

# Guardianship and Administration and Other Legislation Amendment (Postponement) Regulation 2020

Explanatory notes for SL 2020 No. 30

Made under the

*Guardianship and Administration and Other Legislation  
Amendment Act 2019*

## General Outline

### Short Title

*Guardianship and Administration and Other Legislation Amendment (Postponement)  
Regulation 2020*

### Authorising law

Section 15DA of the *Acts Interpretation Act 1954*.  
Section 2 of the *Guardianship and Administration and Other Legislation Amendment Act  
2019*.

### Policy objectives and the reasons for them

The *Guardianship and Administration and Other Legislation Amendment Act 2019* (Amendment Act) received assent on 11 April 2019.

The objects of the Amendment Act include amending Queensland's guardianship legislation (the *Guardianship and Administration Act 2000* (GAA), *Powers of Attorney Act 1998* (POA) and *Public Guardian Act 2014*) to:

- provide a focus on contemporary practice and human rights for adults with impaired capacity;
- enhance safeguards for adults with impaired capacity in the guardianship system; and
- improve the efficiency of Queensland's guardianship system or improve the clarity of Queensland's guardianship legislation.

Parts 2, 4 and 7 of the Amendment Act, which amended the *Government Owned Corporations Act 1993*, *Integrity Act 2009* and *Public Interest Disclosure Act 2010*, commenced on assent.

Section 2 of the Amendment Act provides for parts 3, 5, 6 and 8 and schedule 1 to commence on a day to be fixed by proclamation.

Non-legislative guardianship reforms which must commence upon amendments to Queensland's guardianship legislation in the Amendment Act include:

- a review of the enduring power of attorney (EPA) and advance health directive (AHD) forms under the POA;
- the introduction of explanatory guides to support the new forms (explanatory guides); and
- the introduction of capacity guidelines under new section 250 of the GAA (inserted by the Amendment Act) to assess capacity under Queensland's guardianship legislation (capacity guidelines).

If not extended by regulation the remaining provisions of the Amendment Act that have not yet commenced will automatically commence on 12 April 2020. The *Guardianship and Administration and Other Legislation Amendment (Postponement) Regulation 2020* (postponement regulation) will delay the commencement of the remaining provisions of the Amendment Act to 1 August 2020 to allow for further consultation with stakeholders on the non-legislative reforms associated with the commencement of the Amendment Act.

## **Achievement of policy objectives**

The postponement regulation will extend the period under section 15DA(2) of the AIA to the end of 31 July 2020, so that the remaining provisions of the Amendment Act that have not yet commenced will automatically commence on 1 August 2020. The postponement regulation will expire on 2 August 2020.

## **Consistency with policy objectives of authorising law**

The postponement regulation is consistent with the policy objectives of the Amendment Act.

## **Inconsistency with policy objectives of other legislation**

The postponement regulation is consistent with the policy objectives of other legislation.

## **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the policy objectives.

## **Benefits and costs of implementation**

Any costs associated with further consultation with stakeholders in relation to the non-legislative guardianship reforms will be met from existing agency resources.

## Consistency with fundamental legislative principles

The postponement regulation is consistent with fundamental legislative principles.

## Consultation

The Department of Justice and Attorney-General (DJAG) established a Guardianship Implementation Reference Group (reference group) in June 2018. The role of the reference group is to provide expert advice and feedback on the implementation of the Amendment Act and associated non-legislative reforms, including the revised EPA and AHD forms and the introduction of explanatory guides and the capacity guidelines.

The reference group includes representatives from the legal (Queensland Law Society) and health professions, Community Legal Centres, academics (including from the Australian Centre for Health Law Research, Faculty of Law, Queensland University of Technology and the School of Nursing, Midwifery and Social Work, Faculty of Health and Behavioural Sciences, University of Queensland), disability and older persons' advocacy groups (including Aged and Disability Advocacy Australia, COTA Queensland, National Seniors Australia, Queensland Advocacy Incorporated) and guardianship stakeholders (including the Office of the Public Guardian, Public Trustee and Public Advocate). QCAT was also consulted on the non-legislative reforms.

The reference group generally supports the proposal to delay commencement of the remaining provisions of the Amendment Act.

Delaying commencement of the guardianship reforms will allow for further consultation in relation to the non-legislative reforms.

A self-assessment by DJAG determined that no further regulatory impact analysis is required as the regulatory proposal is excluded under category (g) of the *Queensland Government Guide to Better Regulation* – regulatory proposals that are of a machinery nature.