s attorney, guardian or administrator;
  - (b) by written notice, make an adult’s attorney, guardian or administrator subject to the public guardian’s supervision for a reasonable period if the public guardian believes, on reasonable grounds, it is necessary in the adult’s interests including, for example, because the attorney, guardian or administrator has contravened this Act, the Guardianship Act or duties, though not wilfully;
  - (c) require an attorney who may exercise power for a financial matter for an adult or an adult’s administrator to present a plan of management for approval.
- (2) An adult’s attorney, guardian or administrator may apply to the tribunal to review the public guardian’s decision relating to the advice, notice or requirement and the tribunal may make the order it considers appropriate.
- (3) In this section—  
*administrator*, in relation to an adult, means the administrator appointed for the adult under the Guardianship Act.

*attorney*, in relation to an adult, means the adult's attorney authorised under an enduring document or the adult's statutory health attorney.

*guardian*, in relation to an adult, means the guardian appointed for the adult under the Guardianship Act.

## Part 3 Investigations

### 19 Investigate complaints

- (1) The public guardian may investigate any complaint or allegation that an adult—
  - (a) is being or has been neglected, exploited or abused; or
  - (b) has inappropriate or inadequate decision-making arrangements.
- (2) The public guardian may investigate a complaint or allegation even after an adult's death.

### 20 Delegate for investigation

- (1) If the public guardian decides to investigate a complaint or allegation, the public guardian may delegate to an appropriately qualified person the public guardian's powers under this part, other than the power to give notice under section 25(1) or 29.
- (2) Subsection (1) does not affect the public guardian's authority to delegate power to someone else under section 146.
- (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 public 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 (other than a delegate who is a member of the public guardian's staff) given power to carry out an investigation is entitled to the remuneration decided by the public guardian.

## 21 Records and audit

- (1) The public guardian may, by written notice to an attorney for an adult 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 public 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 public 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 public guardian.

*Note—*

See the Powers of Attorney Act, section 122 (Records and audit) which gives the court similar power in relation to an attorney for a financial matter.

- (5) This section applies even after an adult's death.
- (6) In this section—

***attorney*** means an attorney under an enduring power of attorney.

## 22 Right to information

- (1) The public guardian has a right to all information necessary to investigate a complaint or allegation, or to carry out an audit, in connection with an adult.

*Note—*

In addition, the Powers of Attorney Act, section 81 (Right of attorney to information) gives the public guardian a right to information as an attorney.

- (2) The public 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 public 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 public guardian; and
  - (c) if the person is not an attorney or administrator and the information is contained in a document—to allow the public 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 not 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, including a person's personal 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.

**personal information** see the *Information Privacy Act 2009*, section 12.

### **23 Information by statutory declaration**

- (1) If a person is required to give information to the public guardian under this chapter, the public 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 for subsection (2)—100 penalty units.

### **24 Protection from liability for giving information**

- (1) This section applies to the giving of information to the public guardian under section 22 or 23.
- (2) A person may give the information despite any other law that would otherwise prohibit or restrict the giving of the information.
- (3) If a person, acting honestly, gives the information to the public guardian, the person is not liable, civilly, criminally or under an administrative process, for giving the information.
- (4) Also, merely because the person gives the information, the person can not be held to have—
  - (a) breached any code of professional etiquette or ethics; or
  - (b) departed from accepted standards of professional conduct.
- (5) Without limiting subsections (3) and (4)—
  - (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and

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- (b) if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person—
  - (i) does not contravene the Act, oath or rule of law or practice by giving the information; and
  - (ii) is not liable to disciplinary action for giving the information.
- (6) In this section—

*giving*, of information contained in a document, includes allowing the document to be inspected and a copy to be taken of it.

## 25 Witnesses

- (1) For the performance of adult guardian functions, the public guardian may, by written notice given to a person, require the person to attend before the public 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.

*Note—*

See section 28 (Self-incrimination not a reasonable excuse).

Maximum penalty—100 penalty units.

- (3) The public guardian may—
  - (a) require the person to take an oath; and
  - (b) administer an oath to the person, or, if technology allowing reasonably contemporaneous and continuous communication is to be used, make the arrangements the public guardian considers appropriate in the circumstances for administering an oath to the person; and

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- (c) allow the person to give information by tendering a written statement, verified, if the public guardian directs, by oath.
- (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 person is entitled to be paid by the public guardian an amount equivalent to the amount the person would receive under the Court Fees and Allowances Regulation if the person's attendance before the public guardian were attendance in a Magistrates Court as a witness.
- (6) In this section—
- Court Fees and Allowances Regulation*** means a regulation made under the *Supreme Court of Queensland Act 1991* providing for the fees and allowances payable to witnesses attending before a court.

## **26 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 25.
- (2) A Magistrates Court, at the request of the public 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.

*Note—*

See the *Uniform Civil Procedure Rules 1999*, chapter 11 (Evidence), part 4 (Subpoenas) and rules 417 (Order for cost of complying with subpoena), 418 (Cost of complying with subpoena if not a party) and 420 (Production by non-party).

- (4) The court may require the person to take an oath.
- (5) The public guardian may examine the person attending before the court under a subpoena issued under subsection (2).
- (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.

## **27 Power of court if failure to cooperate under subpoena**

- (1) This section applies if a person subpoenaed under section 26 attends before a Magistrates Court and without reasonable excuse—
  - (a) refuses to take an oath; 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.

## **28 Self-incrimination not a reasonable excuse**

- (1) This section applies to—
  - (a) a person who fails to comply with a notice under section 25(1) to give information and answer questions or to produce documents or things; or
  - (b) a person subpoenaed under section 26 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.

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- (3) However, evidence of, or directly or indirectly derived from, information given by a person or 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 information, answer, document or thing; or
  - (b) if the information, 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 information, answer or production is relevant to the person's professional registration or licence—a proceeding about the registration or licence; or
  - (d) if the information, 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.

## **29 Cost of investigations and audits**

- (1) If—
- (a) the public guardian undertakes an investigation concerning a financial matter or an audit at the request of a person; and
  - (b) the public guardian is satisfied the request was frivolous or vexatious or otherwise without good cause;
- the public guardian may, by written notice, require the person to pay to the public guardian the amount the public guardian considers appropriate for the cost of the investigation or audit.
- (2) If—
- (a) the public guardian undertakes an investigation concerning a financial matter or an audit; and

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(b) the public guardian considers the attorney or administrator concerned has contravened this Act, the Guardianship Act or the Powers of Attorney Act;

the public guardian may, by written notice, require the attorney or administrator to personally pay to the public guardian the amount the public guardian considers appropriate for the cost of the investigation or audit.

(3) The public guardian may, by written notice, require a person who requests an investigation or audit to pay to the public guardian the amount the public guardian considers appropriate as security for a payment under subsection (1).

(4) A person given notice under this section may apply to the tribunal to review the public guardian's decision to require the payment, or the amount of the payment required, and the tribunal may make the order it considers appropriate.

(5) In this section—

*attorney* means an attorney under a power of attorney.

### **30 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.

### **31 Report and information after investigation or audit**

(1) After the public guardian has carried out an investigation or audit in relation to an adult, the public guardian—

(a) must make a written report; and

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- (b) must inform each of the following persons, in a way the public guardian considers appropriate, of the results of the investigation or audit—
- (i) the person at whose request the investigation or audit was carried out;
  - (ii) every attorney, guardian or administrator for the adult;
  - (iii) if the adult has died—the adult’s personal representative; and
- (c) may give a copy of the report to a person mentioned in paragraph (b).
- (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) If an interested person asks to be informed of the results of the investigation or audit, the public guardian must inform the interested person in a way the public guardian considers appropriate.
- (4) If a report made by the public guardian contains information about a person and the public guardian considers it appropriate to protect the person’s identity, the public guardian may remove, from the copy of the report given under subsection (1), information likely to result in the person’s identification.
- (5) In this section—
- attorney** means—
- (a) an attorney under a power of attorney; or
  - (b) an attorney under an advance health directive.

## **32 Prohibited use of report after investigation or audit**

- (1) This section applies if—
- (a) a report contains information about a person but does not identify the person (the *de-identified person*); and

(b) another person accesses the report.

- (2) The other person must not, unless the other person has a reasonable excuse, publish information contained in the report to the public, or a section of the public, if the publication is likely to result in the identification of the de-identified person by a member of the public, or by a member of the section of the public to whom the information is published.

Maximum penalty—200 penalty units.

- (3) However, subsection (2) does not apply if the other person is a person who has access to the report because of being, or an opportunity given by being—
- (a) a relevant person; or
  - (b) the public guardian; or
  - (c) a member of the public guardian’s staff; or
  - (d) an attorney; or
  - (e) a community visitor; or
  - (f) a person consulted or employed by the public guardian for this Act; or
  - (g) a public guardian’s delegate for an investigation.

*Note—*

For the confidentiality requirements for a relevant person, see the Guardianship Act, section 249A. For the confidentiality requirements for an attorney, see the Powers of Attorney Act, section 74A. For the confidentiality requirements for a person mentioned in paragraph (b), (c), (e), (f) or (g), see section 140.

- (4) In this section—

***attorney*** means—

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

***relevant person*** see the Guardianship Act, section 246.



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## Part 4 Protective powers

### 33 Proceedings for protection of property

If the public guardian considers—

- (a) property of an adult is wrongfully held, detained, converted or injured; or
- (b) money is payable to the adult;

the public guardian, either in the name of the public 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 Supreme Court.

### 34 Suspension of attorney's power

- (1) The public 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 public 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, the Guardianship Act or the Powers of Attorney Act.
- (3) The suspension may not be for more than 3 months.
- (4) The public guardian may not—
  - (a) extend the suspension; or
  - (b) suspend the attorney more than once on the same ground arising from the same circumstances.

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- (5) The public guardian may lift the suspension on the terms the public guardian considers appropriate.
- (6) The attorney whose power has been suspended may apply to the tribunal to review the public guardian's decision to suspend the attorney or the terms on which the suspension is lifted and the tribunal may make the order it considers appropriate.
- (7) In this section—  
*attorney* means an attorney under an enduring document.

### **35 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 public guardian is taken to be the attorney for the adult for the exercise of the 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 power.

### **36 Power to apply for entry and removal warrant**

- (1) This section applies if the public 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.
- (2) The public guardian may apply to the tribunal for a warrant under the Guardianship Act, section 148 to enter a place and to remove the adult.

### **37 Health providers may advise public guardian**

- (1) This section applies if a health provider who is treating a person over the age of 18 reasonably considers—



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- (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 public 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.

*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

*Note—*

See also the Guardianship Act, section 248A (Protection for person carrying out forensic examination with consent).

## Part 6                      Community visitor program (adult)

### Division 1                Interpretation

#### 39        Definitions for pt 6

In this part—

**chapter 5B approval** means an approval given under the *Guardianship and Administration Act 2000*, chapter 5B.

**complaint** means a complaint about a matter mentioned in section 41(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 2016*—any person who lives or receives services at the visitable site; or

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- (b) for a visitable site that is the forensic disability service—any person who lives or receives services at the visitable site; or
  - (c) for another visitable site—an adult, with impaired capacity for a personal matter or a financial matter or with an impairment, who lives or receives services at the visitable site.

***forensic disability service*** means the forensic disability service under the *Forensic Disability Act 2011*.

***funded adult participant*** means an adult—

- (a) with impaired capacity for a personal matter or a financial matter, or with an impairment; and
- (b) who is a participant under the *National Disability Insurance Scheme Act 2013* (Cwlth) and has a participant's plan.

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

***private dwelling house*** means premises at which an adult, with impaired capacity for a personal matter or a financial matter or with an impairment, lives if the premises are used, or used principally, as a separate residence for—

- (a) if a restrictive practice is being used at the premises in relation to the adult under a chapter 5B approval—the adult and 1 or more of the adult's relations; or
- (b) if specialist positive behaviour support is being provided at the premises under the adult's participant's plan and the support involves the use of a restrictive practice—the adult and 1 or more of the adult's relations; or
- (c) if specialist disability accommodation is being provided at the premises under the adult's participant's plan—the adult and 1 or more of the adult's relations; or
- (d) if paragraphs (a), (b) and (c) do not apply—the adult and 1 or more of the adult's relations, or the adult only.

**relation**, of an adult, means—

- (a) a person who is related to the adult by blood, spousal relationship, adoption or a foster relationship; or
- (b) if the adult is an Aboriginal person—a person who, under Aboriginal tradition, is regarded as a relative of the adult; or
- (c) if the adult is a Torres Strait Islander—a person who, under Island custom, is regarded as a relative of the adult.

**relevant class of supports** means any of the following classes of supports under the *National Disability Insurance Scheme Act 2013* (Cwlth)—

- (a) high intensity daily personal activities;
- (b) assistance with daily life tasks in a group or shared living arrangement;
- (c) specialist positive behaviour support that involves the use of a restrictive practice;
- (d) specialist disability accommodation.

**specialist disability accommodation** means SDA within the meaning of the national disability insurance scheme rules made for the *National Disability Insurance Scheme Act 2013* (Cwlth), section 35 about the funding of SDA.

**specialist positive behaviour support** has the same meaning as in the *National Disability Insurance Scheme Act 2013* (Cwlth).

**visitable site** means—

- (a) an authorised mental health service under the *Mental Health Act 2016* that provides inpatient services; or
- (b) the forensic disability service; or
- (c) premises, other than a private dwelling house, at which a funded adult participant lives and receives services or supports that—

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- (i) are paid for wholly or partly from funding under the national disability insurance scheme; and
  - (ii) are provided under the adult's participant's plan; and
  - (iii) are provided by a registered NDIS provider that is registered under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 73E to provide a relevant class of supports; and
  - (iv) are within the relevant class of supports; or
- (d) a place, other than a private dwelling house, 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.

## **Division 2            Purpose**

### **40        Purpose and allocation of community visitors (adult)**

- (1) The purpose of providing a program involving community visitors (adult) for visitable sites is to protect the rights and interests of consumers at the visitable sites.
- (2) The public guardian may allocate 1 or more community visitors (adult) for a visitable site.

## **Division 3            Functions**

### **41        Inquiry and complaint functions**

- (1) A community visitor (adult) has inquiry and complaint functions.

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- (2) The inquiry functions of a community visitor (adult) for a visitable site are to inquire into, and report to the public guardian 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 site; and
  - (c) the extent to which consumers at the site receive services in the way least restrictive of their rights; and
  - (d) the adequacy of information given to consumers at the site about their rights; and
  - (e) the accessibility and effectiveness of procedures for complaints about services for consumers at the site; and
  - (f) at the request of the public guardian, another matter about the visitable site or consumers at the site.
- (3) The complaint functions of a community visitor (adult) 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; and
  - (c) refer any other matter in relation to a complaint to the NDIS commissioner if the community visitor (adult) considers the NDIS commissioner has functions in relation to the matter.
- (4) If a community visitor (adult) reasonably considers that the visitor can discharge the visitor's functions or a particular function by contacting a consumer or someone else at a visitable site by using relevant technology, the visitor may discharge the functions or function in that way.
- (5) In this section—



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***relevant technology*** means a telephone or any other technology that reasonably allows persons using the technology to communicate effectively.

*Examples—*

- video conferencing
- text messaging
- email

#### **42 Requirement to regularly visit visitable site**

- (1) A community visitor (adult) for a visitable site must regularly visit the visitable site to perform the visitor's functions.
- (2) The public guardian may decide priorities for visiting particular visitable sites that affect the frequency of visits to a visitable site by a community visitor (adult).

#### **43 Requirement to visit visitable site if asked**

- (1) A consumer at a visitable site, or a person for the consumer, may—
  - (a) ask the public guardian to arrange for a community visitor (adult) to visit the site to perform the visitor's functions; or
  - (b) ask a staff member at the visitable site to arrange for a community visitor (adult) to visit the site to perform the visitor's functions.
- (2) The following entities may also make a request under subsection (1)(a) or (b)—
  - (a) a consumer's administrator;
  - (b) a consumer's attorney under an enduring power of attorney;
  - (c) a consumer's attorney under an advance health directive;
  - (d) a consumer's statutory health attorney;
  - (e) a consumer's guardian;

- (f) an interested person for the consumer;
  - (g) an organisation that provides advocacy for consumers.
- (3) If the request is made to a staff member at the visitable site, the staff member must, within 3 business days after the request is made, tell the public guardian about the request.
- Maximum penalty—40 penalty units.
- (4) A community visitor (adult) for the visitable site must visit the site as soon as practicable if informed of a request to visit.

## **Division 4                      Powers**

### **44            Power to do all things necessary or convenient**

- (1) A community visitor (adult) for a visitable site may do all things necessary or convenient to be done to perform the visitor's functions, including, for example, the following things—
- (a) enter the site during normal hours without notice;
  - (b) with the public guardian's authorisation, enter the site outside normal hours without notice;
  - (c) require a staff member at the site to answer questions, and produce visitable site documents, relevant to the visitor's functions;
  - (d) inspect and take extracts from, or make copies of, any visitable site document;
  - (e) confer alone with a consumer or a staff member at the site;
  - (f) require a staff member at the site to give the visitor reasonable help, if it is practicable to give the help, to enable the visitor to do the things mentioned in paragraphs (a) to (e);

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- (g) ask the NDIS agency or NDIS commissioner for information the visitor considers necessary or convenient to perform the visitor's functions.
  - (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 comply with a requirement under subsection (1)(c) or (f), unless the person has a reasonable excuse.  
Maximum penalty—40 penalty units.
  - (4) It is a reasonable excuse for a person not to comply with a requirement under subsection (1)(c) or (f) because compliance with the requirement might tend to incriminate the person.

#### **45 Public guardian may authorise access outside normal hours**

- (1) This section applies if the public guardian considers a community visitor (adult) can not adequately inquire into a complaint by entering a visitable site during normal hours.
- (2) The public guardian may authorise the visitor to enter the site outside normal hours to inquire into the complaint.
- (3) In authorising an entry outside normal hours, the public guardian must specify a period of not more than 2 hours during which the entry is authorised.

#### **46 Consumer's views and wishes**

- (1) To the greatest extent practicable, a community visitor (adult) must seek and take into account the views and wishes of a consumer before—
  - (a) asking a staff member at the visitable site a question relevant to a function of the 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 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 visitor must act in a way consistent with the consumer's proper care and protection.

#### **47 Reports by community visitors (adult)**

- (1) As soon as practicable after a visit to a visitable site by a community visitor (adult) for the visitable site, the visitor must—
  - (a) prepare a report on the visit; and
  - (b) give a copy of the report to the public guardian.
- (2) If the visitor entered the site outside normal hours, the visitor must state the authority for the entry in the report.
- (3) As soon as practicable after receiving a copy of a report in relation to the site, the public guardian must give a copy of the report to a person in charge of the site.
- (4) The public guardian 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 public advocate;
  - (c) the chief psychiatrist under the *Mental Health Act 2016*;
  - (d) the director of forensic disability under the *Forensic Disability Act 2011*;
  - (e) if a restrictive practice is being used at the visitable site under a chapter 5B approval—
    - (i) the tribunal; or
    - (ii) a guardian or administrator for a consumer in relation to whom the restrictive practice is used; or

- (iii) the chief executive (disability services);
- (f) an interested person for the consumer;
- (g) if the report relates to a visit requested by a person mentioned in section 43(2)(a), (b), (c), (d), (e) or (g)—the person who made the request;
- (h) if the report relates to the provision of services or supports by a registered NDIS provider at the visitable site and section 49A applies to the provider in relation to the services or supports—the NDIS commissioner.

#### **48 Public guardian’s directions about the exercise of powers**

A community visitor (adult) is subject to the public guardian’s directions in the exercise of a power.

### **Division 5 Miscellaneous**

#### **49 Privacy of correspondence between community visitor (adult) and consumers**

A staff member at a visitable site must not open, read, copy or remove any correspondence sent, or being sent, between a community visitor (adult) and a consumer residing at the site, unless the consumer asks the staff member to do so.

Maximum penalty—20 penalty units.

#### **49A Requirement for particular registered NDIS providers to give information to public guardian**

- (1) This section applies to a registered NDIS provider that provides services or supports to a consumer under the consumer’s participant’s plan at a visitable site if—
  - (a) the services or supports are paid for wholly or partly from funding under the national disability insurance scheme; and

- (b) the registered NDIS provider is registered under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 73E to provide a relevant class of supports; and
  - (c) the services or supports are within the relevant class of supports.
- (2) The registered NDIS provider must give the public guardian, in the way and at the times prescribed by regulation, required information that is in the provider’s custody or control, unless the provider has a reasonable excuse.
- Maximum penalty—25 penalty units.
- (3) In this section—
- required information* means information about the provision of the services or supports prescribed by regulation.

## **Chapter 4      Provisions relating to relevant children and children staying at visitable sites**

### **Part 1              Preliminary**

#### **50      Overview of ch 4**

This chapter contains provisions relating to the public guardian’s functions and powers for relevant children and children staying at visitable sites.

#### **51      Definitions for ch 4**

In this chapter—

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***authorised mental health service*** see the *Mental Health Act 2016*, schedule 3.

***child accommodation service*** means a service the main purpose of which is to provide accommodation, but does not include—

- (a) the care of children by an approved carer under the Child Protection Act acting in that capacity; or
- (b) the provision of accommodation to children under residential tenancy agreements under the *Residential Tenancies and Rooming Accommodation Act 2008*.

***child under care***, staying at a visitable home, means—

- (a) a child in the custody or guardianship of the chief executive (child safety) under the Child Protection Act who, under section 82 of that Act, has been placed in the care of someone other than a parent of the child; or
- (b) a child who, under a care agreement under the Child Protection Act, has been placed in the care of someone other than a parent of the child.

***corrective services facility*** see the *Corrective Services Act 2006*, schedule 4.

***detention centre*** means a detention centre established under the *Youth Justice Act 1992*, section 262.

***prescribed department*** means—

- (a) the child safety department; or
- (b) the community services department; or
- (c) the disability services department; or
- (d) the health department; or
- (e) the housing department; or
- (f) the youth justice department.

***residential facility*** means a place at which a child accommodation service is provided—

- (a) by a prescribed department; or

- (b) under funding provided by a prescribed department; or
- (c) under funding provided by the Commonwealth and administered by a prescribed department; or
- (d) under a licence under the Child Protection Act; or
- (e) to a child who is, under the Child Protection Act, in the custody or guardianship of the chief executive (child safety), if the place is prescribed under a regulation for this paragraph; or
- (f) to a child, under the child's participant's plan, for the purpose of providing respite services in relation to the child.

***visitable home***, for a child under care, means—

- (a) if the child is in the custody or guardianship of the chief executive (child safety) under the Child Protection Act and, under section 82 of that Act, has been placed in the care of someone other than a parent of the child—the home or other accommodation where the child is staying with the other person; or
- (b) if the child, under a care agreement under the Child Protection Act, has been placed in the care of someone other than a parent of the child—the home or other accommodation where the child is staying with the other person.

***visitable location*** means a visitable home or visitable site as defined in this section.

***visitable site***, for a child, means—

- (a) a residential facility where the child is staying; or
- (b) a detention centre where the child is staying; or
- (c) a corrective services facility where the child is staying;  
or
- (d) an authorised mental health service where the child is staying.

***visitable site document***, for a visitable site, means—



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- (a) a document relating to the visitable site, including the visitable site's records, policies and procedures; or
  - (b) a document relating to a child staying at the visitable site, including a document in the child's personal or medical file, regardless of who owns the file.

## 52 When is a child a *relevant child*

- (1) A child is a *relevant child* if—
  - (a) the child is subject to any of the following—
    - (i) a temporary assessment order under the Child Protection Act, section 27(1);
    - (ii) a court assessment order under the Child Protection Act, section 44;
    - (iii) a temporary custody order under the Child Protection Act, section 51AE;
    - (iv) a child protection order under the Child Protection Act, section 61, including a child protection order that continues in force—
      - (A) under a transition order made under section 65A of that Act; or
      - (B) by operation of section 65A(4) of that Act;
    - (v) an intervention, with the child's parents' agreement, by the chief executive (child safety) under the Child Protection Act, chapter 2, part 3B, division 2;
    - (vi) a care agreement under the Child Protection Act, section 51ZE; or
  - (b) the child is the subject of an application for an order mentioned in subsection (1)(a)(i) to (iv).
- (2) A child stops being a *relevant child* if—
  - (a) subject to subsection (3)—

- (i) the child stops being subject to an order, intervention or agreement mentioned in subsection (1)(a)(i) to (vi); or
    - (ii) if the child is the subject of an application mentioned in subsection (1)(b)—the application is withdrawn or refused; or
  - (b) subject to subsection (4), the child turns 18.
- (3) A child to whom subsection (2)(a) refers continues to be a **relevant child** if—
  - (a) immediately before the child stopped being subject to the order, intervention or agreement, or the application in relation to the child was withdrawn or refused, the public guardian was providing particular help to the child and the public guardian believes—
    - (i) it is appropriate to finish providing the help to the child; or
    - (ii) the child—
      - (A) may be the subject of a further application for an order mentioned in subsection (1)(a)(i) to (iv) or a further intervention or agreement; and
      - (B) continues to be in need of particular help during the period before the application is made, the intervention starts or the agreement is entered into; or
  - (b) the public guardian believes the child requires particular help to review—
    - (i) a decision ending the order, intervention or agreement; or
    - (ii) a decision to withdraw or refuse an application mentioned in subsection (1)(b).
- (4) A person to whom subsection (2)(b) refers continues to be a **relevant child** if—

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- (a) the person asks the public guardian for help in the person's transition from being a relevant child; and
  - (b) the public guardian is satisfied the person continues to be in need of particular help for the transition.
- (5) A person stops being a *relevant child* under subsection (3) or (4) when the public guardian—
- (a) has finished providing the particular help mentioned in subsection (3)(a) or (b) or (4)(b); and
  - (b) advises the person that he or she is no longer a relevant child for this Act.

### 53 Who is a *parent*

- (1) A *parent* of a child is the child's mother, father or someone else, other than the chief executive (child safety), having or exercising parental responsibility for the child.
- (2) However, a person standing in the place of a parent of a child on a temporary basis is not a parent of the child.
- (3) A parent of an Aboriginal child includes a person who, under Aboriginal tradition, is regarded as a parent of the child.
- (4) A parent of a Torres Strait Islander child includes a person who, under Island custom, is regarded as a parent of the child.

### 54 Child's views and wishes

- (1) To the greatest extent practicable, the public guardian or another entity who performs a child advocate function or exercises a power under this Act in relation to a child must seek, and take into account, the views and wishes of the child when performing the function or exercising the power.
- (2) The child's views and wishes may be expressed orally, in writing or in another way, including, for example, by conduct.
- (3) The child's views and wishes should be taken into account in a way that has regard to the child's age and maturity.
- (4) In this section—

*child* means a relevant child or a child staying at a visitable site.

## **Part 2                      Community visitor program (child)**

### **Division 1                Purpose**

#### **55        Purpose and allocation of community visitors (child)**

- (1) The purpose of providing a program involving community visitors (child) for visitable locations is to protect the rights and interests of children staying at visitable locations.
- (2) The public guardian may allocate 1 or more community visitors (child) for a visitable location.

### **Division 2                Functions**

#### **56        Functions of community visitor (child), etc.**

- (1) A community visitor (child) has the following functions relating to a child under care staying at a visitable home or a child staying at a visitable site—
  - (a) to develop a trusting and supportive relationship with the child, so far as is possible;
  - (b) to advocate on behalf of the child by listening to, giving voice to, and facilitating the resolution of, the child's concerns and grievances;
  - (c) to seek information about, and facilitate access by the child to, support services appropriate to the child's needs provided by service providers;
  - (d) to inquire into and report on the adequacy of information given to the child about the child's rights;

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- (e) to inquire into and report on the physical and emotional wellbeing of the child;
  - (f) for a visitable home—
    - (i) to inspect the home and report on its appropriateness for the accommodation of the child; and
    - (ii) to ensure the child's needs are being met by persons caring for the child at the home;
  - (g) for a visitable site—
    - (i) to inspect the site and report on its appropriateness for the accommodation of the child or the delivery of services to the child, having regard to relevant State and Commonwealth laws, policies and standards; and
    - (ii) to ensure the child's needs are being met by staff members at the site;
  - (h) at the request of the public guardian, to inquire into and report on any other matter relating to a child under care staying at a visitable home or a child staying at a visitable site.
- (2) A community visitor (child) may perform any other child advocate function if directed by the public guardian.
  - (3) A community visitor (child) also has the function of giving advice and reports to the public guardian about anything relating to the visitor's functions and powers.
  - (4) Without limiting subsection (1)(b), the function of a community visitor (child) mentioned in that subsection includes referring a matter in relation to a child's concerns and grievances to the NDIS commissioner if the visitor considers the NDIS commissioner has functions in relation to the matter.
  - (5) If a community visitor (child) reasonably considers that the visitor can discharge the visitor's functions or a particular function by contacting a child or someone else at a visitable

home or visitable site by using relevant technology, the visitor may discharge the functions or function in that way.

(6) In this section—

***relevant technology*** means a telephone or any other technology that reasonably allows persons using the technology to communicate effectively.

*Examples—*

- video conferencing
- text messaging
- email

***service provider*** includes an entity providing a service under an arrangement that involves a written agreement to which a service provider is a party.

*Example—*

services provided to children under foster care arrangements

## **57 Requirement to visit children under care in visitable homes**

- (1) The public guardian may direct a community visitor (child) to visit a child under care staying at a visitable home.
- (2) In deciding whether to direct a community visitor (child) to visit a child under care at a visitable home, the public guardian may have regard to the following matters—
  - (a) the child's age;
  - (b) the number of children staying at the home;
  - (c) the appropriateness of the accommodation at the home;
  - (d) whether the chief executive (child safety) has a reasonable suspicion under the Child Protection Act, section 14 that the child is in need of protection;
  - (e) the number of visitable locations the child has stayed at;
  - (f) whether the child has moved out of visitable locations without the approval of the chief executive (child safety);

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- (g) the child's cultural or linguistic background;
  - (h) whether, under the *Youth Justice Act 1992*—
    - (i) a caution has been administered to the child; or
    - (ii) an offence allegedly committed by the child has been referred to the chief executive of the department in which that Act is administered for a restorative justice process under that Act; or
    - (iii) an opportunity to attend a program has been offered to the child; or
    - (iv) other action has been taken against the child;
  - (i) any other matter the public guardian considers relevant, including, for example, any physical disability or impairment.
- (3) The public guardian may decide the regularity or frequency of visits to the child.
- (4) In this section—
- impairment* means a cognitive, intellectual, neurological or psychiatric impairment.

## **58 Requirement to regularly visit visitable site**

- (1) A community visitor (child) for a visitable site must regularly visit the visitable site to perform the visitor's functions.
- (2) The public guardian may decide priorities for visiting particular visitable sites that affect the frequency of visits to a visitable site by a community visitor (child).

## **59 Requirement to visit visitable home or communicate if asked**

- (1) A child under care staying at a visitable home may—
- (a) ask the public guardian to arrange for a community visitor (child) to visit the home to perform the visitor's functions; or

- (b) ask an authorised officer under the Child Protection Act to arrange for a community visitor (child) to visit the home to perform the visitor's functions; or
  - (c) ask a carer of the child to arrange for a community visitor (child) to visit the home to perform the visitor's functions; or
  - (d) inform a carer of the child that the child wishes to communicate with a particular community visitor (child).
- (2) If subsection (1)(b) applies, the authorised officer must tell the public guardian about the request as soon as practicable.
  - (3) If subsection (1)(c) applies, the carer must tell the public guardian about the request as soon as practicable.
  - (4) If subsection (1)(d) applies, the carer must take reasonable steps to inform the particular visitor about the request as soon as practicable.
  - (5) A community visitor (child) must comply with a request to visit the child at the visitable home, or communicate with the child, as soon as practicable after being informed of the request.
  - (6) A person does not commit an offence only by failing to comply with subsection (2), (3), (4) or (5).

## **60 Requirement to visit visitable site or communicate if asked**

- (1) A child staying at a visitable site may—
  - (a) ask the public guardian to arrange for a community visitor (child) to visit the site to perform the visitor's functions; or
  - (b) ask a staff member of the site to arrange for a community visitor (child) to visit the site to perform the visitor's functions; or



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- (c) inform a staff member of the site that the child wishes to communicate with a particular community visitor (child).
  - (2) If subsection (1)(b) applies, the staff member must tell the public guardian about the request as soon as practicable.  
Maximum penalty—40 penalty units.
  - (3) If subsection (1)(c) applies, the staff member must take reasonable steps to inform the particular visitor about the request as soon as practicable.  
Maximum penalty—40 penalty units.
  - (4) A community visitor (child) must comply with a request to visit a site, or communicate with a child staying at a site, as soon as practicable after being informed of the request.
  - (5) A community visitor (child) does not commit an offence only by failing to comply with subsection (4).

## **Division 3            Powers**

### **Subdivision 1        Visitable homes**

#### **61        Power of entry—visitable home**

- (1) A community visitor (child) may enter a visitable home at which a child under care is staying if—
  - (a) a carer staying at the home consents to the entry; or
  - (b) the entry is authorised by a warrant.
- (2) For the purpose of asking a person who is a carer staying at a visitable home for consent to enter, a visitor may, without the person's consent or a warrant—
  - (a) enter land around the home to an extent that is reasonable to contact the person; or

- (b) enter part of the home the visitor reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the person.

## **62 Consent to entry—visitable home**

- (1) This section applies if a community visitor (child) intends to ask a person who is a carer staying at a visitable home to consent to the visitor entering the home under section 61(1)(a).
- (2) Before asking for the consent, the visitor must tell the person—
  - (a) the purpose of the entry; and
  - (b) that the person is not required to consent.
- (3) If the consent is given, the visitor may ask the person to sign an acknowledgement of the consent.
- (4) The acknowledgement must state—
  - (a) that the person has been told—
    - (i) the purpose of the entry; and
    - (ii) that the person is not required to consent; and
  - (b) the purpose of the entry; and
  - (c) that the person gives the visitor consent to enter the visitable home and exercise powers under this subdivision; and
  - (d) the time and date the consent was given.
- (5) If the person signs the acknowledgement, the visitor must immediately give a copy to the person.
- (6) If—
  - (a) an issue arises in a proceeding about whether a person who was a carer staying at a visitable home consented to the entry; and
  - (b) an acknowledgement complying with subsection (4) for the entry is not produced in evidence;

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the onus of proof is on the person relying on the lawfulness of the entry to prove a person mentioned in paragraph (a) consented.

### **63 Application for warrant—visitable home**

- (1) The public guardian may apply to a magistrate for a warrant for a visitable home at which a child under care is staying.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the public guardian gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

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

### **64 Issue of warrant—visitable home**

- (1) The magistrate may issue a warrant only if the magistrate is satisfied a community visitor (child) can not properly carry out 1 or more of the visitor's functions in relation to the child without gaining entry to the visitable home.
- (2) The warrant must state—
  - (a) that a named community visitor (child) may, with necessary and reasonable help and force—
    - (i) enter the visitable home and any other place necessary for entry; and
    - (ii) exercise the visitor's powers under this subdivision; and
  - (b) the hours of the day or night when the home may be entered; and
  - (c) the date, within 14 days after the warrant's issue, the warrant ends.

## **65 Warrants—procedure before entry to visitable home**

- (1) This section applies if a community visitor (child) named in a warrant issued under section 64 for a visitable home is intending to enter the home under the warrant.
- (2) Before entering the home, the visitor must do or make a reasonable attempt to do the following things—
  - (a) identify himself or herself to a person who is a carer staying at the visitable home by producing the visitor's identity card;
  - (b) give the person a copy of the warrant;
  - (c) tell the person the visitor is permitted by the warrant to enter the home;
  - (d) give the person an opportunity to allow the visitor immediate entry to the home without using force.

## **66 Powers relating to visitable homes**

- (1) After entering a visitable home with consent or under a warrant, a community visitor (child) may do any of the following—
  - (a) look around the home and assess its appropriateness for the accommodation of the child under care;
  - (b) have access to the child under care;
  - (c) talk with the child under care out of the hearing of other persons at the home;
  - (d) require a carer staying at the home to give the visitor reasonable help to exercise the visitor's powers under paragraphs (a) to (c).
- (2) A person must comply with a requirement under subsection (1)(d).
- (3) A person does not commit an offence only by failing to comply with a requirement under subsection (1)(d).

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## Subdivision 2      **Visitable sites**

### **67      Power of entry—visitable site**

- (1) A community visitor (child) may do all things necessary or convenient to be done to perform the visitor's functions, including, for example, the following things—
  - (a) enter a visitable site during normal hours without notice;
  - (b) with the public guardian's authorisation, enter a visitable site outside normal hours without notice;
  - (c) inspect a visitable site;
  - (d) have access to a child staying at a visitable site;
  - (e) talk with a child staying at a visitable site out of the hearing of other persons at the site (including staff members of the site);
  - (f) require a staff member of a visitable site to answer questions, and produce visitable site documents, relevant to the visitor's functions;
  - (g) inspect and take extracts from, or make copies of, any visitable site document;
  - (h) confer alone with a staff member of a visitable site;
  - (i) require a staff member of a visitable site to give the visitor reasonable help, if it is practicable to give the help, to enable the visitor to do the things mentioned in paragraphs (a) to (h).
- (2) A person who complies with a requirement under subsection (1)(f) or (i) does not incur any liability, either to the child or anyone else, because of the compliance.
- (3) A person must comply with a requirement under subsection (1)(f) or (i) unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

- (4) It is a reasonable excuse for a person not to comply with a requirement under subsection (1)(f) or (i) because compliance with the requirement might tend to incriminate the person.
- (5) If the visitable site is a corrective services facility or detention centre, it is a reasonable excuse for a person not to comply with a requirement under subsection (1)(f) or (i) if the disclosure of the information could reasonably be expected to prejudice the security or good order of the facility or centre.
- (6) If the visitable site is a corrective services facility, the exercise of power under this section is subject to any direction or procedure given or made by the chief executive (corrective services) to facilitate the effective and efficient management of corrective services.
- (7) If the visitable site is a detention centre, the exercise of power under this section is subject to any direction given or made by the chief executive (youth justice services) for the security and management of detention centres and the safe custody and wellbeing of children detained in detention centres.

## **68 Public guardian may authorise access to visitable site outside normal hours**

- (1) This section applies if the public guardian considers a community visitor (child) can not adequately perform 1 or more of the visitor's functions by entering a visitable site during normal hours.
- (2) The public guardian may authorise the visitor to enter the visitable site outside normal hours to perform the function or functions.
- (3) In authorising an entry outside normal hours, the public guardian must specify a period of not more than 2 hours during which the entry is authorised.

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## **Subdivision 3      General**

### **68A      Community visitor (child) may ask NDIS agency or NDIS commissioner for particular information**

A community visitor (child) may ask the NDIS agency or NDIS commissioner for information the visitor considers necessary or convenient to perform the visitor's functions.

### **69      Community visitor (child) to respect privacy**

- (1) In performing a function or exercising a power in relation to a child under care staying at a visitable home, a community visitor (child) must act in a way that—
  - (a) respects, as far as practicable, the privacy of persons staying at the home and does not cause them unnecessary inconvenience; and
  - (b) respects the wishes of any of the children staying at the home who does not wish to communicate with the visitor.
- (2) In performing a function or exercising a power in relation to a child staying at a visitable site, a community visitor (child) must act in a way that—
  - (a) respects, as far as practicable, the privacy of children staying at the site; and
  - (b) respects the wishes of any of the children who does not wish to communicate with the visitor.

### **70      Reports by community visitors (child)**

- (1) As soon as practicable after visiting a child under care staying at a visitable home or a child staying at a visitable site, a community visitor (child) must—
  - (a) prepare a report on the visit; and
  - (b) give a copy of the report to the public guardian.

- (2) If the visitor entered a visitable site outside normal hours, the visitor must state the authority for the entry in the report.
- (3) So far as the public guardian considers appropriate, the public guardian may give a copy of a report about a visit to a child under care staying at a visitable home, or information from the report, to any of the following entities—
  - (a) the chief executive (child safety);
  - (b) the chief executive of a department responsible for providing services to the child who is a subject of the report;
  - (c) a carer of the child;
  - (d) a service provider, holding a licence to provide care services under the Child Protection Act, involved in the placement of the child in the home;
  - (e) the child.
- (4) So far as the public guardian considers appropriate, the public guardian may give a copy of a report about a visit to a child staying at a visitable site, or information from the report, to any of the following entities—
  - (a) a person in charge of the site;
  - (b) a government service provider responsible for regulating the site;
  - (c) the chief executive officer of an entity responsible for operating the site;
  - (d) the chief executive of a department responsible for providing funding or services to the site;
  - (e) the chief executive of a department responsible for providing services to children staying at the site;
  - (f) the chief psychiatrist under the *Mental Health Act 2016*;
  - (g) the child;
  - (h) the NDIS commissioner.



**71 Public guardian's directions about the exercise of powers**

A community visitor (child) is subject to the public guardian's directions in the exercise of a power.

**Division 4 Miscellaneous****72 Privacy of correspondence between community visitor (child) and children**

- (1) A carer at a visitable home or a staff member of a visitable site must not open, read, copy or remove any correspondence sent, or being sent, between a community visitor (child) and a child staying at the site or home, unless the child asks the staff member or carer to do so.

Maximum penalty—20 penalty units.

- (2) In this section—

*visitable site* does not include a corrective services facility where a child is staying.

*Note—*

See the *Corrective Services Act 2006*, chapter 2, part 2, division 4, subdivision 1 for provisions dealing with a prisoner's mail.

**72A Requirement for particular NDIS providers and registered NDIS providers to give information to public guardian**

- (1) This section applies to an NDIS provider or a registered NDIS provider that provides a child accommodation service to a child, under the child's participant's plan, for the purpose of providing respite services in relation to the child.
- (2) The NDIS provider or registered NDIS provider must give the public guardian, in the way and at the times prescribed by regulation, required information that is in the provider's custody or control, unless the provider has a reasonable excuse.

Maximum penalty—25 penalty units.

(3) In this section—

**NDIS provider** see the *National Disability Insurance Scheme Act 2013* (Cwlth), section 9.

**required information** means information about the provision of the child accommodation service prescribed by regulation.

## Part 3 Child advocacy officers

### Division 1 Functions

#### 73 Functions of child advocacy officer

A child advocacy officer may perform child advocate functions for a relevant child.

### Division 2 Powers

#### 74 Power of entry

(1) A child advocacy officer may enter—

- (a) a visitable site—
  - (i) during normal visiting hours without notice; or
  - (ii) with the public guardian's authorisation, outside normal hours without notice; or
- (b) another place where a relevant child is staying if—
  - (i) a person in charge of the place consents to the entry; or
  - (ii) it is a public place and the entry is made when it is open to the public; or
  - (iii) the entry is authorised by a warrant.

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- (2) For the purpose of asking a person who is in charge of a place for consent to enter under subsection (1)(b)(i), an officer may, without the person's consent or a warrant—
- (a) enter land around the place to an extent that is reasonable to contact the person; or
  - (b) enter part of the place the officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the person.

## **75 Public guardian may authorise access to visitable site outside normal hours**

- (1) This section applies if the public guardian considers a child advocacy officer can not adequately perform 1 or more of the officer's functions by entering a visitable site during normal hours.
- (2) The public guardian may authorise the officer to enter the visitable site outside normal hours to perform the function or functions.
- (3) In authorising an entry outside normal hours, the public guardian must specify a period of not more than 2 hours during which the entry is authorised.

## **76 Powers in relation to staff members of visitable sites**

- (1) After entering a visitable site, a child advocacy officer may do any of the following—
- (a) have access to a child staying at the site;
  - (b) talk with a child staying at the site, out of the hearing of staff members of the site and other persons at the site;
  - (c) at any reasonable time, require a staff member of the site to give the officer reasonable help, if it is practicable to give the help, to exercise the officer's powers under paragraph (a) or (b).

- (2) A staff member must comply with a requirement under subsection (1)(c), unless the staff member has a reasonable excuse.

Maximum penalty for subsection (2)—40 penalty units.

## **77 Matters to which ss 74 and 76 are subject**

- (1) If the visitable site under section 74 or 76 is a corrective services facility, the exercise of power under the section is subject to any direction or procedure given or made by the chief executive (corrective services) to facilitate the effective and efficient management of corrective services.
- (2) Sections 74 and 76 are subject to any direction given by the chief executive (youth justice services) for the security and management of detention centres and the safe custody and wellbeing of children detained in detention centres.

## **78 Consent to entry**

- (1) This section applies if a child advocacy officer intends to ask a person who is in charge of a place (other than a visitable site) where a relevant child is staying to consent to the officer entering the place under section 74(1)(b)(i).
- (2) Before asking for the consent, the officer must tell the person—
  - (a) the purpose of the entry; and
  - (b) that the person is not required to consent.
- (3) If the consent is given, the officer may ask the person to sign an acknowledgement of the consent.
- (4) The acknowledgement must state—
  - (a) that the person has been told—
    - (i) the purpose of the entry; and
    - (ii) that the person is not required to consent; and
  - (b) the purpose of the entry; and

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- (c) that the person gives the officer consent to enter the place and exercise powers under this division; and
  - (d) the time and date the consent was given.
- (5) If the person signs the acknowledgement, the officer must immediately give a copy to the person.
- (6) If—
- (a) an issue arises in a proceeding about whether a person who was in charge of a place consented to the entry; and
  - (b) an acknowledgement complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove a person mentioned in paragraph (a) consented.

## **79 Application for warrant**

- (1) The public guardian may apply to a magistrate for a warrant for a place (other than a visitable site) where a relevant child is staying.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the public guardian gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

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

## **80 Issue of warrant**

- (1) The magistrate may issue a warrant for a place (other than a visitable site) where a relevant child is staying only if the magistrate is satisfied a child advocacy officer can not

properly carry out 1 or more of the officer's functions without gaining entry to the place.

- (2) The warrant must state—
  - (a) that a named child advocacy officer may, with necessary and reasonable help and force—
    - (i) enter the named place and any other place necessary for entry; and
    - (ii) exercise the officer's powers under this division; and
  - (b) the hours of the day or night when the place may be entered; and
  - (c) the date, within 14 days after the warrant's issue, the warrant ends.

## **81 Warrants—procedure before entry**

- (1) This section applies if a child advocacy officer named in a warrant issued under section 80 for a place where a relevant child is staying is intending to enter the place under the warrant.
- (2) Before entering the place, the officer must do or make a reasonable attempt to do the following things—
  - (a) identify himself or herself to a person who is in charge of the place by producing the officer's identity card;
  - (b) give the person a copy of the warrant;
  - (c) tell the person the officer is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the officer immediate entry to the place without using force.

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**82 Powers relating to places where child is staying**

- (1) After entering a place where a relevant child is staying with consent or under a warrant, a child advocacy officer may do any of the following—
  - (a) look around the place and assess its appropriateness for the accommodation of the child;
  - (b) have access to the child;
  - (c) talk with the child out of the hearing of other persons;
  - (d) require a carer staying at the place or someone else who is in charge of the place to give the officer reasonable help to exercise the officer's powers under paragraphs (a) to (c).
- (2) A person must comply with a requirement under subsection (1)(d).
- (3) A person does not commit an offence only by failing to comply with a requirement under subsection (1)(d).

**83 Child advocacy officer to respect privacy**

- (1) In performing a function or exercising a power in relation to a visitable site, a child advocacy officer must act in a way that respects, as far as practicable, the privacy of children staying at the site.
- (2) In performing a function or exercising a power in relation to a place where a relevant child is staying, a child advocacy officer must act in a way that respects, as far as practicable, the privacy of persons staying at the place and does not cause them unnecessary inconvenience.

**Part 4 Information exchange****84 Purpose**

The purpose of this part is to authorise and facilitate an appropriate exchange of information, including confidential

information about a child and a child's circumstances, between a prescribed entity and the public guardian to help the public guardian perform child advocate functions in relation to relevant children.

## **85 Application of pt 4—separate representatives**

This part does not apply to information about a child and the child's circumstances in the possession or control of the chief executive officer of Legal Aid Queensland if—

- (a) the information came into the possession or control of the chief executive officer because a person is separately representing, or separately represented, the child under the Child Protection Act, section 99Q or 110; and
- (b) the person was appointed by Legal Aid Queensland to separately represent the child.

## **86 Prescribed entities**

The following entities are *prescribed entities* for this part—

- (a) the Queensland Family and Child Commission;
- (b) the chief executive (child safety);
- (c) the chief executive (corrective services);
- (d) the chief executive (disability services);
- (e) the chief executive (education);
- (f) the chief executive (health);
- (g) the chief executive (housing);
- (h) the chief executive (youth justice services);
- (i) the director of public prosecutions;
- (j) the chief executive officer of Legal Aid Queensland;
- (k) the commissioner of the Queensland Police Service;
- (l) a health service chief executive within the meaning of the *Hospital and Health Boards Act 2011*;



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- (m) the chief executive officer of the Mater Misericordiae Health Services Brisbane Ltd (ACN 096 708 922);
  - (n) the principal of an accredited school under the *Education (Accreditation of Non-State Schools) Act 2017*;
  - (o) the chief executive officer (however described) of a visitable site;
  - (p) an independent Aboriginal or Torres Strait Islander entity for an Aboriginal or Torres Strait Islander child;
  - (q) an external contractor;
  - (r) the Family Responsibilities Commission;
  - (s) another entity prescribed under a regulation.

## **87 Information requirement made by public guardian**

- (1) The public guardian may ask a prescribed entity for particular information in the entity's possession or control for the purpose of this part.
- (2) Subject to this section, the prescribed entity must comply with the request.
- (3) However, if the prescribed entity is the director of public prosecutions or the chief executive officer of Legal Aid Queensland, the information to be made available by the director or chief executive officer must not relate to anyone or anything other than a child and the child's circumstances.

*Examples of information that does not relate to the child and the child's circumstances—*

If the director of public prosecutions is prosecuting a parent of the child for an offence against the child, the director is not required to provide information about the prosecution of the parent. Similarly, if Legal Aid Queensland is also representing a parent of the child, Legal Aid Queensland is not required to provide information relevant to the parent's representation.

- (4) For subsection (1), information is not taken to be in the prescribed entity's control merely because of an agreement between the prescribed entity and another entity under which

the other entity must give the information to the prescribed entity.

- (5) A prescribed entity may refuse to comply with a request under this section to provide information that is subject to legal professional privilege.
- (6) Also, a prescribed entity may refuse to comply with a request under this section to provide the information if the prescribed entity decides that giving the information could reasonably be expected to—
  - (a) prejudice the investigation of a contravention or possible contravention of a law in a particular case; or
  - (b) prejudice an investigation under the *Coroners Act 2003*; or
  - (c) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of a law; or
  - (d) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of a law, to be ascertained; or
  - (e) endanger a person's life or physical safety.
- (7) The prescribed entity is not required to satisfy itself that the request for particular information is made for the purpose of this part.

## **88 Use of information**

- (1) The public guardian may use information obtained under this part or another law to help the public guardian discharge the public guardian's child advocate functions in relation to a child.
- (2) For example, information may be used—
  - (a) to help a child by providing information or advice about a matter to the child; or

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- (b) for a child mentioned in the Child Protection Act, section 74(1)—to help the child if the child considers that the charter of rights set out in the Child Protection Act, schedule 1 is not being complied with in relation to the child; or
  - (c) to help a child by monitoring any plan prepared for the child’s health, education or benefit to ensure it is being adhered to; or
  - (d) to help a child by monitoring any case plan, under the Child Protection Act, that is prepared for the child to ensure it is being adhered to; or
  - (e) to link a child with someone else who is in a position to help the child with a particular matter; or
  - (f) to work with another entity to meet a child’s needs; or
  - (g) to support a child in the resolution of an issue a child may have with a particular entity; or
  - (h) to help the child to lodge a complaint about something with a particular entity; or
  - (i) to support a child at a conference, mediation or other meeting; or
  - (j) to support or make submissions on behalf of a child at a court or tribunal hearing.
- (3) Without limiting subsection (1), the public guardian may also use the information to help decide the children receiving visits from community visitors (child) under part 2 or the frequency of the visits.

## **89 Chief executive (child safety) to advise public guardian when child is subject to particular orders, etc.**

- (1) The chief executive (child safety) must advise the public guardian as soon as practicable after—
  - (a) making a reviewable decision in relation to a child; or

- (b) becoming aware that a child is subject to an order, intervention or agreement of a kind mentioned in section 52(1).
- (2) The chief executive (child safety) must advise the public guardian as soon as practicable after becoming aware that the child is no longer the subject of an order, intervention or agreement of a kind mentioned in section 52(1).
- (3) In this section—

*reviewable decision* means a decision that is a reviewable decision under the Child Protection Act, other than—

- (a) a decision about a licence under section 129 of that Act; or
- (b) a decision about a certificate of approval under section 136 of that Act; or
- (c) a decision about an authority under section 137, 138, 140, 140AG(3) or (4) or 140AH of that Act.

*Note—*

Reviewable decisions under the Child Protection Act are in schedule 2 of that Act. See schedule 3, definition reviewable decision of that Act.

## **90 Making information available to prescribed entities**

The public guardian may disclose information, including confidential information, about a child or a child's circumstances to a prescribed entity to protect, in the performance of child advocate functions, the rights and interests of the child.

## **91 Making information available for Child Protection Act**

- (1) The public guardian may, under arrangements made with the chief executive (child safety), make information, including confidential information about a child, gained in the administration of this Act, available to officers of the child

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safety department for the purposes of the Child Protection Act.

- (2) Without limiting subsection (1), the arrangement may provide for the electronic transfer of information, including on a daily basis.

## **92 Protection from liability for giving information**

- (1) This section applies if a person, acting honestly, gives information in compliance with this part.
- (2) The person is not liable, civilly, criminally or under an administrative process, for giving the information.
- (3) Also, merely because the person gives the information, the person can not be held to have—
  - (a) breached any code of professional etiquette or ethics; or
  - (b) departed from accepted standards of professional conduct.
- (4) Without limiting subsections (2) and (3)—
  - (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and
  - (b) if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person—
    - (i) does not contravene the Act, oath or rule of law or practice by giving the information; and
    - (ii) is not liable to disciplinary action for giving the information.

## **93 Interaction with other laws**

- (1) This part does not limit a power or obligation under another Act or law to give information.
- (2) Subject to the Child Protection Act, sections 186, 189, 193 and 194 this part applies to information despite any other law

that would otherwise prohibit or restrict the giving of the information.

*Examples of other laws prohibiting or restricting the giving of information—*

- Child Protection Act, section 187
  - *Education (General Provisions) Act 2006*, section 426
  - *Hospital and Health Boards Act 2011*, section 142(1)
  - *Legal Aid Queensland Act 1997*, section 82
  - *Police Service Administration Act 1990*, section 10.1
  - *Youth Justice Act 1992*, section 288
- (3) Information obtained by the public guardian under another law may be used by the public guardian to protect, in the performance of child advocate functions, the rights and interests of a child.

## Chapter 5 Administration

### Part 1 Appointment of public guardian and related provisions

#### 94 Appointment of public guardian

- (1) The public guardian is appointed by the Governor in Council on the recommendation of the Minister.
- (2) The Minister may recommend a person for appointment only if the Minister is satisfied the person has demonstrated qualities of leadership, management and innovation in a senior government or private sector role.
- (3) A person may not hold office as the public guardian while the person holds another office having functions concerning—

- (a) the rights and interests of, or the provision of services or facilities to, adults with impaired capacity for a matter; or
- (b) the rights and interests of, or the provision of services or facilities to, children.

## **95 Public guardian employed under this Act**

The public guardian is appointed under this Act and not under the *Public Service Act 2008*.

## **96 Selection**

- (1) For selecting a person for recommendation for appointment as public 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 public 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 public guardian.

## **97 Term of office**

Subject to this part, the public guardian holds office for a term of not longer than 5 years.

*Note—*

However, the public guardian may be reappointed—see the *Acts Interpretation Act 1954*, section 25(1)(c).

## **98 Conditions of appointment**

- (1) The public guardian is to be paid the remuneration and allowances decided by the Governor in Council.

- (2) The public guardian holds office on the terms and conditions, not provided for by this Act, that are decided by the Governor in Council.

## **99 Vacancy in office**

- (1) The office of public guardian becomes vacant—
  - (a) if the public guardian—
    - (i) resigns office by signed notice to the Minister giving at least 1 month's notice; or
    - (ii) is convicted of an indictable offence; or
    - (iii) is a person who is an insolvent under administration under the Corporations Act, section 9; or
    - (iv) is removed from office by the Governor in Council under subsection (2); or
  - (b) if the public guardian is suspended by the Minister under subsection (4)—during the period of suspension.
- (2) The Governor in Council may, at any time, remove the public guardian from office on the recommendation of the Minister.
- (3) The Minister may recommend the public guardian's removal if the Minister is satisfied the public guardian—
  - (a) has been guilty of misconduct; or
  - (b) is incapable of performing his or her duties; or
  - (c) has neglected his or her duties or performed them incompetently.
- (4) The Minister may suspend the public guardian for up to 60 days by signed notice to the public guardian if—
  - (a) there is an allegation of misconduct against the public guardian; or
  - (b) the Minister is satisfied a matter has arisen in relation to the public guardian that may be grounds for removal under this section.



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## **100 Preservation of rights of public guardian**

- (1) This section applies if a public service officer is appointed as the public guardian.
- (2) The person keeps all rights accrued or accruing to the person as a public service officer as if service as public guardian were a continuation of service as a public service officer.
- (3) At the end of the person's term of office or on resignation as the public guardian, the person's service as public guardian is taken to be service of a like nature in the public service for deciding the person's rights as a public service officer.

## **101 Acting public guardian**

- (1) If there is a vacancy in the office of public guardian or the public guardian is absent or for any other reason is unable to perform the functions of the office, the Minister may appoint a person to act as public guardian for a period of not more than 6 months.
- (2) A person can not be appointed to act as the public guardian unless the Minister could recommend the person be appointed as public guardian under section 94.
- (3) A person appointed to act as public guardian may be appointed to act as public guardian for a further period—
  - (a) by the Minister, if the appointment is continuous on 1 or more of the person's previous appointments as acting public guardian and the total period of continuous appointments is not more than 6 months; or
  - (b) by the Governor in Council in other circumstances.
- (4) The Governor in Council may at any time cancel the appointment of a person to act as public guardian.

## **Part 2                      Office and staff of the public guardian**

### **102      Office**

- (1) An office called the office of the public guardian is established.
- (2) The office of the public guardian consists of the public guardian and the staff of the office.

### **103      Control of the office**

- (1) The public guardian is to control the office.
- (2) Subsection (1) does not prevent the attachment of the office to the department for the purpose of ensuring that the office is supplied with the administrative support services that it requires to carry out its functions effectively and efficiently.

*Note—*

The public trustee also provides the public guardian with financial and other resources approved by the Minister. See the *Public Trustee Act 1978*, s 63A.

### **104      Staff**

- (1) The staff of the office are employed under the *Public Service Act 2008*.
- (2) The following persons are not staff of the office—
  - (a) a person consulted, employed or remunerated under section 105;
  - (b) a person holding appointment as a community visitor.

### **105      Consultation and employment of professionals, etc.**

- (1) In performing the public guardian's functions, the public guardian may consult with, employ, and remunerate the

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medical, legal, accounting or other professionals the public guardian considers necessary.

- (2) Also, in performing the public guardian's functions, the public guardian may—
  - (a) obtain help from someone else whom the public guardian considers to be appropriately qualified to give the help; and
  - (b) cooperate with any service provider or other entity providing services or dealing with issues affecting children.

*Example—*

The public guardian may enter into arrangements to secure a service provider's cooperation to obtain information about services or issues affecting children.

- (3) The public guardian is entitled to reimbursement from an adult for remuneration paid under subsection (1) in relation to the adult.
- (4) In this section—

*service provider* includes an entity providing a service under an arrangement that involves a written agreement to which a service provider is a party.

*Example—*

services provided to children under foster care arrangements

## Part 3 External contractors

### 106 Engaging external contractor

- (1) The public guardian may, in writing, authorise an entity (an *external contractor*) to perform a child advocate function (*authorised function*) the public guardian may perform under this Act.
- (2) However, the public guardian may not authorise an external contractor—

- (a) to provide the community visitor program (child); or
  - (b) to perform the functions of a community visitor (child);  
or
  - (c) to apply for a warrant under section 79.
- (3) When performing an authorised function, an external contractor has the same powers as the public guardian, including a power of delegation, but not including the power to authorise an external contractor under subsection (1).
- (4) The public guardian may give the authority subject to stated conditions and limitations, including, for example, a condition—
- (a) that a particular power only be exercised subject to a decision of the public guardian; or

*Example—*

a condition requiring the external contractor to obtain the public guardian's approval before delegating a particular power

- (b) imposing particular duties on the external contractor's employees.

*Examples—*

- a condition requiring the external contractor to ensure the contractor's employees receive the training required by the public guardian
- a condition requiring the external contractor to ensure the contractor's employees are subject to the equivalent of the approved code of conduct for public service agencies, and any approved standard of practice for the office of the public guardian, under the *Public Sector Ethics Act 1994*

- (5) The authorisation of an external contractor to perform an authorised function does not relieve the public guardian of the public guardian's obligation to ensure the function is properly performed.
- (6) Laws apply to the external contractor, and to persons in relationship to the external contractor, in the performance of an authorised function, or in the exercise of a power for an authorised function, as if the external contractor were the public guardian.

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- (7) In this section—  
*entity* does not include a public service employee.

## 107 Acts applying to external contractor

- (1) The *Right to Information Act 2009* and the *Information Privacy Act 2009*, chapter 3 apply to an external contractor prescribed under a regulation as if—
- (a) the contractor were an agency; and
  - (b) the holder of a specified office, prescribed by regulation, of the contractor were the chief executive officer of the contractor; and
  - (c) the Minister were the responsible Minister.
- (2) The *Crime and Corruption Act 2001* applies to an external contractor prescribed under a regulation as if—
- (a) the contractor were a unit of public administration; and
  - (b) the holder of a specified office, prescribed by regulation, of the contractor were the chief executive officer of the contractor; and
  - (c) a person employed by the contractor were a person holding an appointment in a unit of public administration.
- (3) The *Judicial Review Act 1991* applies to an external contractor prescribed under a regulation as if—
- (a) the contractor were a State authority; and
  - (b) a decision of an administrative character made, proposed to be made, or required to be made, by the contractor or a person employed by the contractor, whether or not in the exercise of a discretion, were a decision to which that Act applies.
- (4) The *Ombudsman Act 2001* applies to an external contractor prescribed under a regulation as if—
- (a) the contractor were an agency; and

- (b) the holder of a specified office, prescribed by regulation, of the contractor were the chief executive officer of the contractor; and
  - (c) a person employed by the contractor were an officer of an agency; and
  - (d) the Minister were the responsible Minister.
- (5) The *Public Interest Disclosure Act 2010* applies to an external contractor as if—
- (a) the contractor were a public sector entity; and
  - (b) a person employed by the contractor were a public officer; and
  - (c) the holder of a specified office, prescribed by regulation, of the contractor were the chief executive officer of the contractor.

## **108 Review of external contractor's performance**

- (1) The public guardian may appoint an appropriately qualified person to review an external contractor's performance of its authorised functions.
- (2) The external contractor must allow the person unlimited access to—
  - (a) records relating to the performance of the authorised functions; or
  - (b) persons employed or engaged by the contractor; or
  - (c) anything else stated in the appointment.
- (3) The person must prepare a report on the review for the public guardian and give it to the public guardian.

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## **Part 4**

# **Appointment of community visitors and child advocacy officers and related provisions**

### **109 Appointment**

- (1) The public guardian may appoint a person to be—
  - (a) a community visitor (adult); or
  - (b) a community visitor (child); or
  - (c) both a community visitor (adult) and a community visitor (child); or
  - (d) a child advocacy officer.
- (2) An appointment may be on a full-time, part-time or casual basis.

### **110 Eligibility for appointment as community visitor (adult)**

- (1) A person is eligible for appointment as a community visitor (adult) only if the public guardian considers the person has knowledge, experience or skills needed to perform the functions of a community visitor (adult).
- (2) However, a person may not hold office as a community visitor (adult) while the person—
  - (a) is a public service employee of the disability services department or the health department; or
  - (b) has a direct pecuniary interest in any contract with the disability services department or the health department; or
  - (c) has a direct pecuniary interest in any visitable site; or
  - (d) holds office as the chief executive officer of the NDIS agency; or
  - (e) is an employee of the NDIS agency; or

- (f) is a consultant engaged by the NDIS agency under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 171; or
  - (g) holds office as the NDIS commissioner; or
  - (h) is an employee of the NDIS commission; or
  - (i) is a consultant engaged by the NDIS commissioner under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 181V.
- (3) In appointing persons as community visitors (adult), the public guardian must take into account the desirability of community visitors (adult)—
- (a) having a range of knowledge, experience or skills relevant to the exercise of the functions of community visitors (adult); and
  - (b) reflecting the social and cultural diversity of the general community.
- (4) A community visitor (adult) is appointed under this Act and not under the *Public Service Act 2008*.
- (5) For subsection (2), a person is taken to have a direct pecuniary interest if the person's spouse has a direct pecuniary interest.

### **111 Eligibility for appointment as community visitor (child)**

- (1) A person is eligible for appointment as a community visitor (child) only if the public guardian considers the person has the knowledge, experience or skills needed to perform the functions of a community visitor (child).
- (2) However, a person may not hold office as a community visitor (child) while the person—
- (a) is a member of the police service; or
  - (b) is a public service employee employed in—
    - (i) the child safety department; or
    - (ii) the corrective services department; or



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- (iii) the disability services department; or
  - (iv) the health department; or
  - (v) the youth justice department; or
  - (c) is engaged in any capacity in relation to a correctional institution, other than as an official visitor under the *Corrective Services Act 2006*; or
  - (d) is an approved carer under the Child Protection Act; or
  - (e) holds office as the chief executive officer of the NDIS agency; or
  - (f) is an employee of the NDIS agency; or
  - (g) is a consultant engaged by the NDIS agency under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 171; or
  - (h) holds office as the NDIS commissioner; or
  - (i) is an employee of the NDIS commission; or
  - (j) is a consultant engaged by the NDIS commissioner under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 181V.
- (3) In appointing persons as community visitors (child), the public guardian must take into account the desirability of community visitors (child)—
- (a) having a range of knowledge, experience or skills relevant to the exercise of the functions of community visitors (child); and
  - (b) reflecting the social and cultural diversity of children in Queensland.
- (4) A community visitor (child) is appointed under this Act and not under the *Public Service Act 2008*.

## **112 Eligibility for appointment as child advocacy officer**

A person is eligible for appointment as a child advocacy officer only if the person is a member of the public guardian's

staff and the public guardian considers the person has the knowledge, experience or skills needed to perform the functions of a child advocacy officer.

### **113 Duration of appointment as community visitor**

- (1) A community visitor holds office for a term of not longer than 3 years stated in the visitor's instrument of appointment.

*Note—*

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

- (2) A community visitor may resign office by signed notice of resignation given to the public guardian.
- (3) The public guardian may terminate the appointment of a community visitor if the public guardian 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 public guardian considers makes the person unsuitable to perform the duties of a community visitor.
- (4) Also, the public guardian may, by written notice given to a person, suspend the appointment of the person as a community visitor if—
- (a) the public guardian reasonably suspects a ground mentioned in subsection (3) may exist in relation to the person; and
  - (b) the public guardian needs to make investigations about the person to help the public guardian decide whether

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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 earliest of the following—
  - (a) the day the public guardian gives the person written notice that the suspension has ended;
  - (b) the day the public guardian terminates the person's appointment as a community visitor;
  - (c) the day that is 30 days after the day the suspension starts.
- (6) The public guardian must terminate the appointment of a community visitor (adult) if the public guardian is satisfied the visitor is a person who may not hold office as a community visitor (adult) under section 110(2).
- (7) The public guardian must terminate the appointment of a community visitor (child) if the public guardian is satisfied the visitor is a person who may not hold office as a community visitor (child) under section 111(2).

## **114 Terms of appointment of community visitors**

- (1) The public guardian must decide the remuneration and allowances payable to community visitors.
- (2) A community visitor is entitled to be paid the remuneration and allowances decided by the public guardian.
- (3) To the extent this Act does not state the terms on which a community visitor holds office, the visitor holds office on the terms decided by the public guardian and stated in the visitor's instrument of appointment.
- (4) This section applies subject to the *Industrial Relations Act 2016* and any relevant industrial instrument under that Act.

## **115 Limitation of powers**

- (1) The powers of a community visitor or child advocacy officer may be limited—
  - (a) by regulation; or
  - (b) under a condition of appointment; or
  - (c) by written notice of the public guardian given to the visitor or officer.
- (2) Notice under subsection (1)(c) may be given orally, but must be confirmed in writing as soon as practicable after it is given.

## **116 Identity card**

- (1) The public guardian must give each community visitor and each child advocacy officer an identity card.
- (2) The identity card must—
  - (a) contain a recent photo of the visitor or officer; and
  - (b) be in the approved form; and
  - (c) be signed by the visitor or officer; and
  - (d) identify the person as—
    - (i) a community visitor (adult) under this Act; or
    - (ii) a community visitor (child) under this Act; or
    - (iii) a community visitor (adult) and a community visitor (child) under this Act; or
    - (iv) a child advocacy officer under this Act; and
  - (e) state the expiry date for the card.

## **117 Failure to return identity card**

A person who ceases to be a community visitor or child advocacy officer must return the person's identity card to the public guardian within 21 days after ceasing to be a

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community visitor or child advocacy officer, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

### **118 Production or display of identity card**

A community visitor or child advocacy officer may exercise a power in relation to another person only if the visitor or officer—

- (a) first produces his or her identity card for the person's inspection; or
- (b) has the visitor's or officer's identity card displayed so it is clearly visible to the other person.

## **Part 5 Assessing suitability of persons to be engaged in particular employment**

### **119 Person seeking to be engaged by the public guardian must disclose criminal history**

A person seeking to be engaged by the public guardian as a community visitor or child advocacy officer must disclose to the public guardian, before being engaged—

- (a) whether or not the person has a criminal history; and
- (b) if the person has a criminal history—the person's complete criminal history.

### **120 Investigations about suitability of applicant to be community visitor or child advocacy officer**

- (1) The public guardian may make investigations about a person to help the public guardian decide whether the person is suitable to be a community visitor or child advocacy officer.

- (2) Without limiting subsection (1), the public guardian 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 public guardian.
- (4) However, the report is required to contain only criminal history the commissioner has, or has access to.

### **121 Community visitor or child advocacy officer to disclose change in criminal history**

- (1) This section applies if there is a change in the criminal history of a community visitor or child advocacy officer.
- (2) The visitor or officer must immediately disclose the details of the change to the public guardian.
- (3) The disclosure under subsection (2) must be in the approved form.
- (4) Information disclosed in the approved form by the visitor or officer about a conviction or charge for an offence in the visitor's or officer's criminal history must include—
  - (a) the existence of the conviction or charge; and
  - (b) when the offence was committed or alleged to have been committed; and
  - (c) the details of the offence or alleged offence; and
  - (d) for a conviction—whether or not a conviction was recorded and the sentence imposed on the visitor or officer.
- (5) For a visitor or officer who does not have a criminal history, there is taken to be a change in the visitor's or officer's criminal history if the visitor or officer acquires a criminal history.

### **122 Failing to make disclosure or making false, misleading or incomplete disclosure**

- (1) A community visitor or child advocacy officer must not—

- (a) fail to give the public guardian a disclosure as required under section 119 or 121, unless the visitor or officer has a reasonable excuse; or
- (b) give the public guardian an approved form under section 121 that is false, misleading or incomplete in a material particular.

Maximum penalty—100 penalty units or 2 years imprisonment.

- (2) Subsection (1)(b) does not apply to a visitor or officer in relation to particular information that the visitor or officer is unable to provide if the visitor or officer—
  - (a) indicates in the approved form the information that the visitor or officer is unable to provide; and
  - (b) otherwise gives the information in the approved form to the best of the visitor's or officer's ability.

### **123 Person to be advised of information obtained from commissioner of the police service**

- (1) This section applies to information obtained by the public guardian about a person under section 120 from the commissioner of the police service.
- (2) Before using the information to assess the person's suitability to be a community visitor or child advocacy officer, the public guardian must—
  - (a) disclose the information to the person; and
  - (b) allow the person a reasonable opportunity to make representations to the public guardian about the information.

### **124 Use of information obtained under this part**

- (1) This section applies to the public guardian 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 or child advocacy officer.
- (3) When making the assessment, the public guardian must have regard to the following matters relating to any 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 duties or proposed duties as a community visitor or child advocacy officer;
  - (c) anything else the public guardian considers relevant to the assessment of the person.

## **125 Guidelines for dealing with information obtained under this part**

- (1) The public guardian must make guidelines, consistent with this Act, for dealing with information obtained by the public guardian under this part.
- (2) The purpose of the guidelines is to ensure—
  - (a) natural justice is afforded to the persons about whom the information is obtained; and
  - (b) only relevant information is used in assessing the persons' suitability to be appointed as community visitors or child advocacy officers; and
  - (c) decisions about the suitability of persons, based on the information, are made consistently.
- (3) The public guardian must give a copy of the guidelines, on request, to a community visitor or child advocacy officer.



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## Part 6 Other provisions

### 126 Annual report

- (1) As soon as practicable after the close of each financial year but not later than 4 months after the close, the public guardian must—
  - (a) prepare a report on the performance of the public guardian's functions during the year, including—
    - (i) a report on the performance of the adult guardian functions; and
    - (ii) a report on the performance of the child advocate functions; and
  - (b) give a copy of the report to the Minister.
- (2) The public guardian must include in the annual report a report on each of the following—
  - (a) the operations of community visitors during the year, including the number of entries of visitable sites outside normal hours authorised by the public guardian;
  - (b) the number of notices under the *Mental Health Act 2016*, section 231, received by the public guardian during the year, about the admission of minors to authorised mental health services;
  - (c) the operations of community visitors (child) during the year relating to the minors mentioned in paragraph (b), including—
    - (i) the number of entries of visitable sites relating to the minors made by the visitors; and
    - (ii) the types of issues, affecting the rights and interests of the minors, raised by the visitors.
- (3) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

## **127 Not a statutory body for particular Acts**

To remove any doubt, it is declared that the public guardian is not a statutory body for the *Statutory Bodies Financial Arrangements Act 1982* or the *Financial Accountability Act 2009*.

# **Chapter 6 General**

## **Part 1 Tribunal provisions (child)**

### **128 Meaning of *reviewable decision* for pt 1**

(1) In this part—

*reviewable decision* means any of the following decisions, whether made before or after the commencement of this section—

- (a) a decision, under the Child Protection Act, section 87(2), by the chief executive (child safety) not to take action under that subsection;
  - (b) a decision by the chief executive (child safety) to take, or not to take, a step under the Child Protection Act, section 122 for the purpose of ensuring a child placed in care under section 82 of that Act is cared for in a way that meets the statement of standards under section 122 of that Act;
  - (c) a reviewable child protection decision.
- (2) For paragraph (b) of the definition *reviewable decision* in subsection (1), a failure by the chief executive (child safety) to decide to take a step for the purpose mentioned in that paragraph is taken to be a decision not to take the step.

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- (3) Subsection (4) applies if, in the course of the public guardian seeking to have a reviewable decision resolved to the public guardian's satisfaction—
- (a) the chief executive (child safety) amends, or substitutes another reviewable decision for, the first reviewable decision and the amended reviewable decision or substituted reviewable decision does not resolve the matter to the public guardian's satisfaction; or
  - (b) in relation to a failure to take action or to decide to take a step as mentioned in subsection (2)—the chief executive (child safety) actually makes a reviewable decision and the reviewable decision does not resolve the matter to the public guardian's satisfaction.
- (4) For section 133, the amended or substituted reviewable decision, or the reviewable decision actually made, becomes the reviewable decision.

## **129 References to public guardian**

- (1) A reference in this part to the public guardian includes a reference to someone authorised in writing by the public guardian for this part.
- (2) A person authorised in writing by the public guardian for this part must, if asked, produce evidence of the authorisation.

## **130 Right to appear, etc.**

- (1) The public guardian—
  - (a) is entitled to support a relevant child at, and participate in, conferences or mediations ordered or facilitated by the tribunal and to present the child's views and wishes at the conference or mediation; and
  - (b) has a right to appear before the tribunal in relation to a child protection matter for a child—
    - (i) to present the child's views and wishes to the tribunal; and

- (ii) to make submissions, call witnesses and test evidence, including by cross-examining witnesses.
- (2) If the public guardian intends to attend at a conference or mediation or appear before the tribunal, the public guardian must give written notice of the intention to the principal registrar of the tribunal registry within a reasonable time before the conference, mediation or appearance.
- (3) However, a failure to give notice as required under subsection (2) does not prevent the public guardian attending at the conference or mediation or appearing before the tribunal.

### **131 Tribunal to advise public guardian of hearing relating to child protection matters**

- (1) This section applies only to child protection matters identified by the public guardian under an arrangement agreed with the principal registrar of the tribunal registry.
- (2) At least 7 days before the hearing of a child protection matter of a type agreed under subsection (1), the principal registrar must give notice of the hearing to the public guardian.
- (3) The tribunal may, by direction under the QCAT Act, section 62, reduce the time stated in subsection (2).

### **132 Access**

- (1) This section applies to a proceeding in relation to a child protection matter mentioned in section 131 at which the public guardian appears or intends to appear.
- (2) If—
  - (a) a document has been filed in the tribunal registry for the proceeding; or
  - (b) a document or other thing has been produced to the tribunal or a party to the proceeding under an order under the QCAT Act, section 63 or 97;

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subject to subsection (3), the public guardian must be given a reasonable opportunity to access the document or thing before, during or after a hearing.

- (3) However, the public guardian may access a document filed in the registry or a document or thing produced to the tribunal under an order under section 63 only if a party to the proceeding may also access the document or thing.
- (4) If a party to whom a document or thing has been produced fails to give the public guardian access to the document or thing, the tribunal may, on the public guardian's application, make an order requiring the party to give the public guardian access to the document or thing.
- (5) Without limiting section 130(1)(b), the public guardian may make submissions about a document or other information accessed under this section.
- (6) This section has effect despite the Child Protection Act, section 99ZF.
- (7) However, the tribunal may displace the right to access a document or other information only by a confidentiality order.
- (8) In this section—  
*confidentiality order* see the Child Protection Act, section 99ZD.

### **133 Public guardian may apply for review of reviewable decisions**

- (1) This section applies if, in performing the public guardian's child advocate functions in relation to a relevant child, the public guardian—
  - (a) is dissatisfied with a reviewable decision; and
  - (b) has been unable to resolve the matter with the chief executive (child safety) to the public guardian's satisfaction.

- (2) The public guardian may apply, on behalf of the child or on the public guardian's own initiative, to the tribunal to have the reviewable decision reviewed.
- (3) The public guardian may apply to the tribunal only if the public guardian is satisfied that to do so would be in the child's best interests.
- (4) Before the public guardian may apply to the tribunal to have the reviewable decision reviewed, the public guardian must give the chief executive (child safety) a written notice stating—
  - (a) the public guardian is dissatisfied with the decision; and
  - (b) the reasons the public guardian is dissatisfied with the decision; and
  - (c) the matter has not been resolved to the public guardian's satisfaction; and
  - (d) the public guardian intends to apply to the tribunal for a review of the decision.

## **Part 2**                      **Evidence and legal proceedings**

### **134 Proof of status as relevant child**

- (1) This section applies to a proceeding under or in relation to this Act and for any other purpose.
- (2) A certificate signed by the public guardian that an identified child is or was a relevant child at a stated time or during a stated period is proof that the child is or was a relevant child at the stated time or during the stated period.

### **135 Evidentiary provisions**

- (1) This section applies to a proceeding under or in relation to this Act.

- (2) Unless a party, by reasonable notice, requires proof of—
- (a) the appointment of a community visitor or child advocacy officer under this Act; or
  - (b) the authority of a community visitor or child advocacy officer to do something under this Act;
- the appointment or authority must be presumed.
- (3) A signature purporting to be the signature of the public guardian, a community visitor or child advocacy officer is evidence of the signature it purports to be.
- (4) A certificate purporting to be signed by the public guardian stating either of the following matters is evidence of the matter—
- (a) a stated document is a copy of a notice given or issued under this Act;
  - (b) on a stated day, a stated person was given a stated notice under this Act.

### **136 Proceeding for offences**

A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.

### **137 When proceeding may start**

A proceeding for an offence against this Act may be started within—

- (a) 1 year after the offence is committed; or
- (b) 1 year after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

## **Part 3** **False or misleading statements or documents**

### **138 False or misleading statements**

A person must not state anything to the public guardian the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

### **139 False or misleading documents**

- (1) A person must not give the public 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 public 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.

## **Part 4** **Confidentiality**

### **140 Confidentiality of information**

- (1) This section applies to confidential information.
- (2) If a person gains confidential information through involvement in the administration of this Act, the Guardianship Act or the Powers of Attorney Act, the person must not—
- (a) make a record of the information or intentionally disclose the information to anyone, other than under subsection (4); or



(b) recklessly disclose the information to anyone.

Maximum penalty—200 penalty units.

- (3) A person gains confidential information through involvement in the administration of this Act, the Guardianship Act or the Powers of Attorney Act if the person gains the information because of being, or an opportunity given by being—
- (a) the Minister or a member of the Minister's staff; or
  - (b) the public guardian; or
  - (c) a member of the public guardian's staff, including a child advocacy officer; or
  - (d) a community visitor; or
  - (e) a person consulted or employed by the public guardian for this Act; or
  - (f) a public guardian's delegate for an investigation; or
  - (g) an external contractor; or
  - (h) a person authorised in writing by the public guardian under section 129.
- (4) A person may make a record of confidential information or disclose it to someone else—
- (a) for this Act, the Guardianship Act or the Powers of Attorney Act; or
  - (b) to discharge a function under another law; or
  - (c) for a proceeding in a court or the tribunal; or
  - (d) if authorised by a court or the tribunal in the interests of justice; or
  - (e) if authorised by regulation or another law; or
  - (f) if the person is authorised in writing by the person to whom the information relates; or
  - (g) for the purpose of obtaining counselling, advice or other treatment for the person to whom the information relates; or

- (h) for the purpose of reporting a suspected offence to a police officer or helping a police officer in the investigation of a suspected offence; or
- (i) if the confidential information relates to an adult with impaired capacity for a matter—
  - (i) to prevent a serious risk to the adult’s life, health or safety; or
  - (ii) for the purpose of obtaining legal or financial advice; or
  - (iii) to assist the public advocate in the performance of functions under the Guardianship Act; or
- (j) if the confidential information relates to a child—for a purpose related to protecting the child’s rights and interests, including the child’s wellbeing or protection.

#### **141 Confidentiality of information given by persons involved in administration of Act to other persons**

- (1) This section applies to a person (the *receiver*) who is given confidential information under section 140(4).
- (2) The receiver must not use or disclose the information to anyone else.

Maximum penalty—200 penalty units.

- (3) However, the receiver may use or disclose the information to someone else—
  - (a) if the use or disclosure is authorised by the public guardian; or
  - (b) if the use or disclosure is otherwise required or permitted by law.

#### **142 Disclosure of information about investigations**

- (1) Section 140 does not prevent the public guardian from disclosing information to the public or a section of the public about an issue the subject of an investigation by the public

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guardian if the public guardian is satisfied the disclosure is necessary and reasonable in the public interest.

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

### **143 Disclosure by public guardian of information for research purposes**

- (1) The public guardian may disclose the information to a person undertaking research if—
  - (a) the public guardian is satisfied the research is genuine; and
  - (b) the person gives a written undertaking to preserve the confidentiality of the information and the anonymity of the person to whom the information relates.
- (2) The person must not contravene the undertaking.  
Maximum penalty—200 penalty units.

- (3) If the person contravenes the undertaking and by contravening it also contravenes the Child Protection Act, section 189, the person may be prosecuted under this section or the Child Protection Act, section 189 at the election of the prosecution.

## **Part 5**                      **Miscellaneous**

### **144**      **Complaints agency or other government service provider to inform public guardian about actions taken for complaint**

- (1) The public guardian may—
- (a) make a complaint about services provided by a service provider to a relevant child to a complaints agency or other government service provider; or
  - (b) on behalf of a relevant child, refer a complaint about the services to a complaints agency or other government service provider.
- (2) If the public guardian makes a complaint or refers a complaint under subsection (1), the public guardian, by written notice to the complaints agency or government service provider, may ask for information about—
- (a) the outcome of the complaint, including any action taken to address the complaint; or
  - (b) a decision not to investigate or to continue to investigate the complaint and the reasons for the decision.
- (3) The complaints agency or government service provider must comply with a request for information from the public guardian under subsection (2).
- (4) Subsection (3) applies despite any express provision in an Act establishing a complaints agency that makes it an offence for anyone involved with administration of the Act to disclose the information.
- (5) In this section—

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**complaints agency** means any of the following—

- (a) the human rights commissioner under the *Anti-Discrimination Act 1991*;
- (b) the Crime and Corruption Commission under the *Crime and Corruption Act 2001*;
- (c) the Health Ombudsman under the *Health Ombudsman Act 2013*;
- (d) the ombudsman under the *Ombudsman Act 2001*.

**service provider** includes an entity providing a service under an arrangement that involves a written agreement to which the service provider is a party.

*Example—*

services provided to children under foster care arrangements

## 145 Protection from liability

- (1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act, the Guardianship Act or the Powers of Attorney Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, 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 47 or 70.
- (4) In this section—

**official** means—

- (a) the Minister; or
- (b) a community visitor; or
- (c) a person consulted or employed by the public guardian;  
or
- (d) a person acting under the direction of the public guardian or a member of the public guardian's staff.

## 146 Delegation

- (1) The public guardian may delegate the public guardian's functions and powers under this Act or another Act (other than the powers under section 25(1), 29 and 106) to—
  - (a) an appropriately qualified member of the public guardian's staff; or
  - (b) another individual, including a community visitor, who the public guardian considers is an appropriately qualified person to perform the functions or exercise the powers delegated to the person.
- (2) The public guardian may delegate the public guardian's powers under section 29 or 106 to a senior executive or a senior officer.
- (3) The public guardian may delegate the public guardian's powers under section 25(1) to a senior executive.
- (4) A person exercising the public guardian's mediation or conciliation power under a delegation must, if asked, produce evidence of the delegation.
- (5) Also, if the public guardian has power for a personal matter for an adult, the public guardian may delegate the power to make day-to-day decisions about the matter to 1 of the following—
  - (a) an appropriately qualified person who is caring for the adult;
  - (b) a health provider of the adult;

*Note—*

This is despite an adult's health provider not being eligible to be appointed as the adult's guardian or administrator (see the Guardianship Act, section 14(1) (Appointment of 1 or more eligible guardians and administrators)) or as the adult's attorney (see the Powers of Attorney Act, section 29 (Meaning of *eligible attorney*)).

- (c) an attorney under an enduring document;
- (d) 1 of the persons who could be eligible to be the adult's statutory health attorney.

(6) In this section—

*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

*senior officer* see the *Public Service Act 2008*, schedule 4.

#### **147 Approved forms**

The public guardian may approve forms for use under this Act.

#### **148 Regulation-making power**

The Governor in Council may make regulations under this Act.

## **Chapter 7 Transitional provisions**

### **Part 1 Transitional provisions for repealed sections of the Commission for Children and Young People and Child Guardian Act 2000**

#### **149 Definitions**

In this part—

*commencement* means 1 July 2014.

*commissioner* has the meaning given by the former Act.

*community visitor* has the meaning given by the former Act.

*former Act* means the *Commission for Children and Young People and Child Guardian Act 2000* as in force immediately before the commencement.

*identity card* means an identity card issued under section 110 of the former Act.

*reviewable decision* has the meaning given by the former Act, section 369.

*staff member* has the meaning given by the former Act.

*visitable home* has the meaning given by the former Act.

*visitable site* has the meaning given by the former Act.

## 150 References to repealed sections

In this part, a reference to a repealed section by number is a reference to the repealed section of that number of the former Act.

## 151 Repealed s 90 (Requirement to visit visitable site or communicate if asked)

- (1) Subsection (2) applies if, before the commencement—
  - (a) either of the following applies—
    - (i) a child residing at a visitable site asked a staff member of the site under repealed section 90(1)(b) to arrange for a community visitor to visit the site to perform the functions of a community visitor under the former Act;
    - (ii) a child residing at a visitable site informed a staff member of the site under repealed section 90(1)(c) that the child wished to communicate with a stated community visitor; and



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- (b) the staff member had not informed the commissioner of the request before the commencement.
  - (2) The staff member must inform the public guardian of the request as soon as practicable.  
Maximum penalty—10 penalty units.
  - (3) Subsection (4) applies if—
    - (a) a child residing at a visitable site asked the commissioner under repealed section 90(1)(a) to arrange for a community visitor to visit the site to perform the functions of a community visitor under the former Act and the visit had not taken place at the commencement; or
    - (b) a staff member at a visitable site advises the public guardian of a request under subsection (2).
  - (4) The public guardian must arrange for a community visitor (child) to visit the child at the visitable site as soon as practicable to perform the visitor's functions under section 56.

**152 Repealed s 91 (Requirement to visit visitable home or communicate if asked)**

- (1) Subsection (2) applies if, before the commencement—
  - (a) either of the following applies—
    - (i) a child residing in a visitable home asked a carer of the child under repealed section 91(1)(b) to arrange for a community visitor to visit the home to perform the functions of a community visitor under the former Act;
    - (ii) a child residing in a visitable home informed a carer of the child under repealed section 91(1)(c) that the child wished to communicate with a stated community visitor; and
  - (b) the carer had not informed the commissioner of the request before the commencement.

- (2) The carer must inform the public guardian of the request as soon as practicable.
- (3) The carer does not commit an offence only by failing to comply with subsection (2).
- (4) Subsection (5) applies if—
  - (a) a child residing in a visitable home asked the commissioner under repealed section 91(1)(a) to arrange for a community visitor to visit the home to perform the functions of a community visitor under the former Act and the visit had not taken place at the commencement; or
  - (b) a carer of a child residing in a visitable home advises the public guardian of a request under subsection (2).
- (5) The public guardian must arrange for a community visitor (child) to visit the child at the visitable home as soon as practicable to perform the visitor's functions under section 56.

### **153 Repealed s 92 (Report after each visit)**

- (1) This section applies if—
  - (a) under repealed section 92, a community visitor was required to prepare, and give to the commissioner, a report about a visit under repealed section 90 or 91; and
  - (b) the community visitor had not prepared and given the report the commissioner before the commencement; and
  - (c) on the commencement, the community visitor is appointed a community visitor (child).
- (2) The community visitor must prepare and give the report to the public guardian as soon as practicable after the commencement.
- (3) A report given to the public guardian under this section is taken to be a report given under section 70.

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## **154 Repealed s 93 (Functions)**

- (1) This section applies if—
  - (a) in the performance of the function of giving advice or reports as mentioned in repealed section 93(2), a community visitor had prepared, or was in the process of preparing, an advice or report for the commissioner; and
  - (b) the community visitor had not given the advice or report to the commissioner before the commencement; and
  - (c) on the commencement, the community visitor is appointed a community visitor (child).
- (2) The community visitor may give, or prepare and give, the advice or report to the public guardian.
- (3) A report given to the public guardian under this section is taken to be a report given under section 70.

## **155 Repealed s 97 (Issue of warrant)**

A warrant issued by a magistrate on the application of a community visitor under repealed section 97 in relation to a visitable home and in force on the commencement continues to have effect according to its terms except that it may be executed by the stated community visitor as if it had been issued under section 64 to the stated community visitor as a community visitor (child).

## **156 Repealed s 107 (Appointment)**

- (1) This section applies to a person who, immediately before the commencement, held appointment as a community visitor under repealed section 107.
- (2) The person is taken to be appointed as a community visitor (child) until whichever of the following first happens—
  - (a) the day the person is appointed as a community visitor (child) under section 109;

- (b) the end of 30 September 2014.
- (3) The terms of the person's appointment as a community visitor under the former Act are taken to be the terms of the person's appointment as a community visitor (child) under this Act, with necessary changes, until changed by the public guardian under this Act.
  - (4) If the person is appointed as a community visitor (child) under section 109 before the end of 30 September 2014, no amount, whether by way of compensation, reimbursement or otherwise is payable by the State for or in connection with the ending of the person's appointment as a community visitor under subsection (2)(a).
  - (5) If the person is not appointed as a community visitor (child) under section 109 before the end of 30 September 2014, no amount, whether by way of compensation, reimbursement or otherwise is payable by the State for or in connection with the ending of the person's appointment as a community visitor under subsection (2)(b), other than as expressly provided for under the person's terms of appointment or the *Industrial Relations Act 1999*.
  - (6) For the purpose of working out the person's entitlements under the *Industrial Relations Act 1999*, employment by the commissioner and employment by the public guardian are taken to be employment by the same employer.
  - (7) A notice under the *Industrial Relations Act 1999* given by a person holding appointment as a community visitor under repealed section 107 immediately before the commencement to the commissioner as the person's employer is taken to have been given to the public guardian.
  - (8) If, under the person's instrument of appointment as a community visitor, a decision about an entitlement was required to be made by the commissioner or assistant commissioner, the decision must now be made by the public guardian.

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**157 Repealed s 111 (Failure to return identity card)**

- (1) This section applies to a person who ceased to be a community visitor before the commencement and has not returned the person's identity card to the commissioner before the commencement.
- (2) The person must return the person's identity card to the public guardian as soon as possible after the commencement (but within 21 days), unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

**158 Repealed s 370 (Commissioner may apply for review of reviewable decisions)**

- (1) This section applies if, before the commencement—
  - (a) the commissioner applied to QCAT to have a reviewable decision reviewed under repealed section 370; and
  - (b) the reviewable decision had not been reviewed.
- (2) For the purpose of reviewing the reviewable decision—
  - (a) a reference to the commissioner in a document relevant to the review is taken to be a reference to the public guardian; and
  - (b) the review may proceed as if the application had been made under section 133.

## **Part 2 Transitional provisions for the Guardianship and Administration Act 2000**

**160 Definition**

In this part—

*commencement* means 1 July 2014.

## **161 References to adult guardian**

In an Act or document, a reference to the adult guardian is, if the context permits, taken to be a reference to the public guardian.

## **162 References to repealed sections**

In this part, a reference to a repealed section by number is a reference to the repealed section of that number of the Guardianship Act.

## **163 Public guardian is successor in law of adult guardian**

The public guardian is the successor in law of the adult guardian.

## **164 Repealed s 173 (Adult guardian)**

- (1) The person who, immediately before the commencement, held the office of adult guardian goes out of office.
- (2) However, the person holding the office of adult guardian before the commencement is to be offered appointment to the office of public guardian effective on the commencement.
- (3) Subsection (2) applies despite section 96.
- (4) The Minister must give the person a written notice stating the conditions decided by the Governor in Council for appointment to the office.
- (5) If the person consents to hold office as the public guardian—
  - (a) the person holds the office subject to this Act and the conditions decided by the Governor in Council until 12 August 2015; and
  - (b) no amount, whether by way of compensation, reimbursement or otherwise is payable by the State for or in connection with the abolition of the adult guardian's office.

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- (6) If the person does not consent to hold office as public guardian, no amount, whether by way of compensation, reimbursement or otherwise is payable by the State for or in connection with the abolition of the adult guardian's office, other than as expressly provided for under the person's contract of employment.
  - (7) It is declared that subsection (6) does not limit or otherwise affect the person's right to a benefit or entitlement that, under the person's contract, had accrued or was accruing immediately before the commencement.
  - (8) Also, if the person does not consent to hold the office, on the commencement, a benefit or entitlement mentioned in subsection (7) ceases to accrue and becomes payable as if—
    - (a) the person's contract had, according to its terms, been terminated on that day; and
    - (b) the termination is other than by the person.
  - (9) Nothing in this section displaces the operation of the *Acts Interpretation Act 1954*, section 17.

## **165 Repealed s 177 (Delegation)**

- (1) A delegation made by the adult guardian under repealed section 177(1), (2) or (4) and in force immediately before the commencement continues in force, with necessary changes, as if the delegation had been made by the public guardian under section 146.
- (2) A delegation mentioned in subsection (1) ends 12 months after the commencement unless earlier revoked by the public guardian.

## **166 Repealed s 178 (Consultation and employment of professionals)**

- (1) This section applies if, under repealed section 178, the adult guardian consulted or employed a professional under a contract that was in force immediately before the commencement.

- (2) The contract continues in force according to its terms (with necessary changes) as if it had been entered into by the public guardian under section 105.
- (3) In this section—  
*contract* includes written arrangement.

### **167 Repealed s 179 (Advice and supervision)**

- (1) An attorney, guardian or administrator who, immediately before the commencement, is subject to the adult guardian's supervision under a written notice given under repealed section 179 continues to be subject to the public guardian's supervision in accordance with the written notice as if the notice had been given by the public guardian under section 18.
- (2) A requirement made of an attorney under repealed section 179 to present a plan of management for approval that has not, on the commencement, been complied with continues to have effect according to its terms as if the notice had been given by the public guardian under section 18.

### **168 Repealed s 180 (Investigate complaints)**

A complaint or allegation made to the adult guardian under repealed section 180 that has not been investigated or fully investigated on the commencement may be investigated by the public guardian under section 19.

### **169 Repealed s 181 (Delegate for investigation)**

- (1) This section applies if the adult guardian delegated the adult guardian's powers under repealed chapter 8, part 2 (other than the power to give notice under section 185(1) or 189) to a person to investigate a complaint or allegation and the investigation had not been completed on the commencement.
- (2) The person may continue to carry out the investigation, make a written report and give a copy of the report to the public



guardian as if the delegation had been given by the public guardian under section 20.

**170 Repealed s 182 (Records and audit)**

A written notice given by the adult guardian to an attorney or an administrator under repealed section 182 that has not been complied with on the commencement continues to have effect according to its terms (with necessary changes) as if the notice had been given by the public guardian under section 21.

**171 Repealed s 183 (Right to information)**

A written notice given by the adult guardian under repealed section 183(2) that has not been complied with on the commencement continues to have effect according to its terms (with necessary changes) as if the notice had been given by the public guardian under section 22.

**172 Repealed s 184 (Information by statutory declaration)**

A written notice given by the adult guardian under repealed section 184(1) that has not been complied with on the commencement continues to have effect according to its terms (with necessary changes) as if the notice had been given by the public guardian under section 23.

**173 Repealed s 185 (Witnesses)**

A written notice given by the adult guardian under repealed section 185(1) that has not been complied with on the commencement continues to have effect according to its terms (with necessary changes) as if the notice had been given by the public guardian under section 25.

**174 Repealed s 186 (Power of court if noncompliance with attendance notice)**

If a subpoena is issued by a Magistrates Court at the request of the adult guardian requiring the attendance of a person before the court on or after the commencement—

- (a) the subpoena continues to have effect as if it had been issued at the request of the public guardian under section 26; and
- (b) the public guardian may examine the person when the person attends before the court under the subpoena.

**175 Repealed s 189 (Cost of investigations and audits)**

- (1) A written notice under repealed section 189(1) that has not been complied with on the commencement continues to have effect according to its terms (with necessary changes) as if the notice had been given by the public guardian under section 29(1).

- (2) If—

- (a) an investigation concerning a financial matter or an audit was undertaken under repealed section 189(1) at the request of a person; and
- (b) the public guardian is satisfied the request was frivolous or vexatious or otherwise without good cause; and
- (c) no notice had been given by the adult guardian under repealed section 189(1);

the public guardian may, by written notice under section 29(1), require a person to pay to the public guardian the amount the public guardian considers appropriate for the cost of the investigation or audit.

- (3) A written notice under repealed section 189(2) that has not been complied with on the commencement continues to have effect according to its terms (with necessary changes) as if the notice had been given by the public guardian under section 29(2).

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- (4) If—
- (a) an investigation concerning a financial matter or an audit was undertaken under repealed section 189(2); and
  - (b) the public guardian considers the attorney or administrator concerned had contravened the Guardianship Act or the Powers of Attorney Act; and
  - (c) no notice had been given by the adult guardian under repealed section 189(2);
- the public guardian may, by written notice under section 29(2), require the attorney or administrator to personally pay to the public guardian the amount the public guardian considers appropriate for the cost of the investigation or audit.

#### **176 Repealed s 193 (Report after investigation or audit)**

- (1) This section applies if the adult guardian carried out or was carrying out an investigation or audit under repealed section 189 and had not made and given a written report about the investigation or audit to a person under repealed section 193.
- (2) If the investigation or audit was not completed, or a copy of the report was not made and given to a person under repealed section 193, before the commencement, the public guardian may complete the investigation or audit and make and give a copy of the report to the person under section 31.

#### **177 Repealed s 194 (Proceedings for protection of property)**

A proceeding commenced by the adult guardian under repealed section 194 and not finalised before the commencement may be continued by the public guardian.

#### **178 Repealed s 95 (Suspension of attorney's power)**

A written notice given by the adult guardian to an attorney under repealed section 195 and in force immediately before

the commencement continues to have effect according to its terms (with necessary changes) as if it had been given by the public guardian under section 34.

**179 Repealed s 197 (Power to apply for entry and removal warrant)**

A warrant issued under repealed section 197 and in force on the commencement continues to have effect according to its terms (with necessary changes) and may be executed by the public guardian as if it had been issued under the Guardianship Act, section 149.

**180 Repealed s 206 (Annual report)**

- (1) The public guardian must prepare an annual report on the performance of the adult guardian's functions for the reporting year 2013–2014.
- (2) The public guardian must give a copy of the report to the Minister on or before 1 November 2014.

**181 Repealed s 224 (Functions)**

- (1) This section applies if—
  - (a) in the performance of the function of reporting to the chief executive as mentioned in repealed section 224, a community visitor had prepared, or was in the process of preparing, a report for the chief executive; and
  - (b) the community visitor had not given the report to the chief executive before the commencement; and
  - (c) on the commencement, the community visitor is appointed a community visitor (adult).
- (2) The community visitor may give, or prepare and give, the report to the public guardian.
- (3) A report given to the public guardian under this section is taken to be a report given under section 41.

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## **182 Repealed s 226 (Requirement to visit if asked)**

- (1) Subsection (2) applies if, before the commencement—
  - (a) under repealed section 226, a consumer at a visitable site, or a person for the consumer, asked 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; and
  - (b) the employed person had not informed the chief executive of the request before the commencement.
- (2) The employed person must inform the public guardian of the request as soon as practicable.  
Maximum penalty—40 penalty units.
- (3) Subsection (4) applies if—
  - (a) a consumer at a visitable site asked the chief executive under repealed section 226 to arrange for a community visitor to visit the site to perform the functions of a community visitor and the visit had not taken place at the commencement; or
  - (b) the person mentioned in subsection (2) informs the public guardian of a request under subsection (2).
- (4) The public guardian must arrange for a community visitor (adult) to visit the consumer at the visitable site as soon as practicable to perform the visitor's functions under section 41.

## **183 Repealed s 228 (Chief executive may authorise access outside normal hours)**

An authority given by the chief executive under repealed section 228 that has not been acted on but is in force on the commencement is taken to be an authority given by the public guardian under section 45.

## **184 Repealed s 230 (Reports by community visitors)**

- (1) This section applies if—

[s 185]

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- (a) a community visitor had prepared, or was in the process of preparing, a report under repealed section 230 for the chief executive; and
  - (b) the community visitor had not given the report to the chief executive before the commencement.
- (2) The community visitor may give, or prepare and give, the report to the public guardian.
- (3) The public guardian may deal with the report as if it had been prepared and given under section 47.

**185 Repealed s 230A (Investigations about suitability of applicant to be community visitor)**

- (1) This section applies if—
- (a) the chief executive asked the commissioner of the police service for a written report about the criminal history of a person under repealed section 230A; and
  - (b) the commissioner had not given the report to the chief executive before the commencement.
- (2) The commissioner may give the report to the public guardian.

**186 Repealed s 231 (Appointment)**

- (1) A person holding appointment as a community visitor under repealed section 231 immediately before the commencement is taken to be a community visitor (adult) appointed under this Act on the commencement.
- (2) The terms of the person's appointment as a community visitor under the Guardianship Act are taken to be the terms of the person's appointment as a community visitor (adult) under this Act, with necessary changes, until changed by the public guardian under this Act.
- (3) For the purpose of working out the person's entitlements under this Act or the *Industrial Relations Act 1999*, employment by the chief executive under repealed section 231

and employment by the public guardian are taken to be employment by the same employer.

- (4) A notice under the *Industrial Relations Act 1999* given by a person holding appointment as a community visitor under repealed section 231 immediately before the commencement to the chief executive as the person's employer is taken to have been given to the public guardian.
- (5) If, under the person's instrument of appointment as a community visitor, a decision about an entitlement was required to be made by the adult guardian or someone on the adult guardian's behalf, the decision must now be made by the public guardian.

### **187 Repealed s 232 (Duration of appointment)**

- (1) This section applies if—
  - (a) the chief executive has, by written notice under repealed section 232(4), suspended the appointment of a person as a community visitor; and
  - (b) the suspension is in force immediately before the commencement.
- (2) The suspension continues to have effect according to its terms as if the community visitor were a community visitor (adult) under this Act and the person's appointment had been suspended by the public guardian under section 113(4).
- (3) The person's suspension is to be dealt with under this Act.

### **188 Repealed s 236 (Failure to return identity card)**

- (1) This section applies to a person who ceased to be a community visitor before the commencement and has not returned the person's identity card to the chief executive before the commencement.
- (2) The person must return the person's identity card to the public guardian as soon as possible after the commencement (but within 21 days), unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

**189 Repealed s 237 (Annual report by chief executive)**

- (1) The public guardian must prepare an annual report on the operations of community visitors (including the number of entries of visitable sites outside normal hours authorised by the chief executive) for the reporting year 2013–2014.
- (2) The public guardian must give a copy of the report to the Minister on or before 1 November 2014.

**Part 3**

**Transitional provisions for  
Disability Services and Other  
Legislation (NDIS) Amendment  
Act 2019**

**190 Definitions for part**

In this part—

*amending Act* means the *Disability Services and Other Legislation (NDIS) Amendment Act 2019*.

*former*, in relation to a provision, means as in force immediately before the provision was amended or repealed under the amending Act.

*former visitable site* means a place that was a visitable site under former chapter 3, part 6 but is not a visitable site under chapter 3, part 6 as amended by the amending Act.

**191 Inquiries in relation to former visitable sites started before commencement**

- (1) This section applies if—
  - (a) before the commencement, a community visitor (adult) inquired, or started to inquire, under former



- section 41(2) into a matter in relation to a former visitable site; and
- (b) immediately before the commencement, the community visitor (adult) had not reported to the public guardian on the matter.
- (2) The community visitor (adult) must continue to perform the inquiry functions under section 41(2) in relation to the matter.
  - (3) Section 41(4) and chapter 3, part 6, division 4 apply to the performance of the inquiry functions as if—
    - (a) the functions were being performed under section 41(2); and
    - (b) the former visitable site were a visitable site under chapter 3, part 6.

## **192 Existing complaints about former visitable sites**

- (1) This section applies if—
  - (a) before the commencement, a complaint was made about a matter mentioned in former section 41(2) in relation to a former visitable site; and
  - (b) immediately before the commencement, a community visitor (adult) for the former visitable site had not resolved the complaint, or referred it, under former section 41(3).
- (2) A community visitor (adult) for the former visitable site must perform the complaint functions mentioned in section 41(3) in relation to the complaint.
- (3) Section 41(4) and chapter 3, part 6, division 4 apply to the performance of the complaint functions as if—
  - (a) the functions were being performed under section 41(3); and
  - (b) the former visitable site were a visitable site under chapter 3, part 6.

**193 Existing requests for community visitor (adult) to visit former visitable site**

- (1) This section applies if, before the commencement, a person made a request under former section 43(1)(a) or (b) in relation to a former visitable site.
- (2) Subsection (3) applies if—
  - (a) the request was made under former section 43(1)(b) to a staff member at the former visitable site; and
  - (b) immediately before the commencement—
    - (i) the staff member had not told the public guardian about the request; and
    - (ii) the period that is 3 business days after the request is made had not ended.
- (3) The staff member must, within 3 business days after the request is made, tell the public guardian about the request.

Maximum penalty—40 penalty units.

- (4) If, immediately before the commencement, a community visitor (adult) for the former visitable site had not visited the site in accordance with the request—
  - (a) a community visitor (adult) for the site must visit the site as soon as practicable after being informed of the request; and
  - (b) chapter 3, part 6, division 4 applies to the performance of the function under paragraph (a) as if—
    - (i) the function were being performed under section 43; and
    - (ii) the former visitable site were a visitable site under chapter 3, part 6.

**194 Existing authorisations to enter former visitable sites outside normal hours**

- (1) An existing authorisation in relation to an existing complaint continues to have effect according to its terms and conditions.

(2) In this section—

*existing authorisation* means an authorisation given under former section 45 that was in effect immediately before the commencement.

*existing complaint* means a complaint in relation to which section 192 applies.

### **195 Reports about visits to former visitable sites before commencement**

- (1) This section applies if, before the commencement, a community visitor (adult) visited a former visitable site.
- (2) If, immediately before the commencement, the community visitor (adult) had not complied with former section 47(1) in relation to the visit—
  - (a) the community visitor (adult) must prepare a report on the visit under section 47 and give a copy of the report to the public guardian; and
  - (b) the public guardian must, as soon as practicable after receiving a copy of the report, give a copy of the report to a person in charge of the site.
- (3) If, immediately before the commencement, the public guardian had not complied with former section 47(3) in relation to a report on the visit, the public guardian must give a copy of the report to a person in charge of the site.
- (4) Section 47(4) applies in relation to a copy of a report on the visit received by the public guardian before or after the commencement.

### **196 Proceedings for particular offences**

- (1) This section applies in relation to an offence committed against any of the following provisions, in relation to a former visitable site, before the commencement—
  - (a) former section 43(2);

- (b) former section 44(3);
  - (c) former section 49.
- (2) Without limiting the *Acts Interpretation Act 1954*, section 20, a proceeding for the offence may be started or continued, and a person may be convicted of and punished for the offence, as if the amending Act, section 62 had not commenced.
- (3) Subsection (2) applies despite the Criminal Code, section 11.

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## Schedule 1      Dictionary

### section 3

***administrator*** means an administrator appointed under the Guardianship Act.

***adult***, for chapter 3, see section 17.

***adult guardian functions*** see section 12.

***advance health directive*** means an advance health directive under the Powers of Attorney Act.

***authorised function*** see section 106(1).

***authorised mental health service***, for chapter 4, see section 51.

***carer***—

- (a) in relation to a child staying at a visitable home, means a person in whose care the child has been placed; or
- (b) in relation to a stand-alone service, means a person—
  - (i) who is engaged to provide education and care of a child in the course of a stand-alone service; or
  - (ii) who is conducting the stand-alone service and providing education and care of children in the course of the service.

***chapter 5B approval***, for chapter 3, part 6, see section 39.

***chief executive (child safety)*** means the chief executive of the child safety department.

***chief executive (corrective services)*** means the chief executive of the corrective services department.

***chief executive (disability services)*** means the chief executive of the disability services department.

***chief executive (education)*** means the chief executive of the education department.

**chief executive (health)** means the chief executive of the health department.

**chief executive (housing)** means the chief executive of the housing department.

**chief executive (youth justice services)** means the chief executive of the youth justice department.

**child accommodation service**, for chapter 4, see section 51.

**child advocacy officer** means a person appointed as a child advocacy officer under section 109.

**child advocate functions** see section 13.

**Child Protection Act** means the *Child Protection Act 1999*.

**child protection matter** means a matter in relation to a reviewable child protection decision.

**child safety department** means the department mainly responsible for child protection services.

**child under care**, for chapter 4, see section 51.

**community services department** means the department mainly responsible for community services.

**community visitor** means a person appointed under section 109 as—

- (a) a community visitor (adult); or
- (b) a community visitor (child); or
- (c) a community visitor (adult) and a community visitor (child).

**complaint**, for chapter 3, part 6, see section 39.

**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.

**consumer**, for chapter 3, part 6, see section 39.

**corrective services department** means the department mainly responsible for corrective services.

**corrective services facility**, for chapter 4, see section 51.

**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, 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.

**detention centre**, for chapter 4, see section 51.

**disability services department** means the department mainly responsible for disabilities services.

**education department** means the department mainly responsible for education.

**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.

**external contractor** see section 106(1).

**financial matter** see the Guardianship Act, schedule 2, section 1.

**forensic disability service**, for chapter 3, part 6, see section 39.

**forensic examination**, of an adult, see the Guardianship Act, schedule 4.

**funded adult participant**, for chapter 3, part 6, see section 39.

**general principles** see the Guardianship Act, section 11B.

**government entity** means a government entity under the *Public Service Act 2008*, section 24, and includes the police service to the extent it is not a government entity under that section.

**government service provider** means a government entity or a local government.

**guardian** means a guardian appointed under the Guardianship Act.

**Guardianship Act** means the *Guardianship and Administration Act 2000*.

**health care**, see the Guardianship Act, schedule 2, section 5.

**health care principles** see the Guardianship Act, section 11C.

**health department** means the department mainly responsible for hospitals.

**health matter** see the Powers of Attorney Act, schedule 2, section 4.

**health provider** means a person who provides health care in the practice of a profession or the ordinary course of business.

*Example—*

dentist

**housing department** means the department mainly responsible for housing services.

**impaired capacity**, for a person for a matter, see the Guardianship Act, schedule 4.

**impairment**, for chapter 3, part 6, see section 39.

**independent Aboriginal or Torres Strait Islander entity**, for an Aboriginal or Torres Strait Islander child, see the *Child Protection Act 1999*, schedule 3.

**interested person**, for another person, means a person who has a sufficient and genuine concern for the rights and interests of the other person.



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***national disability insurance scheme*** means the National Disability Insurance Scheme under the *National Disability Insurance Scheme Act 2013* (Cwlth).

***national disability insurance scheme rules*** means the National Disability Insurance Scheme rules made under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 209.

***NDIS agency*** means the National Disability Insurance Scheme Launch Transition Agency established under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 117.

***NDIS commission*** means the NDIS Quality and Safeguards Commission established under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 181A.

***NDIS commissioner*** means the Commissioner of the NDIS commission appointed under the *National Disability Insurance Scheme Act 2013* (Cwlth), section 181L.

***normal hours*** means the hours between 8a.m. and 6p.m.

***parent*** see section 53.

***participant's plan***, for a person, means a plan for the person under the *National Disability Insurance Scheme Act 2013* (Cwlth) that is in effect under section 37 of that Act.

***personal matter***, for an adult with impaired capacity for a matter, see the Guardianship Act, schedule 2, section 2.

***power of attorney***, for chapter 3, see section 17.

***Powers of Attorney Act*** means the *Powers of Attorney Act 1998*.

***prescribed department***, for chapter 4, see section 51.

***prescribed entities***, for chapter 4, part 4, see section 86.

***private dwelling house***, for chapter 3, part 6, see section 39.

***private service provider*** means an entity, other than a government service provider, that provides a service for which the funding is—

- (a) wholly or partly provided by the State or a local government; or
- (b) wholly or partly administered by the State.

**public advocate** means the public advocate under the Guardianship Act.

**public guardian** means the person appointed as the public guardian under section 94.

**public guardian's delegate for an investigation** means a delegate of the public guardian under section 20(1).

**registered NDIS provider** see the *National Disability Insurance Scheme Act 2013* (Cwlth), section 9.

**relation**, of an adult, for chapter 3, part 6, see section 39.

**relevant child** see section 52.

**relevant class of supports**, for chapter 3, part 6, see section 39.

**residential facility**, for chapter 4, see section 51.

**restrictive practice** means—

- (a) a restrictive practice within the meaning of the *Disability Services Act 2006*, section 144; or
- (b) a regulated restrictive practice within the meaning of the national disability insurance scheme rules made for the *National Disability Insurance Scheme Act 2013* (Cwlth), section 73H about conditions applying to registered NDIS providers in relation to the use of regulated restrictive practices.

**reviewable child protection decision** means a reviewable decision mentioned in the Child Protection Act, schedule 2 other than—

- (a) a decision about a licence under section 129 of that Act; or
- (b) a decision about a certificate of approval under section 136 of that Act; or

(c) a decision about an authority under section 137, 138, 140, 140AG(3) or (4) or 140AH of that Act.

**reviewable decision**, for chapter 6, part 1, see section 128.

**service provider** means a government service provider or private service provider.

**special health care** see the Guardianship Act, schedule 2, section 7.

**special health matter** see the Powers of Attorney Act, schedule 2, section 6.

**specialist disability accommodation**, for chapter 3, part 6, see section 39.

**specialist positive behaviour support**, for chapter 3, part 6, see section 39.

**staff member**, of a visitable site, means—

- (a) a person in charge of the site; or
- (b) another person who is concerned with, or takes part in, the management of the site; or
- (c) another person who is employed, or providing services, at the site.

**stand-alone service** see the *Education and Care Services Act 2013*, section 9.

**statutory health attorney** see the Powers of Attorney Act, section 63.

**tribunal** means QCAT.

**tribunal registry** means the registry established under the QCAT Act, section 207.

**visitable home**, for chapter 4, see section 51.

**visitable location**, for chapter 4, see section 51.

**visitable site**—

- (a) in relation to an adult with impaired capacity for a matter—see section 39; or
- (b) in relation to a child—see section 51.

*visitable site document*—

- (a) for chapter 3, part 6, see section 39; or
- (b) for chapter 4, see section 51.

*youth justice department* means the department mainly responsible for youth justice.