

Guardianship and Administration Regulation 2022

Explanatory notes for SL 2022 No. 111

Made under the

Guardianship and Administration Act 2000

General Outline

Guardianship and Administration Regulation 2022

Authorising law

Section 252 of the *Guardianship and Administration Act 2000*

Policy objectives and the reasons for them

Background

Under the *Statutory Instruments Act 1992* (SI Act) subordinate legislation expires on 1 September after the 10th anniversary of its making or such extended period as is permitted under the Act. The *Guardianship and Administration Regulation 2012* (the Regulation) is due to expire on 1 September 2022.

The Regulation supports the *Guardianship and Administration Act 2000* (GAA Act) by prescribing laws from other Australian jurisdictions and New Zealand (NZ) as recognised provisions, which enables orders made under those laws to be recognised in Queensland and treated as if they were an order of the Queensland Civil and Administrative Tribunal (QCAT), provided the orders are “similar to” orders that may be made under the GAA Act or the *Powers of Attorney Act 1998* (POA Act) (GAA Act, section 167).

Section 167 of the GAA Act allows laws to be prescribed from other Australian jurisdictions and New Zealand as *recognised provisions*, which enables orders made under those laws to be recognised in Queensland and treated as if they were an order of QCAT, provided the orders are able to be made under the GAA Act or the POA Act.

The Regulation currently prescribes the laws in each state and territory and New Zealand relevant to equivalent guardianship and administration orders. By prescribing these particular laws, Queensland allows for a scheme for recognition of most orders relevant to the appointment of guardians and administrators.

Achievement of policy objectives

The *Guardianship and Administration Regulation 2022* (the remade Regulation) will continue to prescribe recognised provisions from other Australian jurisdictions and NZ to enable orders similar to guardianship and administration orders made under those laws to be recognised in Queensland.

The remade Regulation prescribes 12 laws from other Australian jurisdictions and NZ as recognised provisions. The Regulation currently prescribes nine laws from other jurisdictions. Six of those laws are still in force and are carried over into the remade Regulation. These laws are:

- *Guardianship Act 1987* (NSW)
- *Guardianship and Administration Act 1993* (SA)
- *Guardianship and Administration Act 1995* (Tas)
- *Guardianship and Administration Act 1990* (WA)
- *Guardianship and Management of Property Act 1991* (ACT)
- *Protection of Personal and Property Rights Act 1988* (New Zealand).

The remaining three laws under the Regulation (one in Victoria, two in the Northern Territory (NT)) have been repealed and replaced. The remade Regulation prescribes the following laws as recognised provisions for Victoria and NT:

- the *Guardianship and Administration Act 2019* (Vic) (the new Vic Act);
- the repealed *Guardianship and Administration Act 1986* (Vic) (while this was repealed and replaced by the new Vic Act, the transitional arrangements do not provide for the recognition of orders made under the repealed Act to be taken to be orders under the new Vic Act);
- the *Guardianship of Adults Act 2016* (NT) (which replaces the *Adult Guardianship Act* (NT) and contains transitional arrangements which provide for the recognition of orders made under the repealed *Aged and Infirm Persons' Property Act* (NT)).

The remade regulation also prescribes three additional laws as recognised provisions under which equivalent guardianship and administration orders can also be made:

- the *NSW Trustee and Guardian Act 2009* (NSW)
- the *Aged and Infirm Persons' Property Act 1940* (SA); and
- the *Public Trustee and Guardian Act 1985* (ACT).

Consistency with policy objectives of authorising law

The remade Regulation is consistent with the policy objectives of the authorising law.

Inconsistency with policy objectives of other legislation

The remade Regulation is not inconsistent 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

There will be no implementation costs arising from the remade Regulation.

Consistency with fundamental legislative principles

The remade Regulation is consistent with fundamental legislative principles.

Consultation

Consultation was undertaken with State and Territory Attorneys-General; the NZ Attorney-General, QCAT; the Queensland Law Society; the Office of the Public Guardian; the Public Trustee of Queensland; the Office of the Public Advocate, the Bar Association of Queensland, Queensland Advocacy for Inclusion, Carers Queensland, ADA Australia and Amparo Advocacy.

The Department of Justice and Attorney-General has conducted a sunset review and found the Regulation is still required and is effective and efficient. The sunset review was submitted to the Office of Best Practice Regulation (OBPR) for assessment. OBPR has assessed the sunset review and has confirmed that the requirements for a sunset review have been met and that the Regulation remains relevant and that no further regulatory impact analysis is required.