



# Guardianship and Administration Act 2000

Current as at [Not applicable]

## Indicative reprint note

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Queensland

# Guardianship and Administration Act 2000

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# Guardianship and Administration Act 2000

**An Act to consolidate, amend and reform the law relating to the appointment of guardians and administrators to manage the personal and financial affairs of adults with impaired capacity, to confer jurisdiction on the Queensland Civil and Administrative Tribunal for particular purposes, to create an office of Public Advocate, and for other purposes**

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## Chapter 1 Preliminary

### 1 Short title

This Act may be cited as the *Guardianship and Administration Act 2000*.

### 2 Commencement

This Act commences on a day to be fixed by proclamation.

### 3 Definitions

The dictionary in schedule 4 defines particular words used in this Act.

### 4 Act binds all persons

This Act binds all persons, including the State, and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

## Chapter 2 Explanation

### 5 Acknowledgements

This Act acknowledges the following—

- (a) an adult's right to make decisions is fundamental to the adult's inherent dignity;
- (b) the right to make decisions includes the right to make decisions with which others may not agree;
- (c) *the capacity of an adult to make decisions may differ according to—*
  - (ii) the type of decision to be made, including, for example, the complexity of the decision to be made; and
  - (iii) the support available from members of the adult's existing support network;
- (d) the right of an adult with impaired capacity to make decisions should be restricted, and interfered with, to the least possible extent;
- (e) an adult with impaired capacity has a right to adequate and appropriate support for decision-making.

### 6 Purpose to achieve balance

This Act seeks to strike an appropriate balance between—

- (a) the right of an adult with impaired capacity to the greatest possible degree of autonomy in decision-making; and
- (b) the adult's right to adequate and appropriate support for decision-making.

### 7 Way purpose achieved

This Act—



- (a) provides that an adult is presumed to have capacity for a matter; and
- (b) together with the *Powers of Attorney Act 1998*, provides a comprehensive scheme to facilitate the exercise of power for financial matters and personal matters by or for an adult who needs, or may need, another person to exercise power for the adult; and
- (c) states principles to be observed by anyone performing a function or exercising a power under the scheme; and
- (d) encourages involvement in decision-making of the members of the adult's existing support network; and
- (e) confers jurisdiction on the tribunal to administer particular aspects of the scheme; and
- (f) recognises the public trustee is available as a possible administrator for an adult with impaired capacity; and
- (g) provides for the appointment of the public advocate for systemic advocacy.

## **7A Relationship with Public Guardian Act 2014**

This Act is to be read in conjunction with the *Public Guardian Act 2014* which provides for the public guardian and the community visitor program (adult).

## **8 Relationship with Powers of Attorney Act 1998**

- (1) This Act is to be read in conjunction with the *Powers of Attorney Act 1998* which provides a scheme by which—
  - (a) by enduring power of attorney or advance health directive, an adult may authorise other persons to make particular decisions and do particular other things for the adult in relation to financial matters and personal matters 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—schedule 2, section 2.

- (b) by advance health directive, an adult may make directions for the adult's future health care and special health care; and
  - (c) a statutory health attorney is authorised to do particular things for an adult in particular circumstances in relation to health care.
- (2) If there is an inconsistency between this Act and the *Powers of Attorney Act 1998*, this Act prevails.

## **9 Range of substitute decision-makers**

- (1) This Act and the *Powers of Attorney Act 1998* authorise the exercise of power for a matter for an adult with impaired capacity for the matter.
- (2) Depending on the type of matter involved, this may be done—
- (a) on an informal basis by members of the adult's existing support network; or

*Note—*

Although this Act deals primarily with formal substituted decision-making, a decision or proposed decision of an informal decision-maker may be ratified or approved under section 154.

- (b) on a formal basis by 1 of the following—
  - (i) an attorney for personal matters appointed by the adult under an enduring power of attorney or advance health directive under the *Powers of Attorney Act 1998*;
  - (ii) an attorney for financial matters appointed by the adult under an enduring power of attorney under the *Powers of Attorney Act 1998*;
  - (iii) a statutory health attorney under the *Powers of Attorney Act 1998*;
  - (iv) a guardian appointed under this Act;

*Note—*

A guardian may only be appointed for personal matters.

- (v) an administrator appointed under this Act;

*Note—*

An administrator may only be appointed for financial matters.

- (vi) the tribunal;

- (vii) the court.

## 10 Types of matter

This Act categorises matters as follows—

- personal matter
- special personal matter
- special health matter
- financial matter.

*Note—*

Schedule 2 contains definitions of types of matters.

## 11 Application of presumption of capacity

- (1) *If, in performing a function or exercising a power under this Act, the tribunal or the court is required to make a decision about an adult's capacity for a matter, the tribunal or the court is to presume the adult has capacity for the matter until the contrary is proven.*
- (2) *If the tribunal or the court has appointed a guardian or an administrator for an adult for a matter, the guardian or administrator is not required to presume the adult has capacity for the matter.*
- (3) *If a declaration by the tribunal or the court that an adult has impaired capacity for a matter is in force, a person or other entity that performs a function or exercises a power under this*

*Act is entitled to rely on the declaration to presume that the adult does not have capacity for the matter.*

## **11A Primary focus—adults**

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

# **Chapter 2A Principles**

## **11B General principles**

- (1) *The principles (the **general principles**) set out below must be applied by a person or other entity that performs a function or exercises a power under this Act.*
- (2) *Also, a person making a decision for an adult on an informal basis must apply the general principles in making the decision.*
- (3) *The community is encouraged to apply and promote the general principles.*

### **General principles**

#### **1 Presumption of capacity**

*An adult is presumed to have capacity for a matter.*

#### **2 Same human rights and fundamental freedoms**

- (1) *An adult's inherent dignity and worth, and equal and inalienable rights, must be recognised and taken into account.*
- (2) *The rights of all adults to the same human rights and fundamental freedoms, regardless of a particular adult's capacity, must be recognised and taken into account.*

- (3) *The principles on which an adult's human rights and fundamental freedoms are based, and that should inform the way those rights and freedoms are taken into account, include—*
- (a) *respect for inherent dignity and worth, individual autonomy (including the freedom to make one's own choices) and independence of persons; and*
  - (b) *non-discrimination; and*
  - (c) *full and effective participation and inclusion in society, including performing roles valued by society; and*
  - (d) *respect for difference and acceptance of persons with impaired capacity as part of human diversity and humanity; and*
  - (e) *equality of opportunity; and*
  - (f) *accessibility; and*
  - (g) *equality between all persons regardless of gender.*

**3 Empowering adult to exercise human rights and fundamental freedoms**

*The importance of the following matters must be taken into account—*

- (a) *empowering an adult to exercise the adult's human rights and fundamental freedoms;*
- (b) *encouraging and supporting an adult—*
  - (i) *to perform social roles valued in society; and*
  - (ii) *to live a life in the general community and to take part in activities enjoyed by the community; and*
  - (iii) *to achieve maximum physical, social, emotional and intellectual potential and to become as self-reliant as practicable;*

- (c) *an adult's right to participate to the greatest extent practicable in the development of policies, programs and services for people with impaired capacity for a matter.*

**4 Maintenance of adult's existing supportive relationships**

- (1) *The importance of maintaining an adult's existing supportive relationships must be taken into account.*
- (2) *Maintaining an adult's existing supportive relationships may, for example, involve consultation with—*
  - (a) *the adult, to find out who are the members of the adult's support network; and*
  - (b) *any persons who have an existing supportive relationship with the adult; and*
  - (c) *any members of the adult's support network who are making decisions for the adult on an informal basis.*
- (3) *The role of families, carers and other significant persons in an adult's life to support the adult to make decisions should be acknowledged and respected.*

**5 Maintenance of adult's cultural and linguistic environment and values**

- (1) *The importance of maintaining an adult's cultural and linguistic environment and set of values, including religious beliefs, must be taken into account.*
- (2) *Without limiting subsection (1), for an adult who is an Aboriginal person or a Torres Strait Islander, the importance of maintaining the adult's Aboriginal or Torres Strait Islander cultural and linguistic environment and set of values, including*

*Aboriginal tradition or Island custom, must be taken into account.*

**6 *Respect for privacy***

- (1) An adult's privacy must be taken into account and respected.*
- (2) An adult's personal information, including health information, must be protected on the same basis as other people's personal information is protected.*

**7 *Liberty and security***

- (1) An adult's right to liberty and security on an equal basis with others must be taken into account.*
- (2) An adult should not be deprived of the adult's liberty except in accordance with the law.*

**8 *Maximising an adult's participation in decision-making***

- (1) An adult's right to participate, to the greatest extent practicable, in decisions affecting the adult's life must be recognised and taken into account.*
- (2) An adult must be given the support and access to information necessary to enable the adult to make or participate in decisions affecting the adult's life.*
- (3) An adult must be given the support necessary to enable the adult to communicate the adult's decisions.*
- (4) To the greatest extent practicable, a person or other entity, in exercising power for a matter for an adult, must seek the adult's views, wishes and preferences.*
- (5) An adult's views, wishes and preferences may be expressed orally, in writing or in another way, including, for example, by conduct.*

- (6) *An adult is not to be treated as unable to make a decision about a matter unless all practicable steps have been taken to provide the adult with the support and access to information necessary to make and communicate a decision.*

**9 *Performance of functions and exercise of powers***

*A person or other entity, in performing a function or exercising a power under this Act in relation to an adult, or in making a decision for an adult on an informal basis, must do so—*

- (a) *in a way that promotes and safeguards the adult's rights, interests and opportunities; and*  
(b) *in the way that is least restrictive of the adult's rights, interests and opportunities.*

**10 *Structured decision-making***

- (1) *In applying general principle 9, a person or other entity in performing a function or exercising a power under this Act in relation to an adult, or in making a decision for an adult on an informal basis, must adopt the approach set out in subsections (2) to (5).*
- (2) *First, the person or other entity must—*
- (a) *recognise and preserve, to the greatest extent practicable, the adult's right to make the adult's own decision; and*  
(b) *if possible, support the adult to make a decision.*
- (3) *Second, the person or other entity must recognise and take into account any views, wishes and preferences expressed or demonstrated by the adult.*
- (4) *Third, if the adult's views, wishes and preferences can not be determined, the person or other entity must use the principle of substituted judgement so that if, from the adult's views, wishes and*



*preferences, expressed or demonstrated when the adult had capacity, it is reasonably practicable to work out what the adult's views, wishes and preferences would be, the person or other entity must recognise and take into account what the person or other entity considers the adult's views, wishes and preferences would be.*

- (5) *Fourth, once the person or other entity has recognised and taken into account the matters mentioned in subsections (2) to (4), the person or other entity may perform the function, exercise the power or make the decision.*

## **11C Health care principles**

- (1) *The principles (the **health care principles**) set out below must be applied by a person or other entity that performs a function or exercises a power under this Act for a health matter or a special health matter.*
- (2) *Also, an entity authorised by an Act to make a decision for an adult about prescribed special health care must apply the health care principles.*
- (3) *For subsection (2), the health care principles and the general principles apply as if a reference in the principles to performing a function or exercising a power under this Act were a reference to making a decision about prescribed special health care under the Act under which the decision is to be made.*

### **Health care principles**

#### **1 Application of general principles**

*A person or other entity that performs a function or exercises a power under this Act, for a health matter or a special health matter in relation to an adult, must also apply the general principles.*

#### **2 Same human rights and fundamental freedoms**

*In applying general principle 2 to a health matter or special health matter—*

- (a) the principle of non-discrimination requires that all adults be offered appropriate health care, including preventative care, without regard to a particular adult's capacity; and*
- (b) any consent to, or refusal of, health care for an adult must take into account the principles of respect for inherent dignity and worth, individual autonomy (including the freedom to make one's own choices) and independence of persons.*

**3 Performance of functions and exercise of powers**

*In applying general principles 9 and 10 to a health matter or special health matter, a person or other entity, in performing a function or exercising a power under this Act in relation to an adult, must take into account—*

- (a) information given by the adult's health provider; and*
- (b) if the adult has a medical condition—*
  - (i) the nature of the adult's medical condition; and*
  - (ii) the adult's prognosis; and*
- (c) if particular health care is proposed, any alternative health care that is available; and*
- (d) the nature and degree of any significant risks associated with the proposed health care or any alternative health care; and*
- (e) whether the proposed health care can be postponed because a better health care option may become available within a reasonable time or the adult is likely to become capable of making the adult's own decision about the health care; and*
- (f) the consequences for the adult if the proposed health care is not carried out; and*

- (g) *a consideration of the benefits versus the burdens of the proposed health care; and*
- (h) *the effect of the proposed health care on the adult's dignity and autonomy.*

**4 Substituted judgement**

*For applying general principle 10(4) to a health matter or special health matter, the views and wishes of an adult expressed when the adult had capacity may also be expressed—*

- (a) *in an advance health directive; or*
- (b) *by a consent to, or refusal of, health care given at a time when the adult had capacity to make decisions about the health care.*

## **Chapter 3 Appointment of guardians and administrators**

### **Part 1 Making an appointment order**

#### **12 Appointment**

- (1) The tribunal may, by order, appoint a guardian for a personal matter, or an administrator for a financial matter, for an adult if the tribunal is satisfied—
  - (a) the adult has impaired capacity for the matter; and
  - (b) there is a need for a decision in relation to the matter or the adult is likely to do something in relation to the matter that involves, or is likely to involve, unreasonable risk to the adult's health, welfare or property; and
  - (c) without an appointment—
    - (i) the adult's needs will not be adequately met; or

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- (ii) the adult's interests will not be adequately protected.
- (2) The appointment may be on terms considered appropriate by the tribunal.
- (3) The tribunal may make the order on its own initiative or on the application of the adult, the public guardian or an interested person.
- (4) This section does not apply for the appointment of a guardian for a restrictive practice matter under chapter 5B.

*Note—*

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

## **12A Appointment—missing person**

- (1) *The tribunal may, by order, appoint an administrator for a financial matter for an adult if the tribunal is satisfied—*
  - (a) *the adult is a missing person; and*
  - (b) *the adult usually resides in the State; and*
  - (c) *there is, or is likely to be, a need for a decision in relation to the matter; and*
  - (d) *without an appointment the adult's interests in the matter would be adversely affected.*
- (2) *The tribunal may be satisfied an adult is a missing person only if the tribunal is satisfied that—*
  - (a) *it is not known if the adult is alive; and*
  - (b) *reasonable efforts have been made to locate the adult; and*
  - (c) *for at least 90 days the adult has not contacted—*
    - (i) *anyone who lives at the adult's last-known home address; or*
    - (ii) *any relative or friend of the adult with whom the adult is likely to communicate.*

- (3) *This Act applies, with necessary changes, to an appointment under this section.*
- (4) *The appointment may be on terms considered appropriate by the tribunal.*
- (5) *An application for the appointment of an administrator under subsection (1) may be made by—*
  - (a) *the adult's spouse; or*
  - (b) *a relative of the adult; or*
  - (c) *the public trustee; or*
  - (d) *an interested person for the adult.*

## **12B Relationship with Public Trustee Act 1978**

- (1) *The tribunal may not appoint an administrator under section 12A for a financial matter for an adult if the public trustee is the administrator under the Public Trustee Act 1978, section 104(1) of the property to which the financial matter relates.*
- (2) *The tribunal may appoint an administrator under section 12A for a financial matter for an adult relating to property of which the public trustee is the administrator under the Public Trustee Act 1978, section 104(2).*
- (3) *On the making of an appointment of an administrator as mentioned in subsection (2), the public trustee ceases to be the administrator of the property under the Public Trustee Act 1978, section 104(2).*

## **13 Advance appointment**

- (1) The tribunal may, by order, make an appointment of a guardian for a personal matter, or an administrator for a financial matter, for an individual who is at least 17½ years but not 18 years if the tribunal is satisfied—
  - (a) there is a reasonable likelihood, when the individual turns 18, the individual will have impaired capacity for the matter; and

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- (b) there is a reasonable likelihood, when the individual turns 18—
    - (i) there will be a need to do something in relation to the matter; or
    - (ii) the individual is likely to do something in relation to the matter that involves, or is likely to involve, unreasonable risk to the individual's health, welfare or property; and
  - (c) there is a reasonable likelihood, without an appointment, when the individual turns 18—
    - (i) the individual's needs would not be adequately met; or
    - (ii) the individual's interests would not be adequately protected.
- (2) This Act applies, with necessary changes, to an appointment under this section.
- (3) The appointment begins when the individual turns 18.
- (4) The appointment ends when the individual turns 19, unless the tribunal orders the appointment to be for a longer period.
- (5) The tribunal may order the appointment for a longer period only if the tribunal considers—
  - (a) the need for an appointment will continue for the longer period; and
  - (b) the need for the tribunal to review the appointment is very limited.
- (6) The longer period may be—
  - (a) if the administrator is the public trustee or a trustee company under the *Trustee Companies Act 1968*—the period decided by the tribunal; or
  - (b) otherwise—a period of not more than 5 years.
- (7) The appointment may be on terms considered appropriate by the tribunal.

- (8) The tribunal may make the order on its own initiative or on the application of the individual or an interested person.
- (9) This section does not apply for the appointment of a guardian for a restrictive practice matter under chapter 5B.

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

- (1) The tribunal may, by order, make an appointment of a guardian for a restrictive practice matter under chapter 5B for an individual who is at least 17½ years but not 18 years if the tribunal is satisfied—
  - (a) there is a reasonable likelihood, when the individual turns 18, the individual will have impaired capacity for the matter; and
  - (b) the individual's behaviour has previously resulted in harm to the individual or others; and
  - (c) there is a reasonable likelihood, when the individual turns 18—
    - (i) there will be a need for a decision about the restrictive practice matter; and
    - (ii) without the appointment—
      - (A) the individual's behaviour is likely to cause harm to the individual or others; and
      - (B) the individual's interests would not be adequately protected.
- (2) This Act applies, with necessary changes, to an appointment under this section.
- (3) The appointment begins when the individual turns 18.
- (4) The appointment ends—
  - (a) on the day ordered by the tribunal, which must not be later than the day the individual turns 19; or

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- (b) if no day is ordered by the tribunal—when the individual turns 19.
- (5) The appointment may be on terms considered appropriate by the tribunal.
- (6) The tribunal may make the order on its own initiative or on the application of any of the following—
  - (a) the individual;
  - (b) an interested person for the individual;
  - (c) a relevant service provider under chapter 5B;
  - (d) the chief executive (disability services);
  - (e) the public guardian;
  - (f) if the individual is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*—the chief psychiatrist.

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

- (1) The tribunal may appoint a person as guardian or administrator for a matter only if—
  - (a) for appointment as a guardian, the person is—
    - (i) a person who is at least 18 years and not a paid carer, or health provider, for the adult; or
    - (ii) the public guardian; and
  - (b) for appointment as an administrator, the person is—
    - (i) a person who is at least 18 years, not a paid carer, or health provider, for the adult and not bankrupt or taking advantage of the laws of bankruptcy as a debtor under the *Bankruptcy Act 1966* (Cwlth) or a similar law of a foreign jurisdiction; or
    - (ii) the public trustee or a trustee company under the *Trustee Companies Act 1968*; and



- (c) having regard to the matters mentioned in section 15(1), the tribunal considers the person appropriate for appointment.
- (2) Despite subsection (1)(a)(ii), the tribunal may appoint the public guardian as guardian for a matter only if there is no other appropriate person available for appointment for the matter.
- (3) Subject to section 74, no-one may be appointed as a guardian for a special personal matter or special health matter.

*Note—*

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

- (4) *The tribunal may appoint a person as guardian or administrator for a matter for an adult on the application of the adult's parent only if the tribunal has informed the parent of the tribunal's power under subsection (6)(e) to appoint successive appointees for the matter.*
- (5) *A failure by the tribunal to comply with subsection (4) does not affect an appointment made by the tribunal.*
- (6) The tribunal may appoint 1 or more of the following—
  - (a) a single appointee for a matter or all matters;
  - (b) different appointees for different matters;
  - (c) a person to act as appointee for a matter or all matters in a stated circumstance;
  - (d) alternative appointees for a matter or all matters so power is given to a particular appointee only in stated circumstances;
  - (e) successive appointees for a matter or all matters so power is given to a particular appointee only when power given to a previous appointee ends;
  - (f) joint or several, or joint and several, appointees for a matter or all matters;

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- (g) 2 or more joint appointees for a matter or all matters, being a number less than the total number of appointees for the matter or all matters.
- (7) If the tribunal makes an appointment because an adult has impaired capacity for a matter and the tribunal does not consider the impaired capacity is permanent, the tribunal must state in its order when it considers it appropriate for the appointment to be reviewed.

*Note—*

Otherwise periodic reviews happen under section 28.

## 15 **Appropriateness considerations**

- (1) In deciding whether a person is appropriate for appointment as a guardian or administrator for an adult, the tribunal must consider the following matters (*appropriateness considerations*)—
  - (a) the general principles and whether the person is likely to apply them;
  - (b) *if the appointment is for a health matter—the health care principles and whether the person is likely to apply the principles;*
  - (c) the extent to which the adult's and person's interests are likely to conflict;
  - (d) whether the adult and person are compatible including, for example, whether the person has appropriate communication skills or appropriate cultural or social knowledge or experience, to be compatible with the adult;
  - (e) if more than 1 person is to be appointed—whether the persons are compatible;
  - (f) whether the person would be available and accessible to the adult;
  - (g) *the person's appropriateness and competence to perform functions and exercise powers under an*

*appointment order, including whether the person has ever been a paid carer for the adult.*

- (2) The fact a person is a relation of the adult does not, of itself, mean the adult's and person's interests are likely to conflict.
- (3) Also, the fact a person may be a beneficiary of the adult's estate on the adult's death does not, of itself, mean the adult's and person's interests are likely to conflict.
- (4) In considering the person's appropriateness and competence, the tribunal must have regard to the following—
  - (a) the nature and circumstances of any criminal history, whether in Queensland or elsewhere, of the person including the likelihood the commission of any offence in the criminal history may adversely affect the adult;
  - (b) the nature and circumstances of any refusal of, or removal from, appointment, whether in Queensland or elsewhere, as a guardian, administrator, attorney or other person making a decision for someone else;
  - (c) if the proposed appointment is of an administrator and the person is an individual—
    - (i) the nature and circumstances of the person having been a bankrupt or taking advantage of the laws of bankruptcy as a debtor under the *Bankruptcy Act 1966* (Cwlth) or a similar law of a foreign jurisdiction; and
    - (ii) the nature and circumstances of a proposed, current or previous arrangement with the person's creditors under the *Bankruptcy Act 1966* (Cwlth), part 10 or a similar law of a foreign jurisdiction; and
    - (iii) the nature and circumstances of a proposed, current or previous external administration of a corporation, partnership or other entity of which the person is or was a director, secretary or partner or in whose management, direction or control the person is or was involved.

(5) In this section—

***attorney*** means—

- (a) an attorney under a power of attorney; or
- (b) an attorney under an advance health directive or similar document under the law of another jurisdiction.

***power of attorney*** means—

- (a) a general power of attorney made under the *Powers of Attorney Act 1998*; or
- (b) an enduring power of attorney; or
- (c) a power of attorney made otherwise than under the *Powers of Attorney Act 1998*, whether before or after its commencement; or
- (d) a similar document under the law of another jurisdiction.

## **16 Advice from proposed appointee about appropriateness and competence**

- (1) An individual who has agreed to a proposed appointment (a ***proposed appointee***) must advise the tribunal before the tribunal makes an order appointing the proposed appointee whether he or she—
  - (a) is under 18 years; or
  - (b) *is, or has ever been, a paid carer for the adult; or*
  - (c) *is a health provider for the adult; or*
  - (d) has any criminal history, whether in Queensland or elsewhere; or
  - (e) has been, whether in Queensland or elsewhere, refused, or removed from, appointment as a guardian, administrator, attorney or other person making a decision for someone else; or
  - (f) for a proposed appointment as administrator—

- (i) is bankrupt or taking advantage of the laws of bankruptcy as a debtor under the *Bankruptcy Act 1966* (Cwlth) or a similar law of a foreign jurisdiction; or
- (ii) has ever been bankrupt or taken advantage of the laws of bankruptcy as a debtor under the *Bankruptcy Act 1966* (Cwlth) or a similar law of a foreign jurisdiction; or
- (iii) is proposing to make, or has ever made, an arrangement with his or her creditors under the *Bankruptcy Act 1966* (Cwlth), part 10 or a similar law of a foreign jurisdiction; or
- (iv) is or was a director, secretary or partner, or is or was involved in the management, direction or control of a corporation, partnership or other entity that is proposing to be, is or has been, under external administration.

Maximum penalty—40 penalty units.

- (2) The proposed appointee must also advise the tribunal of any likely conflict between—
  - (a) the duty of the proposed appointee if appointed as guardian or administrator towards the adult; and
  - (b) either—
    - (i) the interests of the proposed appointee or a person in a close personal or business relationship with the proposed appointee; or
    - (ii) another duty of the proposed appointee as guardian or administrator for another person.

Maximum penalty—40 penalty units.

- (3) The proposed appointee must give the advice by statutory declaration or on oath or affirmation if required by the tribunal.

Maximum penalty—40 penalty units.

- (4) In this section—

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***attorney*** means—

- (a) an attorney under a power of attorney; or
- (b) an attorney under an advance health directive or similar document under the law of another jurisdiction.

***power of attorney*** means—

- (a) a general power of attorney made under the *Powers of Attorney Act 1998*; or
- (b) an enduring power of attorney; or
- (c) a power of attorney made otherwise than under the *Powers of Attorney Act 1998*, whether before or after its commencement; or
- (d) a similar document under the law of another jurisdiction.

## **17 Guardian or administrator to update advice about appropriateness and competence**

- (1) After appointment, a guardian or administrator is under a continuing duty to advise the tribunal of anything of which the guardian or administrator—
  - (a) has not previously advised the tribunal; and
  - (b) would be required to advise the tribunal under section 16 if the tribunal were considering whether to appoint the guardian or administrator.

Maximum penalty—40 penalty units.

- (2) The guardian or administrator must give the advice by statutory declaration or on oath or affirmation if required by the tribunal.

Maximum penalty—40 penalty units.

## **18 Inquiries about appropriateness and competence**

- (1) The tribunal, or the registrar acting either at the direction of the tribunal or on the registrar's own initiative, may make

inquiries about the appropriateness and competence to perform functions and exercise powers under an appointment order of a person who has agreed to a proposed appointment or who is a guardian or administrator.

- (2) If asked by the tribunal or registrar, the commissioner of the police service must give the tribunal or registrar a written report about the criminal history of—
  - (a) a person who has agreed to a proposed appointment; or
  - (b) a person who is a guardian or administrator; or
  - (c) if the person mentioned in paragraph (a) or (b) is a corporation—a director, secretary or person involved in the management, direction or control of the corporation.
- (3) If the registrar makes the inquiries, the registrar must advise the tribunal of the results of the inquiries before the tribunal makes an appointment order.

## **19 Comply with other tribunal requirement**

- (1) The tribunal may impose a requirement, including a requirement about giving security, on a guardian or administrator or a person who is to become a guardian or administrator.
- (2) A guardian or administrator or person who is to become a guardian or administrator must comply with the requirement.  
Maximum penalty—200 penalty units.

## **20 Financial management plan**

- (1) Unless the tribunal orders otherwise, a person who agrees to a proposed appointment as an administrator must give a financial management plan to the tribunal, or its appropriately qualified nominee, for approval.
- (2) The tribunal, or its appropriately qualified nominee, may approve a financial management plan.
- (3) In this section—

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*appropriately qualified*, for a nominee in relation to a financial management plan, means having the qualifications or experience appropriate to approve the plan.

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

- (1) If the tribunal appoints an administrator for a matter involving an interest in land, the tribunal and the administrator must each, within 3 months of the appointment, advise the registrar of titles.
- (2) *If the registrar of titles receives an advice, the registrar of titles must keep the information contained in the advice in a way that ensures a search of the relevant title reveals the order making the appointment has been made.*
- (3) The administrator must pay the fee payable to the registrar of titles.

*Editor's note—*

Note section 47 (Payment of expenses).

## **Part 2 Relationship between appointment and enduring document**

### **22 Attorney's power subject to tribunal authorisation**

- (1) This section applies if—
  - (a) an adult's enduring document gives power for a matter to an attorney; and
  - (b) after the enduring document is made, the tribunal, with knowledge of the existence of the enduring document, gives the power to a guardian or an administrator.
- (2) The attorney may exercise power only to the extent authorised by the tribunal.
- (3) Subsection (2) does not apply for power for a health matter.



*Note—*

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

## **23 Appointment without knowledge of enduring document**

- (1) This section applies if—
  - (a) the tribunal gives power for a matter for an adult to a guardian or an administrator without knowledge of the existence of an enduring document giving power for the matter to an attorney for the adult; and
  - (b) the guardian or administrator becomes aware of the existence or purported existence of the enduring document.
- (2) If the guardian or administrator becomes aware of the existence or purported existence of the enduring document, the guardian's or administrator's power for the matter is suspended pending review of the appointment of the guardian or administrator.

*Editor's note—*

Note section 56 (Protection if unaware of change of appointee's power).

- (3) The guardian or administrator must advise the tribunal in writing of the existence or purported existence of the enduring document as soon as practicable.

Maximum penalty—40 penalty units.

- (4) If the tribunal receives an advice under subsection (3), the tribunal must review the appointment of the guardian or administrator.
- (5) Part 3, division 2 applies to the review.

## **24 Protection if unaware of appointment**

- (1) An attorney who, without knowing power has been given by the tribunal to a guardian or administrator, purports to exercise the power does not incur any liability, either to the adult or

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anyone else, because of the appointment of the guardian or administrator.

(2) A transaction between—

- (a) an attorney who purports to exercise power for a matter; and
- (b) a person who does not know power for the matter has been given to a guardian or administrator;

is, in favour of the person, as valid as if the power had not been given to the guardian or administrator.

(3) In this section—

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

**know**, power has been given by the tribunal, includes have reason to believe power has been given by the tribunal.

## **25 Protection if unaware power already exercised by advance health directive**

(1) This section applies if—

- (a) an adult's advance health directive includes a direction about a matter; and
- (b) after the advance health directive is made, but without reference to it, the tribunal gives power for the matter to a guardian.

(2) The guardian who, without knowing a direction about the matter is included in an advance health directive, purports to exercise power for the matter does not incur any liability, either to the adult or anyone else, because of the direction being included in the advance health directive.

(3) If—

- (a) the guardian purports to exercise power for a matter; and
- (b) without knowing a direction about the matter is included in an advance health directive, a person acts in reliance on the purported exercise of power;

the person does not incur any liability, either to the adult or anyone else, because of the direction being included in the advance health directive.

(4) In this section—

*know*, a direction about a matter is included in an advance health directive, includes have reason to believe the matter is dealt with by an advance health directive.

## Part 3                      Changing or revoking an    appointment order

### Division 1                Revocation by appointee

#### 26        Automatic revocation

- (1) An appointment as a guardian or administrator for an adult for a matter ends if—
  - (a) the guardian or administrator becomes a paid carer, or health provider, for the adult; or
  - (b) the guardian or administrator becomes the service provider for a residential service where the adult is a resident; or
  - (c) if the guardian or administrator and the adult are married when the appointment is made—the marriage is dissolved; or
  - (d) if the guardian or administrator and the adult are in a civil partnership when the appointment is made—the civil partnership is terminated under the *Civil Partnerships Act 2011*, part 2, division 4; or
  - (e) the guardian or administrator dies; or
  - (f) the adult dies; or
  - (g) for a guardian for a restrictive practice matter under chapter 5B—the tribunal gives a containment or

seclusion approval under chapter 5B in relation to the adult.

(2) *Also, an appointment as an administrator ends if—*

(a) *the administrator becomes bankrupt or insolvent; or*

(b) *for an appointment made under section 12A for an adult—*

(i) *a coroner makes a finding under the Coroners Act 2003 that the adult has died; or*

(ii) *the court makes a declaration of death for the adult or grants a person leave to swear the death of the adult; or*

(iii) *the adult's death is registered under the Births, Deaths and Marriages Registration Act 2003.*

(2A) *If more than 1 event mentioned in subsection (2)(b) applies for the adult, the appointment ends on the happening of the earliest event for the adult.*

(3) If an appointment as a guardian or administrator ends under subsection (1)(a), (b), (c), (d) or (f) or subsection (2), the former guardian or administrator must advise the tribunal in writing of the ending of the appointment.

(4) If an appointment as a guardian or administrator for a matter ends under subsection (1) or (2) and the guardian or administrator was a joint guardian or administrator for the matter—

(a) if, of the joint guardians or administrators, there is 1 remaining guardian or administrator, the remaining guardian or administrator may exercise power for the matter; and

(b) if, of the joint guardians or administrators, there are 2 or more remaining guardians or administrators, the remaining guardians or administrators may exercise power for the matter and, if exercising power, must exercise power jointly.

(5) In this section—

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

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

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

## 27 Withdrawal with tribunal's leave

- (1) An appointment as a guardian or administrator for an adult for a matter ends if, with the tribunal's leave, the guardian or administrator withdraws as guardian or administrator for the matter.
- (2) If the tribunal gives leave for a guardian or administrator to withdraw for a matter—
  - (a) the tribunal may appoint someone else to replace the withdrawing person as guardian or administrator for the matter; and
  - (b) for a withdrawing administrator notice of whose appointment was given to the registrar of titles under section 21, the registrar of the tribunal must take reasonable steps to advise the registrar of titles of the withdrawal.
- (3) *If the registrar of titles receives an advice of withdrawal, the registrar of titles must keep the information contained in the advice in a way that ensures a search of the relevant title reveals the withdrawal of the administrator.*
- (4) The withdrawing administrator must pay the fee payable to the registrar of titles, unless the tribunal orders otherwise.

**Division 1A**                      **Provisions about appointment for  
adult who is missing person**

**27A**      **Obligation to notify tribunal of particular circumstances**

- (1) *This section applies to an administrator appointed for an adult under section 12A if, during the term of the appointment, the administrator becomes aware—*
- (a) *the adult is alive; or*
  - (b) *the adult has died.*
- (2) *The administrator must, as soon as practicable after becoming aware a circumstance mentioned in subsection (1)(a) or (b) exists, notify the tribunal in writing of the circumstance.*

**27B**      **Tribunal must revoke order making appointment**

- (1) *This section applies in relation to an order appointing an administrator for an adult under section 12A.*
- (2) *The tribunal must revoke the order if the tribunal is satisfied—*
- (a) *the adult is alive; or*
  - (b) *the adult has died; or*
  - (c) *the adult may be presumed to be dead.*
- (3) *The order may be revoked by the tribunal on its own initiative or on the application of the administrator or an interested person.*

## **Division 2                      Change or revocation at tribunal review of appointment**

### **28        Periodic review of appointment**

- (1) The tribunal must review an appointment of a guardian or administrator (other than the public trustee or a trustee company under the *Trustee Companies Act 1968*)—
  - (a) for an appointment made because an adult has impaired capacity for a matter but the tribunal does not consider the impaired capacity is permanent—in accordance with an order of the tribunal, but at least every 5 years; or
  - (b) otherwise—at least every 5 years.
- (2) This section does not apply for a guardian for a restrictive practice matter under chapter 5B.

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

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

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- (ii) an interested person for the adult;
  - (iii) a relevant service provider under chapter 5B providing disability services to the adult;
  - (iv) the chief executive (disability services);
  - (v) the public guardian;
  - (vi) if the adult is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*—the chief psychiatrist;
  - (vii) if the adult is a forensic disability client—the director of forensic disability.
- (2) However, the tribunal must review the appointment of a guardian for a restrictive practice matter under chapter 5B at least once before the term of the appointment ends.

### **30 Guardian or administrator to update advice about appropriateness and competence**

- (1) For a review of an appointment, the tribunal may require the guardian or administrator to advise the tribunal of anything of which the guardian or administrator—
- (a) has not previously advised the tribunal; and
  - (b) would be required to advise the tribunal under section 16 if the tribunal were considering whether to appoint the guardian or administrator.
- (2) The guardian or administrator must give the advice by statutory declaration or on oath or affirmation if required by the tribunal.

Maximum penalty—40 penalty units.

### **31 Appointment review process**

- (1) The tribunal may conduct a review of an appointment of a guardian or administrator (an *appointee*) for an adult in the way it considers appropriate.



- (2) At the end of the review, the tribunal must revoke its order making the appointment unless it is satisfied it would make an appointment if a new application for an appointment were to be made.
- (3) If the tribunal is satisfied there are appropriate grounds for an appointment to continue, it may either—
  - (a) continue its order making the appointment; or
  - (b) change its order making the appointment, including, for example, by—
    - (i) changing the terms of the appointment; or
    - (ii) removing an appointee; or
    - (iii) making a new appointment.
- (4) *However, the tribunal may make an order removing an appointee, other than the public guardian, only if the tribunal considers—*
  - (a) the appointee is no longer competent; or
  - (b) another person is more appropriate for appointment.
- (5) An appointee is no longer competent if, for example—
  - (a) a relevant interest of the adult has not been, or is not being, adequately protected; or
  - (b) the appointee has neglected the appointee's duties or abused the appointee's powers, whether generally or in relation to a specific power; or
  - (c) the appointee is an administrator appointed for a matter involving an interest in land and the appointee fails to advise the registrar of titles of the appointment as required under section 21(1); or
  - (d) the appointee has otherwise contravened this Act.
- (6) *The tribunal may make an order removing the public guardian as an appointee if there is an appropriate person mentioned in section 14(1) available for appointment.*

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- (7) The tribunal may include in its order changing or revoking the appointment of an administrator a provision as to who must pay the fee payable to the registrar of titles for advice of the change or revocation.

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

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

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

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

*way that ensures a search of the relevant title reveals the order changing or revoking the appointment has been made or the advice mentioned in subsection (1)(b)(ii) has been given.*

## **Division 3                      Directions**

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

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

## **Chapter 4      Functions and powers of guardians and administrators**

### **Part 1              General functions and powers of guardian or administrator**

#### **33      Power of guardian or administrator**

- (1) Unless the tribunal orders otherwise, a guardian is authorised to do, in accordance with the terms of the guardian's appointment, anything in relation to a personal matter that the adult could have done if the adult had capacity for the matter when the power is exercised.
- (2) Unless the tribunal orders otherwise, an administrator is authorised to do, in accordance with the terms of the administrator's appointment, anything in relation to a financial matter that the adult could have done if the adult had capacity for the matter when the power is exercised.
- (3) For a guardian for a restrictive practice matter under chapter 5B, this section applies subject to sections 80ZE and 80ZF.

#### **34      Apply principles**

- (1) A guardian or administrator must apply the general principles.  
*Note—*  
*See section 11B.*
- (2) *However, an administrator appointed under section 12A is not required to apply general principles 1, 3, 4, 7, 8 and 10(1) to (3) and (5).*
- (3) In making a health care decision, a guardian must also apply the health care principles.

**35 Act honestly and with reasonable diligence**

A guardian or administrator who may exercise power for an adult must exercise the power honestly and with reasonable diligence to protect the adult's interests.

Maximum penalty—200 penalty units.

**36 Act as required by terms of tribunal order**

A guardian or administrator who may exercise power for an adult must, when exercising the power, exercise it as required by the terms of any order of the tribunal.

Maximum penalty—200 penalty units.

**37 Avoid conflict transaction**

- (1) *An administrator for an adult may enter into a conflict transaction only if the tribunal has authorised the transaction, conflict transactions of that type or conflict transactions generally.*

*Note—*

*See section 152 for the authorisation of conflict transactions by the tribunal.*

- (2) A **conflict transaction** is a transaction in which there may be conflict, or which results in conflict, between—
- (a) the duty of an administrator towards the adult; and
  - (b) either—
    - (i) the interests of the administrator or a person in a close personal or business relationship with the administrator; or
    - (ii) another duty of the administrator.

*Examples—*

- 1 *A conflict transaction happens if an adult's administrator buys the adult's car.*
- 2 *A conflict transaction happens if an adult's administrator lends the adult's money to a close friend of the administrator.*

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- 3 *A conflict transaction happens if an adult's administrator rents the adult's residential property to the administrator or a relative of the administrator.*
  - 4 *A conflict transaction happens if an adult's administrator uses the adult's money to pay the personal expenses of the administrator, including, for example, the administrator's personal travel expenses.*
  - 5 *A conflict transaction happens if an adult's administrator buys the adult's house.*
  - 6 *A conflict transaction does not happen if an adult's administrator is acting under section 55 to maintain the adult's dependants.*
- (3) *However, a transaction is not a conflict transaction merely because—*
- (a) *the administrator is related to the adult; or*
  - (b) *the administrator may be a beneficiary of the adult's estate on the adult's death; or*
  - (c) *by the transaction the administrator in the administrator's own right and on behalf of the adult—*
    - (i) *deals with an interest in property jointly held; or*
    - (ii) *acquires a joint interest in property; or*
    - (iii) *obtains a loan or gives a guarantee or indemnity in relation to a transaction mentioned in subparagraph (i) or (ii).*
- (4) *Also, to remove any doubt, it is declared that the making of a gift or donation under section 54 is not a conflict transaction.*
- (5) *A conflict transaction between an administrator and a person who does not know, or have reason to believe, the transaction is a conflict transaction is, in favour of the person, as valid as if the transaction were not a conflict transaction.*
- (6) *In this section—*  
***joint interest** includes an interest as a joint tenant or tenant in common.*

**38 Multiple guardians or administrators are joint if not otherwise stated**

Two or more guardians or administrators for a matter are appointed as joint guardians or joint administrators for the matter if the tribunal does not order otherwise.

**39 Act together with joint guardians or administrators**

- (1) Guardians or administrators for an adult who may exercise power for a matter jointly must exercise the power unanimously.
- (2) If it is impracticable or impossible to exercise the power unanimously, 1 or more of the guardians or administrators, or another interested person for the adult, may apply for directions to the tribunal.

**40 Consult with adult's other appointees or attorneys**

- (1) If there are 2 or more persons who are guardian, administrator or attorney for an adult, the persons must consult with one another on a regular basis to ensure the adult's interests are not prejudiced by a breakdown in communication between them.
- (2) However, failure to comply with subsection (1) does not affect the validity of an exercise of power by a guardian, administrator or attorney.
- (3) In this section—  
*attorney* means an attorney under an enduring document or a statutory health attorney.

**41 Disagreement about matter other than health matter**

- (1) If—
  - (a) a guardian, administrator or attorney for an adult disagrees with another person who is a guardian, administrator or attorney for the adult about the way

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power for a matter, other than a health matter, should be exercised; and

- (b) the disagreement can not be resolved by mediation by the public guardian;

the public guardian or any person mentioned in paragraph (a) may apply for directions to the tribunal.

- (2) In this section—

***attorney*** means an attorney under an enduring document.

## **42 Disagreement about health matter**

- (1) If there is a disagreement about a health matter for an adult and the disagreement can not be resolved by mediation by the public guardian, the public guardian may exercise power for the health matter.
- (2) If the public guardian exercises power under subsection (1), the public guardian must advise the tribunal in writing of the following details—
  - (a) the name of the adult;
  - (b) an outline of the disagreement;
  - (c) the name of each guardian, attorney or eligible statutory health attorney involved in the disagreement;
  - (d) the decision made by the public guardian.

- (3) In this section—

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

***disagreement*** about a health matter means—

- (a) a disagreement between a guardian or attorney for an adult and another person who is a guardian or attorney for the adult about the way power for the health matter should be exercised; or
- (b) a disagreement between or among 2 or more eligible statutory health attorneys for an adult about which of



them should be the adult's statutory health attorney or how power for the health matter should be exercised.

*eligible statutory health attorneys* are persons eligible to be an adult's statutory health attorney under the *Powers of Attorney Act 1998*, section 63(1)(a), (b) or (c).

**43     *Acting contrary to general principles or health care principles***

(1) If a guardian or attorney for a health matter for an adult—

- (a) *refuses to make a decision about the health matter for the adult and the refusal is contrary to the general principles or the health care principles; or*
- (b) *makes a decision about the health matter for the adult and the decision is contrary to the general principles or the health care principles;*

the public guardian may exercise power for the health matter.

(2) If the public guardian exercises power under this section, the public guardian must advise the tribunal in writing of the following details—

- (a) the name of the adult;
- (b) the name of the guardian or attorney;
- (c) *a statement as to why the refusal or decision is contrary to the general principles or the health care principles;*
- (d) the decision made by the public guardian.

(3) In this section—

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

**44     *Right of guardian or administrator to information***

(1) A guardian or administrator who has power for a matter for an adult has a right to all the information the adult would have

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been entitled to if the adult had capacity and which is necessary to make an informed exercise of the power.

- (2) At the guardian's or administrator's request, a person who has custody or control of the information must give the information to the guardian or administrator, unless the person has a reasonable excuse.
- (3) If a person who has custody or control of the information does not comply with a request by a guardian or administrator to give information, the tribunal may, on application by the guardian or administrator, order the person to give the information to the guardian or administrator.
- (4) If the tribunal orders a person to give information to the guardian or administrator, the person must comply with the order, unless the person has a reasonable excuse.
- (5) It is a reasonable excuse for a person to fail to give information because giving the information might tend to incriminate the person.
- (6) Subject to subsection (5), this section overrides—
  - (a) any restriction, in an Act or the common law, about the disclosure or confidentiality of information; and
  - (b) any claim of confidentiality or privilege, including a claim based on legal professional privilege.

#### **45 Execution of instrument etc.**

- (1) If necessary or convenient for the exercise of power given to a guardian or administrator (the *appointee*), the appointee may—
  - (a) execute an instrument with the appointee's own signature or, if sealing is required or used, with the appointee's own seal; and
  - (b) do any other thing in the appointee's own name.
- (2) An instrument executed by an appointee must be executed in a way showing the appointee executes it as guardian or administrator for the adult.

- (3) An instrument executed, or thing done, in the way mentioned in this section is as effective as if executed or done by the adult—
  - (a) with the adult's signature; or
  - (b) with the adult's signature and seal; or
  - (c) in the adult's name.
- (4) This section applies subject to the *Property Law Act 1974*, section 46.

#### **46 Implied power to execute a deed**

If a tribunal order gives a guardian or administrator power to do a thing, the guardian or administrator is given power to execute a deed to do the thing.

#### **47 Payment of expenses**

A guardian or administrator for an adult is entitled to reimbursement from the adult of the reasonable expenses incurred in acting as guardian or administrator.

#### **48 Remuneration of professional administrators**

- (1) *An administrator for an adult is entitled to remuneration from the adult if the tribunal makes an order that the administrator is to be remunerated by the adult.*
- (2) *The tribunal may make an order under subsection (1) only if the administrator carries on a business providing professional services.*
- (3) The remuneration may not be more than the amount the tribunal considers fair and reasonable, having regard to—
  - (a) the nature and complexity of the service; and
  - (b) the care, skill and specialised knowledge required to provide the service; and
  - (c) the responsibility displayed in providing the service; and

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- (d) the time within which the service was provided; and
  - (e) the place where, and the circumstances in which, the service was provided.
- (4) Nothing in this section affects the right of the public trustee or a trustee company to remuneration or commission under another Act or the Corporations Act.

## **Part 2**

### **Particular functions and powers of administrators**

#### **49 Keep records**

- (1) An administrator for an adult must—
  - (a) keep records that are reasonable in the circumstances; and
  - (b) if required by the tribunal—produce records of dealings and transactions involving the adult's property that are reasonable for inspection at the time the tribunal decides.

Maximum penalty—100 penalty units.

- (2) An administrator must also, if required by the tribunal—
  - (a) keep the records the tribunal decides; and
  - (b) produce the records for inspection at the time and in the way the tribunal decides.

Maximum penalty—100 penalty units.

#### **50 Keep property separate**

- (1) An administrator for an adult must keep the administrator's property separate from the adult's property.

Maximum penalty—300 penalty units.

- (2) Subsection (1) does not apply to property owned jointly by the adult and administrator.

- (3) Subsection (1) does not affect another obligation imposed by law.

## **51 Power to invest and continue investments**

- (1) This section applies if an administrator for an adult has power to invest.
- (2) The administrator may invest only in authorised investments.
- (3) However, if, when the administrator is appointed, the adult had investments that were not authorised investments, the administrator may continue the investments, including by taking up rights to issues of new shares, or options for new shares, to which the adult becomes entitled by the adult's existing shareholding.

## **54 Gifts and donations**

- (1) *Unless the tribunal orders otherwise, an administrator for an adult may give away or donate the adult's property only if—*
- (a) *the gift or donation is—*
- (i) a gift or donation of the nature the adult made when the adult had capacity; or
- (ii) a gift or donation of the nature the adult might reasonably be expected to make; and
- (b) *the value of the gift or donation is not more than what is reasonable having regard to all the circumstances and, in particular, the adult's financial circumstances.*
- (2) *The administrator or a charity with which the administrator has a connection is not precluded from receiving a gift or donation under subsection (1).*

## **55 Maintain adult's dependants**

- (1) An administrator for an adult may provide from the adult's estate for the needs of a dependant of the adult.

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- (2) However, unless the tribunal orders otherwise, what is provided must not be more than what is reasonable having regard to all the circumstances and, in particular, the adult's financial circumstances.

## Part 3 Other provisions applying to guardians and administrators

### 56 Protection if unaware of change of appointee's power

- (1) This section applies if—
  - (a) the tribunal gives power for a matter to a guardian or administrator; and
  - (b) the power is changed.
- (2) The guardian or administrator who, without knowing of the change, purports to exercise power for the matter does not incur any liability, either to the adult or anyone else, because of the change.
- (3) A transaction between—
  - (a) the guardian or administrator who purports to exercise power for the matter; and
  - (b) a person who does not know of the change;is, in favour of the person, as valid as if the power had not been changed.
- (4) In this section—

**change**, of power for a matter, includes—

  - (a) suspension of power for the matter; and
  - (b) removal as guardian or administrator for the matter.

**know**, of a change of a power, includes—

  - (a) know of the happening of an event that changes the power; and

*Note—*

For an example of an event, an appointment ends if a guardian or administrator for an adult becomes a paid carer, or health provider, for the adult—see section 26 (Automatic revocation).

- (b) have reason to believe the change has happened.

**57 Advice of change of successive appointee**

- (1) This section applies if the tribunal appoints successive guardians or administrators so power is given to a particular appointee only when the power of a previous appointee ends.
- (2) If the power of a previous appointee ends—
  - (a) the previous appointee must advise the next successive appointee of the ending of the previous appointment; and
  - (b) the next successive appointee must advise the tribunal in writing of the change as soon as practicable.

**58 Relief from personal liability**

- (1) *This section applies if the court considers—*
  - (a) *a guardian or administrator is, or may be, personally liable for a contravention of this Act; and*
  - (b) *the guardian or administrator has acted honestly and reasonably and ought fairly to be excused for the contravention.*
- (2) *The court may relieve the guardian or administrator of all or part of the guardian's or administrator's personal liability for the contravention.*

**59 Compensation and accounting for profits for failure to comply**

- (1) *The tribunal or a court may order a guardian or administrator for an adult (an **appointee**) to pay an amount to the adult or, if the adult has died, the adult's estate—*

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- (a) *to compensate for a loss caused by the appointee's failure to comply with this Act in the exercise of a power; or*
  - (b) *to account for any profits the appointee has accrued as a result of the appointee's failure to comply with this Act in the exercise of a power.*
- (2) *However, the tribunal or court may not order the appointee to make a payment under both subsection (1)(a) and (b) in relation to the same exercise of power.*
- (3) *Subsection (1) applies even if the appointee is convicted of an offence in relation to the appointee's failure.*
- (4) *Also, subsection (1) applies even if the appointee's appointment has ended.*
- (5) *If the adult or appointee has died, an application for an order under subsection (1) must be made to the tribunal or a court within 6 months after the death.*
- (6) *If the adult and appointee have died, an application for an order under subsection (1) must be made to the tribunal or a court within 6 months after the first death.*
- (7) *The tribunal or a court may extend the application time.*
- (8) *If security has been given under section 19 and the tribunal or a court makes an order under subsection (1), the tribunal or court may also order that the security be applied in satisfaction of the order.*
- (9) *An amount paid under a tribunal or court order under subsection (1) must be taken into account in assessing damages in a later civil proceeding in relation to the appointee's exercise of the power.*
- (10) *In this section—*  
***court*** *means any court.*



**60 Power to apply to court for compensation for loss of benefit in estate**

- (1) This section applies if a person's benefit in an adult's estate under the adult's will, on intestacy, or by another disposition taking effect on the adult's death, is lost because of a sale or other dealing with the adult's property by an administrator of the adult.
- (2) This section applies even if the person whose benefit is lost is the administrator by whose dealing the benefit is lost.
- (3) The person, or the person's personal representative, may apply to the court for compensation out of the adult's estate.

*Editor's note—*

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

- (4) The court may order that the person, or the person's estate, be compensated out of the adult's estate as the court considers appropriate, but the compensation must not be more than the value of the lost benefit.
- (5) The *Succession Act 1981*, sections 41(2) to (8), (10) and (11) and 44 apply to an application and an order made on it as if the application were an application under part 4 of that Act by a person entitled to make an application.

**60A Effect on beneficiary's interest if property dealt with by administrator**

- (1) *This section applies to a person who is a beneficiary (**the beneficiary**) under a deceased adult's will.*
- (2) *The beneficiary has the same interest in any surplus money or other property (**the proceeds**) arising from a sale, mortgage, charge, disposition of, or other dealing with, property under the powers given to an administrator as the beneficiary would have had in the property sold, mortgaged, charged, disposed of or otherwise dealt with, if the sale, mortgage, charge, disposition or other dealing had not happened.*
- (3) *The beneficiary is also entitled to—*

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- (a) *any money or other property that is able to be traced as income generated by the proceeds; and*
  - (b) *any capital gain that is generated from the proceeds.*
- (4) *This section applies even if the beneficiary is the administrator who sold, mortgaged, charged, disposed of or otherwise dealt with the property.*
- (5) *This section applies subject to any order made by the court under section 60C(1).*

**60B Administrator not required to keep proceeds and property separate**

*Section 60A does not require an administrator for an adult who has sold, mortgaged, charged, disposed of, or otherwise dealt with, the adult's property under the powers given to the administrator, to keep any surplus money or other property arising from the sale, mortgage, charge, disposition or other dealing separate from other property of the adult.*

**60C Application to court to confirm or vary operation of s 60A**

- (1) *An application may be made to the court for—*
  - (a) *an order, including an order to direct a conveyance, deed or other thing to be executed or done, to give effect to section 60A; or*
  - (b) *an order to ensure a beneficiary under the adult's will does not gain an unjust and disproportionate advantage or suffer an unjust and disproportionate disadvantage of a kind not contemplated by the will because of the operation of section 60A.*
- (2) *An application may be made by—*
  - (a) *a beneficiary under the adult's will; or*
  - (b) *the personal representative of a deceased beneficiary under the adult's will; or*
  - (c) *the personal representative of the adult.*

- (3) *An order made under subsection (1)(b)—*
  - (a) *has effect as if it had been made as a codicil to the adult's will executed immediately before the adult's death; and*
  - (b) *applies despite any contrary operation of section 60A.*
- (4) *An application under this section must be made to the court within 6 months after the adult's death.*
- (5) *The court may extend the application time.*
- (6) *The Succession Act 1981, section 44(1) to (4) applies to an application and an order made on it as if the application were an application under part 4 of that Act by a person entitled to make an application.*

## Chapter 5      Health matters and special health matters

### Part 1              Philosophy and purpose

#### 61      Purpose to achieve balance for health care

This chapter seeks to strike a balance between—

- (a) *ensuring an adult is not deprived of necessary health care only because the adult has impaired capacity for a health matter or special health matter; and*
- (b) *ensuring health care is given to the adult only if it is appropriate in all the circumstances.*

*Note—*

*See also the general principles and health care principles set out in sections 11B and 11C.*

## **Part 2**                      **Scheme for health care and special health care**

### **Division 1**                **Health care—no consent**

#### **62**        **Division's scope**

This division deals with when health care, other than special health care, may be carried out without consent.

#### **63**        **Urgent health care**

- (1) Health care, other than special health care, of an adult may be carried out without consent if the adult's health provider reasonably considers—
  - (a) the adult has impaired capacity for the health matter concerned; and
  - (b) either—
    - (i) the health care should be carried out urgently to meet imminent risk to the adult's life or health; or
    - (ii) the health care should be carried out urgently to prevent significant pain or distress to the adult and it is not reasonably practicable to get consent from a person who may give it under this Act or the *Powers of Attorney Act 1998*.
- (2) However, the health care mentioned in subsection (1)(b)(i) may not be carried out without consent if the health provider knows the adult objects to the health care in an advance health directive.
- (3) However, the health care mentioned in subsection (1)(b)(ii) may not be carried out without consent if the health provider knows the adult objects to the health care unless—
  - (a) the adult has minimal or no understanding of 1 or both of the following—

- (i) what the health care involves;
  - (ii) why the health care is required; and
- (b) the health care is likely to cause the adult—
  - (i) no distress; or
  - (ii) temporary distress that is outweighed by the benefit to the adult of the health care.
- (4) The health provider must certify in the adult's clinical records as to the various things enabling the health care to be carried out because of this section.
- (5) In this section—  
**health care**, of an adult, does not include withholding or withdrawal of a life-sustaining measure for the adult.

### **63A Life-sustaining measure in an acute emergency**

- (1) A life-sustaining measure may be withheld or withdrawn for an adult without consent if the adult's health provider reasonably considers—
  - (a) the adult has impaired capacity for the health matter concerned; and
  - (b) the commencement or continuation of the measure for the adult would be inconsistent with good medical practice; and
  - (c) consistent with good medical practice, the decision to withhold or withdraw the measure must be taken immediately.
- (2) However, the measure may not be withheld or withdrawn without consent if the health provider knows the adult objects to the withholding or withdrawal.

*Editor's note—*

**Object** is defined in schedule 4 (Dictionary).

- (3) The health provider must certify in the adult's clinical records as to the various things enabling the measure to be withheld or withdrawn because of this section.

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- (4) For this section, artificial nutrition and hydration is not a *life-sustaining measure*.

## **64 Minor, uncontroversial health care**

- (1) Health care, other than special health care, of an adult may be carried out without consent if the adult's health provider—
- (a) reasonably considers the adult has impaired capacity for the health matter concerned; and
  - (b) reasonably considers the health care is—
    - (i) necessary to promote the adult's health and wellbeing; and
    - (ii) of the type that will best promote the adult's health and wellbeing; and
    - (iii) minor and uncontroversial; and
  - (c) does not know, and can not reasonably be expected to know, of—
    - (i) a decision about the health care made by a person who is able to make the decision under this Act or the *Powers of Attorney Act 1998*; or
    - (ii) any dispute among persons the health provider reasonably considers have a sufficient and continuing interest in the adult about—
      - (A) the carrying out of the health care; or
      - (B) the capacity of the adult for the health matter.

*Examples of minor and uncontroversial health care mentioned in paragraph (b)(iii)—*

- the administration of an antibiotic requiring a prescription
- the administration of a tetanus injection

- (2) However, the health care may not be carried out without consent if the health provider knows, or could reasonably be expected to know, the adult objects to the health care.

- (3) The health provider must certify in the adult's clinical records as to the various things enabling the health care to be carried out because of this section.

## **Division 2                      Health care and special health care—consent**

### **65            Adult with impaired capacity—order of priority in dealing with special health matter**

- (1) If an adult has impaired capacity for a special health matter, the matter may only be dealt with under the first of the following subsections to apply.
- (2) If the adult has made an advance health directive giving a direction about the matter, the matter may only be dealt with under the direction.
- (3) If subsection (2) does not apply and an entity other than the tribunal is authorised to deal with the matter, the matter may only be dealt with by the entity.
- (4) If subsections (2) and (3) do not apply and the tribunal has made an order about the matter, the matter may only be dealt with under the order.

*Note—*

However, the tribunal may not consent to electroconvulsive therapy or a non-ablative neurosurgical procedure—see section 68(1).

### **66            Adult with impaired capacity—order of priority in dealing with health matter**

- (1) If an adult has impaired capacity for a health matter, the matter may only be dealt with under the first of the following subsections to apply.
- (2) If the adult has made an advance health directive giving a direction about the matter, the matter may only be dealt with under the direction.

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- (3) If subsection (2) does not apply and the tribunal has appointed 1 or more guardians for the matter or made an order about the matter, the matter may only be dealt with by the guardian or guardians or under the order.

*Note—*

If, when appointing the guardian or guardians, the tribunal was unaware of the existence of an enduring document giving power for the matter to an attorney, see section 23 (Appointment without knowledge of enduring document), particularly subsection (2).

- (4) If subsections (2) and (3) do not apply and the adult has made 1 or more enduring documents appointing 1 or more attorneys for the matter, the matter may only be dealt with by the attorney or attorneys for the matter appointed by the most recent enduring document.
- (5) If subsections (2) to (4) do not apply, the matter may only be dealt with by the statutory health attorney.
- (6) This section does not apply to a health matter relating to health care that may be carried out without consent under division 1.

**66A When consent to withholding or withdrawal of life-sustaining measure may operate**

- (1) This section applies if a matter concerning the withholding or withdrawal of a life-sustaining measure is to be dealt with under section 66(3), (4) or (5).

*Note—*

If a matter concerning the withholding or withdrawal of a life-sustaining measure is to be dealt with under section 66(2), see the *Powers of Attorney Act 1998*, section 36(2) (Operation of advance health directive) as to when a direction to withhold or withdraw a life-sustaining measure can operate.

- (2) A consent to the withholding or withdrawal of a life-sustaining measure for the adult can not operate unless the adult's health provider reasonably considers the commencement or continuation of the measure for the adult would be inconsistent with good medical practice.



**66B Certificate in clinical records if life-sustaining measure withheld or withdrawn**

- (1) This section applies if a life-sustaining measure is withheld or withdrawn for an adult other than because of section 63A.
- (2) The adult's health provider must certify in the adult's medical records as to the various things enabling the measure to be withheld or withdrawn because of—
  - (a) for a withholding or withdrawal under a direction in the adult's advance health directive—section 66(2) and the *Powers of Attorney Act 1998*, section 36; or
  - (b) for a withholding or withdrawal by consent—section 66(3), (4) or (5) and section 66A.

**67 Effect of adult's objection to health care**

- (1) Generally, the exercise of power for a health matter or special health matter is ineffective to give consent to health care of an adult if the health provider knows, or ought reasonably to know, the adult objects to the health care.

*Note—*

*Object* is defined in schedule 4 (Dictionary). Note also the *Powers of Attorney Act 1998*, section 35(2)(a) (Advance health directives) provides that 'by an advance health directive [a] principal may give a direction—

- (a) consenting, in the circumstances specified, to particular future health care of the principal when necessary and despite objection by the principal when the health care is provided'.
- (2) However, the exercise of power for a health matter or special health matter is effective to give consent to the health care despite an objection by the adult to the health care if—
  - (a) the adult has minimal or no understanding of 1 of the following—
    - (i) what the health care involves;
    - (ii) why the health care is required; and
  - (b) the health care is likely to cause the adult—

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- (i) no distress; or
  - (ii) temporary distress that is outweighed by the benefit to the adult of the proposed health care.
- (3) Subsection (2) does not apply to the following health care—
  - (a) removal of tissue for donation;
  - (b) participation in special medical research or experimental health care or approved clinical research.

## **Part 3**                      **Consent to special health care**

### **68**            **Special health care**

- (1) The tribunal may, by order, consent to special health care, other than electroconvulsive therapy or a non-ablative neurosurgical procedure, for an adult.
- (2) To the extent another entity is authorised by an Act to make a decision for an adult about prescribed special health care, the tribunal does not have power to make the decision.

*Note—*

*For the application of the general principles and the health care principles to the tribunal and to an entity authorised by an Act to make a decision for an adult about prescribed special health care, see sections 11B and 11C.*

### **68A**          **Tribunal to consult in making decision about special health care**

*In deciding whether to consent to special health care for an adult, the tribunal must, to the greatest extent practicable, seek and take into account the views of—*

- (a) *a guardian appointed by the tribunal for the adult; or*
- (b) *if there is no guardian mentioned in paragraph (a), an attorney for a health matter appointed by the adult; or*

- (c) *if there is no guardian or attorney mentioned in paragraph (a) or (b), the statutory health attorney for the adult.*

## 69 Donation of tissue

- (1) The tribunal may consent, for an adult with impaired capacity for the special health matter concerned, to removal of tissue from the adult for donation to another person only if the tribunal is satisfied—
  - (a) the risk to the adult is small; and
  - (b) the risk of failure of the donated tissue is low; and
  - (c) the life of the proposed recipient would be in danger without the donation; and
  - (d) no other compatible donor is reasonably available; and
  - (e) there is, or has been, a close personal relationship between the adult and proposed recipient.
- (2) The tribunal may not consent if the adult objects to the removal of tissue for donation.

*Note—*

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

- (3) If the tribunal consents to removal of tissue for donation, the tribunal's order must specify the proposed recipient.

## 70 Sterilisation

- (1) The tribunal may consent, for an adult with impaired capacity for the special health matter concerned, to sterilisation of the adult only if the tribunal is satisfied—
  - (a) one of the following applies—
    - (i) the sterilisation is medically necessary;

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- (ii) the adult is, or is likely to be, sexually active and there is no method of contraception that could reasonably be expected to be successfully applied;
  - (iii) if the adult is female—the adult has problems with menstruation and cessation of menstruation by sterilisation is the only practicable way of overcoming the problems; and
- (b) the sterilisation can not reasonably be postponed; and
- (c) the adult is unlikely, in the foreseeable future, to have capacity for decisions about sterilisation.
- (2) Sterilisation is not medically necessary if the sterilisation is—
  - (a) for eugenic reasons; or
  - (b) to remove the risk of pregnancy resulting from sexual abuse.
- (3) Also, in deciding whether to consent for the adult to a sterilisation procedure, the tribunal must take into account—
  - (a) alternative forms of health care, including other sterilisation procedures, available or likely to become available in the foreseeable future; and
  - (b) the nature and extent of short-term, or long-term, significant risks associated with the proposed procedure and available alternative forms of health care, including other sterilisation procedures.
- (4) An adult's sterilisation, to which the tribunal has consented for the adult, is not unlawful.

## **71 Termination of pregnancy**

- (1) The tribunal may consent, for an adult with impaired capacity for the special health matter concerned, to termination of the adult's pregnancy only if the tribunal is satisfied the termination is necessary to preserve the adult from serious danger to her life or physical or mental health.

- (2) Termination of an adult's pregnancy, to which the tribunal has consented for the adult, is not unlawful.

## **72 Special medical research or experimental health care**

- (1) The tribunal may consent, for an adult with impaired capacity for the special health matter concerned, to the adult's participation in special medical research or experimental health care relating to a condition the adult has or to which the adult has a significant risk of being exposed only if the tribunal is satisfied about the following matters—
  - (a) the special medical research or experimental health care is approved by an ethics committee;
  - (b) the risk and inconvenience to the adult and the adult's quality of life is small;
  - (c) the special medical research or experimental health care may result in significant benefit to the adult;
  - (d) the potential benefit can not be achieved in another way.

*Note—*

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

- (a) psychological research; or
  - (b) approved clinical research—see schedule 2, section 12(2).
- (2) The tribunal may consent, for an adult with impaired capacity for the matter, to the adult's participation in special medical research or experimental health care intended to gain knowledge that can be used in the diagnosis, maintenance or treatment of a condition the adult has or has had only if the tribunal is satisfied about the following matters—
  - (a) the special medical research or experimental health care is approved by an ethics committee;
  - (b) the risk and inconvenience to the adult and the adult's quality of life is small;

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- (c) the special medical research or experimental health care may result in significant benefit to the adult or other persons with the condition;
  - (d) the special medical research or experimental health care can not reasonably be carried out without a person who has or has had the condition taking part;
  - (e) the special medical research or experimental health care will not unduly interfere with the adult's privacy.
- (3) The tribunal may not consent to the adult's participation in special medical research or experimental health care if—
- (a) the adult objects to the special medical research or experimental health care; or
- Note—*
- Section 67, which effectively enables an adult's objection to be overridden in some cases, does not apply.
- (b) the adult, in an enduring document, indicated unwillingness to participate in the special medical research or experimental health care.

## **73 Prescribed special health care**

- (1) Subject to section 68(2), the tribunal may consent, for an adult with impaired capacity for the special health matter concerned, to the adult having prescribed special health care.
- (2) The tribunal may consent only if it is satisfied of the matters prescribed under a regulation.

## **74 Subsequent special health care for adult**

- (1) If the tribunal consents to special health care for an adult, the tribunal may appoint 1 or more persons who are eligible for appointment as a guardian or guardians for the adult and give the guardian or guardians power to consent for the adult to—
  - (a) continuation of the special health care; or

- (b) the carrying out on the adult of similar special health care.
- (2) The appointment order may include a declaration, order, direction, recommendation, or advice about how the power given is to be used.
- (3) The appointment order may be changed by the tribunal on its own initiative or on the application of an interested person.
- (4) *In deciding whether to consent, a guardian must apply the general principles and the health care principles.*

## **Part 3A                      Clinical research**

### **74A      What is clinical research**

- (1) *Clinical research is—*
  - (a) *medical research intended to diagnose, maintain or treat a condition affecting the participants in the research; or*
  - (b) *a trial of drugs, devices, biologicals or techniques involving the carrying out of health care that may include giving placebos to some of the participants in the trial.*
- (2) *However, a comparative assessment of health care already proven to be beneficial is not medical research.*

*Examples—*

- *a comparative assessment of the effects of different forms of administration of a drug proven to be beneficial in the treatment of a condition, for example, a continuous infusion, as opposed to a once-a-day administration of the drug*
- *a comparative assessment of the angle at which to set a tilt-bed to best assist an adult's breathing*

### **74B      What is approved clinical research**

*Approved clinical research is clinical research approved by the tribunal.*

**74C    *Approval of clinical research***

- (1) The tribunal may approve clinical research only if the tribunal is satisfied—*
  - (a) the clinical research is approved by an ethics committee; and*
  - (b) any drugs, devices, biologicals or techniques to be trialled in the clinical research are intended to diagnose, maintain or treat a condition affecting the participants in the research; and*
  - (c) the clinical research will not involve any known substantial risk to participants or, if there is existing health care for the particular condition, the research will not involve known material risk to the participants greater than the risk associated with the existing health care; and*
  - (d) the development of any drugs, devices, biologicals or techniques to be trialled in the clinical research has reached a stage at which safety and ethical considerations make it appropriate for the drugs, devices, biologicals or techniques to be made available to participants in the research despite the participants being unable to consent to participation; and*
  - (e) having regard to the potential benefits and risks of participation in the clinical research, on balance it is not adverse to the interests of participants in the research to participate.*
- (2) The fact the drugs, devices, biologicals or techniques to be trialled in the clinical research will or may involve giving placebos to some of the participants in the research does not prevent the tribunal being satisfied it is, on balance, not adverse to the interests of the participants to participate.*
- (3) The tribunal's approval of clinical research does not operate as a consent to the participation in the clinical research of any particular person.*



## **Part 4**

# **Other provisions about health care**

### **75 Use of force**

A health provider and a person acting under the health provider's direction or supervision may use the minimum force necessary and reasonable to carry out health care authorised under this Act.

### **76 Health providers to give information**

- (1) The purpose of this section is to ensure—
  - (a) a guardian or attorney who has power for a health matter for an adult has all the information necessary to make an informed exercise of the power; and
  - (b) the tribunal, in deciding whether to consent to special health care for an adult with impaired capacity for a special health matter, has all the information necessary to make an informed decision.
- (2) At the guardian's or attorney's request, a health provider who is treating, or has treated, the adult must give information to the guardian or attorney unless the health provider has a reasonable excuse.
- (3) At the tribunal's request, a health provider who is treating, or has treated, the adult must give information to the tribunal unless the health provider has a reasonable excuse.
- (4) The information to be given by a health provider who is treating, or has treated, the adult includes information about—
  - (a) the nature of the adult's condition at the time of the treatment; and
  - (b) the particular form of health care being, or that was, carried out; and
  - (c) the reasons why the particular form of health care is being, or was, carried out; and

- (d) the alternative forms of health care available for the condition at the time of the treatment; and
  - (e) the general nature and effect of each form of health care at the time of the treatment; and
  - (f) the nature and extent of short-term, or long-term, significant risks associated with each form of health care; and
  - (g) for a health provider who is treating the adult—the reasons why it is proposed a particular form of health care should be carried out.
- (5) If a health provider does not comply with a request by a guardian or attorney to give information, the tribunal may, on application by the guardian or attorney, order the health provider to give the information to the guardian or attorney.
- (6) If the tribunal orders a health provider to give information, the health provider must comply with the order, unless the health provider has a reasonable excuse.
- (7) It is a reasonable excuse for a health provider to fail to give information because giving the information might tend to incriminate the health provider.
- (8) Subject to subsection (7), this section overrides—
  - (a) any restriction, in an Act or the common law, about the disclosure or confidentiality of information; and
  - (b) any claim of confidentiality or privilege.
- (9) This section does not limit—
  - (a) a guardian's right to information under section 44; or
  - (b) the tribunal's right to information under section 130; or
  - (c) an attorney's right to information under the *Powers of Attorney Act 1998*, section 81.
- (10) In this section—  
**attorney** means an attorney under an enduring document or a statutory health attorney.

**77 Protection of health provider**

- (1) To the extent a health provider giving health care to an adult complies with a purported exercise of power for a health matter or special health matter by a person who represented to the health provider that the person had the right to exercise the power, the health provider is taken to have the adult's consent to the exercise of power.
- (2) Subsection (1) does not apply if the health provider knew, or could reasonably be expected to have known, the person did not have the right to exercise the power.

**78 Offence to exercise power for adult if no right to do so**

It is an offence for a person who knows he or she has no right to exercise power for a health matter or special health matter for an adult, or who is recklessly indifferent about whether he or she has a right to exercise power for a health matter or special health matter for the adult, to—

- (a) purport to exercise power for a health matter or special health matter for the adult; or
- (b) represent to a health provider for the adult that the person has a right to exercise power for a health matter or special health matter for the adult.

Maximum penalty—

- (a) for special health matter—300 penalty units; or
- (b) for health matter—200 penalty units.

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

- (1) It is an offence for a person to carry out health care of an adult with impaired capacity for the health matter concerned unless—
  - (a) this or another Act provides the health care may be carried out without consent; or

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*Note—*

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

- (b) consent to the health care is given under this or another Act; or
- (c) the health care is authorised by an order of the court made in its *parens patriae* jurisdiction.

*Note—*

**Court** means the Supreme Court—see schedule 4 (Dictionary). The *parens patriae* jurisdiction is based on the need to protect those who lack the capacity to protect themselves. It allows the Supreme Court to appoint decision-makers for people who, because of mental illness, intellectual disability, illness, accident or old age, are unable to adequately safeguard their own interests.

Maximum penalty—

- (a) if special health care is carried out—300 penalty units; or
  - (b) if other health care is carried out—200 penalty units.
- (2) This section has effect despite the Criminal Code, section 282.

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

A person carrying out health care of an adult that is authorised by this or another Act is not liable for an act or omission to any greater extent than if the act or omission happened with the adult's consent and the adult had capacity to consent.

## Chapter 5A Consent to sterilisation of child with impairment

### Part 1 Preliminary

#### 80A Definitions for ch 5A

In this chapter—

*active party* see section 80K.

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

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

*Note—*

*Child*, if age rather than descendency is relevant, means an individual who is under 18—*Acts Interpretation Act 1954*, schedule 1 (Meaning of commonly used words and expressions).

*child representative* see section 80L.

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

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

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

*sterilisation* see section 80B.

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## **80B Sterilisation**

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

*Examples of sterilisation—*

endometrial ablation, hysterectomy, tubal ligation and vasectomy

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

*Example—*

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

## **Part 2 Consent by tribunal**

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

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

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

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

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

[s 80E]

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

## **Part 3                      Tribunal proceedings**

### **Division 1                General**

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

- (1) The following provisions of chapter 7 apply in relation to a chapter 5A application and a proceeding under this part—
  - part 1 (other than sections 102 and 106)



- section 122
  - part 3 (other than section 125)
  - part 4 (other than sections 128, 129, 134, 138 and 138A)
  - part 6
  - part 8 (other than section 163).
- (2) The remaining provisions of chapter 7 do not apply in relation to a chapter 5A application or a proceeding under this part.
- (3) However, this part contains additional provisions that apply in relation to a chapter 5A application and a proceeding under this part.

## **80F Members constituting tribunal**

- (1) At a hearing of a chapter 5A application, the tribunal must be constituted by 3 members.
- (2) To the extent practicable, the tribunal must include the following members who have, in the president's opinion, knowledge and experience of persons with impaired capacity for matters—
- (a) either—
    - (i) a senior member who is an Australian lawyer; or
    - (ii) an ordinary member who is an Australian lawyer;
  - (b) a member who is a paediatrician;
  - (c) another member.
- (3) In this section—

***paediatrician*** means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession as a specialist registrant in the specialty of paediatrics and child health, other than as a student.

## Division 2                      Applications

### 80H      Who may apply

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

*Note—*

See schedule 4 (Dictionary), definition *interested person*.

### 80I      How to apply

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

*Note—*

See section 80C (When tribunal may consent and effect of consent).

- (b) a detailed description of—
  - (i) the child's impairment; and
  - (ii) how the child communicates; and

- (iii) the impact of the impairment on the child's capacity for communication, social interaction and learning;
  - (c) whether the child has been informed of the application;
  - (d) whether the child has indicated the child does not wish to have the proposed sterilisation;
- Note—*
- See section 80D(4) (Whether sterilisation is in child's best interests).
- (e) information about the help, if any, the child might need at the hearing of the application;
  - (f) if urgent action is required—an explanation of the urgency;
  - (g) any other information in relation to the wellbeing of the child the applicant considers relevant;
  - (h) to the best of the applicant's knowledge, information about the following persons—
    - (i) the applicant;
    - (ii) the child;
    - (iii) any parent or guardian of the child;
    - (iv) if a parent or guardian of the child is not the primary carer of the child, the primary carer of the child;
    - (v) a doctor who is treating the child.
- (3) The information required under subsection (2)(h) is to enable the tribunal to give notice of the hearing and must consist of—
- (a) each person's name; and
  - (b) either—
    - (i) details the applicant knows of the person's address and telephone and facsimile number; or
    - (ii) if the applicant does not know the details—a way known to the applicant of contacting the person.

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

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

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

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

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

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

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

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

- (1) As soon as possible after a chapter 5A application is made, the tribunal must appoint a person to separately represent the child before the tribunal (a *child representative*).
- (2) A person is eligible for appointment as a child representative only if the person is a lawyer who has experience in dealing with children with an impairment.

*Note—*

*Lawyer* means a barrister, solicitor, barrister and solicitor or legal practitioner of the High Court or the Supreme Court of a State—*Acts Interpretation Act 1954*, schedule 1 (Meaning of commonly used words and expressions).

*Editor's note—*

The definition *lawyer* in the *Acts Interpretation Act 1954* was replaced by the *Justice and Other Legislation Amendment Act 2013*, section 6 with the following—

*lawyer* means an Australian lawyer within the meaning of the *Legal Profession Act 2007*.

- (3) The child representative must—
  - (a) act in the child's best interests; and
  - (b) have regard to any expressed views or wishes of the child; and
  - (c) to the greatest extent practicable, present the child's views and wishes to the tribunal.
- (4) To ensure the child representative has all the information necessary to act in the child's best interests, the tribunal may order a person, for example, a parent or a doctor who is treating, or has treated, the child, to give the child representative information about the child.
- (5) If the tribunal orders a person to give information under subsection (4), the person must comply with the order unless the person has a reasonable excuse.

- (6) It is a reasonable excuse for a person to fail to give information because giving the information might tend to incriminate the person.
- (7) Subject to subsection (6), this section overrides—
  - (a) any restriction, in an Act or the common law, about the disclosure or confidentiality of information; and
  - (b) any claim of confidentiality or privilege, including a claim based on legal professional privilege.

## **Division 3                      Proceeding**

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

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

## **Division 5                      Appeal**

### **80O      Appellant**

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

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

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

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

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



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

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

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

## **Chapter 5B Restrictive practices**

### **Part 1 Preliminary**

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

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

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

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

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

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

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

**80U Definitions for ch 5B**

In this chapter—

*active party* see section 80ZQ.

*adult with an intellectual or cognitive disability* see the DSA, section 144.

*assessment*, of an adult, see the DSA, section 144.

*authorised psychiatrist* see the *Mental Health Act 2016*, schedule 3.

*chemical restraint* see the DSA, section 144.

*chemical restraint (fixed dose)* see the DSA, section 144.

*community access services* see the DSA, section 144.

*contain* see the DSA, section 144.

*containment or seclusion approval*—

- (a) means approval given by the tribunal under part 2, division 1 for a relevant service provider to contain or seclude an adult; and
- (b) includes an approval given under that part for a relevant service provider to use a restrictive practice other than containment or seclusion in relation to the adult.

***director of forensic disability*** means the director of forensic disability under the *Forensic Disability Act 2011*.

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

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

***forensic disability client*** means a forensic disability client under the *Forensic Disability Act 2011*.

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

***harm*** see the DSA, section 144.

***informal decision-maker***, for an adult, see the DSA, section 144.

***least restrictive*** see the DSA, section 144.

***positive behaviour support plan*** see the DSA, section 144.

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

***respite/community access plan*** see the DSA, section 144.

***respite services*** see the DSA, section 144.

***restrictive practice*** see the DSA, section 144.

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

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

***restrictive practice matter*** means—

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

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

***seclude*** see the DSA, section 144.

***senior practitioner*** means a senior practitioner under the *Forensic Disability Act 2011*.

## **Part 2                      Containment or seclusion approvals**

### **Division 1                Giving containment or seclusion approvals**

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

- (1) The tribunal may, by order, give approval for a relevant service provider to contain or seclude an adult, subject to the conditions stated in the order.
- (2) The tribunal may give the approval only if the tribunal is satisfied—
  - (a) the adult has impaired capacity for making decisions about the use of restrictive practices in relation to the adult; and
  - (b) there is a need for the relevant service provider to contain or seclude the adult because—
    - (i) the adult's behaviour has previously resulted in harm to the adult or others; and

- (ii) there is a reasonable likelihood that, if the approval is not given, the adult's behaviour will cause harm to the adult or others; and
  - (c) a positive behaviour support plan has been developed for the adult that provides for the containment or seclusion; and
  - (d) containing or secluding the adult in compliance with the approval is the least restrictive way of ensuring the safety of the adult or others; and
  - (e) the adult has been adequately assessed by appropriately qualified persons, within the meaning of the DSA, section 144, in the development of the positive behaviour support plan for the adult; and
  - (f) if the positive behaviour support plan for the adult is implemented—
    - (i) the risk of the adult's behaviour causing harm will be reduced or eliminated; and
    - (ii) the adult's quality of life will be improved in the long term; and
  - (g) the observations and monitoring provided for under the positive behaviour support plan for the adult are appropriate.
- (3) The tribunal may make the order on its own initiative or on an application under section 80ZO.

### **80W Matters tribunal to consider**

- (1) In deciding whether to give a containment or seclusion approval, the tribunal must consider each of the following—
- (a) the suitability of the environment in which the adult will be contained or secluded;
  - (b) if the tribunal is aware the adult is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*—

- (i) the terms of the order or authority; and
    - (ii) the views of the authorised psychiatrist responsible for treating the adult under that Act about the containment or seclusion of the adult;
  - (c) if the tribunal is aware the adult is a forensic disability client—
    - (i) the terms of the forensic order under the *Mental Health Act 2016* for the adult's detention in the forensic disability service; and
    - (ii) the views of a senior practitioner responsible for the care and support of the adult under the *Forensic Disability Act 2011* about the containment or seclusion of the adult;
  - (d) any strategies, including restrictive practices, previously used to manage or reduce the behaviour of the adult that causes harm to the adult or others, and the effectiveness of those strategies;
  - (e) the type of disability services provided to the adult.
- (2) Also, in deciding whether to give the containment or seclusion approval, the tribunal may consider the following—
- (a) the findings, theories and recommendations of each person who assessed the adult;
  - (b) if there was a difference of opinion between the persons who assessed the adult—how this difference was taken into account in developing the positive behaviour support plan for the adult;
  - (c) the views of each person consulted during the assessment of the adult and the development of the positive behaviour support plan about the use of containment or seclusion;
  - (d) the way in which the relevant service provider will support and supervise staff involved in implementing the positive behaviour support plan.

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

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

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

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

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

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

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

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

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

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

- (a) on its own initiative; or
- (b) on the application of any of the following—
  - (i) the adult;



- (ii) an interested person for the adult;
- (iii) a relevant service provider to which the approval applies;
- (iv) the chief executive (disability services);
- (v) the public guardian;
- (vi) if the adult is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*—the chief psychiatrist;
- (vii) if the adult is a forensic disability client—the director of forensic disability.

### **80ZB Review process**

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

## **Part 3**

# **Guardians for a restrictive practice matter**

### **80ZC Application of pt 3**

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

### **80ZD Appointment**

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

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

- (1) The purpose of this section is to state requirements for a guardian for a restrictive practice (general) matter about consenting to the use of a restrictive practice in relation to the adult by a relevant service provider.
- (2) The guardian may consent to use of the restrictive practice by the relevant service provider in compliance with a positive behaviour support plan for the adult.
- (3) The consent may be given subject to conditions.
- (4) The guardian may give the consent only if satisfied—
  - (a) the adult's behaviour has previously resulted in harm to the adult or others; and
  - (b) there is a reasonable likelihood that, if the consent is not given, the adult's behaviour will cause harm to the adult or others; and
  - (c) using the restrictive practice in compliance with the positive behaviour support plan mentioned in subsection (2) is the least restrictive way of ensuring the safety of the adult or others; and
  - (d) the adult has been adequately assessed for developing or changing the positive behaviour support plan; and
  - (e) use of the restrictive practice is supported by the recommendations of the person who assessed the adult; and
  - (f) if the restrictive practice is chemical restraint—in developing the positive behaviour support plan, the relevant service provider consulted the adult's treating doctor; and
  - (g) if the positive behaviour support plan is implemented—
    - (i) the risk of the adult's behaviour causing harm will be reduced or eliminated; and
    - (ii) the adult's quality of life will be improved in the long term; and

- (h) the observations and monitoring provided for under the positive behaviour support plan are appropriate.
- (5) In deciding whether to give the consent, the guardian must consider the following—
  - (a) if the guardian is aware the adult is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*—
    - (i) the terms of the order or authority; and
    - (ii) the views of the authorised psychiatrist responsible for treating the adult under that Act about the use of the restrictive practice;
  - (b) if the guardian is aware the adult is a forensic disability client—
    - (i) the terms of the forensic order under the *Mental Health Act 2016* for the adult's detention in the forensic disability service; and
    - (ii) the views of a senior practitioner responsible for the care and support of the adult under the *Forensic Disability Act 2011* about the use of the restrictive practice;
  - (c) any information available to the guardian about strategies, including restrictive practices, previously used to manage the behaviour of the adult that causes harm to the adult or others, and the effectiveness of those strategies;
  - (d) the type of disability services provided to the adult;
  - (e) the suitability of the environment in which the restrictive practice is to be used;
  - (f) if the restrictive practice is chemical restraint—the views of the adult's treating doctor about the use of the chemical restraint.
- (6) Also, in deciding whether to give the consent, the guardian may consider the following—

- (a) the findings, theories and recommendations of each person who assessed the adult;
- (b) if there was a difference of opinion between the persons who assessed the adult—how this difference was taken into account in developing the positive behaviour support plan for the adult;
- (c) the views of each person consulted during the assessment of the adult and the development of the positive behaviour support plan about the use of the restrictive practice;
- (d) the way in which the relevant service provider will support and supervise staff involved in implementing the positive behaviour support plan.

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

- (1) The purpose of this section is to state requirements for a guardian for a restrictive practice (respite) matter about consenting to the use of a restrictive practice in relation to the adult by a relevant service provider.
- (2) The guardian may consent to use of the restrictive practice by the relevant service provider in compliance with a respite/community access plan for the adult.
- (3) The consent may be given subject to conditions.
- (4) The guardian may give the consent only if satisfied—
  - (a) there is a reasonable likelihood that, if the consent is not given, the adult's behaviour will cause harm to the adult or others; and
  - (b) the relevant service provider has complied with the DSA, part 6, division 5; and
  - (c) if the respite/community access plan is implemented—
    - (i) the risk of the adult's behaviour causing harm will be reduced or eliminated; and

- (ii) the adult's quality of life will be improved in the long term; and
  - (d) the observations and monitoring provided for under the respite/community access plan are appropriate.
- (5) For giving consent to the use of chemical restraint (fixed dose)—
  - (a) subsections (2) and (4) do not apply; and
  - (b) the guardian may give the consent only if satisfied there is a reasonable likelihood that, if the consent is not given, the adult's behaviour will cause harm to the adult or others.

## Part 4

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

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

- (1) This section does not apply for an adult if—
  - (a) there is a containment or seclusion approval in relation to the adult; or
  - (b) both of the following apply—
    - (i) there is a guardian for a restrictive practice (respite) matter for the adult;
    - (ii) a relevant service provider proposes to contain or seclude the adult in the course of providing respite services or community access services to the adult.
- (2) The public guardian may give approval for a relevant service provider to contain or seclude the adult if satisfied—
  - (a) the adult has impaired capacity for making decisions about the use of restrictive practices in relation to the adult; and

- (b) the adult's behaviour has previously resulted in harm to the adult or others; and
  - (c) there is an immediate and serious risk that, if the approval is not given, the adult's behaviour will cause harm to the adult or others; and
  - (d) using the restrictive practice is the least restrictive way of ensuring the safety of the adult or others.
- (3) In deciding whether to give the approval, the public guardian must, unless it is not practicable in the circumstances, consult with and consider the views of the following persons about the use of the restrictive practice—
- (a) the adult;
  - (b) a guardian or informal decision-maker for the adult;
  - (c) if the public guardian is aware the adult is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*—the authorised psychiatrist responsible for treating the adult under that Act;
  - (d) if the public guardian is aware the adult is a forensic disability client—a senior practitioner responsible for the care and support of the adult under the *Forensic Disability Act 2011*.
- (4) If the public guardian has previously given an approval under this section in relation to the adult, the public guardian may give the approval only if satisfied exceptional circumstances justify giving a subsequent approval under this section.
- (5) The public guardian may give the approval subject to the conditions the public guardian considers appropriate.
- (6) An approval given under this section may not have effect for more than 6 months.
- (7) The relevant service provider or a person consulted under subsection (2) may apply to the tribunal in relation to a decision of the public guardian to give, or refuse to give, the approval, and the tribunal may make the order it considers appropriate.

**80ZI When public guardian may give short-term approval for use of containment or seclusion—new relevant service provider**

- (1) This section applies for an adult in relation to a relevant service provider if the relevant service provider is not providing, and proposes to provide, disability services to the adult.
- (2) The public guardian may give approval for the relevant service provider to contain or seclude the adult if the public guardian is satisfied of the matters in section 80ZH(2)(a) to (d).
- (3) Section 80ZH(3) to (7) applies in relation to the approval.

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

- (1) While an approval given under section 80ZH or 80ZI is in effect, the public guardian may give approval for a relevant service provider to use another restrictive practice in relation to the adult if satisfied of the matters stated in section 80ZH(2)(a) to (d) for the restrictive practice.
- (2) Also, if the restrictive practice is chemical restraint, the public guardian must be satisfied the relevant service provider has consulted with, and considered the views of, the adult's treating doctor.
- (3) The public guardian may not give approval under this section for use of a restrictive practice if a guardian for a restrictive practice (general) matter for the adult has given, or refused to give, consent to the use of the restrictive practice for the adult.
- (4) An approval given under this section ends—
  - (a) if a guardian for a restrictive practice (general) matter for the adult gives, or refuses to give, consent to the relevant service provider to use the restrictive practice in relation to the adult; or
  - (b) otherwise—on the day the approval given under section 80ZH or 80ZI ends.



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

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

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

- (1) As soon as practicable after the public guardian decides to give, or refuse to give, an approval under this part, the public

guardian must give written notice of the decision to the following—

- (a) the relevant service provider;
  - (b) the adult;
  - (c) the tribunal;
  - (d) the chief executive (disability services);
  - (e) a guardian for a restrictive practice (general) matter for the adult;
  - (f) any other person consulted by the public guardian under section 80ZH(3).
- (2) The notice must state the following—
- (a) the name of the adult;
  - (b) the name of the relevant service provider;
  - (c) the public guardian's decision, including, if the decision is to give the approval, the terms of the approval;
  - (d) the reasons for the public guardian's decision.

## **Part 5                      Tribunal proceedings**

### **Division 1                General**

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

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

- parts 6 and 8.
- (2) The remaining provisions of chapter 7 do not apply for a proceeding under this chapter.
- (3) This part contains additional provisions that apply for a proceeding under this chapter.

## Division 2 Applications

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

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

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

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

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

- (a) an adult;
- (b) an interested person for an adult;
- (c) a relevant service provider providing disability services to an adult;
- (d) the chief executive (disability services);
- (e) the public guardian;
- (f) if the adult is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*—the chief psychiatrist;

- (g) if the adult is a forensic disability client—the director of forensic disability.

## Division 3                      Other matters

### 80ZQ    Who is an *active party*

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

- (a) the chief executive (disability services);
- (b) the applicant;
- (c) the adult concerned in the proceeding;
- (d) any current guardian or administrator for the adult;
- (e) if the adult is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*—the chief psychiatrist;
- (f) if the adult is a forensic disability client—the director of forensic disability;
- (g) a relevant service provider providing disability services to the adult;
- (h) the public guardian;
- (i) a person joined as a party to the proceeding by the tribunal.

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

a member of the adult's family

### 80ZR    Interim orders

- (1) This section applies for a proceeding under this chapter if the tribunal is satisfied, on reasonable grounds—
  - (a) there is an immediate risk of harm to the adult concerned in the proceeding or others; and

- (b) using a restrictive practice is the least restrictive way of ensuring the safety of the adult or others.
- (2) The tribunal may make an interim order in the proceeding without hearing and deciding the proceeding or otherwise complying with the requirements of this Act, including section 118.
- (3) The interim order has effect for the period stated in the order.
- (4) The period stated in the order must not be more than 3 months.
- (5) In this section—

*tribunal* means the tribunal constituted by the president, a deputy president or a legal member.

## Part 6 Miscellaneous provisions

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

- (1) This section applies to an informal decision-maker for deciding whether to consent to—
  - (a) a relevant service provider restricting access of an adult other than in the course of providing respite services or community access services to the adult; or
  - (b) the use of a restrictive practice in relation to an adult by a relevant service provider in the course of providing respite services or community access services to the adult.
- (2) For giving consent to use of a restrictive practice mentioned in subsection (1)(a), the informal decision-maker must—
  - (a) apply the general principles; and
  - (b) be satisfied—
    - (i) the adult's behaviour has previously resulted in harm to the adult or others; and

- (ii) there is a reasonable likelihood that, if the consent is not given, the adult's behaviour will cause harm to the adult or others; and
  - (iii) using the restrictive practice in compliance with the positive behaviour support plan for the adult is the least restrictive way of ensuring the safety of the adult or others; and
  - (iv) if the positive behaviour support plan for the adult is implemented—
    - (A) the risk of the adult's behaviour causing harm will be reduced or eliminated; and
    - (B) the adult's quality of life will be improved in the long term; and
  - (v) if the informal decision-maker is aware the adult is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*—the authorised psychiatrist responsible for treating the adult under that Act has been given an opportunity to participate in the development of the positive behaviour support plan; and
  - (vi) if the informal decision-maker is aware the adult is a forensic disability client—a senior practitioner responsible for the care and support of the adult under the *Forensic Disability Act 2011* has been given an opportunity to participate in the development of the positive behaviour support plan.
- (3) For giving consent to use of a restrictive practice mentioned in subsection (1)(b), the informal decision-maker must—
  - (a) apply the general principles; and
  - (b) be satisfied—
    - (i) the adult's behaviour has previously resulted in harm to the adult or others; and

- (ii) there is a reasonable likelihood that, if the consent is not given, the adult's behaviour will cause harm to the adult or others; and
  - (iii) using the restrictive practice in compliance with the respite/community access plan for the adult is the least restrictive way of ensuring the safety of the adult or others; and
  - (iv) if the respite/community access plan for the adult is implemented—
    - (A) the risk of the adult's behaviour causing harm will be reduced or eliminated; and
    - (B) the adult's quality of life will be improved in the long term.
- (4) However, subsection (3)(b)(iii) and (iv) do not apply for giving consent to the use of chemical restraint (fixed dose) in the course of providing respite services to the adult.
- (5) In this section—  
*restricting access*, of an adult, see the DSA, section 144.

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

- (1) This section applies if an informal decision-maker gains confidential information under the DSA, part 6 about an adult with an intellectual or cognitive disability.

*Note—*

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

- (2) The informal decision-maker must not disclose the information to anyone other than under subsection (3).
- (3) The informal decision-maker may disclose the information to someone else—
- (a) for this Act or the DSA; or
  - (b) to discharge a function under another law; or
  - (c) for a proceeding in a court or tribunal; or

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- (d) if authorised under another law or a regulation made under this Act; or
  - (e) if authorised in writing by the adult to whom the information relates; or
  - (f) to protect a person with a disability, within the meaning of the DSA, section 11, from abuse, neglect or exploitation.
- (4) In this section—
- confidential information*** includes information about a person's affairs but does not include—
- (a) information already publicly disclosed unless further disclosure of the information is prohibited by law; or
  - (b) statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates.

### **80ZU Review of ch 5B**

The DSA, section 241 provides for the efficacy and efficiency of this chapter to be reviewed by the Minister and the Minister responsible for administering that Act, acting jointly.

*Note—*

The review must be conducted when the DSA is reviewed under section 240 of that Act.

## **Chapter 6      Queensland Civil and Administrative Tribunal**

### **81 Tribunal's functions for this Act**

- (1) The tribunal has the functions given to it by this Act, including the following functions—



- (a) making declarations about the capacity of an adult, guardian, administrator or attorney for a matter;
- (b) considering applications for appointment of guardians and administrators;
- (c) appointing guardians and administrators if necessary and reviewing the appointments;
- (d) making declarations, orders or recommendations, or giving directions or advice, in relation to the following—
  - (i) guardians and administrators;
  - (ii) attorneys;
  - (iii) enduring documents;
  - (iv) related matters;
- (e) ratifying an exercise of power, or approving a proposed exercise of power, for a matter by an informal decision-maker for an adult with impaired capacity for the matter;
- (f) consenting to the withholding or withdrawal of a life-sustaining measure for adults with impaired capacity for the health matter concerned;
- (g) subject to section 68, consenting to special health care for adults with impaired capacity for the special health matter concerned;
- (h) consenting to the sterilisation of a child with an impairment;
- (i) giving approvals under chapter 5B for the use by a relevant service provider of a restrictive practice in relation to an adult to whom the chapter applies, and reviewing the approvals;
- (j) registering an order made in another jurisdiction under a provision, Act or law prescribed under a regulation for section 167;

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- (k) reviewing a matter in which a decision has been made by the registrar.
- (2) *In performing its functions or exercising its powers under this Act in relation to an adult, the tribunal must, to the greatest extent practicable, seek and take account of—*
  - (a) *the views, wishes and preferences expressed or demonstrated by the adult; and*
  - (b) *the views of any member of the adult's support network.*
- (3) In this section—  
**attorney** means an attorney under an enduring document or a statutory health attorney.

## **82 Jurisdiction**

- (1) Subject to section 245, the tribunal has exclusive jurisdiction for the appointment of guardians and administrators for adults with impaired capacity for matters.
- (2) The tribunal has concurrent jurisdiction with the court for enduring documents and attorneys under enduring documents.
- (3) The tribunal has the other jurisdiction given under this Act.

## **83 Annual report by president**

The president must include in the tribunal's annual report under the QCAT Act for the previous financial year—

- (a) the number and type of limitation orders made by the tribunal during the year; and
- (b) the number of applications, approvals and orders made under chapter 5B of this Act during the year.

## Chapter 7 Tribunal proceedings

### Part 1 General

#### 99 Definitions for pt 1

In this part—

***document*** includes a photograph, drawing, model or other object.

***health information*** for a person means—

- (a) information about the person's physical or mental condition; or
- (b) information about the person's health care, including the person's expressed wishes about the person's health care; or
- (c) information about the person collected to provide, or in providing, health care to the person; or
- (d) information about the person collected in relation to the donation, or intended donation, of the person's body parts, organs or bodily substances; or
- (e) genetic information about the person in a form that is, or could be, predictive about the health of the person or of a sibling, relative or descendant of the person.

***significant health detriment*** to a person means significant identifiable detriment to any of the following—

- (a) the person's physical or mental health or wellbeing;
- (b) the person's health care;
- (c) the person's relationship with a health provider, including the person's willingness to fully disclose relevant information to the health provider.

## **100 Types of limitation order**

A *limitation order* means an order of the following type—

- (a) an adult evidence order;
- (b) a closure order;
- (c) a non-publication order;
- (d) a confidentiality order.

## **101 Relationship with the QCAT Act**

- (1) The following provisions of the QCAT Act do not apply in relation to proceedings under this chapter—
  - (a) section 66;
  - (b) section 90;
  - (c) section 100;
  - (d) section 102 (except to the extent it applies for section 103 of that Act);
  - (e) section 142(3)(a)(ii);
  - (f) section 222.
- (2) *The QCAT Act, section 99 does not apply in relation to a proceeding under this chapter if the tribunal is considering whether to make an order under section 106(1) or 107(1).*

## **102 Members constituting tribunal**

At a hearing, the tribunal must be constituted by 3 members unless the president considers it appropriate for the proceeding to be heard by the tribunal constituted by 2 members or a single member.

## **103 Access**

- (1) Each active party in a proceeding must be given a reasonable opportunity to present the active party's case and, in particular—

- (a) to access, before the start of a hearing, a document before the tribunal that the tribunal considers is relevant to an issue in the proceeding; and
  - (b) to access, during a hearing, a document or other information before the tribunal that the tribunal considers is credible, relevant and significant to an issue in the proceeding; and
  - (c) to make submissions about a document or other information accessed under this subsection.
- (2) Each active party in a proceeding, or person the tribunal considers has a sufficient interest in the proceeding, must be given a reasonable opportunity to access, within a reasonable time after a hearing, a document before the tribunal that the tribunal considered credible, relevant and significant to an issue in the proceeding.
- (3) For subsections (1) and (2), something is relevant only if it is directly relevant.
- (4) On request, the tribunal must give access to a document or other information in accordance with this section.
- (5) The tribunal may displace the right to access a document or other information only by a confidentiality order.
- (6) To remove any doubt, it is declared that the right to access a document or other information is not affected by an adult evidence order, a closure order or a non-publication order.

#### **104 Basis of consideration for limitation order**

- (1) In considering whether to make a limitation order, the tribunal must take as the basis of its consideration—
- (a) that each active party in the proceeding is entitled to access a document or other information before the tribunal that is credible, relevant and significant to an issue in the proceeding; and
  - (b) that it is desirable that tribunal hearings be held in public and be able to be publicly reported.

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- (2) For subsection (1), something is relevant only if it is directly relevant.

## **105 Open**

- (1) A hearing by the tribunal of a proceeding must be in public.
- (2) However, the tribunal may make an adult evidence order or a closure order.

*Note—*

See also section 101.

## **106 Adult evidence order**

- (1) If the tribunal is satisfied it is necessary to avoid serious harm or injustice to a person or to obtain relevant information the tribunal would not otherwise receive, the tribunal may, by order (an **adult evidence order**), obtain relevant information from the adult concerned in the matter at a hearing in the absence of anyone else, including, for example—
  - (a) members of the public; or
  - (b) a particular person, including an active party.
- (2) To the extent relevant information is health information for a person, serious harm to the person includes significant health detriment to the person.
- (3) For subsection (1), something is relevant only if it is directly relevant.
- (4) The tribunal may make an adult evidence order on its own initiative or on the application of an active party.
- (5) A person must not contravene an adult evidence order, unless the person has a reasonable excuse.

Maximum penalty for subsection (5)—200 penalty units.

## 107 Closure order

- (1) If the tribunal is satisfied it is necessary to avoid serious harm or injustice to a person, the tribunal may, but only to the extent necessary, by order (a ***closure order***), do either or both of the following—
  - (a) close the hearing or part of the hearing to all or some members of the public;
  - (b) exclude a particular person, including an active party, from a hearing or part of a hearing.
- (2) To the extent the hearing or the part of the hearing concerns health information for a person, serious harm to the person includes significant health detriment to the person.
- (3) The tribunal may make a closure order on its own initiative or on the application of an active party.
- (4) A person must not contravene a closure order, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—200 penalty units.

## 108 Non-publication order

- (1) If the tribunal is satisfied it is necessary to avoid serious harm or injustice to a person, the tribunal may, but only to the extent necessary, by order (a ***non-publication order***), prohibit publication of information about a tribunal proceeding the publication of which is not prohibited under section 114A.
- (2) To the extent information about a tribunal proceeding is health information for a person, serious harm to the person includes significant health detriment to the person.
- (3) The tribunal may make a non-publication order on its own initiative or on the application of an active party.
- (4) If information about a tribunal proceeding discloses information prepared or provided by an entity, the tribunal may make a non-publication order on the application of the entity.

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- (5) If information about a tribunal proceeding discloses health information for the person—
  - (a) without limiting subsection (3) or (4), the tribunal may make a non-publication order on the application of—
    - (i) the person; or
    - (ii) an interested person for the person; and
  - (b) an application may be made by an interested person for the person even after the person's death.
- (6) If a non-publication order is made prohibiting publication of information about a tribunal proceeding and the information about the tribunal proceeding discloses health information for the person, the person's death does not affect the non-publication order.
- (7) A person must not contravene a non-publication order, unless the person has a reasonable excuse.

Maximum penalty for subsection (7)—200 penalty units.

*Note—*

See also section 101.

## **109 Confidentiality order**

- (1) If the tribunal is satisfied it is necessary to avoid serious harm or injustice to a person, the tribunal may, but only to the extent necessary, by order (a ***confidentiality order***)—
  - (a) withhold from an active party or other person a document, or part of a document, before the tribunal; or
  - (b) withhold from an active party or other person other information before the tribunal.
- (2) To the extent a document or part of a document contains health information for a person, or to the extent other information is health information for a person, serious harm to the person includes significant health detriment to the person.
- (3) The tribunal may make a confidentiality order on its own initiative or on the application of an active party.



- (4) Also, the tribunal may make a confidentiality order in relation to a document or other information on the application of the entity who prepared or provided the document or other information.
- (5) A person must not contravene a confidentiality order, unless the person has a reasonable excuse.

Maximum penalty for subsection (5)—200 penalty units.

## **110 Non-publication or confidentiality order made before hearing**

- (1) In a proceeding, a non-publication order or confidentiality order may be made before a hearing of the proceeding starts.
- (2) However, a non-publication order or confidentiality order made before a hearing is vacated at the start of the hearing.
- (3) Sections 111 to 113 do not apply in relation to a non-publication order or confidentiality order made before the hearing of the proceeding starts.

## **111 Standing for limitation order**

Each active party, and any entity that would be adversely affected by a proposed limitation order, has standing to be heard in relation to the making of the order.

*Example—*

A journalist who would be excluded from a hearing by a proposed closure order would be an entity that would be adversely affected by the proposed order.

## **112 Making and notifying decision for limitation order**

- (1) The tribunal must give its decision on the making of a limitation order as soon as practicable after hearing any submissions on the making of the order.
- (2) As soon as practicable after making its decision, the tribunal must notify, and give a copy of its decision to—

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- (a) the adult concerned in the matter; and
  - (b) each other active party in the proceeding; and
  - (c) each entity heard in relation to the order; and
  - (d) the public advocate.
- (3) The tribunal must also give a copy of its decision to anyone else who requests a copy.
- (4) For subsection (3), it is sufficient for the tribunal to give a copy of the decision in a form that does not contravene section 114A.
- (5) Also, within 45 days after making its decision, the tribunal must give the public advocate all information before the tribunal in its consideration of making the limitation order, including, for a confidentiality order, the document or other information being considered as the subject of the confidentiality order.

### **113 Written reasons for limitation order and copy of reasons**

- (1) This section applies if the tribunal decides to make a limitation order.
- (2) The tribunal must give written reasons for its decision to make the limitation order (other than an adult evidence order) and may give reasons for its decision to make an adult evidence order.
- (3) If the tribunal gives written reasons for its decision, it must give a copy of the reasons within 45 days after making the decision to—
  - (a) the adult concerned in the matter; and
  - (b) each other active party in the proceeding; and
  - (c) each entity heard in relation to the order; and
  - (d) the public advocate.
- (4) The tribunal must also give a copy of its written reasons to anyone else who requests a copy.

- (5) For subsection (4), it is sufficient for the tribunal to give a copy of the written reasons in a form that does not contravene section 114A.
- (6) The QCAT Act, sections 121 and 122 do not apply to limitation orders.

## 114 Procedural directions

- (1) The tribunal may—
  - (a) direct a person to undergo examination by a doctor or psychologist in the ordinary course of the doctor's medical practice or the psychologist's practice; or
  - (b) direct the person the subject of the proceeding to be brought before the tribunal.
- (2) The tribunal may change or revoke a direction under subsection (1).
- (3) A person must comply with a direction under subsection (1), unless the person has a reasonable excuse.
- (4) If the tribunal gives a direction under subsection (1)(a), the tribunal may direct that a party pay for the examination.
- (5) In this section—  
***psychologist*** means a person registered under the Health Practitioner Regulation National Law to practise in the psychology profession, other than as a student.

## 114A Publication about proceeding that discloses adult's identity

- (1) Generally, information about a guardianship proceeding may be published.
- (2) However, a person must not, without reasonable excuse, publish information about a guardianship proceeding to the public, or a section of the public, if the publication is likely to lead to the identification of the relevant adult 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.

*Notes—*

- The publication of information about a tribunal proceeding may also be prohibited by a non-publication order—see section 108.
- Also see the *Child Protection Act 1999*, section 189 (Prohibition of publication of information leading to identity of children).

(3) Subsection (2) does not apply—

- (a) to publication of information by the public guardian, or the public advocate, if the public guardian, or the public advocate, considers it is necessary in the public interest to publish the information in response to a prohibited publication by another entity; or
- (b) to publication of information after the relevant adult has died; or
- (c) to publication of information authorised by an order made under this section.

*Note—*

A non-publication order may prohibit publication of information about a tribunal proceeding disclosing health information about a person even after the person's death.

- (4) The court may make an order authorising publication of information about a guardianship proceeding that is otherwise prohibited under subsection (2).
- (5) The tribunal may make an order authorising publication of information about a tribunal proceeding that is otherwise prohibited under subsection (2).
- (6) The court or tribunal may make an order under subsection (4) or (5) authorising publication only if the court or tribunal is satisfied the publication is in the public interest or the relevant adult's interest.
- (7) The QCAT Act, section 125 does not apply for the purposes of this section.
- (8) In this section—

***prohibited publication*** means publication of information about a guardianship proceeding to the public, or a section of the public, that is likely to lead to the identification of the relevant adult by a member of the public, or by a member of the section of the public to whom the information is published.

***relevant adult*** means the adult concerned in the matter, whether or not the court or tribunal decides the adult is an adult with impaired capacity.

#### **114B No filing fee payable**

- (1) A fee is not payable to the tribunal for making an application, or filing another document, under this Act.
- (2) Subsection (1) does not apply in relation to an appeal to the appeal tribunal under the QCAT Act chapter 2, part 8, division 1.

## **Part 2 Applications**

#### **115 Scope of applications**

- (1) An application may be made, as provided under the QCAT Act, to the tribunal for a declaration, order, direction, recommendation or advice in relation to an adult about something in, or related to, this Act or the *Powers of Attorney Act 1998*.
- (2) The application may be made by—
  - (a) the adult concerned; or
  - (b) unless this Act or the *Powers of Attorney Act 1998* states otherwise—another interested person.

#### **118 Tribunal advises persons concerned of hearing**

- (1) At least 7 days before the hearing of an application about a matter, the tribunal must give notice of the hearing to the adult

concerned in the matter and, as far as practicable, to the following—

- (a) if the adult concerned is not the applicant—the applicant;
- (b) *a spouse of the adult who is in a close and continuing relationship with the adult;*
- (c) *any child of the adult who is at least 18 years and who is in a close and continuing relationship with the adult;*
- (d) *any parent of the adult who is in a close and continuing relationship with the adult;*
- (e) *any sibling of the adult who is in a close and continuing relationship with the adult;*
- (f) *if the adult is an Aboriginal person or a Torres Strait Islander—any person who is regarded under Aboriginal tradition or Island custom as a child, parent or sibling of the adult, and who is in a close and continuing relationship with the adult;*
- (g) any primary carer of the adult;
- (h) all current guardians, administrators and attorneys for the adult;
- (i) the public guardian;
- (j) the public trustee;
- (k) for a proceeding under chapter 5B—
  - (i) the chief executive (disability services); and
  - (ii) a relevant service provider providing disability services to the adult; and
  - (iii) if the tribunal is aware the adult is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*—the chief psychiatrist; and
  - (iv) if the tribunal is aware the adult is a forensic disability client—the director of forensic disability;

- (l) anyone else the tribunal considers should be notified.
- (2) *If there is no person mentioned in subsection (1)(b) to (f) in existence or able to be located for the adult, the tribunal must give notice of the hearing, as far as practicable, to—*
  - (a) *a member of the adult's extended family who is in a close and continuing relationship with the adult; or*
  - (b) *a person from the adult's household who is in a close and continuing relationship with the adult.*
- (3) However, the tribunal is not required to give notice to the adult if any of the following apply—
  - (a) the tribunal considers that notice to the adult might be prejudicial to the physical or mental health or wellbeing of the adult;
  - (b) the tribunal considers the adult is evading the hearing;
  - (c) the adult is—
    - (i) temporarily or permanently unconscious; or
    - (ii) unable to be located after the tribunal has made reasonable inquiries into the adult's whereabouts.
- (4) Notice to the adult must be given in the way the tribunal considers most appropriate having regard to the person's needs.
- (5) However, the adult's failure to understand the notice does not affect its validity.
- (6) The tribunal may, by direction under the QCAT Act, section 62—
  - (a) *dispense with the requirement to give notice to all or any of the persons mentioned in subsection (1)(a) to (k); and*
  - (b) reduce the time stated in subsection (1).
- (7) *Subject to subsection (3), failure to comply with the requirement to give notice to the adult invalidates a hearing and the tribunal's decision about an application.*

- (8) *Failure to comply with the requirement to give notice to all or any of the persons mentioned in subsection (1)(a) to (k) does not affect the validity of a hearing or the tribunal's decision about an application.*
- (9) The QCAT Act, section 37 does not apply for the purposes of this section.
- (10) 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.
- child** *includes a stepchild, an adopted child and a person for whom the adult was a foster-parent or guardian when the person was a child.*
- parent** *includes a step-parent, an adoptive parent, a foster-parent and a guardian.*
- power of attorney** means—
- (a) a general power of attorney made under the *Powers of Attorney Act 1998*; or
  - (b) an enduring power of attorney; or
  - (c) a power of attorney made otherwise than under the *Powers of Attorney Act 1998*, whether before or after its commencement; or
  - (d) a similar document under the law of another jurisdiction.
- sibling** *includes a step-sibling, an adopted sibling and a foster-sibling.*

## 119 Who is an **active party**

Each of the following persons is an **active party** for a proceeding in relation to an adult—

- (a) the adult;



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

## 121 Protection if unaware of invalidity

- (1) A person appointed as a guardian or administrator for an adult by an invalid tribunal order who, without knowing of the order's invalidity, purports to use power given by the order does not incur any liability, either to the adult or anyone else, because of the invalidity.
- (2) A transaction between—
  - (a) a person appointed as guardian or administrator by an invalid tribunal order; and
  - (b) a person who does not know of the invalidity;is, in favour of the second person, as valid as if the tribunal order were valid.
- (3) In this section—

**know**, of a tribunal order's invalidity, includes have reason to believe notice of the hearing of an application was not given to the adult as required.

## 122 Withdrawal by leave

- (1) This section applies if the tribunal gives leave to an applicant to withdraw an application under the QCAT Act, section 46.

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- (2) The tribunal must give notice of the withdrawal to the parties to the proceeding that the tribunal considers should receive notice of the withdrawal.
- (3) The QCAT Act, section 46(2) does not apply to an applicant under this Act.

## **Part 3                      Participation**

### **123      Right of active party to appear**

An active party in a proceeding before the tribunal may appear in person.

### **124      Representative may be used with tribunal's leave**

- (1) An active party may, with the tribunal's leave, be represented by a lawyer or agent.
- (2) A person given notice to attend at a hearing to give evidence or produce things may, with the tribunal's leave, be represented by a lawyer or agent.

### **125      Representative may be appointed**

- (1) If, in a proceeding before the tribunal—
  - (a) the adult concerned in the proceeding is not represented in the proceeding; or
  - (b) *the adult is represented in the proceeding by an agent the tribunal considers to be inappropriate to represent the adult's interests;*

*the tribunal may appoint a representative to represent the adult's views, wishes and interests.*
- (2) A proceeding may be adjourned to allow the appointment to be made.
- (3) *A representative appointed under subsection (1) must—*

- (a) *have regard to any expressed or demonstrated views, wishes and preferences of the adult; and*
- (b) *to the greatest extent practicable, present the adult's views, wishes and preferences to the tribunal; and*
- (c) *promote and safeguard the adult's rights, interests and opportunities.*

## 126 Tribunal to decide who are interested persons

- (1) If necessary, the tribunal may decide whether a person is an interested person for another person under this Act or the *Powers of Attorney Act 1998*.

*Note—*

See *interested person*—schedule 4 (Dictionary).

- (2) If the tribunal decides a person is not an interested person for the other person and the person asks for the tribunal's reasons, the tribunal must give the person written reasons for its decision.
- (3) This section does not limit a court's power to decide whether a person is an interested person for another person under the *Powers of Attorney Act 1998*.

## 127 Costs

- (1) Each party in a proceeding is to bear the party's own costs of the proceeding.
- (2) However, the tribunal may order an applicant to pay an active party's costs and the costs of the tribunal in exceptional circumstances, including, for example, if the tribunal considers the application is frivolous or vexatious.
- (3) Also, the following provisions of the QCAT Act, chapter 2, part 6, division 6 in relation to costs apply to the tribunal for proceedings under this Act—
  - (a) section 101;
  - (b) sections 103 to 109.

*Note—*

See also section 101.

## **Part 4                      Proceeding**

### **128      Tribunal may stay decision pending hearing**

- (1) If a person applies to the tribunal in relation to a decision for an adult about a matter, the person may also apply to the tribunal for a stay of the decision.
- (2) The tribunal may, by order, stay the decision to secure the effectiveness of the application.
- (3) A stay—
  - (a) may be given on the terms the tribunal considers appropriate; and
  - (b) operates for the period specified by the tribunal.
- (4) The period of a stay must not extend past the time when the tribunal decides the application.
- (5) The tribunal may amend or revoke its order staying a decision.

### **129      Interim order**

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

- (3) An interim order may not include consent to special health care.
- (4) An interim order has effect for the period specified in the order.
- (5) The maximum period that may be specified in an interim order is 3 months.
- (6) An interim order may be renewed, but only if the tribunal is satisfied there are exceptional circumstances justifying the renewal.
- (7) To exercise jurisdiction under subsection (6), the tribunal must be constituted by a legal member.

**130 Tribunal to ensure it has all relevant information and material**

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

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

### **131 Tribunal may proceed without further information**

- (1) If the tribunal considers urgent or special circumstances justify it doing so, the tribunal may proceed to decide a matter on the information before it without receiving further information.
- (2) If all the active parties in a proceeding agree, the tribunal may also proceed to decide a matter in the proceeding on the information before it when the agreement was reached without receiving further information.
- (3) Before the active parties agree, the tribunal must ensure they are aware of the material on which the matter will be decided.

### **134 Report by tribunal staff**

- (1) The tribunal may—
  - (a) receive in evidence in a proceeding a written report by tribunal staff on a matter in the proceeding; and
  - (b) have regard to the report.
- (2) Generally, if the tribunal receives the report in evidence in a proceeding, the adult concerned in the proceeding and each other active party in the proceeding must be—
  - (a) advised of the contents of the report; and
  - (b) upon request, given a copy of the report.
- (3) However, the right to be given a copy may be displaced in a confidentiality order.

### **136 Witness fees and expenses**

- (1) The tribunal may make an order as to fees and expenses to be paid to a witness.

- (2) Despite the QCAT Act, section 97(3), a witness is entitled to fees and expenses only if the tribunal makes an order under subsection (1).

### **137 Offences by witnesses**

- (1) A witness at a hearing must not, unless the person has a reasonable excuse—
- (a) fail to answer a question the person is required to answer by the presiding member; or
  - (b) fail to produce a document or thing the person is required to produce by notice given by the tribunal under the QCAT Act, section 97(1)(b).

Maximum penalty—100 penalty units.

- (2) It is not a reasonable excuse for a person to fail to answer a question because answering the question might tend to incriminate the person.
- (3) It is not a reasonable excuse for a person to fail to produce a document or thing because producing the document or thing might tend to incriminate the person.
- (4) However, evidence of, or directly or indirectly derived from, a person's answer or production of a document or thing that might tend to incriminate the person is not admissible in evidence against the person in a civil or criminal proceeding, other than—
- (a) a proceeding for any of the following offences—
    - (i) an offence against the QCAT Act, section 216 or 217;
    - (ii) another offence about the falsity of the answer, document or thing; or
  - (b) if the answer or production is relevant to the person's employment—a proceeding brought by or for the person against the person's employer; or

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- (c) if the answer or production is relevant to the person's professional registration or licence—a proceeding about the registration, licence or approval; or
- (d) if the answer or production is relevant to the person's registration, licence or approval as proprietor or operator of a service or facility involved in the care of adults with impaired capacity for a matter—a proceeding about the registration, licence or approval.

### **138 Advice, directions and recommendations**

- (1) Once an application about a matter has been made to the tribunal, the tribunal may—
  - (a) give advice or directions about the matter it considers appropriate; or
  - (b) make recommendations it considers appropriate about action an active party should take.

*Note—*

For disobeying a direction of the tribunal, see the QCAT Act, section 213(1).

- (2) If the tribunal gives advice or a direction or makes a recommendation, it may also—
  - (a) continue with the application; or
  - (b) adjourn the application.
- (3) The tribunal may also give leave for an active party to apply to the tribunal for directions about implementing the recommendation.
- (4) A guardian, administrator or attorney who acts under the tribunal's advice, directions or recommendations is taken to have complied with this Act or the *Powers of Attorney Act 1998* unless the person knowingly gave the tribunal false or misleading information relevant to the tribunal's advice, directions or recommendations.
- (5) In this section—  
***attorney*** means—



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

***power of attorney*** means—

- (a) a general power of attorney made under the *Powers of Attorney Act 1998*; or
- (b) an enduring power of attorney; or
- (c) a power of attorney made otherwise than under the *Powers of Attorney Act 1998*, whether before or after its commencement.

### **138AA Directions to former attorney**

- (1) At any hearing of a proceeding relating to an adult, the tribunal may give directions to a person who was formerly an attorney for a matter for the adult.

*Note—*

For disobeying a direction of the tribunal, see the QCAT Act, section 213(1).

- (2) However—
  - (a) the directions may only be directions the tribunal considers necessary because of the ending of the person's appointment as attorney for the matter; and
  - (b) the directions may relate only to a matter for which the person was appointed as attorney immediately before the appointment ended.

- (3) In this section—

***attorney*** means—

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

### **138A Repeated applications for orders**

- (1) This section applies if the tribunal dismisses an application because it considers the application is frivolous, vexatious, misconceived or lacking in substance.
- (2) The QCAT Act, section 49(2) does not apply to another application of the same kind in relation to the same matter.

## **Part 5 Particular proceedings or orders**

### **Division 1 Declaration about capacity**

#### **146 Declaration about capacity**

- (1) The tribunal may make a declaration about the capacity of an adult, guardian, administrator or attorney for a matter.
- (2) The tribunal may do this on its own initiative or on the application of the individual or another interested person.
- (3) In deciding whether an individual is capable of communicating decisions in some way, the tribunal must investigate the use of all reasonable ways of facilitating communication, including, for example, symbol boards or signing.

*Note—*

See definition *capacity*—schedule 4 (Dictionary).

- (4) In this section—

*attorney* means—

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

*power of attorney* means—

- (a) a general power of attorney made under the *Powers of Attorney Act 1998*; or
- (b) an enduring power of attorney; or
- (c) a power of attorney made otherwise than under the *Powers of Attorney Act 1998*, whether before or after its commencement.

#### **147 Effect of declaration about capacity to enter contract**

A declaration about whether a person had capacity to enter a contract is, in a subsequent proceeding in which the validity of the contract is in issue, evidence about the person's capacity.

### **Division 2 Entry and removal warrant**

#### **148 Application for entry and removal warrant**

- (1) An application by the public guardian for a warrant to enter a place and to remove an adult must be sworn and state the grounds on which the warrant is sought.
- (2) Section 118 does not apply to the application and the tribunal may issue a warrant without notice of the application having been given to the adult or any other person.
- (3) The tribunal may refuse to consider the application until the public guardian gives the tribunal all the information the tribunal requires about the application in the way the tribunal requires.

*Example—*

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

#### **149 Issue of entry and removal warrant**

- (1) The tribunal may issue a warrant only if the tribunal is satisfied there are reasonable grounds for suspecting there is an immediate risk of harm, because of neglect (including self

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neglect), exploitation or abuse, to an adult with impaired capacity for a matter.

(2) The warrant must state—

- (a) that the public guardian may, with necessary and reasonable help and force, enter the place, and any other place necessary for entry, and remove the adult; and
- (b) that the public guardian may ask a police officer to help in the exercise of the public guardian's powers under the warrant; and
- (c) the hours of the day or night when the place may be entered; and
- (d) the date, within 14 days after the warrant's issue, the warrant ends.

## **150 Role of occupier if entry and removal warrant**

- (1) The public guardian may require the occupier of the place or another person at the place to help in the exercise of the public guardian's powers under the warrant.
- (2) When making the requirement, the public guardian must warn that it is an offence to fail to comply with the requirement, unless a person has a reasonable excuse.
- (3) A person required to give reasonable help must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—100 penalty units.

## **151 Reporting requirement after removal of adult**

- (1) As soon as practicable after the adult has been removed under the warrant, the public guardian must apply to the tribunal for the orders the public guardian considers appropriate about the following—
  - (a) the adult's personal welfare;
  - (b) a power of attorney or advance health directive of the adult;

- (c) a guardian, administrator or attorney of the adult.
- (2) In this section—
  - attorney** means—
    - (a) an attorney under a power of attorney; or
    - (b) an attorney under an advance health directive; or
    - (c) a statutory health attorney.
  - power of attorney** means—
    - (a) a general power of attorney made under the *Powers of Attorney Act 1998*; or
    - (b) an enduring power of attorney; or
    - (c) a power of attorney made otherwise than under the *Powers of Attorney Act 1998*, whether before or after its commencement.

## Division 3                      Miscellaneous

### 152      ***Tribunal authorisation or approval***

- (1) *The tribunal may, before an administrator enters into a conflict transaction, authorise the administrator to enter into—*
  - (a) *the conflict transaction; or*
  - (b) *conflict transactions of that type; or*
  - (c) *conflict transactions generally.*

*Note—*

*Under section 37 an administrator for an adult may enter into a conflict transaction only if the tribunal has authorised the conflict transaction.*

- (2) *Despite subsection (1), if an administrator enters into a conflict transaction that has not been authorised under subsection (1), the tribunal may retrospectively authorise the transaction.*

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- (3) *A conflict transaction authorised under subsection (2) is taken to be, and always to have been, as valid as if it had been entered into under an authorisation given by the tribunal before the administrator entered into the transaction.*
- (4) *To remove any doubt, it is declared that, until the tribunal retrospectively authorises a conflict transaction under subsection (2), an administrator who entered into the conflict transaction without the tribunal's authorisation under subsection (1) has acted contrary to section 37(1).*
- (5) *The tribunal may approve an investment as an authorised investment.*

### **153 Records and audit**

- (1) The tribunal may order an adult's administrator or adult's attorney for a financial matter to file in the tribunal, and serve on the applicant, a summary of receipts and expenditure for the adult or more detailed accounts of dealings and transactions for the adult.
- (2) The tribunal may—
  - (a) order that the summary or accounts filed be audited by an auditor appointed by the tribunal and a copy of the auditor's report be given to the tribunal and the applicant; and
  - (b) make an order about payment of the auditor's costs.
- (3) The tribunal may make an order under subsection (1) or (2) on its own initiative or on the application of the adult or another interested person.
- (4) *This section applies even if—*
  - (a) *the administrator's appointment has ended; or*
  - (b) *the enduring power of attorney has been revoked; or*
  - (c) *the adult has died.*
- (5) In this section—

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

**154 Ratification or approval of exercise of power by informal decision-maker**

- (1) The tribunal may, by order, ratify an exercise of power, or approve a proposed exercise of power, for a matter by an informal decision-maker for an adult with impaired capacity for the matter.
- (2) The tribunal may only approve or ratify the exercise of power for a matter if—
  - (a) it considers the informal decision-maker proposes to act, or has acted, honestly and with reasonable diligence; and
  - (b) the matter is not a special personal matter, a health matter or a special health matter.
- (3) The tribunal may make the order on its own initiative or on the application of the adult or informal decision-maker.
- (4) If the tribunal approves or ratifies the exercise of power for an adult for a matter—
  - (a) the exercise of power is as effective as if the power were exercised by the adult and the adult had capacity for the matter when the power is or was exercised; and
  - (b) the informal decision-maker does not incur any liability, either to the adult or anyone else, for the exercise of power.
- (5) In this section—

**informal decision-maker**, for a matter for an adult, means a person who is—

  - (a) a member of the adult's support network; and
  - (b) not an attorney under an enduring document, administrator or guardian for the adult for the matter.

## **155 Suspension of guardianship order or administration order**

- (1) The tribunal may, by order, suspend the operation of all or some of the power of a guardian or administrator (an *appointee*) for an adult if the tribunal suspects, on reasonable grounds, that the appointed person is not competent.
- (2) An appointee is not competent if, for example—
  - (a) a relevant interest of the adult has not been, or is not being, adequately protected; or
  - (b) the appointee has neglected the appointee's duties or abused the appointee's powers, whether generally or in relation to a specific power; or
  - (c) the appointee has otherwise contravened this Act.
- (3) The tribunal may make an order under subsection (1) in a proceeding without hearing and deciding the proceeding or otherwise complying with the requirements of this Act.
- (4) The suspension may not be for more than 3 months.
- (5) During the suspension of the operation of power of a guardian, the public guardian is taken to be the guardian for the adult for the exercise of the suspended power.
- (6) During the suspension of the operation of power of an administrator, the public trustee is taken to be the administrator for the adult for the exercise of the suspended power.

## **Part 6 Decision**

### **156 Making and notifying decision**

- (1) This section does not apply in relation to the making of a limitation order.

*Note—*

In relation to the making of a limitation order, see section 112.



- (2) Subject to section 157, as soon as practicable after making its decision, the tribunal must notify, and give a copy of its decision to, each relevant person.
- (3) The tribunal must also give a copy of its decision to anyone else who requests a copy.
- (4) For subsection (3), it is sufficient for the tribunal to give a copy of the decision in a form that does not contravene section 114A.
- (5) If the tribunal's decision does not include its reasons, the tribunal must give each relevant person a written notice stating that the relevant person may request the tribunal to give written reasons for its decision under the QCAT Act, section 122.
- (6) The QCAT Act, section 122 applies to a request made by a relevant person for written reasons as if a reference in that section to a party to the proceeding were a reference to a relevant person.
- (7) In this section—  
*relevant person* means—
  - (a) the adult concerned in the matter; or
  - (b) another active party in the proceeding; or
  - (c) another person given notice of the hearing of the application.

## **157 Order postponing giving copy of decision**

- (1) The tribunal may, by order (a *postponement order*), postpone notifying, and giving a copy of its decision to, a particular person under section 156.
- (2) The tribunal may make a postponement order only if the tribunal is satisfied, on reasonable grounds, that making the order is necessary to avoid—
  - (a) serious harm to a person; or
  - (b) the effect of the decision being defeated.

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- (3) A postponement order has effect for the period specified in the order.
- (4) The maximum period that may be specified in a postponement order is 14 days.
- (5) A postponement order may be renewed, but only if the tribunal is satisfied there are exceptional circumstances justifying the renewal.

### **158 Copy of reasons to be given**

- (1) This section does not apply in relation to a decision to make a limitation order.

*Note—*

In relation to a decision to make a limitation order, see section 113.

- (2) This section applies if the tribunal gives written reasons for its decision on an application about a matter.
- (3) The tribunal must give a copy of the written reasons to—
  - (a) the adult concerned in the matter; and
  - (b) each other active party in the proceeding.
- (4) The tribunal must also give a copy of its written reasons to anyone else who requests a copy.
- (5) For subsection (4), it is sufficient for the tribunal to give a copy of the written reasons in a form that does not contravene section 114A.

## **Part 8 Appeal**

### **163 Appellant**

- (1) An eligible person may appeal against a tribunal decision, other than a non-appellable decision, in a proceeding as provided under the QCAT Act and for that purpose the person is taken to be a party to the proceeding.

*Note—*

See also section 101.

(2) A non-appellable decision can not be appealed under the QCAT Act.

(3) In this section—

***eligible person—***

(a) means—

(i) the person whose capacity for a matter was under consideration in the proceeding; or

(ii) the applicant in the proceeding; or

(iii) a person proposed for appointment by the proceeding; or

(iv) a person whose power as guardian, administrator or attorney was changed or removed by the tribunal decision; or

(v) the public guardian; or

(vi) the public trustee; or

(vii) the Attorney-General; or

(viii) a person given leave to appeal by the appeal tribunal, or the Court of Appeal, under the QCAT Act; and

(b) for a tribunal decision to make a limitation order, other than a non-appellable decision, also means an active party, or an entity adversely affected by the limitation order.

***non-appellable decision*** means a tribunal decision to make a limitation order under section 110.

## **164 Filing notice of appeal in particular circumstances**

If the tribunal makes 1 or more orders under section 157 postponing notifying, and giving a copy of, its decision for a

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specified period, the notice of appeal may be filed within 28 days after the later of the following days—

- (a) the last day of the specified period or periods;
- (b) the date of the written reasons for the tribunal's decision.

## **Part 9                      Recognition of order made under another law**

### **166      Definitions for pt 9**

In this part—

***recognised provision*** means a provision, Act or law prescribed under a regulation for section 167.

***registrable order*** means an order made under a recognised provision.

### **167      Regulation prescribing recognised provision**

If an Act, or provision of an Act, of the Commonwealth or another State, or a law, or provision of a law, of a foreign jurisdiction, allows an order to be made that is similar to an order that may be made under this Act or the *Powers of Attorney Act 1998*, the provision, Act or law may be prescribed under a regulation for this section.

### **168      Application to register**

A person may apply to the tribunal to register a registrable order.

### **169      Registration**

The tribunal may register a registrable order only if the original order or a certified copy of the order has been filed with the tribunal.

## **170 Effect of registration**

The effect of registration of a registrable order is the order is treated, other than for an appeal, as if it were an order made by the tribunal.

## **171 Notice of registration and subsequent action to original maker**

- (1) As soon as reasonably practicable after registering a registrable order, the tribunal must advise the entity that originally made the order of the registration.
- (2) As soon as reasonably practicable after the tribunal takes any subsequent action about the order, including, for example, making a further order, the tribunal must advise the entity that originally made the order of the action.

# **Chapter 9 Public advocate**

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

### **207A Definitions for pt 1**

In this part—

*confidential information* see section 246.

*information* includes confidential information.

### **208 Public advocate**

There must be a Public Advocate.

## **209 Functions—systemic advocacy**

- (1) The public advocate has the following functions—
  - (a) promoting and protecting the rights of adults with impaired capacity for a matter;
  - (b) promoting the protection of the adults from neglect, exploitation or abuse;
  - (c) encouraging the development of programs to help the adults to reach the greatest practicable degree of autonomy;
  - (d) promoting the provision of services and facilities for the adults;
  - (e) monitoring and reviewing the delivery of services and facilities to the adults.
- (2) However, it is not the function of the public advocate to investigate a complaint or allegation that concerns a particular adult with impaired capacity for a matter.

## **209A Report about systemic matter**

- (1) The public advocate may—
  - (a) prepare a report about a matter arising from the performance of the public advocate's functions under this Act; and
  - (b) give a copy of the report to the Minister.
- (2) The report must not contain confidential information that is likely to result in the identification, by a member of the public, of an adult with impaired capacity to whom the information relates.
- (3) If the public advocate proposes to include information adverse to a person in the report—
  - (a) the public advocate must not include the information in the report unless, before the report is prepared, the public advocate gives the person an opportunity to make submissions about the information; and

- (b) if the person makes submissions and the public advocate still proposes to include the information in the report, the public advocate must ensure the person's submissions are fairly stated in the report.
- (4) The Minister must table a copy of the report in the Legislative Assembly within 5 sitting days after receiving the report.

## **210 Powers**

- (1) The public advocate may do all things necessary or convenient to be done to perform the public advocate's functions.
- (2) The public advocate may intervene in a proceeding before a court or tribunal, or in an official inquiry, involving protection of the rights or interests of adults with impaired capacity for a matter.
- (3) However, intervention requires the leave of the court, tribunal or person in charge of the inquiry and is subject to the terms imposed by the court, tribunal or person in charge of the inquiry.

## **210A Right to information**

- (1) For performing the public advocate's functions, the public advocate has a right to all information—
  - (a) necessary to monitor and review the delivery of services and facilities to adults with impaired capacity for a matter; and
  - (b) about the arrangements for the provision of services and facilities to a class of the adults; and
  - (c) about the policies and procedures of a service or facility that relate to the provision of services and facilities to the adults.
- (2) The public advocate may, by written notice given to a person who has custody or control of the information, require the person, within a stated reasonable time—

[s 210B]

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- (a) to give the information to the public advocate; and
  - (b) if the information is contained in a document—to allow the public advocate to inspect the document and take a copy of it.
- (3) The notice must state the purpose for making the requirement.
- (4) The person must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (5) It is a reasonable excuse for a person to fail to comply with the notice because, for example, complying with the notice—
  - (a) might tend to incriminate the person; or
  - (b) would require the person to disclose information that is the subject of legal professional privilege.
- (6) Despite subsection (2), the public advocate must not give a notice to any of the following people—
  - (a) an adult with impaired capacity for a matter;
  - (b) a family member or close friend of the adult who is a member of the adult's support network.

### **210B Offence to publish confidential information**

- (1) This section applies to information given to, or inspected or copied by, the public advocate under section 210A to the extent the information comprises confidential information.
- (2) The public advocate or a member of the public advocate's staff must not, without reasonable excuse, publish the information to the public if the publication is likely to result in the identification, by a member of the public, of a person to whom the information relates.

Maximum penalty—200 penalty units.



## **211 Not under Ministerial control**

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

## **212 Delegation**

(1) The public advocate may delegate the public advocate's powers to an appropriately qualified member of the public advocate's staff.

(2) In this section—

*appropriately qualified*, for a person to whom a power under an Act may be delegated, includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

a person's level of authority

# **Part 2 Administrative provisions**

## **213 Appointment**

(1) The Governor in Council must appoint the public advocate.

(2) The appointment must be on a full-time basis.

(3) A person is eligible for appointment as public advocate only if the person has demonstrated commitment to advocacy for people with impaired capacity for a matter.

(4) A person may not hold office as public advocate while the person holds office as public guardian or public trustee.

(5) *The public advocate is appointed under this Act and not under the Public Service Act 2008.*

## **214 Selection**

- (1) For selecting a person for recommendation for appointment as public advocate, the Minister must advertise for applications from appropriately qualified persons to be considered for selection.
- (2) The Minister may recommend to the Governor in Council a person for appointment as public advocate only if subsection (1) has been complied with for the appointment.
- (3) Subsections (1) and (2) do not apply to the reappointment of a person as the public advocate.

## **215 Duration of appointment**

- (1) The public advocate holds office for a term of not longer than 5 years.

*Note—*

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

- (2) The office of public advocate becomes vacant if the public advocate resigns by signed notice of resignation given to the Minister.
- (3) The Governor in Council may remove the public advocate from office for—
  - (a) physical or mental incapacity to satisfactorily perform official duties; or
  - (b) neglect of duty; or
  - (c) dishonourable conduct; or
  - (d) being found guilty of an offence the Minister considers makes the person inappropriate to perform official duties.

## **216 Terms of appointment**

- (1) The Governor in Council may decide the remuneration and allowances payable to the public advocate.

- (2) The public advocate is to be paid the remuneration and allowances decided by the Governor in Council.
- (3) To the extent this Act does not state the terms on which the public advocate holds office, the public advocate holds office on the terms decided by the Governor in Council.

## **217 Leave of absence**

The Minister may give the public advocate leave of absence on the terms the Minister considers appropriate.

### **217A Preservation of rights of public advocate**

- (1) *This section applies if a public service officer is appointed as the public advocate.*
- (2) *The person keeps all rights accrued or accruing to the person as a public service officer as if service as the public advocate 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 advocate, the person's service as the public advocate is taken to be service of a like nature in the public service for deciding the person's rights as a public service officer.*

## **218 Acting public advocate**

- (1) The Minister may appoint a person to act as the public advocate during any or all periods—
  - (a) the office is vacant; or
  - (b) the public advocate is absent from duty or, for another reason, is unable to perform the duties of the office.
- (2) A person appointed under subsection (1) may be appointed for a period of not more than 6 months.

## **219 Staff**

Staff necessary to enable the public advocate to perform the public advocate's functions are to be appointed under the *Public Service Act 2008*.

## **220 Annual report**

- (1) As soon as practicable after the close of each financial year but not later than 4 months after that close, the public advocate must—
  - (a) prepare a report on the performance of the public advocate's functions during the year; and
  - (b) give a copy of the report to the Minister.
- (2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

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

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

# **Chapter 11 Miscellaneous provisions**

## **Part 1 Relationship with criminal law**

### **238 Act does not authorise euthanasia or affect particular provisions of Criminal Code**

To remove doubt it is declared that nothing in this Act—

- (a) authorises, justifies or excuses killing a person; or

- (b) affects the Criminal Code, section 284 or chapter 28.

## **Part 2                      Relationship with court jurisdiction**

### **239      Litigation guardian process not affected**

This Act does not affect rules of court of the Supreme Court, District Court or Magistrates Courts about a litigation guardian for a person under a legal incapacity.

### **240      Supreme Court's inherent jurisdiction not affected**

This Act does not affect the court's inherent jurisdiction, including its *parens patriae* jurisdiction.

*Note—*

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

### **241      Transfer of proceeding**

- (1) The court may, if it considers it appropriate, transfer a proceeding within the tribunal's jurisdiction to the tribunal.
- (2) The tribunal may, if it considers it appropriate, transfer a proceeding within the court's jurisdiction to the court.
- (3) The transfer may be ordered on the court's or tribunal's initiative or on the application of an active party to the proceeding.

### **242      Stay of proceeding concerning an enduring document**

If there is a Supreme Court proceeding, and a tribunal proceeding, about an enduring document or attorneys under an enduring document, other than to the extent necessary for section 243, the tribunal must stay the tribunal proceeding unless the court transfers the Supreme Court proceeding to the tribunal.

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**243 Interim appointed decision-maker if Supreme Court proceeding**

- (1) If there is a Supreme Court proceeding about an adult's enduring document or attorneys under an enduring document, the tribunal may appoint guardians or administrators for the adult until the proceeding is resolved.
- (2) The appointment may be made on the tribunal's initiative or on the application of the adult or anyone else.

**244 Chapter 3 applies for interim appointment**

Chapter 3 applies for the appointment under section 243.

**Part 2A Access to record of proceedings**

**244A Access to record of proceedings**

- (1) This section applies if—
  - (a) the tribunal is considering making an appointment or reviewing the appointment of a guardian or an administrator for an adult; and
  - (b) the adult has been a party to a civil proceeding in a court; and
  - (c) the court has not made an order under section 245.
- (2) The tribunal may request from the registrar of the court a copy of the part of the record of proceedings for the civil proceeding that is relevant to the tribunal's consideration.
- (3) The registrar may, if the registrar considers the part of the record of proceedings is relevant to the tribunal's consideration, comply with a request under subsection (2).
- (4) A fee is not payable to the court for a copy of part of the record of proceedings under this section.
- (5) In this section—

*court* means the Supreme Court or the District Court.

## Part 3

### Settlements or damages awards

#### 245 Settlements or damages awards

- (1) This section applies if, in a civil proceeding—
  - (a) the court sanctions a settlement between another person and an adult or orders an amount to be paid by another person to an adult; and
  - (b) the court considers the adult is a person with impaired capacity for a matter.
- (2) The court may exercise all the powers of the tribunal under chapter 3.
- (3) Chapter 3 applies to the court in its exercise of these powers as if the court were the tribunal.
- (4) As soon as practicable after a court makes an order under this section, the registrar of the court must give a copy of the order to the tribunal.
- (5) Also, after the order is made, the registrar must, if requested by the tribunal, give the tribunal a copy of the part of the record of proceedings that is relevant to making the order.
- (6) A fee is not payable to the court for a copy of part of the record of proceedings under subsection (5).
- (7) In this section—

*court* means the Supreme Court or the District Court.

*settlement* includes compromise or acceptance of an amount paid into court.

## Part 4 Protection from liability and dealing with information

### 246 Definitions for pt 4

In this part—

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

- (a) information within the public domain 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; or
- (c) information about a guardianship proceeding.

***consultant*** means a person engaged under the *Law Reform Commission Act 1968*, section 9.

***public guardian's delegate for an investigation*** means a delegate of the public guardian under the *Public Guardian Act 2014*, section 20(1).

***relevant person*** means—

- (a) a relevant tribunal person; or
- (b) the public advocate or a member of the public advocate's staff; or
- (c) a guardian or administrator.

***relevant tribunal person*** means—

- (a) a member of the tribunal; or
- (b) the principal registrar or a registrar under the QCAT Act or another member of the administrative staff of the registry under that Act; or
- (c) an adjudicator or assessor appointed under the QCAT Act.

***tribunal expert*** means—



- (a) a person engaged under a procedural direction to help the tribunal in a proceeding; or
- (b) a person required under a procedural direction to prepare and produce a report or document to be given to the tribunal.

*use*, confidential information, includes disclose or publish.

## 247 Whistleblowers' protection

(1) *A person is not liable, civilly, criminally or under an administrative process, for disclosing information to an official if the person honestly believes, on reasonable grounds—*

- (a) *the information tends to show—*
  - (i) *another person has contravened this Act, the Powers of Attorney Act 1998 or the Public Guardian Act 2014; or*
  - (ii) *an adult is, or has been, the subject of neglect (including self-neglect), exploitation or abuse; or*
- (b) *the information would help in the assessment or investigation of a complaint that—*
  - (i) *another person has contravened this Act, the Powers of Attorney Act 1998 or the Public Guardian Act 2014; or*
  - (ii) *an adult is, or has been, the subject of neglect (including self-neglect), exploitation or abuse.*

(2) Without limiting subsection (1)—

- (a) in a proceeding for defamation the discloser has a defence of absolute privilege for publishing the disclosed information; and
- (b) if the discloser would otherwise be required to maintain confidentiality about the disclosed information under an Act, oath, rule of law or practice, the discloser—

- (i) does not contravene the Act, oath, rule of law or practice for disclosing the information; and
  - (ii) is not liable to disciplinary action for disclosing the information.
- (3) A person's liability for the person's own conduct is not affected only because the person discloses it to an official.
- (4) In this section—  
*official* means—
  - (a) the principal registrar or a registrar under the QCAT Act or another member of the administrative staff of the registry under that Act; or
  - (b) the public guardian, a member of the public guardian's staff or a public guardian's delegate for an investigation under the *Public Guardian Act 2014*; or
  - (c) the public advocate or a member of the public advocate's staff; or
  - (d) *a person appointed under the Public Guardian Act 2014, section 109 as—*
    - (i) *a community visitor (adult); or*
    - (ii) *a community visitor (adult) and a community visitor (child).*

#### **247A Reprisal and grounds for reprisal**

- (1) *A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that, the other person or someone else has disclosed or intends to disclose information under section 247(1).*
- (2) *An attempt to cause detriment includes an attempt to induce a person to cause detriment.*
- (3) *A contravention of subsection (1) is a reprisal or the taking of a reprisal.*
- (4) *A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.*

- (5) *For the contravention mentioned in subsection (3) to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.*

### **247B Offence of taking reprisal**

- (1) *A person must not take a reprisal.*  
*Maximum penalty—167 penalty units or 2 years imprisonment.*
- (2) *An offence against subsection (1) is an indictable offence that is a misdemeanour.*

### **247C Damages for reprisal**

- (1) *A reprisal is a tort and a person who takes a reprisal is liable in damages to any person who suffers detriment as a result.*
- (2) *Any appropriate remedy that may be granted by a court for a tort, including exemplary damages, may be granted by a court for the taking of a reprisal.*
- (3) *If the claim for damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.*
- (4) *The right of a person to bring proceedings for damages under this section does not affect any other right or remedy available to the person arising from the reprisal.*
- (5) *Proceedings for damages may be brought under this section even if a prosecution in relation to the reprisal has not been brought, or can not be brought, for the offence under section 247B.*
- (6) *The Workers' Compensation and Rehabilitation Act 2003 does not apply to proceedings for damages brought under this section.*
- (7) *In this section—*  
***court*** *means any court.*

**248 Protection from liability if honest and not negligent**

- (1) A person is not civilly liable for an act done, or an omission made, honestly and without negligence under this Act or the *Powers of Attorney Act 1998*.
- (2) If subsection (1) prevents a civil liability attaching to a person, the liability attaches instead to the State.
- (3) In this section—  
*former member*, of the former tribunal, means—
  - (a) a person who was the president, a deputy president or another tribunal member of the former tribunal; or
  - (b) a person who was the registrar, a member of the staff, or a tribunal expert, of the former tribunal.

*former tribunal* means the Guardianship and Administration Tribunal established under this Act before its abolition by the QCAT Act.

*person* means—

- (a) the public advocate or a member of the public advocate's staff; or
- (b) a former member of the former tribunal.

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

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

- (b) the public guardian under the *Public Guardian Act 2014*, section 38.

## **248B Protection from liability for giving information**

- (1) This section applies to the giving of information to the public advocate under section 210A.
- (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 advocate, 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
  - (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.

**249 Protected use of confidential information**

- (1) Despite section 249A, a relevant person may disclose confidential information that relates only to a particular person to the particular person.
- (2) If a relevant person gains confidential information because of being a relevant person, or because of an opportunity given by being a relevant person, the person may use the information for the purposes of this Act or as provided under subsection (3).
- (3) Confidential information may be used—
  - (a) if authorised or required under a regulation or another law; or
  - (b) for a proceeding arising out of or in connection with this Act; or
  - (c) if authorised by the person to whom the information relates; or
  - (d) if authorised by the court or the tribunal in the interests of justice; or
  - (e) if necessary to prevent a serious risk to a person's life, health or safety; or
  - (f) for the purpose of obtaining legal or financial advice; or
  - (g) if reasonably necessary to obtain counselling, advice or other treatment; or
  - (h) in reporting a suspected offence to a police officer or assisting a police officer in the investigation of a suspected offence; or
  - (i) in assisting the public guardian, the public advocate or a public service officer in the performance of functions under this Act, the *Powers of Attorney Act 1998* or the *Public Guardian Act 2014*.
- (4) This section applies subject to section 210B.

## **249A Prohibited use of confidential information**

A relevant person must not use confidential information gained because of being a relevant person, or because of an opportunity given by being a relevant person, other than as provided under section 249, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

## **Part 4A Miscellaneous**

### **250 Guidelines to assist in assessments of capacity**

- (1) *The Minister is to prepare guidelines to assist persons required to make assessments about the capacity of adults to make decisions about matters to make the assessments.*
- (2) *The guidelines are to include—*
  - (a) *principles to be applied in making assessments about the capacity of adults to make decisions about matters; and*
  - (b) *information and advice that will give practicable guidance for making the assessments.*
- (3) *In preparing the guidelines the Minister must consult with persons who have qualifications relevant to, or experience in, making assessments about the capacity of adults to make decisions about matters.*
- (4) *The guidelines are to be published on the department's website.*
- (5) *The Minister is to review the guidelines at least every 5 years.*

### **250A Delegation of public trustee's powers under this Act**

- (1) *If the public trustee has power under this Act for a financial matter for an adult, the public trustee may delegate the power to—*

- (a) *an appropriately qualified member of the public trustee's staff; or*
  - (b) *for day-to-day decisions about the matter—*
    - (i) *an appropriately qualified carer of the adult; or*
    - (ii) *an attorney under an enduring document; or*
    - (iii) *a person who would be eligible to be the adult's statutory health attorney; or*
    - (iv) *another person the public trustee considers appropriately qualified to exercise the power.*
- (2) *However, the public trustee may not delegate the public trustee's powers mentioned in subsection (1)(b) to—*
  - (a) *the public guardian; or*
  - (b) *a paid carer for the adult.*
- (3) *In this section—*  
***day-to-day decisions***, *for a financial matter for an adult, means minor, uncontroversial decisions about day-to-day issues that involve no more than a low risk to the adult.*

### **250B Proceedings for indictable offences**

- (1) *Subject to subsection (2), a charge of an indictable offence against this Act must be heard and decided summarily.*
- (2) *A Magistrates Court must abstain from dealing summarily with a charge mentioned in subsection (1) if satisfied, on an application made by the prosecution or the defence, that because of exceptional circumstances the charge should not be heard and decided summarily.*
- (3) *If subsection (2) applies to a Magistrates Court—*
  - (a) *the court must stop treating the proceeding as a proceeding to hear and decide the charge summarily and start treating the proceeding as a committal proceeding; and*



- (b) *the defendant's plea at the start of the hearing must be disregarded; and*
- (c) *the evidence already heard by the court must be taken to be evidence in the committal proceeding; and*
- (d) *to avoid any doubt, it is declared that the Justices Act 1886, section 104 must be complied with for the committal proceeding.*

## Part 5 Forms and regulations

### 251 Chief executive may approve forms

The chief executive may approve forms for use under this Act.

### 252 Regulation-making power

The Governor in Council may make regulations under this Act.

## Chapter 12 Transitional provisions and repeal

### Part 1 Transitional provisions for adult guardian

#### 253 Definition for pt 1

In this part—

*repealed chapter* means the *Powers of Attorney Act 1998*, chapter 7.

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## **254 Appointment of adult guardian continues**

From the repeal of the repealed chapter, the person holding office as adult guardian immediately before the repeal of the repealed chapter continues in office for the balance of the person's term as the adult guardian appointed under section 199.

## **255 Particular things continued**

From the repeal of the repealed chapter, a thing done under a provision of the repealed chapter mentioned in column 1 and in force immediately before the repeal of the repealed chapter continues to have effect after the repeal as a thing done under the corresponding provision of this Act mentioned in column 2.

### **Column 1—provisions of the repealed chapter**

section 130

section 131

section 132

section 134

section 135

section 136

section 137

section 138

section 142

section 143

section 144

section 145

section 146

### **Column 2—corresponding provision in this Act**

section 177

section 178

section 179

section 180

section 182

section 183

sections 184 and 185

section 189

section 193

section 194

sections 195 and 196

sections 148 and 197

section 149

**Column 1—provisions of the  
repealed chapter**

**Column 2—corresponding  
provision in this Act**

section 149

section 151

section 154

section 204

*Example—*

A notice given by the adult guardian under the *Powers of Attorney Act 1998*, section 144 suspending operation of an attorney's power and that is in force immediately before the repeal of the repealed chapter continues to have effect after the repeal for the remainder of the suspension period as a suspension under section 195 of this Act. Section 196 of this Act applies during the suspension.

## **Part 2                      Transitional provisions for committee**

### **256      Power to apply to court for compensation for loss of benefit in estate because of committee**

- (1) If a person's benefit in an adult's estate under the adult's will, on intestacy, or by another disposition taking effect on the adult's death, is lost because of a sale or other dealing with the adult's property by a committee of the adult, section 60 applies as if references in the section to an administrator were references to the committee.
- (2) Subsection (1) applies whether the sale or other dealing happens before or after the commencement of this section.

### **257      Tribunal's power if committee**

If a committee for a person continues after the commencement of this section, the tribunal may make an order setting aside the committee and may make any other appropriate order.

## **Part 3**

# **Transitional provisions for, and repeal of, Intellectually Disabled Citizens Act 1985**

### **258 Definition for pt 3**

In this part—

*repealed Act* means the *Intellectually Disabled Citizens Act 1985*.

### **259 Adult guardian assumes legal friend responsibilities**

- (1) If, immediately before the repeal of the repealed Act, the legal friend is authorised to act, or is acting, under section 26 of the repealed Act for a person—
  - (a) the adult guardian is taken to have been authorised to act for the person under section 26 of the repealed Act; and
  - (b) the repealed Act applies to the adult guardian as if references to the legal friend were references to the adult guardian and the repealed Act had not been repealed.
- (2) The adult guardian's authority under subsection (1) ends if the adult guardian receives a written request from the person's administrator that the adult guardian no longer act under the authority.

### **260 Management by public trustee**

- (1) If, immediately before the repeal of the repealed Act, the public trustee manages a person's estate under section 32(1) and (2) of the repealed Act, then, on the repeal of the repealed Act the public trustee is taken to be appointed by the tribunal as the person's administrator for all financial matters.
- (2) If, immediately before the repeal of the repealed Act, the public trustee manages a person's estate under section 32(1A) and (2) of the repealed Act, then, on the repeal of the repealed

Act, the public trustee is taken to be appointed by the tribunal as the person's administrator for all financial matters.

**261 Council records to be given to tribunal**

The records of the Intellectually Disabled Citizens Council of Queensland constituted under the repealed Act are to become the records of the tribunal.

**262 Repeal**

The Intellectually Disabled Citizens Act 1985 is repealed.

**Part 4**

**Transitional provision for  
Guardianship and  
Administration and Powers of  
Attorney Amendment Act 2001**

**262A Protection for health provider**

- (1) This section applies if—
  - (a) an adult's health provider withheld or withdrew a life-sustaining measure for the adult on or after 1 July 2000 and before the commencement of this section; and
  - (b) at the time the measure was withheld or withdrawn the health provider reasonably considered—
    - (i) the adult had impaired capacity for the health matter concerned; and
    - (ii) the commencement or continuation of the measure for the adult would have been inconsistent with good medical practice.
- (2) The withholding or withdrawal of the measure is taken—
  - (a) for section 79—to have been health care for which consent was properly given under this Act; and

[s 262B]

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- (b) for section 80—to have been health care authorised by this Act.

## **Part 5**

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

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

- (1) This section applies for the reference to a community visitor's spouse in section 231(7) if—
  - (a) the community visitor was appointed before the commencement of the *Acts Interpretation Act 1954*, section 32DA (*section 32DA*); and
  - (b) the spouse was, immediately before the commencement, a de facto partner of the person as defined under section 32DA.
- (2) While the spouse continues to be a de facto partner of the person, section 231(7) does not apply for the spouse.
- (3) However, subsection (2) applies only for the person's term of holding office as a community visitor that was current at the commencement of section 32DA.

## Part 6

# Transitional provisions for Guardianship and Administration and Other Acts Amendment Act 2003

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

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

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

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

*Note—*

For examples of when an administrator is not competent, see section 31(5)(d) (Appointment review process), 155(2)(c) (Suspension of guardianship order or administration order) or 195(2)(c) (Suspension of attorney's power).

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

- (1) This section applies if before the commencement of this section (the **commencement**)—
  - (a) a person is given a notice under section 118 as in force immediately before the commencement; and
  - (b) the person had not, under section 120 as in force immediately before the commencement (the **repealed**

[s 262F]

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*section*), given the tribunal a notice as permitted under the repealed section.

- (2) After the commencement—
- (a) the repealed section continues to apply in relation to the person as if it had not been repealed; and
  - (b) if the person gives the tribunal a notice as permitted under the repealed section, the person is taken to be an active party in the proceeding.

#### **262F Interim orders**

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

## **Part 7**

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

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

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

#### **264 Interim orders**

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



## Part 8

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

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

- (1) This section applies to a guardian for an adult to whom chapter 5B applies if the guardian was—
  - (a) appointed before the commencement; and
  - (b) immediately before the commencement, authorised in accordance with the terms of the guardian's appointment to make decisions for the adult about the use of a restrictive practice in relation to the adult.
- (2) Despite chapter 5B, the guardian may continue to make decisions for the adult about use of the restrictive practice in relation to the adult.
- (3) This section stops applying on the earlier of—
  - (a) the guardian's appointment being reviewed by the tribunal; or
  - (b) the first day after the transitional period ends.
- (4) In this section—

***commencement*** means the commencement of this section.

***restrictive practice*** see section 80U.

***transitional period*** means the period starting on the commencement and ending 27 months after the commencement.

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

- (1) Chapter 5B, part 4 does not apply during the transitional period.

- (2) In this section—

*transitional period* means the period starting on 1 July 2008 and ending on the date of assent of the *Criminal History Screening Legislation Amendment Act 2010*.

## **Part 9**

### **Transitional provision for Guardianship and Administration and Other Acts Amendment Act 2008**

#### **267 Directions to former attorney**

Section 138AA also applies in relation to a person whose appointment as attorney for a matter ended before the commencement of this section.

## **Part 10**

### **Transitional provision for Fair Work (Commonwealth Powers) and Other Provisions Act 2009**

#### **268 Remuneration of professional administrators**

- (1) This section applies if the tribunal orders, before the commencement, that an administrator for an adult as mentioned in section 48(1) is entitled to remuneration from the adult.
- (2) Repealed section 48(2) continues to apply, despite its repeal, in relation to the remuneration, until the tribunal makes a further order about the administrator's remuneration.
- (3) In this section—

*commencement* means the commencement of this section.

*repealed section 48(2)* means section 48(2) as it existed before its repeal by the *Fair Work (Commonwealth Powers) and Other Provisions Act 2009*.

## Part 11

### Transitional provision for State Penalties Enforcement and Other Legislation Amendment Act 2009

#### 269 Declaration and validation concerning particular reviews under s 29

- (1) During the transitional period, section 29 is taken always to have applied in relation to a review of an appointment of an administrator for an adult as if the amendment of that section by the *State Penalties Enforcement and Other Legislation Amendment Act 2009*, section 216 had commenced on 1 July 2008.

- (2) In this section—

*transitional period* means the period starting at the beginning of 1 July 2008 and ending at the end of the day before the commencement of the amendment.

## Part 12

### Transitional and validation provisions for Guardianship and Administration and Other Legislation Amendment Act 2018

#### 270 Definition for part

*In this part—*

*amendment Act* means the *Guardianship and Administration and Other Legislation Amendment Act 2018*.

**271      *Obligation of registrar of titles***

*Sections 21(2), 27(3) and 32A(3), as amended by the amendment Act, apply only in relation to an advice received by the registrar after the commencement.*

**272      *Application of ss 60A–60C***

*Sections 60A to 60C apply—*

- (a) in relation to the will of an adult who dies after the commencement; and*
- (b) regardless of whether the sale, mortgage, charge, disposition of, or other dealing with, property by the administrator happened before or after the commencement.*

**273      *Validation of delegation***

- (1) This section applies to a delegation by the public trustee of a power of a type described in, and to a person mentioned in, section 250A before the commencement.*
- (2) The delegation is taken to be, and always to have been, as valid and effective as it would have been if it were made after the commencement of section 250A.*

**274      *Existing proceedings***

- (1) This section applies if, immediately before the commencement, a proceeding under this Act had been started but not finished.*
- (2) The proceeding is to continue as if the amendment Act had not been enacted.*

## Schedule 2      Types of matters

schedule 4

### Part 1                      Financial matter

#### 1                      Financial matter

A *financial matter*, for an adult, is a matter relating to the adult's financial or property matters, including, for example, a matter relating to 1 or more of the following—

- (a) paying maintenance and accommodation expenses for the adult and the adult's dependants, including, for example, purchasing an interest in, or making another contribution to, an establishment that will maintain or accommodate the adult or a dependant of the adult;
- (b) paying the adult's debts, including any fees and expenses to which an administrator is entitled under a document made by the adult or under a law;
- (c) receiving and recovering money payable to the adult;
- (d) carrying on a trade or business of the adult;
- (e) performing contracts entered into by the adult;
- (f) discharging a mortgage over the adult's property;
- (g) paying rates, taxes, insurance premiums or other outgoings for the adult's property;
- (h) insuring the adult or the adult's property;
- (i) otherwise preserving or improving the adult's estate;
- (j) investing for the adult in authorised investments;
- (k) continuing investments of the adult, including taking up rights to issues of new shares, or options for new shares, to which the adult becomes entitled by the adult's existing shareholding;
- (l) undertaking a real estate transaction for the adult;

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

## Part 2                      Personal matter

### 2                      Personal matter

A ***personal matter***, for an adult, is a matter, other than a special personal matter or special health matter, relating to the adult's care, including the adult's health care, or welfare, including, for example, a matter relating to 1 or more of the following—

- (a) where the adult lives;
- (b) with whom the adult lives;
- (ba) services provided to the adult;
- (c) whether the adult works and, if so, the kind and place of work and the employer;
- (d) what education or training the adult undertakes;
- (e) whether the adult applies for a licence or permit;
- (f) day-to-day issues, including, for example, diet and dress;
- (g) health care of the adult;
- (h) whether to consent to a forensic examination of the adult;

*Note—*

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

- (i) a legal matter not relating to the adult's financial or property matter;
- (j) a restrictive practice matter under chapter 5B;
- (k) seeking help and making representations about the use of restrictive practices for an adult who is the subject of a containment or seclusion approval under chapter 5B;
- (l) *who may have access visits to, or other contact with, the adult;*
- (m) *advocacy relating to the care and welfare of the adult.*

### 3 Special personal matter

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

- (a) making or revoking the adult's will;
- (b) making or revoking a power of attorney, enduring power of attorney or advance health directive of the adult;
- (c) exercising the adult's right to vote in a Commonwealth, State or local government election or referendum;
- (d) consenting to adoption of a child of the adult under 18 years;
- (e) consenting to marriage of the adult;
- (f) consenting to the adult entering into a civil partnership;
- (g) consenting to the adult terminating a civil partnership;
- (h) entering into, or agreeing to enter into, a surrogacy arrangement under the *Surrogacy Act 2010*;
- (i) consenting to the making or discharge of a parentage order under the *Surrogacy Act 2010*;
- (j) *entering a plea on a criminal charge for the adult.*

*Note—*

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

#### **4 Health matter**

A **health matter**, for an adult, is a matter relating to health care, other than special health care, of the adult.

#### **5 Health care**

- (1) **Health care**, of an adult, is care or treatment of, or a service or a procedure for, the adult—
  - (a) to diagnose, maintain, or treat the adult's physical or mental condition; and
  - (b) carried out by, or under the direction or supervision of, a health provider.
- (2) **Health care**, of an adult, includes withholding or withdrawal of a life-sustaining measure for the adult if the commencement or continuation of the measure for the adult would be inconsistent with good medical practice.
- (3) **Health care**, of an adult, does not include—
  - (a) first aid treatment; or
  - (b) a non-intrusive examination made for diagnostic purposes; or
  - (c) the administration of a pharmaceutical drug if—
    - (i) a prescription is not needed to obtain the drug; and
    - (ii) the drug is normally self-administered; and
    - (iii) the administration is for a recommended purpose and at a recommended dosage level; or
  - (d) psychosurgery for the adult.

*Example of paragraph (b)—*

a visual examination of an adult's mouth, throat, nasal cavity, eyes or ears



**5A Life-sustaining measure**

- (1) A *life-sustaining measure* is health care intended to sustain or prolong life and that supplants or maintains the operation of vital bodily functions that are temporarily or permanently incapable of independent operation.
- (2) Without limiting subsection (1), each of the following is a *life-sustaining measure*—
  - (a) cardiopulmonary resuscitation;
  - (b) assisted ventilation;
  - (c) artificial nutrition and hydration.
- (3) A blood transfusion is not a *life-sustaining measure*.

**5B Good medical practice**

*Good medical practice* is good medical practice for the medical profession in Australia having regard to—

- (a) the recognised medical standards, practices and procedures of the medical profession in Australia; and
- (b) the recognised ethical standards of the medical profession in Australia.

**6 Special health matter**

A *special health matter*, for an adult, is a matter relating to special health care of the adult.

*Note—*

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

However, an adult may give a direction about a special health matter in an advance health directive. Alternatively, in particular circumstances the tribunal may consent to particular special health care—see section 68.

**7 Special health care**

*Special health care*, of an adult, is health care of the following types—

- (a) removal of tissue from the adult while alive for donation to someone else;

*Note—*

For the situation after the adult has died, see the *Transplantation and Anatomy Act 1979*, particularly section 22.

- (b) sterilisation of the adult;
- (c) termination of a pregnancy of the adult;
- (d) participation by the adult in special medical research or experimental health care;
- (e) electroconvulsive therapy or a non-ablative neurosurgical procedure for the adult;
- (f) prescribed special health care of the adult.

**8 Removal of tissue for donation**

- (1) For an adult, *removal of tissue for donation* to someone else includes removal of tissue from the adult so laboratory reagents, or reference and control materials, derived completely or partly from pooled human plasma may be given to the other person.
- (2) *Tissue* is—
  - (a) an organ, blood or part of a human body; or
  - (b) a substance that may be extracted from an organ, blood or part of a human body.

**9 Sterilisation**

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

*Examples of sterilisation—*

endometrial obliteration, hysterectomy, tubal ligation and vasectomy

- (2) Sterilisation does not include health care primarily to treat organic malfunction or disease of the adult.

## 10 Termination

**Termination**, of a pregnancy of an adult, does not include health care primarily to treat organic malfunction or disease of the adult.

## 11 Primary reason for treatment

**Health care primarily to treat organic malfunction or disease**, of an adult, is health care without which an organic malfunction or disease of the adult is likely to cause serious or irreversible damage to the adult's physical health.

*Examples—*

- 1 Health care involving sterilisation may be primarily to treat organic malfunction or disease if the adult has cancer affecting the reproductive system or cryptorchidism.
- 2 A procedure involving termination of a pregnancy may be primarily to treat organic malfunction if the adult is a pregnant woman requiring abdominal surgery for injuries sustained in an accident.

## 12 Special medical research or experimental health care

- (1) **Special medical research or experimental health care**, for an adult, means—
- (a) medical research or experimental health care relating to a condition the adult has or to which the adult has a significant risk of being exposed; or
  - (b) medical research or experimental health care intended to gain knowledge that can be used in the diagnosis, maintenance or treatment of a condition the adult has or has had.
- (2) **Special medical research or experimental health care** does not include—
- (a) psychological research; or

- (b) approved clinical research.

**14 Electroconvulsive therapy**

*Electroconvulsive therapy* is the application of electric current to specific areas of the head to produce a generalised seizure that is modified by general anaesthesia and the administration of a muscle relaxing agent.

**15 Psychosurgery**

*Psychosurgery* is a procedure on the brain, that involves deliberate damage to or removal of brain tissue, for the treatment of a mental illness.

**15A Non-ablative neurosurgical procedure**

A *non-ablative neurosurgical procedure* is a procedure on the brain, that does not involve deliberate damage to or removal of brain tissue, for the treatment of a mental illness.

**17 Prescribed special health care**

*Prescribed special health care* means health care prescribed under a regulation for this section.

## **Part 3 Legal matter**

**18 Legal matter**

A *legal matter*, for an adult, includes a matter relating to—

- (a) use of legal services to obtain information about the adult's legal rights; and
- (b) use of legal services to undertake a transaction; and
- (c) use of legal services to bring or defend a proceeding before a court, tribunal or other entity, including an application under the *Succession Act 1981*, part 4 or an

application for compensation arising from a compulsory acquisition; and

*Note—*

The *Succession Act 1981*, part 4 enables the Supreme Court to make provision for a dependant of a deceased person from the deceased person's estate if adequate provision is not made from the estate for the dependant's proper maintenance and support.

- (d) bringing or defending a proceeding, including settling a claim, whether before or after the start of a proceeding.

## Schedule 4 Dictionary

### section 3

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

***active party***—

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

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

***adult***, for chapter 7 provisions applied under section 80E, means a child with an impairment.

***adult evidence order*** see section 106.

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

***advance health directive*** means an advance health directive under the *Powers of Attorney Act 1998*.

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

***approved clinical research*** see section 74B.

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

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

***Australian lawyer*** has the meaning given by the *Legal Profession Act 2007*.

***authorised investment*** means—

- (a) an investment which, if the investment were of trust funds by a trustee, would be an investment by the trustee exercising a power of investment under the *Trusts Act 1973*, part 3; or

(b) an investment approved by the tribunal.

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

**capacity**, for a person for a matter, means the person is capable of—

- (a) understanding the nature and effect of decisions about the matter; and
- (b) freely and voluntarily making decisions about the matter; and
- (c) communicating the decisions in some way.

*Note—*

*Under section 146(3) in deciding whether an individual is capable of communicating decisions in some way the tribunal must investigate the use of all reasonable ways of facilitating communication, which may include symbol boards or signing.*

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

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

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

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

**chief psychiatrist** see the *Mental Health Act 2016*, schedule 3.

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

**clinical research** see section 74A.

**close friend**, of a person, means another person who has a close personal relationship with the first person and a personal interest in the first person's welfare.

**closure order** see section 107.

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

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

**confidential information**—

- (a) for chapter 9, part 1, see section 207A; or

(b) for chapter 11, part 4, see section 246.

**confidentiality order** see section 109.

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

**consultant**, for chapter 11, part 4, see section 246.

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

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

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

**court** means the Supreme Court.

**criminal history**, of a person, means—

- (a) the person's criminal record within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986*; and
- (b) despite the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6, any conviction of the person to which that section applies; and
- (c) charges made against the person for an offence committed in Queensland or elsewhere and results of those charges; and
- (d) a finding of guilt against the person, or the acceptance of a plea of guilty by the person, by a court.

**dependant**, of an adult, means a person who is completely or mainly dependent on the adult.

**deputy president** means a deputy president of the tribunal.

**director of forensic disability** see section 80U.

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

**document**, for chapter 7, part 1, see section 99.

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

**electroconvulsive therapy** see schedule 2, section 14.

**enduring document** means an enduring power of attorney or an advance health directive.



***enduring power of attorney*** means an enduring power of attorney under the *Powers of Attorney Act 1998*.

***ethics committee*** means—

- (a) a Human Research Ethics Committee registered by the Australian Health Ethics Committee established under the *National Health and Medical Research Council Act 1992* (Cwlth); or
- (b) if there is no committee mentioned in paragraph (a)—
  - (i) an ethics committee established by a public sector hospital within the meaning of the *Hospital and Health Boards Act 2011*; or
  - (ii) an ethics committee established by a university and concerned, wholly or partly, with medical research; or
  - (iii) an ethics committee established by the National Health and Medical Research Council.

***financial management plan*** means—

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

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

***forensic disability client*** see section 80U.

***forensic disability service*** see section 80U.

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

*Note—*

For procedures in relation to an adult suspected of having committed an indictable offence, see the *Police Powers and Responsibilities Act 2000*, chapter 17 (Forensic procedures), part 3 (Forensic procedure orders).

***general principles*** see section 11B.

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

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

***guardianship proceeding***—

- (a) means—
  - (i) a proceeding under this Act before the tribunal; or
  - (ii) a hearing, conference or interlocutory matter before the tribunal taken in connection with or incidental to a proceeding before the tribunal; or
  - (iii) a proceeding in which the court is exercising concurrent jurisdiction with the tribunal; but
- (b) does not include a proceeding in which the court is exercising the powers of the tribunal under section 245.

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

***health care***—

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

***health care primarily to treat organic malfunction or disease***  
see schedule 2, section 11.

***health care principles*** see section 11C.

***health information***, for chapter 7, part 1, see section 99.

***health matter*** see schedule 2, section 4.

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

*Example*—

dentist

***impaired capacity***, for a person for a matter, means the person does not have capacity for the matter.

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

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

***information***, for chapter 9, part 1, see section 207A.

***insolvent*** includes external administration, for example, liquidation, receivership or compromise entered into with creditors, under the Corporations Act or a similar law of a foreign jurisdiction.

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

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

***legal matter*** see schedule 2, section 18.

***legal member*** means a legally qualified member of the tribunal under the QCAT Act.

***life-sustaining measure*** see schedule 2, section 5A.

***limitation order*** see section 100.

***matter*** includes a type of matter.

***member***, of the tribunal, means a member of the tribunal under the QCAT Act.

***non-ablative neurosurgical procedure*** see schedule 2, section 15A.

***non-publication order*** see section 108.

***normal hours***, for chapter 10, see section 222.

***object***, by an adult, to health care means—

- (a) the adult indicates the adult does not wish to have the health care; or
- (b) the adult previously indicated, in similar circumstances, the adult did not then wish to have the health care and since then the adult has not indicated otherwise.

*Example—*

An indication may be given in an enduring power of attorney or advance health directive or in another way, including, for example, orally or by conduct.

***ordinary member***, of the tribunal, means an ordinary member of the tribunal under the QCAT Act.

***paid carer***, for an adult, means someone who—

- (a) performs services for the adult's care; and
- (b) receives remuneration from any source for the services, other than—
  - (i) a carer payment or other benefit received from the Commonwealth or a State for providing home care for the adult; or
  - (ii) remuneration attributable to the principle that damages may be awarded by a court for voluntary services performed for the adult's care.

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

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

***power***, for a matter, means power to make all decisions about the matter and otherwise exercise the power.

***power of attorney*** means—

- (a) a general power of attorney made under the *Powers of Attorney Act 1998*; or
- (b) an enduring power of attorney; or
- (c) a power of attorney made otherwise than under the *Powers of Attorney Act 1998*, whether before or after its commencement.

***prescribed special health care*** see schedule 2, section 17.

***president*** means the president of the tribunal.

***presiding member***, for a proceeding, means the member presiding at the proceeding as provided for under the QCAT Act.

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

***private dwelling house***, for chapter 10, see section 222.

***psychosurgery*** see schedule 2, section 15.

***public advocate*** means the public advocate appointed under section 213.

**public guardian** means the public guardian under the *Public Guardian Act 2014*.

**public guardian's delegate for an investigation**, for chapter 11, part 4, see section 246.

**real estate transaction** means a transaction involving the sale or purchase of real property.

**reasonably considers** means considers on grounds that are reasonable in the circumstances.

**recognised provision**, for chapter 7, part 9, see section 166.

**record of proceedings** includes—

- (a) a written transcript of the proceedings; and
- (b) the documents in the court file for the proceedings.

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

**registrar** or **registrar of the tribunal** means the principal registrar of the tribunal under the QCAT Act.

**relevant person**, for chapter 11, part 4, see section 246.

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

**relevant tribunal person**, for chapter 11, part 4, see section 246.

**removal of tissue for donation** see schedule 2, section 8(1).

**repealed Act**, for chapter 12, part 3, see section 258.

**repealed chapter**, for chapter 12, part 1, see section 253.

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

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

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

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

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

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

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

***senior member***, of the tribunal, means a senior member of the tribunal under the QCAT Act.

***senior practitioner***, for chapter 5B, see section 80U.

***significant health detriment***, for chapter 7, part 1, see section 99.

***special health care*** see schedule 2, section 7.

***special health matter*** see schedule 2, section 6.

***special medical research or experimental health care*** see schedule 2, section 12.

***special personal matter*** see schedule 2, section 3.

***statutory health attorney*** see *Powers of Attorney Act 1998*, section 63.

***sterilisation***—

- (a) for chapter 5A, see section 80B; or
- (b) otherwise, see schedule 2, section 9.

***support network***, for an adult, consists of the following people—

- (a) members of the adult's family;
- (b) close friends of the adult;
- (c) other people the tribunal decides provide support to the adult.

***term*** includes condition, limitation and instruction.

***termination*** see schedule 2, section 10.

***tissue*** see schedule 2, section 8(2).

***tribunal*** means QCAT.

***tribunal expert***, for chapter 11, part 4, see section 246.

***use***, for chapter 11, part 4, see section 246.

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

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