

Guardianship and Administration and Other Legislation Amendment (Postponement) Regulation (No. 2) 2020

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Yvette D'Ath MP, Attorney-General and Minister for Justice provide this human rights certificate with respect to the *Guardianship and Administration and Other Legislation Amendment (Postponement) Regulation (No. 2) 2020* (Postponement Regulation (No. 2)) made under the *Guardianship and Administration and Other Legislation Amendment Act 2019* (Amendment Act).

In my opinion, the Postponement Regulation (No. 2), as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The *Guardianship and Administration Act 2000*, *Powers of Attorney Act 1998* and *Public Guardian Act 2014* form the legislative basis for the guardianship system in Queensland.

The objects of the Amendment Act include amending Queensland's guardianship legislation 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.

The Amendment Act received assent on 11 April 2019. 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).

The *Guardianship and Administration and Other Legislation Amendment (Postponement) Regulation 2020* (Postponement Regulation (No. 1)) extended the period for automatic

commencement under section 15DA(2) of the *Acts Interpretation Act 1954* (AIA) to 31 July 2020, so that the remaining provisions of the Amendment Act will automatically commence on 1 August 2020.

The *COVID-19 Emergency Response Act 2020* (COVID-19 Response Act) received assent and commenced on 22 April 2020. Section 2 of the COVID-19 Response Act provides that the main purposes of the Act include to facilitate the continuance of public administration, judicial process, small business and other activities disrupted by the COVID-19 emergency, including by easing regulatory requirements and establishing an office of small business commissioner.

New section 15DB of the AIA was inserted by the COVID-19 Response Act.

For the purposes of the COVID-19 Response Act, section 15DB(2) of the AIA states that a regulation may further extend the period before automatic commencement of the postponed law (the Amendment Act, as defined in section 15DA(1) of the AIA) for a period ending on or before 31 December 2020.

The implementation of the guardianship reforms has been delayed due to the disruption caused by the COVID-19 emergency. Key stakeholders have also raised concerns about commencing the guardianship reforms, including the associated non-legislative reforms (including new EPA and AHD forms), on 1 August 2020, given the impact of the COVID-19 emergency.

The Postponement Regulation (No. 2) will further extend the period under section 15DB(2) of the AIA to the end of 29 November 2020, so that the remaining provisions of the Amendment Act will automatically commence on 30 November 2020.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The Postponement Regulation (No. 2) will further postpone automatic commencement of parts 3, 5, 6, and 8 and schedule 1 of the Amendment Act to 30 November 2020 and does not limit any human rights.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

The Postponement Regulation (No. 2) does not limit, restrict or interfere with human rights.

Conclusion

I consider that the Postponement Regulation (No. 2) is compatible with the *Human Rights Act 2019* because it does not limit any human rights.

YVETTE D'ATH MP
Attorney-General and Minister for Justice
Leader of the House

© The State of Queensland 2020