

Serial 210
Adult Decision Making Bill 2012
Mr Vatskalis

A Bill for an Act to allow for the making of decisions for adults with impaired
decision-making capacity, and for related purposes

NORTHERN TERRITORY OF AUSTRALIA

ADULT DECISION MAKING ACT 2012

Act No. [] of 2012

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2012

An Act to allow for the making of decisions for adults with impaired decision-making capacity, and for related purposes

[Assented to [] 2012]
[Second reading [] 2012]

The Legislative Assembly of the Northern Territory enacts as follows:

Chapter 1 Introduction

Part 1.1 Preliminary matters

1 Short title

This Act may be cited as the *Adult Decision Making Act 2012*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Act binds Crown

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

4 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 4

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part 1.2 What this Act is about

5 Overview

- (1) This Act provides a scheme to enable decisions to be made about life management matters for adults whose capacity to make those decisions is impaired.
- (2) Those decisions may be made, according to the circumstances:
 - (a) by the adult himself or herself in advance through a life management document; or
 - (b) by an alternate decision maker; or
 - (c) by the Tribunal established by Part 5.3.

6 Life management documents and advance care directives

Chapter 2 provides for an adult to make a document (called a life management document) to do either or both of the following:

- (a) appoint an ADM (substitute);
- (b) give instructions about how the adult wants to be cared for if he or she loses decision-making capacity (called advance care directives).

7 Alternate decision makers

Chapter 3 allows for 3 types of alternate decision makers (called ADMs) as follows:

- (a) an ADM (tribunal) – being a person appointed by the Tribunal for an adult who has impaired decision-making capacity (see Part 3.1);

- (b) an ADM (substitute) – being a person appointed by an adult, while he or she still has capacity, to act for the adult if his or her decision-making capacity becomes impaired (see Part 3.2);
- (c) an ADM (health) – being a person who is a close friend or customary carer of an adult who has impaired decision-making capacity, and who has authority to make decisions about health care for the adult in certain circumstances (see Part 3.3).

8 Consent to health care action

Chapter 4 provides a regime to allow decisions to give or refuse consent for the taking of health care action to be made for adults whose capacity to make those decisions is impaired.

9 Decision-making principles

- (1) This Act enshrines the decision-making principles as the basis on which all decisions under this Act about an adult must be made.
- (2) Section 19 explains the decision-making principles.

10 Impaired decision-making capacity

- (1) This Act allows other people to exercise authority for a matter for an adult only if the adult has impaired decision-making capacity for that matter.
- (2) This Act addresses decision-making capacity in relation to particular matters to recognise that an adult may have capacity to make decisions about some aspects of their life while having impaired capacity in relation to others, and that an adult's level of capacity may change from time to time.
- (3) An adult is presumed to have decision-making capacity until the contrary is shown.
- (4) Section 20 explains the concept of impaired decision-making capacity.

11 Commissioner, Tribunal and Public Trustee

- (1) This Act establishes:
 - (a) the Commissioner for Adult Decision Making and Advocacy (see Part 5.1); and
 - (b) the Tribunal for Adult Decision Making (see Part 5.3).

- (2) This Act also confers powers and functions on the Public Trustee (see Part 5.2).

12 **Recognition of orders, appointment etc. from other jurisdictions**

This Act allows for the recognition in the Territory of:

- (a) orders made in other jurisdictions that have an effect similar to that of an ADM order; and
- (b) documents made by persons under laws of other jurisdictions that have an effect similar to that of a life management document.

Part 1.3 **Interpretation**

13 **Definitions**

In this Act:

ADM (which is an acronym for alternate decision maker) means:

- (a) an ADM (tribunal); or
- (b) an ADM (substitute); or
- (c) an ADM (health).

ADM (health), see section 97.

ADM order means an order of the Tribunal under section 30 by which an ADM (tribunal) is appointed.

ADM (substitute) means a person appointed by an adult in a life management document to be an alternate decision maker for the adult.

ADM (tribunal) means:

- (a) a person appointed by the Tribunal under section 30 for a matter for an adult; or
- (b) the Commissioner when he or she is an ADM for a matter for an adult under section 66 or 67.

advance care directive means an instruction given in a life management document as mentioned in section 21(1)(b).

affected adult, for Part 5.3, see section 149.

appointor, for Part 6.1, see section 194(1).

at a place, for Part 6.1, see section 192.

authority means a power or function.

close friend, see section 96.

Commissioner means the Commissioner for Adult Decision Making and Advocacy established by section 129.

connected with an offence, for Part 6.1, Division 4, see section 206.

consent decision, about health care action, means a decision to give or refuse consent for the taking of the action.

customary carer, see section 96.

decision-making capacity, see section 20(1).

decision-making principles, see section 19.

excluded matter, see section 15.

executor, for a person who has died, means the executor or administrator of the person's estate or the Public Trustee acting under section 50 of the *Administration and Probate Act*.

exercise, in relation to an authority, means to exercise a power or perform a function.

financial management power, for an ADM, means authority to make decisions in relation to the management of some or all of the represented adult's property and financial affairs.

health care means health care of any kind, including health care that is part of a health service, as defined in section 5 of the Health Practitioner Regulation National Law.

health care action, for an adult, means commencing, continuing, withholding or withdrawing health care for the adult.

health care provider means a person who provides health care.

impaired capacity for health care action, means impaired decision-making capacity to make a consent decision about the taking of the action.

impaired decision-making capacity, see section 20(3).

interested person, for an adult, means any of the following:

- (a) an ADM for the adult;
- (b) a health care provider for the adult;
- (c) the Commissioner;
- (d) the Public Trustee;
- (e) any other person who has a genuine and sufficient interest in protecting the adult's best interests.

investigative purposes, for Part 6.1, see section 192.

investigator, for Part 6.1, see section 193.

legal member, for Part 5.3, see section 151(3)(a).

licensed trustee company, see section 601RAA of the Corporations Act 2001.

life management document, see section 21(1).

life management matter, see section 14.

maker, for Chapter 2, means a person who makes a life management document.

medical member, for Part 5.3, see section 151(3)(b).

member, for Part 5.3, see section 149.

occupier, for Part 6.1, see section 192.

official means one of the following:

- (a) the Commissioner;
- (b) the Public Trustee;
- (c) a delegate of the Commissioner or Public Trustee;
- (d) a member of the Tribunal;
- (e) a member of the staff of the Commissioner or Public Trustee (including an investigator), or of Tribunal.

party, for Part 5.3, see section 166.

person entitled, for Part 6.1, see section 192.

place, for Part 6.1, see section 192.

president, for Part 5.3, see section 149.

Public Trustee, see section 5 of the *Public Trustee Act*.

reasonably believes, see section 16.

represented adult means:

- (a) an adult for whom an ADM order is in force; or
- (b) an adult who has made a life management document that is in force and appoints an ADM (substitute); or
- (c) an adult for whom an ADM (health) has authority to act.

restricted health care action, see section 17(1).

seized thing, for Part 6.1, see section 192.

Tribunal means the Tribunal for Adult Decision Making established by section 150.

14 Meaning of *life management matter*

- (1) A ***life management matter***, for an adult, means a matter relating to his or her:
 - (a) care or welfare (including health care); or
 - (b) property or financial affairs.
- (2) However, an excluded matter is not a life management matter.
- (3) To avoid doubt, making a consent decision about health care action for an adult is a life management matter.

Examples for section 14

The following are examples of life management matters:

- (a) *accommodation;*
- (b) *day-to-day living matters, such as diet and dress;*
- (c) *health care;*
- (d) *the provision of care services to the adult;*
- (e) *the carrying out of a forensic procedure in relation to an adult;*
- (f) *employment;*
- (g) *education and training;*
- (h) *banking;*

- (i) *receipt and payment of money;*
- (j) *property (including real estate) ownership;*
- (k) *management of assets;*
- (l) *carrying on a trade or business;*
- (m) *holding a licence or permit;*
- (n) *insurance for an adult or his or her property;*
- (o) *legal matters relating to a life management matter.*

15 **Meaning of *excluded matter***

An ***excluded matter***, for an adult, means a matter relating to one or more of the following:

- (a) exercising the adult's right to vote in a Commonwealth, Territory or local government election or referendum;
- (b) consenting to the adoption of a child of the adult;
- (c) consenting to the marriage, or dissolution of the marriage, of the adult;
- (d) making, varying or revoking any of the following for the adult:
 - (i) a will;
 - (ii) a power of attorney;
 - (iii) a life management document, or anything (by whatever name) having a similar effect in another jurisdiction.

16 **Meaning of *reasonably believes***

- (1) A person ***reasonably believes*** something at a particular time if the person personally has grounds at the time for believing that thing and those grounds, when judged objectively, are reasonable.
- (2) The reasonableness of the belief is not affected by the grounds subsequently being found to be false or non-existent.
- (3) A belief held by a health care provider about a health care matter is not reasonable unless it is consistent with the generally accepted standards of good professional practice of members of the provider's profession.

17 Meaning of *restricted health care action*

- (1) Each of the following is *restricted health care action* for an adult:
- (a) removal from the adult of non-regenerative tissue (as defined in section 4 of the *Transplantation and Anatomy Act*) for transplantation to another person;
 - (b) sterilisation of the adult, unless it occurs as an effect of health care action that is taken primarily to treat an illness or injury of the adult;
 - (c) termination of a pregnancy of the adult, unless it occurs as an effect of health care action that is taken primarily to treat an illness or injury of the adult;
 - (d) participation in research that involves health care action being taken for the adult;
 - (e) health care action prescribed by regulation to be restricted health care action.
- (2) For subsection (1)(b) and (c), health care action is taken *primarily to treat an illness or injury* of an adult if the primary reason for taking the action is to treat an illness, injury or other organic malfunction that is likely to cause serious or irreversible damage to the adult's health unless the health care action is taken.

18 When advance care directive constitutes consent decision

An advance care directive made by an adult constitutes a consent decision for health care action if:

- (a) the directive is an express statement of the adult's consent or refusal of consent for the health care action; or
- (b) on a reasonable interpretation, it is reasonably clear from the directive that the adult would or would not want the health care action to be taken in the circumstances that exist at the time it is proposed to take the action.

Examples for section 18

- 1 *A statement that "I do not want to be given a blood transfusion in any circumstances" is a clear statement refusing consent for a blood transfusion.*
- 2 *A statement that "If I have a terminal illness and am going to die soon, I do not want to be given treatment just to keep me alive for a little bit longer – just keep me pain free" may constitute consent for a terminally ill person to be given pain relief and for other treatment to be discontinued.*

- 3 *A statement that "I want all decisions that are made for me to be made strictly in accordance with my religious belief as a Catholic" would not be a consent decision, but would be a statement of the maker's wishes (see sections 21(1)(b), 19(2) and 75(2)(b)(i)).*

Part 1.4 Important concepts

19 Decision-making principles

- (1) The ***decision-making principles*** are that when authority is exercised under this Act in relation to an adult:
 - (a) the adult's best interests must be the paramount concern; and
 - (b) the adult's views and wishes must, as far as it is practicable to do so, be sought, acknowledged and taken into account; and
 - (c) the adult's freedom of decision and action must be preserved to the greatest extent reasonably practicable.
- (2) However, if the adult has made an advance care directive, effect must be given to that directive even if doing so is not in the adult's best interests, unless the Tribunal directs otherwise under section 24.
- (3) Without limiting subsection (1)(a), an adult's ***best interests*** include the following:
 - (a) protection of the adult from harm, neglect, abuse and exploitation;
 - (b) maintenance or improvement of the adult's health and wellbeing;
 - (c) the ability of the adult to be as independent as practicable, including the ability to:
 - (i) look after himself or herself; and
 - (ii) make his or her own judgments and decisions; and
 - (iii) achieve his or her maximum physical, social, emotional and intellectual potential;
 - (d) the ability of the adult to live in the general community and take part in community activities;
 - (e) maintenance of the adult's right to be treated with dignity and respect;

- (f) the ability of the adult to maintain his or her preferred living environment and lifestyle;
 - (g) maintenance or creation of a positive support network for the adult;
 - (h) maintenance or improvement of the adult's financial security;
 - (i) protection of the adult's property and financial resources from loss, damage or use in a way that is not in the adult's best interests;
 - (j) protection of the adult's right to confidentiality of information about him or her.
- (4) Subsection (1)(a) does not prevent authority in relation to an adult being exercised under this Act in a way that may be beneficial to another person if:
- (a) the benefit to the other person is of a kind which the adult:
 - (i) provided when he or she had decision-making capacity for the matter; or
 - (ii) might reasonably be expected to provide; and
 - (b) providing the benefit to the other person:
 - (i) is reasonable in the circumstances; and
 - (ii) will not significantly adversely affect the adult's best interests.

Examples for subsection (4)

- 1 *It may be appropriate for an ADM to make provision out of the adult's money for educational expenses for his or her children, even though that is not directly for the benefit of the adult and will mean that the money is not available to pay for his or her own expenses.*
- 2 *It may be appropriate for an ADM to consent to the adult donating bone marrow to treat the adult's child who has leukaemia, even though doing so may involve some risk to the adult.*

20 **Decision-making capacity and impaired decision-making capacity**

- (1) An adult has ***decision-making capacity*** for a matter if he or she has the capacity to:
- (a) comprehend and retain information about the matter; and

- (b) weigh the information in order to make a decision about the matter; and
 - (c) communicate that decision in some way.
- (2) An adult is presumed to have decision-making capacity for a matter until the contrary is shown.
- (3) An adult has *impaired decision-making capacity* for a matter if his or her decision-making capacity for the matter is impaired.
- (4) The cause of the impairment is immaterial.
- (5) An adult does not have impaired decision-making capacity for a matter only because he or she:
 - (a) engages in unconventional behaviour or other forms of personal expression; or
 - (b) chooses a living environment or lifestyle with which other people do not agree; or
 - (c) makes decisions with which other people do not agree; or
 - (d) does not speak English to a particular standard or at all; or
 - (e) does not have a particular level of literacy or education; or
 - (f) engages in particular cultural or religious practices; or
 - (g) does or does not express a particular religious, political or moral opinion; or
 - (h) is of a particular sexual orientation or identity or expresses particular sexual preferences; or
 - (i) takes or has taken, or is or has been dependent on, alcohol or drugs (but the effect of alcohol or drugs may be taken into account); or
 - (j) engages or has engaged in illegal or immoral conduct.

Chapter 2 Life management documents and advance care directives

21 Making a life management document

- (1) An adult with full legal capacity may make a written statement (a *life management document*) to do either or both of the following:
 - (a) appoint an ADM (substitute);
 - (b) give instructions about how he or she wants to be cared for if he or she loses decision-making capacity (*advance care directives*).
- (2) Without limiting subsection (1)(b), in an advance care directive the maker may:
 - (a) set out his or her decision about a matter; or
 - (b) set out his or her views, wishes and beliefs as the basis on which anyone exercising authority for the maker is to act.
- (3) In an advance care directive, the maker may direct that a particular person is not to act as an ADM (health) for him or her.
- (4) An advance care directive may be given specifically about one or more matters or generally about all matters.

22 Formal requirements for life management document

- (1) A life management document must be in writing and in the form prescribed by regulation.
- (2) The life management document must be signed by a medical practitioner to indicate that in the practitioner's opinion the maker's capacity to understand the nature and effect of the life management document is not impaired.
- (3) The medical practitioner must not:
 - (a) be a member of the maker's family; or
 - (b) have any other personal relationship with the maker; or
 - (c) be an ADM for the adult; or
 - (d) be a person being appointed as an ADM (substitute) by the life management document.

- (4) The life management document must be signed by the maker in the presence of 2 witnesses present at the same time.
- (5) If the life management document will appoint an ADM (substitute), the life management document must be:
 - (a) if the person appointed is an individual – signed by the individual to indicate his or her consent and in the presence of 2 witnesses present at the same time; or
 - (b) if the person is a body corporate – executed by the body corporate.

Note for subsection (5)

Under section 69(3), a person cannot be appointed as an ADM (substitute) unless the person consents to the appointment.

- (6) The witnesses for subsection (4):
 - (a) may include the medical practitioner mentioned in subsection (2); and
 - (b) may be the same people who are witnesses for subsection (5)(a); and
 - (c) cannot include any person being appointed as an ADM (substitute).
- (7) After witnessing a signature, a witness must:
 - (a) sign the life management document; and
 - (b) write his or her full name and address or telephone number.

23 Effect of life management document

- (1) An appointment of an ADM (substitute) has effect as provided in Part 3.2.
- (2) An advance care directive has effect as provided in sections 19(2) and 75(2)(b)(i) and, if the directive constitutes a consent decision about health care action, Chapter 4.
- (3) The validity and effect of an advance care directive is not affected by whether or not the maker was, at the time it was made, fully informed about health care action in relation to which it might apply.

24 Tribunal may allow non-compliance with advance care directive if compliance wholly unreasonable

- (1) This section applies if:
 - (a) a life management document includes an advance care directive about a matter; and
 - (b) the maker has impaired decision-making capacity for the matter; and
 - (c) the advance care directive does not constitute a consent decision about health care action; and
 - (d) giving effect to the advance care directive is not in the maker's best interests.
- (2) The Tribunal may direct that a person who is required to act in accordance with the decision-making principles need not give effect to the advance care directive.
- (3) However, the Tribunal must not give a direction under subsection (2) unless satisfied that:
 - (a) there is no reasonable possibility the maker would have intended the directive to apply in the present circumstances; or
 - (b) compliance with the directive is, for all practical purposes, impossible; or
 - (c) the desirability of giving effect to the directive is outweighed by the unreasonably onerous burden that doing so would impose on another person; or
 - (d) compliance with the directive would be so wholly unreasonable that it is justifiable to override the maker's wishes.
- (4) The Tribunal may give a direction:
 - (a) at any time on its own initiative; or
 - (b) on application by:
 - (i) the maker; or
 - (ii) an interested person for the maker.

25 Duration of life management document

A life management document:

- (a) comes into force when it is made; and
- (b) remains in force until one of the following occurs:
 - (i) if the life management document is expressed to be for a limited period – that period ends;
 - (ii) the life management document is revoked by the maker or the Tribunal;
 - (iii) if the life management document appoints an ADM (substitute) but does not contain any advance care directives – the person appointed as ADM, or if 2 or more persons were appointed the last of them, ceases to be an ADM under section 93;
 - (iv) the maker dies.

26 Amendment or revocation by maker

- (1) The maker of a life management document may amend or revoke the document at any time if he or she has full legal capacity.
- (2) An amendment or revocation must be made in accordance with section 22 as if it were a life management document.
- (3) Under section 22(5), an amendment:
 - (a) must be signed by each person who will be an ADM (substitute) under the life management document after the amendment is made; but
 - (b) need not be signed by a person who, as a result of the amendment, will cease to be an ADM (substitute).

27 Amendment by Tribunal if ADM (substitute) appointed

- (1) This section applies if:
 - (a) a life management document includes the appointment of an ADM (substitute); and
 - (b) the maker does not have full legal capacity.

- (2) The Tribunal may amend the life management document so as to terminate the appointment of the ADM if satisfied that:
 - (a) either:
 - (i) the ADM has failed to comply with section 75(2); or
 - (ii) there has been a major change in circumstances since the maker made the life management document; and
 - (b) the nature of the failure or change is such that the maker would, if he or she had full legal capacity, agree to the appointment being terminated.

Example for subsection (2)(a)(ii)

Major changes in circumstances might include the following:

- (a) the ADM losing decision-making capacity;*
 - (b) the maker and ADM getting divorced.*
- (3) The Tribunal may amend a life management document:
 - (a) at any time on its own initiative; or
 - (b) on application by:
 - (i) the maker; or
 - (ii) an interested person for the maker.

28 Revocation by Tribunal if made under duress

- (1) The Tribunal may revoke a life management document if satisfied that, in making the life management document, the maker was acting under duress or was otherwise not acting voluntarily.
- (2) The Tribunal may revoke a life management document:
 - (a) at any time on its own initiative; or
 - (b) on application by:
 - (i) the maker; or
 - (ii) an interested person for the maker.

29 Declarations about validity, capacity etc.

- (1) The Tribunal may make a declaration as to one or more of the following:
 - (a) whether a life management document is or is not valid;
 - (b) whether the maker of a life management document has impaired decision-making capacity for a matter;
 - (c) whether an advance care directive is or is not applicable in a particular circumstance;
 - (d) the meaning of an advance care directive or an ambiguity in an advance care directive;
 - (e) any other matter relating to the validity or effect of a life management document.
- (2) The Tribunal may make a declaration on application by:
 - (a) the maker; or
 - (b) an interested person for the maker.

Note for section 29

The Tribunal also has declaratory powers in relation to life management documents that appoint ADMs under section 91.

Chapter 3 Alternate decision makers

Part 3.1 ADM (tribunal)

Division 1 Appointment of ADM (tribunal)

30 When Tribunal may appoint ADM (tribunal)

- (1) The Tribunal may by order appoint an alternate decision maker for a life management matter for an adult if satisfied that:
 - (a) the adult:
 - (i) has impaired decision-making capacity for the matter; or
 - (ii) is likely to develop impaired decision-making capacity for the matter in the reasonably foreseeable future; and

- (b) is in need of an ADM (tribunal) for the matter.

Examples for subsection (1)(a)(ii)

- 1 *An adult may currently have decision-making capacity but suffer from an illness such as bipolar disorder that impairs his or her decision-making capacity from time to time.*
- 2 *An adult may currently have decision-making capacity but suffer from a deteriorating condition, such as dementia, that is likely to result in his or her decision-making capacity becoming impaired.*

- (2) An order under subsection (1) must be on terms the Tribunal considers appropriate.
- (3) The Tribunal may make an order under subsection (1) for an adult:
- (a) at any time on its own initiative; or
 - (b) on application by:
 - (i) the adult; or
 - (ii) an interested person for the adult.

Note for section 30

If health care action needs to be taken for the adult prior to the determination of the application under this section, an application may be made under section 116 for the Tribunal to make a consent decision about the action. The applications for the 2 orders may be made simultaneously.

31 Appointment in advance for child

- (1) The Tribunal may make an ADM order for a person who is under 18 years of age (a **child**) if:
- (a) the child is at least 17½ years of age; and
 - (b) the Tribunal is satisfied there is a reasonable likelihood that, when the child turns 18, the child will satisfy the criteria mentioned in section 30(1).
- (2) However, the ADM order has no effect until the child turns 18.
- (3) In relation to an order made as mentioned in subsection (1), this Act applies as if a reference to an adult included a reference to the child.

32 Who may be appointed

- (1) The Tribunal may appoint any of the following as an ADM (tribunal) for a matter for an adult:
 - (a) an individual who is eligible for appointment under section 34(1);
 - (b) the Commissioner;
 - (c) if the matter relates to the adult's property and financial affairs – the Public Trustee;
 - (d) a licensed trustee company that is eligible for appointment under section 34(2).
- (2) The Tribunal must not appoint the Commissioner or the Public Trustee unless:
 - (a) there is no other suitable person available for appointment; or
 - (b) there are special circumstances and the Commissioner or Public Trustee agrees to the appointment.

33 Appointment options

- (1) An ADM (tribunal) may be appointed for one matter, 2 or more matters or all matters.
- (2) An ADM (tribunal) may be appointed with authority to act:
 - (a) at all times; or
 - (b) only in stated circumstances; or
 - (c) at all times except in stated circumstances.
- (3) The Tribunal may appoint one ADM, or 2 or more ADMs, for a matter or matters for an adult.
- (4) If the Tribunal appoints 2 or more ADMs for a matter, they may be appointed jointly, severally or jointly and severally.
- (5) Two or more ADMs (tribunal) for a matter are appointed jointly unless the Tribunal provides otherwise.

34 Eligibility for appointment

- (1) An individual is eligible for appointment under section 32(1)(a) as an ADM (tribunal) for an adult if:
 - (a) the individual:
 - (i) is at least 18 years of age; and
 - (ii) consents to the appointment; and
 - (b) the Tribunal is satisfied the individual is suitable to be an ADM for the adult.
- (2) A licensed trustee company is eligible for appointment under section 32(1)(d) as an ADM (tribunal) for an adult if:
 - (a) the company consents to the appointment; and
 - (b) the Tribunal is satisfied the company is suitable to be an ADM for the adult.
- (3) Without limiting subsection (1)(b) or (2)(b), in determining a person's suitability the Tribunal must take the following into account:
 - (a) whether the person is likely to comply with this Act;
 - (b) the person's ability to properly exercise the authority of an ADM (tribunal) for the matter for which it is proposed to appoint the person;
 - (c) the views and wishes of the adult;
 - (d) the desirability of preserving any existing positive support network for the adult;
 - (e) the compatibility of the person with:
 - (i) the adult; and
 - (ii) any other person who it is proposed also be appointed; and
 - (iii) any existing ADMs for the adult;
 - (f) the person's availability and accessibility to the adult;

- (g) whether the person has, or has had, a professional relationship with the adult, the nature of that relationship and whether it is appropriate for a person with that relationship to be the adult's ADM;
- (h) the extent to which the person's interests are likely to conflict with the adult's interests;
- (i) the person's history and experience as an ADM or in any similar role in the Territory or elsewhere;
- (j) if it is proposed that the person will have financial management powers – the person's bankruptcy history (if any) in the Territory or elsewhere;
- (k) the person's criminal history (if any) in the Territory or elsewhere;
- (l) any other matter the Tribunal considers relevant.

Example for subsection (3)(g)

Examples of professional relationships include being the adult's doctor or financial advisor, or the manager of the nursing home where the adult lives.

35 Notification of adult before making ADM order

The Tribunal must not make an ADM order for an adult unless satisfied that:

- (a) the adult was given:
 - (i) notice of the application; and
 - (ii) adequate opportunity to provide the Tribunal with information relevant to the application; or
- (b) all reasonable steps have been taken in attempting to give that notice and opportunity.

36 Time limit for making an ADM order

- (1) If the Tribunal receives an application that complies with section 163, the Tribunal must deal with and determine the application within 6 weeks after the application is received.
- (2) However, if the applicant fails to comply with a requirement under section 169(2) or (3) within the time specified by the Tribunal, the calculation of the 6 weeks mentioned in subsection (1) is suspended until the applicant complies with the requirement.

Division 2 Authority of ADM (tribunal)

37 Authority of ADM (tribunal)

- (1) An ADM (tribunal) for a matter is authorised to do anything in relation to that matter that the represented adult could lawfully do if he or she had full legal capacity.
- (2) However, the ADM may exercise that authority only when the represented adult has impaired decision-making capacity for the matter.
- (3) The ADM's authority is subject to the terms of the ADM order.

Note for section 37

This section does not give the ADM (tribunal) authority beyond that which the represented adult would have if he or she had full legal capacity. For example, if a person has lawful authority to do something in relation to an adult without the adult's consent, the person may do the thing in relation to a represented adult without the consent of the adult or the ADM (tribunal). An adult with full capacity would not have a right to object; therefore neither does the ADM.

38 Restrictions on authority and requirements

In an ADM order, the Tribunal may do either or both of the following as the Tribunal considers appropriate:

- (a) impose restrictions on the ADM's authority;
- (b) impose requirements to be complied with by the ADM in relation to the exercise of the ADM's authority.

Note for section 38

The Tribunal may impose restrictions or requirements;

- (a) *of a kind mentioned in sections 45 to 48; or*
- (b) *of a kind that could be imposed by directions under section 55(2)(a); or*
- (c) *of any other kind the Tribunal considers appropriate.*

39 Exercise of authority by ADM (tribunal)

- (1) An ADM (tribunal) may do all things necessary to be done for the exercise of the ADM's authority.
- (2) In exercising that authority, the ADM must:
 - (a) act in accordance with the decision-making principles; and

- (b) comply with:
 - (i) the ADM order, subject to any direction given under section 55(2)(e); and
 - (ii) any direction or other order of the Tribunal; and
 - (iii) this Act; and
 - (c) cooperate with any other ADMs for the represented adult to enable them to properly exercise their authority; and
 - (d) act honestly and with care, skill and diligence.
- (3) Two or more ADMs (tribunal) who are appointed jointly for a matter must exercise their authority unanimously.

Note for subsection (3)

If joint ADMs are unable to reach a unanimous decision, they may seek directions from the Tribunal under section 55(2)(b).

40 Effect of exercise of authority by ADM (tribunal)

An act done or omission made by an ADM (tribunal) in the exercise of the ADM's authority has effect as if it were done or made by the represented adult and he or she had full legal capacity.

41 No authority for restricted health care action

An ADM (tribunal) cannot make a consent decision about restricted health care action for the represented adult.

42 Right to documents and information

- (1) An ADM (tribunal) for a matter:
 - (a) has the same right to documents and information relevant to the exercise of the ADM's authority in relation to that matter as the represented adult would have if he or she had full legal capacity; and
 - (b) has a right to documents and information of the represented adult that are relevant to the exercise of the ADM's authority in relation to that matter.
- (2) A person who has custody or control of a relevant document or information (an *information holder*) must give it to the ADM if requested by the ADM to do so, unless the information holder has a reasonable excuse not to do so.

(3) If the information holder does not comply with the request, the Tribunal may, on application by the ADM, order the information holder to give the document or information to the ADM.

(4) The information holder must not engage in conduct that results in a contravention of the order.

Maximum penalty: 200 penalty units.

(5) An information holder who gives information under this section in good faith is not civilly or criminally liable, or in breach of any professional code of conduct, for doing so.

43 Information and things may be given to ADM (tribunal)

(1) If:

(a) a person is required by a law of the Territory (the *other law*) to give information or a thing to a represented adult; and

(b) the information or thing relates to a matter for which the adult has impaired decision-making capacity; and

(c) an ADM (tribunal) has authority for the matter;

the person may give the information or thing to the ADM (tribunal) instead of giving it to the represented adult.

(2) A person who gives information or a thing to the ADM under this section in good faith:

(a) is taken to have complied with the requirement in the other law to give it to the represented adult; and

(b) is not civilly or criminally liable, or in breach of any professional code of conduct, for giving it to the ADM.

(3) This section does not apply in relation to a document that the other law requires to be personally served on the represented adult.

44 Record keeping and reporting requirements

(1) An ADM (tribunal) must:

(a) keep such records in relation to the exercise of the ADM's authority as are reasonable in the circumstances; and

(b) comply with any record keeping and reporting requirements prescribed by regulation.

- (2) Without limiting the matters that may be provided for in regulations, a regulation may provide for one or more of the following:
- (a) keeping of records;
 - (b) preparation of annual or other reports;
 - (c) auditing or other verification of records and reports;
 - (d) the form of records and reports, which may be in a form approved by the Commissioner or Public Trustee;
 - (e) who must or may be given copies of, or access to, records or reports;
 - (f) examination of records or reports by the Tribunal, Commissioner, Public Trustee or other persons.

45 Property to be managed as if trust property

- (1) An ADM (tribunal) who has financial management powers:
- (a) must deal with the represented adult's property as if it were trust property held by the ADM on trust for the represented adult; and
 - (b) in dealing with the property, is subject to the duties, obligations and limitations that apply under any law of the Territory to a trustee dealing with trust property.

Note for subsection (1)

The ADM's power to deal with the property stems from section 37. This section limits that power by requiring the ADM to deal with it as if it were trust property. However, this section does not constitute a trust nor cause the property to vest in the ADM.

- (2) However, the ADM may deal with property other than in accordance with subsection (1) if:
- (a) permitted to do so by a provision of this Act; or
 - (b) authorised by the Tribunal to do so:
 - (i) in the ADM order; or
 - (ii) by direction under section 55(2)(c).
- (3) If, when the ADM (tribunal) is appointed, any property is held jointly by the represented adult and the ADM (whether as joint tenants or tenants in common), subsection (1) does not prevent the continuation of that joint ownership.

46 Gifts

- (1) An ADM (tribunal) who has financial management powers may make a gift or donation from the represented adult's property if:
 - (a) the gift or donation is of a kind the represented adult:
 - (i) made when he or she had decision-making capacity for the matter; or
 - (ii) might reasonably be expected to make; and
 - (b) the value of the gift or donation is reasonable in the circumstances.
- (2) However, the Tribunal may, in the ADM order or by direction under section 55(2)(c):
 - (a) restrict the ADM's authority to make gifts or donations; or
 - (b) authorise the ADM to make a gift or donation not otherwise permitted by this section.
- (3) Despite subsection (1), the ADM cannot make a gift or donation from the represented adult's property to the ADM unless specifically authorised to do so under subsection (2)(b).

47 Maintenance of dependants

- (1) An ADM (tribunal) who has financial management powers may provide from the represented adult's property for the needs of a dependant of the represented adult if:
 - (a) the provision is of a kind the represented adult:
 - (i) made when he or she had decision-making capacity for the matter; or
 - (ii) might reasonably be expected to make; and
 - (b) the value of the provision is reasonable in the circumstances.
- (2) However, the Tribunal may, in the ADM order or by direction under section 55(2)(c):
 - (a) restrict the ADM's authority to provide for dependants; or
 - (b) authorise the ADM to make provision for a dependant that is not otherwise permitted by subsection (1).

48 Asset management planning

- (1) This section applies if:
 - (a) an ADM (tribunal) has financial management powers; and
 - (b) the ADM order requires the ADM to comply with this section.
- (2) The ADM must:
 - (a) prepare an asset management plan in accordance with any requirements prescribed by regulation; and
 - (b) as far as reasonably practicable, manage the represented adult's property in accordance with that plan.
- (3) Without limiting the matters that may be provided for in regulations, a regulation may provide for one or more of the following:
 - (a) the form of an asset management plan, which may be in a form approved by the Public Trustee;
 - (b) the matters to be addressed by an asset management plan;
 - (c) a requirement that an asset management plan be approved by the Tribunal, Public Trustee or other person;
 - (d) who must or may be given copies of the asset management plan.

49 Reimbursement of expenses

- (1) An ADM (tribunal) is entitled to reimbursement from the represented adult for reasonable costs incurred in acting as ADM as approved by the Tribunal.
- (2) The Tribunal may give approval for reimbursement of expenses in the ADM order or by direction under section 55(2)(d).
- (3) The Tribunal's approval may be given for a particular expense, for expenses up to a specified amount, for expenses generally, or otherwise as the Tribunal considers appropriate.

Note for section 49

This section applies only to costs incurred by the ADM in the person's capacity as ADM. For reimbursement of expenses incurred in providing other services, see section 51.

50 Remuneration for professional appointee

- (1) An ADM (tribunal) who is a professional ADM is entitled to reasonable remuneration from the represented adult as approved by the Tribunal.
- (2) The Tribunal may give approval for remuneration in the ADM order or by direction under section 55(2)(d).
- (3) This section does not affect any right of the Public Trustee or a trustee company to remuneration or commission under another Act or the Corporations Act 2001.
- (4) In this section:

professional ADM means any of the following:

- (a) a person who carries on a business of, or including, the provision of services as an ADM;
- (b) the Commissioner;
- (c) the Public Trustee.

Note for section 50

This section applies only to remuneration for services provided by the ADM in the person's capacity as ADM. For remuneration for providing other services, see section 51.

51 Reimbursement and remuneration for other services provided by ADM to represented adult

- (1) This section applies if a person who is an ADM (tribunal) also provides other services to the represented adult.
- (2) The person is not entitled to either of the following from the represented adult unless approved by the Tribunal:
 - (a) reimbursement for costs incurred in providing the other services;
 - (b) remuneration for providing the other services.
- (3) The Tribunal may give approval for reimbursement or remuneration in the ADM order or by direction under section 55(2)(d).
- (4) The Tribunal must not give approval unless satisfied that:
 - (a) it is reasonable in the circumstances for the person who is the ADM to also be providing the other services; and

(b) the amount to be paid is reasonable.

- (5) For this section, *providing other services* to a represented adult includes acting as a carer for the represented adult.

52 ADM to hand over when ceasing to be ADM

A person who ceases to be an ADM (tribunal) must take all reasonable steps to provide for:

- (a) if the represented adult is still alive – the smooth transfer of decision making authority from the person to another ADM or to the represented adult (as appropriate); or
- (b) if the represented adult has died – the smooth transfer of the adult's estate to the adult's executor.

53 ADM unaware of entitlement to act

(1) If:

- (a) an ADM (tribunal) purports to exercise authority for a matter in good faith and reasonably believing that circumstances exist that entitle the ADM to do so; but
- (b) those circumstances do not in fact exist;

anything done by the ADM in the purported exercise of the authority has effect, and the ADM is liable to the same extent, as if the circumstances had existed.

(2) If:

- (a) an ADM (tribunal) has authority for a matter; and
- (b) circumstances exist in which the ADM is entitled to exercise that authority; but
- (c) the ADM is unaware, and could not reasonably have been expected to be aware, of the existence of those circumstances;

the ADM is not liable for any failure to exercise the authority.

Example for section 53

A circumstance that would affect the ADM's entitlement to exercise authority is whether or not the represented adult had impaired decision-making capacity for the matter.

Division 3 Supervision of ADM (tribunal)

54 Commissioner or Public Trustee may give advice

- (1) The Commissioner or Public Trustee may give a written opinion or advice to an ADM (tribunal) about the exercise of the ADM's authority.
- (2) An ADM (tribunal) who acts in accordance with an opinion or advice given under subsection (1) is taken to have acted properly and in accordance with this Act.
- (3) Subsection (2) does not apply if, in obtaining the opinion or advice, the ADM acted fraudulently or wilfully misrepresented or concealed material information.

55 Tribunal may give directions

- (1) The Tribunal may give directions to an ADM (tribunal) about the exercise of the ADM's authority.
- (2) Without limiting subsection (1), the Tribunal may give directions as follows:
 - (a) as to how the ADM may, must, or must not, exercise the ADM's authority in order to comply with section 39(2);
 - (b) if joint ADMs are unable to reach a unanimous decision as required by section 39(3) – to facilitate the resolution of their differences;
 - (c) restricting the ADM's authority, or authorising the ADM to act, as mentioned in section 45(2)(b)(ii), 46(2) or 47(2);
 - (d) approving reimbursement or remuneration for the ADM as mentioned in section 49(2), 50(2) or 51(3);
 - (e) authorising the ADM, in a particular instance, to act contrary to the ADM order.

Note for subsection (2)(b)

If dispute resolution is unsuccessful, the Tribunal may give a direction under subsection (2)(a) to resolve the matter.

- (3) The Tribunal may give directions under subsection (2)(a) to (d) about the exercise of the ADM's authority generally or for a particular circumstance.

- (4) The Tribunal may give directions:
- (a) at any time on its own initiative; or
 - (b) on application by:
 - (i) the represented adult; or
 - (ii) an interested person for the represented adult.

56 Declarations about authority, effect etc.

- (1) The Tribunal may make a declaration as to one or more of the following:
- (a) the scope of the authority of an ADM (tribunal);
 - (b) whether the authority of an ADM (tribunal) for a matter has commenced or has ceased;
 - (c) whether a represented adult has impaired decision-making capacity for a matter;
 - (d) any other matter relating to the effect of an ADM order.
- (2) The Tribunal may make a declaration:
- (a) at any time on its own initiative; or
 - (b) on application by:
 - (i) the represented adult; or
 - (ii) an interested person for the represented adult.

57 Tribunal may give directions to former ADM (tribunal)

- (1) This section applies if a person ceases to be an ADM (tribunal) other than as a result of the ADM's death.
- (2) The Tribunal may give the person any directions the Tribunal considers appropriate to provide for:
- (a) if the represented adult is still alive – the smooth transfer of decision making authority from the person to another ADM or to the represented adult (as appropriate); or
 - (b) if the represented adult has died – the smooth transfer of the adult's estate to the adult's executor.

- (3) The person must not engage in conduct that results in a contravention of a direction given under subsection (2).

Maximum penalty: 200 penalty units.

- (4) The Tribunal may give directions:
- (a) at any time on its own initiative; or
 - (b) on application by any of the following:
 - (i) the represented adult;
 - (ii) an interested person for the represented adult;
 - (iii) the former ADM;
 - (iv) if the represented adult has died – the adult's executor.

58 Variation of ADM order

- (1) The Tribunal may vary an ADM order as the Tribunal considers appropriate.
- (2) The Tribunal may vary an ADM order:
- (a) at any time on its own initiative; or
 - (b) on application by:
 - (i) the represented adult; or
 - (ii) an interested person for the represented adult.

Division 4 Review of ADM orders

59 ADM order to be reviewed

- (1) An ADM order must be reviewed by the Tribunal at least once every 3 years, or more frequently in accordance with its terms.
- (2) The Tribunal must review an ADM order in the following circumstances:
- (a) as soon as practicable after the Tribunal becomes aware that a person appointed as an ADM (tribunal) under the order has ceased to be an ADM under section 63(a) or (b);
 - (b) on application by:
 - (i) the represented adult; or

- (ii) an interested person for the represented adult;
 - (c) on its own initiative in order to ensure subsection (1) is complied with.
- (3) The Tribunal may review an ADM order at any other time on its own initiative.
- (4) Despite subsection (2)(a), the Tribunal need not review an ADM order if the ADM mentioned in that paragraph was jointly appointed for all matters for which the ADM had authority and at least one other person continues under section 65 as an ADM (tribunal) for those matters.
- (5) The Tribunal may decline to deal with an application under subsection (2)(b) if it is made less than 12 months after the ADM order was made or last reviewed.

60 Matters to be considered on review

- (1) On a review the Tribunal must consider the following:
 - (a) whether it is appropriate for the ADM order to remain in force having regard to the criteria mentioned in section 30(1);
 - (b) whether any change should be made in the persons who are appointed by the order having regard to sections 32 to 34;
 - (c) whether any changes should be made to the other terms of the order.
- (2) For subsection (1)(b), in determining whether a person remains suitable as mentioned in section 34(3) the Tribunal must take into account the person's performance as an ADM (tribunal) since the ADM order was made or last reviewed.
- (3) In this section:

performance, by a person as an ADM, means how the person has exercised the person's authority as an ADM, including whether the person has complied with section 39(2).

61 Outcome of review

- (1) On completion of a review the Tribunal must revoke the ADM order unless satisfied that, if it were considering an application for a new ADM order, the order would be granted.

- (2) If satisfied as mentioned in subsection (1), the Tribunal may do one of the following:
- (a) confirm the ADM order;
 - (b) vary the ADM order;
 - (c) revoke the ADM order and make another in its place.

Division 5 Duration of order and appointment

62 Duration of ADM order

An ADM order:

- (a) comes into force when it is made or at a later time specified in it; and
- (b) remains in force until one of the following occurs:
 - (i) if the order is expressed to be for a limited period – that period ends;
 - (ii) the order is revoked by the Tribunal;
 - (iii) the represented adult dies.

Note for section 62

If an ADM order is made under section 31 for a child, the order does not come into force until the child turns 18.

63 When appointment of ADM (tribunal) ends

A person ceases to be an ADM (tribunal) if any of the following occurs:

- (a) the person, being an individual, dies;
- (b) the person resigns by giving written notice to the Tribunal;
- (c) if the appointment is expressed to be for a limited period – that period ends;
- (d) the ADM order appointing the person:
 - (i) ceases to be in force; or
 - (ii) is varied so as to terminate the person's appointment.

64 Notification requirements

- (1) If a represented adult dies, an ADM (tribunal) must notify the Tribunal of the death as soon as practicable after becoming aware of it.
- (2) If an ADM (tribunal) dies, any other ADM for the represented adult must notify the Tribunal of the death as soon as practicable after becoming aware of it.
- (3) If the Tribunal becomes aware of circumstances that cause the Commissioner to become an ADM under section 66 or 67, the Tribunal must notify the Commissioner as soon as practicable after becoming aware of those circumstances.

65 Effect of cessation of appointment if joint appointees

- (1) This section applies if:
 - (a) a person ceases to be an ADM (tribunal) for a matter under section 63(a) or (b); and
 - (b) the person was jointly appointed as an ADM (tribunal) for the matter.
- (2) If there were 2 jointly appointed ADMs (tribunal) for the matter, the remaining person becomes the sole ADM (tribunal) for the matter.
- (3) If there were 3 or more jointly appointed ADMs (tribunal) for the matter, the remaining 2 or more of them continue as jointly appointed ADMs (tribunal) for the matter.

66 Effect of cessation of appointment if sole appointee

If:

- (a) a person ceases to be an ADM (tribunal) for a matter under section 63(a) or (b); and
- (b) the person was the sole ADM (tribunal) for the matter;

the Commissioner automatically becomes the ADM (tribunal) for the matter.

67 ADM (tribunal) temporarily unable to act

- (1) If:
 - (a) an ADM (tribunal) for a matter becomes unable to act; and
 - (b) there is no other ADM (tribunal) with authority for the matter;

the Commissioner automatically becomes the ADM (tribunal) for the matter in place of the person mentioned in paragraph (a).

- (2) The Commissioner remains the ADM until the person is again able to act.
- (3) An ADM (tribunal) must notify the Tribunal:
 - (a) before, or as soon as practicable after, becoming unable to act; and
 - (b) as soon as practicable after again becoming able to act.
- (4) In this section:

unable to act, for an ADM, means not reasonably able to exercise the ADM's authority due to illness, absence or any other cause.

68 Tribunal to update ADM order

- (1) This section applies if a person ceases to be an ADM (tribunal) but the ADM order remains in force.
- (2) The Tribunal may, on application, amend the order to reflect:
 - (a) the fact that the person has ceased to be an ADM (tribunal); and
 - (b) the effect, if applicable, of section 65, 66 or 67.
- (3) An application for amendment may be made by:
 - (a) the represented adult; or
 - (b) the former ADM (tribunal); or
 - (c) an interested person for the represented adult.

Part 3.2 ADM (substitute)

Division 1 Appointing an ADM (substitute)

69 Appointing an ADM (substitute)

- (1) An adult may, in a life management document, appoint a person to be an alternate decision maker for a life management matter for the adult.

Note for subsection (1)

The requirements for making a life management document are set out in Chapter 2.

- (2) The adult may appoint any of the following as an ADM (substitute):
- (a) an individual who is at least 18 years of age;
 - (b) a licensed trustee company;
 - (c) the Commissioner or Public Trustee.
- (3) The adult cannot appoint a person as an ADM (substitute) unless that person consents to the appointment in writing in the life management document.

70 Appointment in advance of a child

- (1) Despite section 69(2), an adult may appoint an individual who is under 18 years of age to become an ADM (substitute) when the individual turns 18.
- (2) The appointment has no effect until:
- (a) the individual turns 18; and
 - (b) after turning 18, the individual signs the life management document as required by section 22(5).

71 Appointment options for matters

- (1) An ADM (substitute) may be appointed for one matter, 2 or more matters or all matters.
- (2) If a life management document appoints an ADM but does not identify the matter or matters for which the ADM is appointed, the ADM is appointed for all life management matters.

72 Appointment options for ADMs

- (1) An ADM (substitute) may be appointed with authority to act:
 - (a) at all times; or
 - (b) only in stated circumstances; or
 - (c) at all times except in stated circumstances.
- (2) An adult may appoint one ADM, or 2 or more ADMs, for a matter or matters.
- (3) If the adult appoints 2 or more ADMs for a matter, they may be appointed jointly, severally or jointly and severally.
- (4) Two or more ADMs (substitute) for a matter are appointed jointly unless the adult provides otherwise.

Division 2 Authority of ADM (substitute)

73 Authority of ADM (substitute)

- (1) An ADM (substitute) for a matter is authorised to do anything in relation to the matter that the represented adult could lawfully do if he or she had full legal capacity.
- (2) However, the ADM may exercise that authority only when the represented adult has impaired decision-making capacity for the matter.
- (3) The ADM's authority is subject to the terms of the life management document.

Note for section 73

This section does not give the ADM (substitute) authority beyond that which the represented adult would have if he or she had full legal capacity. For example, if a person has lawful authority to do something in relation to an adult without the adult's consent, the person may do the thing in relation to a represented adult without the consent of the adult or the ADM (substitute). An adult with full capacity would not have a right to object; therefore neither does the ADM.

74 Restrictions on authority, requirements and directions

In a life management document, the represented adult may do one or more of the following:

- (a) impose restrictions on the ADM's authority;
- (b) impose requirements to be complied with by the ADM in relation to the exercise of the ADM's authority;

- (c) give directions to the ADM about the exercise by the ADM of the ADM's authority.

75 Exercise of authority by ADM (substitute)

- (1) An ADM (substitute) may do all things necessary to be done for the exercise of the ADM's authority.
- (2) In exercising that authority, the ADM must:
 - (a) act in accordance with the decision-making principles; and
 - (b) comply with:
 - (i) the life management document, subject to any direction given under section 24(2); and
 - (ii) any direction or other order of the Tribunal; and
 - (iii) this Act; and
 - (c) cooperate with any other ADMs for the represented adult to enable them to properly exercise their authority; and
 - (d) act honestly and with care, skill and diligence.
- (3) Two or more ADMs (substitute) for a matter who are appointed jointly must exercise their authority unanimously.

Note for subsection (3)

If joint ADMs are unable to reach a unanimous decision, they may seek directions from the Tribunal under section 90(2)(b).

76 Effect of exercise of authority by ADM (substitute)

An act done or omission made by an ADM (substitute) in the exercise of the ADM's authority has effect as if it were done or made by the represented adult and he or she had full legal capacity.

77 Authority for restricted health care action

An ADM (substitute) may make a consent decision for a restricted health care action for the represented adult only if the life management document expressly authorises the ADM to make a decision about that particular kind of restricted health care action.

78 Right to documents and information

- (1) An ADM (substitute) for a matter:
 - (a) has the same right to documents and information relevant to the exercise of the ADM's authority in relation to that matter as the represented adult would have if he or she had full legal capacity; and
 - (b) has a right to documents and information of the represented adult that are relevant to the exercise of the ADM's authority in relation to that matter.
- (2) A person who has custody or control of a relevant document or information (an *information holder*) must give it to the ADM if requested by the ADM to do so, unless the information holder has a reasonable excuse not to do so.
- (3) If the information holder does not comply with the request, the Tribunal may, on application by the ADM, order the information holder to give the documents or information to the ADM.
- (4) The information holder must not engage in conduct that results in a contravention of the order.

Maximum penalty: 200 penalty units.

- (5) An information holder who gives information under this section in good faith is not civilly or criminally liable, or in breach of any professional code of conduct, for doing so.

79 Information and things may be given to ADM (substitute)

- (1) If:
 - (a) a person is required by a law of the Territory (the *other law*) to give information or a thing to a represented adult; and
 - (b) the information or thing relates to a matter for which the adult has impaired decision-making capacity; and
 - (c) an ADM (substitute) has authority for the matter;

the person may give the information or thing to the ADM (substitute) instead of giving it to the represented adult.

- (2) A person who gives information or a thing to the ADM under this section in good faith:
 - (a) is taken to have complied with the requirement in the other law to give it to the represented adult; and
 - (b) is not civilly or criminally liable, or in breach of any professional code of conduct, for giving it to the ADM.
- (3) This section does not apply in relation to a document that the other law requires to be personally served on the represented adult.

80 Record keeping and reporting requirements

- (1) An ADM (substitute) must:
 - (a) keep such records in relation to the exercise of the ADM's authority as are reasonable in the circumstances; and
 - (b) comply with any record keeping and reporting requirements prescribed by regulation.
- (2) Without limiting the matters that may be provided for in regulations, a regulation may provide for one or more of the following:
 - (a) keeping of records;
 - (b) preparation of annual or other reports;
 - (c) auditing or other verification of records and reports;
 - (d) the form of records and reports, which may be in a form approved by the Commissioner or Public Trustee;
 - (e) who must or may be given copies of, or access to, records or reports;
 - (f) examination of records or reports by the Tribunal, Commissioner, Public Trustee or other persons.

81 Property to be managed as if trust property

- (1) An ADM (substitute) who has financial management powers:
 - (a) must deal with the represented adult's property as if it were trust property held by the ADM on trust for the represented adult; and

- (b) in dealing with the property, is subject to the duties, obligations and limitations that apply under any law of the Territory to a trustee dealing with trust property.

Note for subsection (1)

The ADM's power to deal with the property stems from section 73. This section limits that power by requiring the ADM to deal with it as if it were trust property. However, this section does not constitute a trust nor cause the property to vest in the ADM.

- (2) However, the ADM may deal with property other than in accordance with subsection (1) if:
 - (a) permitted to do so by a provision of this Act; or
 - (b) authorised to do so:
 - (i) by the represented adult in the life management document; or
 - (ii) by the Tribunal by direction under section 90(2)(c).
- (3) Subsection (1) does not prevent the continuation of joint ownership of property by the represented adult and the ADM (whether as joint tenants or tenants in common) if the joint ownership commenced:
 - (a) before the ADM was appointed; or
 - (b) after the appointment but while the represented adult had decision-making capacity for the matter.

82 Gifts

- (1) An ADM (substitute) who has financial management powers may make a gift or donation from the represented adult's property if:
 - (a) the gift or donation is of a kind the represented adult:
 - (i) made when he or she had decision-making capacity for the matter; or
 - (ii) might reasonably be expected to make; and
 - (b) the value of the gift or donation is reasonable in the circumstances.
- (2) However, the represented adult may, in the life management document:
 - (a) restrict the ADM's authority to make gifts or donations; or

- (b) authorise the ADM to make a gift or donation not otherwise permitted by this section.
- (3) Further, the Tribunal may, by direction under section 90(2)(c), authorise the ADM to make a gift or donation not otherwise permitted by this section.
- (4) Despite subsection (1), the ADM cannot make a gift or donation from the represented adult's property to the ADM unless specifically authorised to do so under subsection (2)(b) or (3).

83 Maintenance of dependants

- (1) An ADM (substitute) who has financial management powers may provide from the represented adult's property for the needs of a dependant of the represented adult if:
 - (a) the provision is of a kind the represented adult:
 - (i) made when he or she had decision-making capacity for the matter; or
 - (ii) might reasonably be expected to make; and
 - (b) the value of the provision is reasonable in the circumstances.
- (2) However, the represented adult may, in the life management document:
 - (a) restrict the ADM's authority to provide for dependants; or
 - (b) authorise the ADM to make provision for a dependant that is not otherwise permitted by subsection (1).
- (3) Further, the Tribunal may, by direction under section 90(2)(c), authorise the ADM to make provision for a dependant that is not otherwise permitted by subsection (1).

84 Reimbursement of expenses

- (1) An ADM (substitute) is entitled to reimbursement from the represented adult for reasonable costs incurred in acting as ADM:
 - (a) as authorised in the life management document; or
 - (b) as approved by the Tribunal by direction under section 90(2)(d).
- (2) The Tribunal's approval may be given for a particular expense, for expenses up to a specified amount, for expenses generally, or otherwise as the Tribunal considers appropriate.

- (3) However, the Tribunal cannot approve reimbursement of expenses contrary to any express provision in the life management document.

Note for section 84

This section applies only to costs incurred by the ADM in the person's capacity as ADM. For reimbursement of expenses incurred in providing other services, see section 86.

85 Remuneration for professional appointee

- (1) An ADM (substitute) who is a professional ADM is entitled to reasonable remuneration from the represented adult:
- (a) as authorised in the life management document; or
 - (b) as approved by the Tribunal by direction under section 90(2)(d).
- (2) However, the Tribunal cannot approve payment of remuneration contrary to any express provision in the life management document.
- (3) This section does not affect any right of the Public Trustee or a trustee company to remuneration or commission under another Act or the Corporations Act 2001.
- (4) In this section:

professional ADM means any of the following:

- (a) a person who carries on a business of, or including, the provision of services as an ADM;
- (b) the Commissioner;
- (c) the Public Trustee.

Note for section 85

This section applies only to remuneration for services provided by the ADM in the person's capacity as ADM. For remuneration for providing other services, see section 86.

86 Reimbursement and remuneration for other services provided by ADM to represented adult

- (1) This section applies if a person who is an ADM (substitute) also provides other services to the represented adult.

- (2) The person is not entitled to either of the following from the represented adult unless approved under subsection (3):
 - (a) reimbursement for costs incurred in providing the other services;
 - (b) remuneration for providing the other services.
- (3) Approval for reimbursement or remuneration may be given:
 - (a) by the represented adult in the life management document; or
 - (b) by the Tribunal by direction under section 90(2)(d).
- (4) The Tribunal must not give approval unless satisfied that:
 - (a) it is reasonable in the circumstances for the person who is the ADM to also be providing the other services; and
 - (b) the amount to be paid is reasonable.
- (5) For this section, *providing other services* to a represented adult includes acting as a carer for the represented adult.

87 ADM to hand over when ceasing to be ADM

A person who ceases to be an ADM (substitute) for an adult must take all reasonable steps to provide for:

- (a) if the represented adult is still alive – the smooth transfer of decision making authority from the person to another ADM or to the represented adult (as appropriate); or
- (b) if the represented adult has died – the smooth transfer of the adult's estate to the adult's executor.

88 ADM unaware of entitlement to act

- (1) If:
 - (a) an ADM (substitute) purports to exercise authority for a matter in good faith and reasonably believing that circumstances exist that entitle the ADM to do so; but
 - (b) those circumstances do not in fact exist;

anything done by the ADM in the purported exercise of the authority has effect, and the ADM is liable to the same extent, as if the circumstances had existed.

(2) If:

- (a) an ADM (substitute) has authority for a matter; and
- (b) circumstances exist in which the ADM is entitled to exercise that authority; but
- (c) the ADM is unaware, and could not reasonably have been expected to be aware, of the existence of those circumstances;

the ADM is not liable for any failure to exercise the authority.

Example for section 88

A circumstance that would affect the ADM's entitlement to exercise authority is whether or not the represented adult had impaired decision-making capacity for the matter.

Division 3 Supervision of ADM (substitute) and jurisdiction of Tribunal

89 Commissioner or Public Trustee may give advice

- (1) The Commissioner or Public Trustee may give a written opinion or advice to an ADM (substitute) about the exercise of the ADM's authority.
- (2) An ADM (substitute) who acts in accordance with an opinion or advice given under subsection (1) is taken to have acted properly and in accordance with this Act.
- (3) Subsection (2) does not apply if, in obtaining the opinion or advice, the ADM acted fraudulently or wilfully misrepresented or concealed material information.

90 Tribunal may give directions

- (1) The Tribunal may give directions to an ADM (substitute) about the exercise of the ADM's authority.
- (2) Without limiting subsection (1), the Tribunal may give directions as follows:
 - (a) as to how the ADM may, must, or must not, exercise the ADM's authority in order to comply with section 75(2);
 - (b) if joint ADMs are unable to reach a unanimous decision as required by section 75(3) – to facilitate the resolution of their differences;

- (c) authorising the ADM's to act as mentioned in section 81(2)(b)(ii), 82(3) or 83(3);
- (d) approving reimbursement or remuneration for the ADM as mentioned in section 84(1)(b), 85(1)(b) or 86(3)(b).

Note for subsection (2)(b)

If dispute resolution is unsuccessful, the Tribunal may give a direction under subsection (2)(a) to resolve the matter.

- (3) The Tribunal must not give a direction under subsection (1) requiring or permitting the ADM to act contrary to an express provision of the life management document.
- (4) The Tribunal may give directions about the exercise of the ADM's authority generally or for a particular circumstance.
- (5) The Tribunal may give directions on application by:
 - (a) the represented adult; or
 - (b) an interested person for the represented adult.

91 Declarations about validity, capacity etc.

- (1) The Tribunal may make a declaration as to one or more of the following:
 - (a) whether a life management document that appoints an ADM (substitute) is or is not valid;
 - (b) whether a represented adult has impaired decision-making capacity for a matter;
 - (c) the scope of the authority of an ADM (substitute);
 - (d) whether the authority of an ADM (substitute) for a matter has commenced or has ceased;
 - (e) any other matter relating to the validity or effect of a life management document that appoints an ADM (substitute).
- (2) The Tribunal may make a declaration on application by:
 - (a) the represented adult; or
 - (b) an interested person for the represented adult.

92 Tribunal may give directions to former ADM (substitute)

- (1) This section applies if a person ceases to be an ADM (substitute) other than as a result of the ADM's death.
- (2) The Tribunal may give the person any directions the Tribunal considers appropriate to provide for:
 - (a) if the represented adult is still alive – the smooth transfer of decision making authority from the person to another ADM or to the represented adult (as appropriate); or
 - (b) if the represented adult has died – the smooth transfer of the adult's estate to the adult's executor.
- (3) The person must not engage in conduct that results in a contravention of a direction given under subsection (2).

Maximum penalty: 200 penalty units.

- (4) The Tribunal may give directions on application by any of the following:
 - (a) the represented adult;
 - (b) an interested person for the represented adult;
 - (c) the former ADM;
 - (d) if the represented adult has died – the adult's executor.

Division 4 Duration of appointment

93 When appointment of ADM (substitute) ends

- (1) A person ceases to be an ADM (substitute) if any of the following occurs:
 - (a) the person, being an individual, dies;
 - (b) the person resigns by giving written notice to:
 - (i) if the represented adult has full legal capacity – the represented adult; or
 - (ii) otherwise – the Tribunal;
 - (c) if the appointment is expressed to be for a limited period – that period ends;

- (d) the life management document by which the person was appointed:
 - (i) ceases to be in force; or
 - (ii) is amended so as to terminate the person's appointment.
- (2) A notice for subsection (1)(b)(ii) must be accompanied by:
 - (a) a copy of the life management document by which the ADM was appointed; and
 - (b) any information prescribed by regulation.

94 Effect of cessation of appointment if jointly appointed

- (1) This section applies if:
 - (a) a person ceases to be an ADM (substitute) for a matter under section 93(1)(a) or (b); and
 - (b) the person was jointly appointed as an ADM (substitute) for the matter.
- (2) If there were 2 jointly appointed ADMs (substitute) for the matter, the remaining person becomes the sole ADM (substitute) for the matter.
- (3) If there were 3 or more jointly appointed ADMs (substitute) for the matter, the remaining 2 or more of them continue as jointly appointed ADMs (substitute) for the matter.

95 Tribunal to endorse cessation of ADM (substitute)

- (1) This section applies if:
 - (a) a person ceases to be an ADM (substitute) but the life management document remains in force; and
 - (b) the represented adult no longer has full legal capacity.
- (2) The Tribunal must, on application, endorse on the life management document:
 - (a) the fact that the person has ceased to be an ADM (substitute); and
 - (b) the effect, if applicable, of section 94.

- (3) An application for endorsement may be made by:
 - (a) the represented adult; or
 - (b) the former ADM (substitute); or
 - (c) an interested person for the represented adult.

Part 3.3 ADM (health)

Division 1 Who is an ADM (health)

96 Meaning of *close friend* and *customary carer*

- (1) For section 97, an individual is a ***close friend*** of an adult if the individual has a close personal relationship with the adult and a genuine personal interest in the adult's care and welfare.
- (2) In determining whether an individual is a close friend of an adult, it is immaterial whether the individual is a relative of the adult.

Note for subsection (2)

This means that a relative of the adult may be a "close friend", but only if the relative meets the criteria mentioned in subsection (1). Being a relative is not, on its own, sufficient.

- (3) An individual may be a close friend of an adult even if the individual does not personally provide regular care and assistance to the adult.
- (4) However, an individual is not a close friend of an adult if the individual's relationship with the adult and interest in the adult's care and welfare arises from the individual being a professional support worker for the adult.
- (5) For section 97, for an adult who is an Aboriginal person or Torres Strait Islander, an individual is a ***customary carer*** of the adult if, according to the customs and traditions of the adult's community or group, the individual is someone who would ordinarily make decisions about health care matters for the adult.
- (6) In this section:

professional support worker means a person who, in the practice of the person's profession or the ordinary course of the person's business, provides day-to-day care and assistance to people.

97 Who is an ADM (health)

- (1) Each of the following persons is an *ADM (health)* for an adult:
 - (a) a close friend of the adult;
 - (b) a customary carer of the adult.
- (2) However, a person is not an ADM (health) for an adult if:
 - (a) the person is under 18 years of age; or
 - (b) the person does not want to be an ADM (health) for the adult;
or
 - (c) the adult has made an advance care directive as mentioned in section 21(3) stating that the person is not an ADM (health) for the adult.

Division 2 Authority of ADM (health)

98 Authority of ADM (health)

If an adult has impaired capacity for health care action, an ADM (health) for the adult is authorised to make a consent decision about the health care action in accordance with Chapter 4.

Notes for section 98

- 1 *Under sections 113 and 122, a health care provider is able to rely on a consent decision given by an ADM about health care action only if the health care provider reasonably believes that the represented adult has impaired capacity for that health care action. Therefore an ADM (health) will only be able to exercise his or her authority to make consent decisions if the health care provider believes the represented adult has impaired capacity.*
- 2 *An ADM (health) does not have authority to do anything other than make consent decisions about health care action.*

99 Exercise of authority by ADM (health)

- (1) An ADM (health) may do all things necessary to be done for the exercise of the ADM's authority.
- (2) In exercising that authority, the ADM must:
 - (a) act in accordance with the decision-making principles; and
 - (b) comply with:
 - (i) any advance care directives made by the represented adult that do not constitute consent decisions; and

- (ii) any direction or order of the Tribunal; and
- (iii) this Act; and
- (c) cooperate with any other ADMs for the represented adult to enable them to properly exercise their authority; and
- (d) act honestly and with care, skill and diligence.

Note for subsection (2)(b)(i)

As to whether an advance care directive constitutes a consent decision, see section 18. As to the effect of an advance care directive that does constitute a consent decision, see section 111.

100 Effect of exercise of authority by ADM (health)

An act done or omission made by an ADM (health) in the exercise of the ADM's authority has effect as if it were done or made by the represented adult and he or she had full legal capacity.

101 No authority for restricted health care action

An ADM (health) cannot make a consent decision about restricted health care action for the represented adult.

102 Right to documents and information

- (1) An ADM (health) who is proposing to make a consent decision about health care action for the represented adult:
 - (a) has the same right to documents and information relevant to the making of that decision as the represented adult would have if he or she had full legal capacity; and
 - (b) has a right to documents and information of the represented adult that are relevant to the making of that decision.
- (2) A person who has custody or control of a relevant document or information (an *information holder*) must give it to the ADM if requested by the ADM to do so, unless the information holder has a reasonable excuse not to do so.
- (3) If the information holder does not comply with the request, the Tribunal may, on application by the ADM, order the information holder to give the documents or information to the ADM.
- (4) The information holder must not engage in conduct that results in a contravention of the order.

Maximum penalty: 200 penalty units.

- (5) An information holder who gives information under this section in good faith is not civilly or criminally liable, or in breach of any professional code of conduct, for doing so.

103 Information and things may be given to ADM (health)

- (1) If:
- (a) a person is required by a law of the Territory (the *other law*) to give information or a thing to a represented adult; and
 - (b) the information or thing relates to health care action for which the represented adult has impaired capacity; and
 - (c) an ADM (health) has made, or is proposing to make, a consent decision about the health care action;

the person may give the information or thing to the ADM (health) instead of giving it to the represented adult.

- (2) A person who gives information or a thing to the ADM under this section in good faith:
- (a) is taken to have complied with the requirement in the other law to give it to the represented adult; and
 - (b) is not civilly or criminally liable, or in breach of any professional code of conduct, for giving it to the ADM.
- (3) This section does not apply in relation to a document that the other law requires to be personally served on the represented adult.

104 Record keeping and reporting requirements

An ADM (health) must:

- (a) keep such records in relation to the exercise of the ADM's authority as are reasonable in the circumstances; and
- (b) comply with any record keeping and reporting requirements imposed by regulation.

105 Reimbursement of expenses

- (1) An ADM (health) is entitled to reimbursement from the represented adult for reasonable costs incurred in acting as ADM as approved by the Tribunal by direction under section 108(2)(b).

- (2) The Tribunal's approval may be given for a particular expense, for expenses up to a specified amount, for expenses generally, or otherwise as the Tribunal considers appropriate.

Notes for section 105

- 1 *This section applies only to costs incurred by the ADM in his or her capacity as ADM. An ADM (health) is not entitled to remuneration for being an ADM (health).*
- 2 *If a person who is an ADM (health) also provides other services to the represented adult:*
 - (a) *if the person is also an ADM (tribunal) or ADM (substitute) – his or her entitlement to reimbursement or remuneration for the other services would be subject to section 51 or 86; or*
 - (b) *if not – this Act does not prevent reimbursement or remuneration for providing those services. Payment of the expenses or remuneration would be a decision for whoever has authority to make payments for such amounts for the represented adult.*

106 ADM to hand over when ceasing to be ADM

A person who ceases to be an ADM (health) must take all reasonable steps to provide for:

- (a) if the represented adult is still alive – the smooth transfer of decision making authority from the person to another ADM or to the represented adult (as appropriate); or
- (b) if the represented adult has died – the smooth transfer of the adult's estate to the adult's executor.

Division 3 Supervision of ADM (health) and jurisdiction of Tribunal

107 Commissioner may give advice

- (1) The Commissioner may give a written opinion or advice to an ADM (health) about the exercise of the ADM's authority.
- (2) An ADM (health) who acts in accordance with an opinion or advice given under subsection (1) is taken to have acted properly and in accordance with this Act.
- (3) Subsection (2) does not apply if, in obtaining the opinion or advice, the ADM acted fraudulently or wilfully misrepresented or concealed material information.

108 Tribunal may give directions

- (1) The Tribunal may give directions to an ADM (health) about the exercise of the ADM's authority.

- (2) Without limiting subsection (1), the Tribunal may give directions as follows:
 - (a) as to how the ADM may, must, or must not, exercise the ADM's authority in order to comply with section 99(2);
 - (b) approving reimbursement for the ADM as mentioned in section 105(1).
- (3) The Tribunal may give directions about the exercise of the ADM's authority generally or for a particular circumstance.
- (4) The Tribunal may give directions on application by:
 - (a) the represented adult; or
 - (b) an interested person for the represented adult.

109 Declarations about capacity etc.

- (1) The Tribunal may make a declaration as to one or more of the following:
 - (a) whether an adult has impaired capacity for health care action;
 - (b) whether a person is an ADM (health) for an adult;
 - (c) the scope of the authority of an ADM (health);
 - (d) any other matter relating to the exercise of authority by an ADM (health).
- (2) The Tribunal may make a declaration on application by:
 - (a) the represented adult; or
 - (b) an interested person for the represented adult.

110 Tribunal may give directions to former ADM (health)

- (1) This section applies if a person ceases to be an ADM (health) other than as a result of the ADM's death.
- (2) The Tribunal may give the person any directions the Tribunal considers appropriate to provide for:
 - (a) if the represented adult is still alive – the smooth transfer of decision making authority from the person to another ADM or to the represented adult (as appropriate); or

- (b) if the represented adult has died – the smooth transfer of the adult's estate to the adult's executor.
- (3) The person must not engage in conduct that results in a contravention of a direction given under subsection (2).

Maximum penalty: 200 penalty units.

- (4) The Tribunal may give directions on application by any of the following:
 - (a) the represented adult;
 - (b) an interested person for the represented adult;
 - (c) the former ADM;
 - (d) if the represented adult has died – the adult's executor.

Chapter 4 Consent to health care action

Part 4.1 Consent to health care action by ADM or Tribunal

111 Scope of consent decision

A consent decision about health care action may be made in relation to:

- (a) health care to be provided in a particular instance; or
- (b) a course of health care to be provided over a period of time.

112 Consent decision in advance care directive

- (1) This section applies if:
 - (a) a health care provider proposes to take health care action for an adult; and
 - (b) the adult has impaired capacity for the action; and
 - (c) the adult has made an advance care directive that constitutes a consent decision about the action.
- (2) The consent decision in the advance care directive is the adult's consent decision about the health care.

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- (3) However, the Tribunal may direct that the advance care directive be disregarded.

Note for subsection (3)

If the Tribunal directs that a consent decision in the advance care directive be disregarded, a consent decision about the health care action may be made by an ADM under section 113 or 114 or by the Tribunal under section 116.

- (4) The Tribunal must not give a direction unless satisfied:
- (a) there is no reasonable possibility that the adult would have intended the consent decision in the directive to apply in the present circumstances; or
 - (b) taking health care action in reliance on the consent decision in the directive:
 - (i) would cause the adult unacceptable pain and suffering; or
 - (ii) would otherwise be so wholly unreasonable that it is justifiable to override the adult's wishes.
- (5) The Tribunal may give a direction:
- (a) at any time on its own initiative; or
 - (b) on application by any of the following:
 - (i) the adult;
 - (ii) a health care provider for the adult;
 - (iii) any other interested person for the adult.

113 Consent decisions by ADMs

- (1) This section applies if:
- (a) a health care provider proposes to take health care action for a represented adult; and
 - (b) the represented adult has impaired capacity for the action; and
 - (c) either:
 - (i) the represented adult has not made an advance care directive that constitutes a consent decision about the action; or

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- (ii) the Tribunal has given a direction under section 112(3) that the directive is to be disregarded; and
 - (d) there is one or more ADMs for the represented adult with authority to make a consent decision about the action; and
 - (e) the Tribunal has not made a consent decision about the health care action under section 116.
- (2) A consent decision about the health care action must be made by the first in order of priority of the ADMs:
- (a) who is reasonably available; and
 - (b) whose decision-making capacity for the action is unimpaired; and
 - (c) who is willing to make the consent decision.
- (3) The order of priority of ADMs for a represented adult is:
- (a) an ADM (substitute); then
 - (b) an ADM (tribunal); then
 - (c) an ADM (health).

114 Two or more ADMs with same priority

- (1) This section applies if there are 2 or more ADMs of the same priority who, under section 113(2), must make a consent decision.
- (2) If the ADMs agree on how the consent decision is to be made, the decision may be made by any one of them.
- (3) If:
 - (a) the ADMs do not agree as to how the consent decision is to be made; but
 - (b) the health care provider reasonably believes:
 - (i) there is one ADM who is reasonably able to act in the best interests of the represented adult; and
 - (ii) in all the circumstances it is appropriate for that ADM to make the consent decision;

the consent decision must be made by that ADM.

115 Uninformed consent by ADM not sufficient

- (1) A health care provider must not accept a consent decision about health care action from an ADM unless the provider reasonably believes that:
 - (a) the ADM understands the ADM's obligation to act in accordance with the decision-making principles; and
 - (b) the ADM has been given all the information the ADM reasonably needs to make a balanced judgment about the proposed health care action; and
 - (c) the ADM has had adequate time to consider that information; and
 - (d) the ADM understands the effect of making the consent decision; and
 - (e) in making the decision the ADM is acting freely and voluntarily.
- (2) The information needed by the ADM as mentioned in subsection (1)(b) includes a clear explanation:
 - (a) of the health problem affecting the represented adult; and
 - (b) of the health care to which the decision relates and any alternative health care that might reasonably be provided, including the following:
 - (i) the nature of the health care;
 - (ii) the benefits of the health care;
 - (iii) the risks associated with the health care;
 - (iv) the likely outcome of the health care being provided; and
 - (c) of the effect of taking the proposed health care action; and
 - (d) of the answers to all relevant questions asked by the ADM; and
 - (e) of the ADM's right to refuse consent, or to subsequently withdraw any consent that is given; and
 - (f) that an application can be made to the Tribunal for it to make the consent decision instead of the ADM; and

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- (g) of any financial or other interest the health care provider may have in the outcome of the ADM's consent decision.
 - (3) An explanation is not *clear* unless it is given:
 - (a) as far as is practicable, in a way that is likely to be understood by the ADM; and
 - (b) without exaggeration, distortion or concealment.

116 Consent decisions by Tribunal

- (1) This section applies if:
 - (a) a health care provider proposes to take health care action for an adult; and
 - (b) the adult has impaired capacity for the action; and
 - (c) either:
 - (i) the represented adult has not made an advance care directive that constitutes a consent decision about the action; or
 - (ii) the Tribunal has given a direction under section 112(3) that the directive is to be disregarded.
- (2) The Tribunal may make a consent decision about the health care action:
 - (a) at any time on its own initiative; or
 - (b) on application by any of the following:
 - (i) the adult;
 - (ii) a health care provider for the adult;
 - (iii) any other interested person for the adult.

Note for subsection (2)

This section, read with section 111, allows the Tribunal to consent to a course of health care being provided to the adult over a period of time. For example, if an application has been made under section 30 for an ADM order in relation to an adult, the Tribunal may, under this section, consent to a course of health care being provided to the adult pending determination of the application for an ADM order.

- (3) In a proceeding under this section, the Tribunal:
 - (a) must itself make a consent decision about the health care action; and
 - (b) must not deal with the matter as a review of, or appeal against, a consent decision about the action made by an ADM or by the adult in an advance care directive.
- (4) However, in making its decision the Tribunal may have regard to a decision made by an ADM or in an advance care directive.

117 Application for urgent consent decision

- (1) This section applies if:
 - (a) an application is made under section 116 by a medical practitioner in relation to health care action proposed to be taken in relation to an adult who is the practitioner's patient; and
 - (b) the application includes, or is accompanied by, a statement by a medical practitioner that he or she reasonably believes that a consent decision about the health care action needs to be made urgently.
- (2) Within 24 hours after the application is made the Tribunal must:
 - (a) make that decision; or
 - (b) if satisfied that the consent decision does not need to be made urgently – adjourn the application to be dealt with as an ordinary application under section 116.
- (3) If an application is dealt with urgently under subsection (2)(a), the Tribunal cannot make a consent decision about a course of health care that is to be provided over a period exceeding 2 weeks.

Note for subsection (3)

Subsection (3) does not prevent the Tribunal subsequently making another consent decision to continue the health care for a further period.

118 Effect of consent decision by Tribunal

- (1) A consent decision made by the Tribunal has effect as if it were a decision made by the adult and he or she had full legal capacity.
- (2) Subsection (1) applies whether or not a consent decision about the health care action has been, or might be, made by an ADM under any other provision of this Part.

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- (3) If the Tribunal makes a consent decision in relation to a course of action to be provided over a period of time, a later consent decision to withhold or withdraw the health care may only be made:
- (a) if providing the care is restricted health care action – by the Tribunal; or
 - (b) otherwise, by:
 - (i) the Tribunal; or
 - (ii) an ADM for the adult who is authorised by the Tribunal to make that decision.
- (4) Except as provided in subsection (3), the making by the Tribunal of a consent decision about health care action for a represented adult does not affect the ability of an ADM for the represented adult to make consent decisions about other health care actions for the adult.

119 Effect of application to Tribunal on consent decision

- (1) This section applies if:
- (a) a consent decision about health care action has been made by an ADM; and
 - (b) an application is made to the Tribunal:
 - (i) for a direction under section 112(3) that an advance care directive that constitutes a consent decision about the action be disregarded; or
 - (ii) for the Tribunal to make a consent decision about the action under section 116.
- (2) The making of the application does not stay or otherwise affect the consent decision in the advance care directive or made by the ADM, unless the Tribunal orders otherwise.

120 Effect of appeal against Tribunal's decision

If an appeal to the Supreme Court is lodged under section 179 against a consent decision made by the Tribunal, the lodging of the appeal does not stay or otherwise affect the Tribunal's decision, unless the Supreme Court orders otherwise.

Part 4.2 Health care providers

121 Health care provider relying on consent in advance care directive

- (1) This section applies if a health care provider takes health care action for an adult:
 - (a) reasonably believing that section 112 applies in relation to the action; and
 - (b) relying on consent the provider reasonably believes to have been given by the adult in the advance care directive; and
 - (c) if a direction has been given under section 112(3) that the advance care directive be disregarded – without knowledge of that direction.
- (2) The health care provider taking the action is taken, for all purposes, to have done so with the consent of the adult and as if the adult had full legal capacity.
- (3) Subsection (2) applies even if an effect of taking the action is to hasten the death of the adult.

122 Health care provider relying on consent of ADM or Tribunal

- (1) This section applies if a health care provider takes health care action for an adult:
 - (a) reasonably believing that section 113 applies in relation to the action; and
 - (b) relying on consent the provider reasonably believes to have been given by an ADM for the adult under section 113 or 114; and
 - (c) reasonably believing that accepting the consent decision is not prohibited by section 115; and
 - (d) if the Tribunal has made a consent decision about the action under section 116 – without knowledge of that decision.
- (2) This section also applies if a health care provider takes health care action for an adult relying on consent the provider reasonably believes to have been given by the Tribunal under section 116.

- (3) This section also applies if:
- (a) a health care provider (*provider A*) takes health care action for an adult; and
 - (b) the adult has impaired capacity for the action; and
 - (c) it is reasonable in the circumstances for provider A to rely on another health care provider having ascertained that consent has been given; and
 - (d) provider A reasonably assumes that another health care provider has done so.
- (4) The health care provider taking the action is taken, for all purposes, to have done so with the consent of the adult and as if the adult had full legal capacity.
- (5) Subsection (4) applies even if an effect of taking the action is to hasten the death of the adult.

123 Health care provider acting with consent of adult when unaware of impaired capacity

- (1) This section applies if:
- (a) a health care provider takes health care action for an adult relying in good faith on consent purportedly given by the adult; and
 - (b) the adult has impaired capacity for the action; and
 - (c) the provider does not know, and could not reasonably be expected to know, that the adult has impaired capacity for the action.
- (2) The health care provider taking the action is taken, for all purposes, to have done so with the consent of the adult and as if the adult had full legal capacity.
- (3) Subsection (2) applies even if an effect of taking the action is to hasten the death of the adult.

Part 4.3 Miscellaneous matters

124 Tribunal declarations about health care action

- (1) The Tribunal may make a declaration as to one or more of the following:
 - (a) whether an adult has impaired capacity for health care action;
 - (b) whether an advance care directive constitutes a consent decision about health care action;
 - (c) if there are 2 or more ADMs for a represented adult – which of them is to make a consent decision for health care action for the represented adult;
 - (d) the scope of a consent decision;
 - (e) any other matter relating to the making of a consent decision about health care action for an adult who has impaired capacity for the action.
- (2) The Tribunal may make a declaration on application by any of the following:
 - (a) the adult;
 - (b) a health care provider who proposes to take health care action for the adult;
 - (c) any other interested person for the adult.

Note for section 124

The Tribunal also has declaratory powers in relation to ADMs under sections 56, 91 and 109 and in relation to advance care directives under section 29.

125 Right to refuse health care

This Act does not affect any right an adult with decision-making capacity for health care action has to refuse the health care.

126 No obligation to take health care action

This Act does not require a health care provider to take health care action if the provider would not, in the absence of this Act, be required to do so.

127 Unlawful health care action not permitted

- (1) This Act does not authorise a person to take health care action for an adult unless the person would, in the absence of this Act, be lawfully able to take the action for an adult who had full legal capacity and consented to the taking of the action.
- (2) If the taking of health care action would be unlawful:
 - (a) an adult cannot consent to the taking of the action in an advance care directive; and
 - (b) an ADM or the Tribunal cannot consent to the taking of the action.
- (3) This Act does not permit the form of intentional killing of another called euthanasia or the assisting of a person to terminate his or her life.

128 Other Acts not affected

This Act does not affect the operation of any other law of the Territory that allows a person to take health care action for another person without that person's consent.

Chapter 5 Administration of Act

Part 5.1 Commissioner for Adult Decision Making and Advocacy

Division 1 Establishment, functions and powers of Commissioner

129 Commissioner for Adult Decision Making and Advocacy

There is to be a Commissioner for Adult Decision Making and Advocacy.

130 Commissioner's functions

- (1) The Commissioner has the following functions:
 - (a) to act in relation to particular persons as mentioned in subsection (2);
 - (b) to support and monitor ADMs as mentioned in subsection (3);

- (c) to exercise the advocacy function as mentioned in subsection (4);
 - (d) to exercise the general functions as mentioned in subsection (5);
 - (e) to ensure compliance with, and prosecute offences against, this Act;
 - (f) to perform any other functions conferred on the Commissioner under this or any other Act.
- (2) The Commissioner's functions in relation to particular persons are as follows:
- (a) to be an ADM (tribunal) or ADM (substitute) for adults when appointed under Part 3.1 or 3.2;
 - (b) to exercise the authorities conferred under this Act on the Commissioner in relation to adults for whom the Commissioner is not an ADM;
 - (c) to assist adults with impaired decision-making capacity or other persons to access support services.

Example for subsection (2)(b)

The Commissioner's functions under subsection (2)(b) include being an interested person for an adult with impaired decision-making capacity for whom the Commissioner is not an ADM.

- (3) The Commissioner's functions in relation to other persons who are ADMs are as follows:
- (a) to provide advice and support for ADMs;
 - (b) to monitor, or investigate complaints about, the conduct of ADMs.
- (4) The Commissioner's advocacy function is to act as advocate for adults with impaired decision-making capacity generally, including as follows:
- (a) by promoting and protecting the rights and interests of adults with impaired decision-making capacity;
 - (b) by encouraging the provision of support services;
 - (c) by monitoring and reviewing the delivery of support services.

(5) The Commissioner's general functions are as follows:

- (a) to promote understanding and awareness of relevant issues;
- (b) to provide, or encourage the provision of, education about relevant issues;
- (c) to undertake, or encourage the undertaking of, research into relevant issues;
- (d) to advise the Minister on relevant issues.

(6) In this section:

relevant issue means an issue relating to adults with impaired decision-making capacity, including issues relating to the following:

- (a) the rights and interests of adults with impaired decision-making capacity;
- (b) the role of the Commissioner, the Public Trustee (in relation to persons with impaired decision-making capacity) and ADMs;
- (c) support services;
- (d) the purpose and effect of life management documents;
- (e) the law relating to adults with impaired decision-making capacity.

support service means a service, facility or program for any of the following:

- (a) adults with impaired decision-making capacity;
- (b) ADMs;
- (c) families and carers of adults with impaired decision-making capacity.

131 Commissioner's powers

The Commissioner may do all things necessary to be done for the performance of the Commissioner's functions.

132 Commissioner to act in accordance with decision-making principles

The Commissioner must act in accordance with the decision-making principles.

133 Commissioner's independence

- (1) Except as otherwise provided by another law of the Territory, the Commissioner is not subject to the direction of anyone in relation to the way in which the Commissioner's functions are exercised.
- (2) Despite subsection (1), if the Commissioner is an ADM for an adult, the Commissioner is, in that capacity, subject to the supervision and direction of the Tribunal to the same extent as any other ADM.

Division 2 Appointment of Commissioner

134 Appointment of Commissioner

The Administrator may, by *Gazette* notice, appoint a person to be the Commissioner.

135 Term of appointment

The Commissioner holds office for 5 years or any shorter period specified in the appointment and may be reappointed.

136 Conditions of appointment

- (1) The Commissioner holds office on the conditions (including remuneration, expenses and allowances) determined by the Administrator.
- (2) The Minister may grant the Commissioner leave of absence on the conditions determined by the Minister.

137 Resignation

The Commissioner may resign from office by giving written notice to the Administrator.

138 Termination of appointment

- (1) The Administrator may terminate the appointment of a person as Commissioner:
 - (a) on the ground of misbehaviour or misconduct; or
 - (b) on the ground of physical or mental inability to satisfactorily perform the duties of the office; or
 - (c) if the person is found guilty of an offence of such a nature that it would be inappropriate for the person to continue to be the Commissioner; or

- (d) if the person engages in paid employment outside the duties of the office without the Minister's prior written approval; or
- (e) if the person:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with creditors or makes an assignment of the Commissioner's remuneration for their benefit.
- (2) A termination of appointment must be made in writing.

139 Acting Commissioner

- (1) The Minister may appoint a person to act in the office of Commissioner:
 - (a) during a vacancy in the office (whether or not an appointment has previously been made to the office); or
 - (b) during a period or all periods when the Commissioner is unable to exercise the authorities of the office.
- (2) A person appointed under subsection (1) must not act continuously for more than 12 months in the office of the Commissioner.
- (3) The Minister may determine conditions of the appointment (including remuneration, expenses and allowances).

140 Oath of office

A person appointed to be the Commissioner must, before taking office, take an oath of office in accordance with the *Oaths, Affidavits and Declarations Act*.

Division 3 Administrative matters

141 Delegation

- (1) The Commissioner may, in writing, delegate to a person any of the Commissioner's authorities under this Act.
- (2) The Commissioner may do so only if satisfied the person has the appropriate qualifications or experience to properly exercise the delegated authority.

142 Staff and facilities for Commissioner

- (1) The Chief Executive Officer must provide the Commissioner with staff and facilities to enable the Commissioner to properly exercise the Commissioner's authorities.
- (2) A staff member provided to the Commissioner under subsection (1) is subject only to the direction of:
 - (a) the Commissioner; or
 - (b) another such staff member.

143 Annual report

- (1) The Commissioner must prepare and give to the Minister a report on the performance by the Commissioner of the Commissioner's functions during each financial year.
- (2) The report must be given to the Minister by 31 October following the end of the financial year.
- (3) The report must include the following:
 - (a) the number of persons for whom the Commissioner was an ADM (tribunal) or ADM (substitute) during the year and changes in those numbers from the previous year;
 - (b) details of the staff and resources provided to the Commissioner and their adequacy in relation to the performance of the Commissioner's functions;
 - (c) any other matters the Commissioner considers appropriate;
 - (d) any matter required by the Minister to be included in the report;
 - (e) any matter required by regulation to be included in the report.
- (4) The report must not include the name of, or any information that might identify, any adult with impaired decision-making capacity.
- (5) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after the Minister receives the report.

Part 5.2 Public Trustee

144 Public Trustee's functions

The Public Trustee has the following functions under this Act:

- (a) to be an ADM (tribunal) or ADM (substitute) for adults when appointed under Part 3.1 or 3.2;
- (b) to exercise the authorities conferred under this Act on the Public Trustee in relation to adults for whom the Public Trustee is not an ADM;
- (c) to provide advice and support for ADMs with financial management powers;
- (d) to monitor, or investigate complaints about, the conduct of ADMs exercising financial management powers;
- (e) to exercise functions conferred by regulation on the Public Trustee in relation to asset management planning, record keeping and reporting;
- (f) to assist the Commissioner in the performance of the Commissioner's functions under section 130(1)(e), (3), (4) and (5) in relation to matters relating to an adult's property or financial affairs;
- (g) any other functions conferred on the Public Trustee under this Act.

Example for paragraph (b)

The Public Trustee's functions under paragraph (b) include being an interested person for an adult with impaired decision-making capacity for whom the Public Trustee is not an ADM.

145 Public Trustee's powers

The Public Trustee may do all things necessary to be done for the performance of the Public Trustee's functions under this Act.

146 Public Trustee to act in accordance with decision-making principles

The Public Trustee must act in accordance with the decision-making principles.

147 Public Trustee's independence

- (1) Except as otherwise provided by another law of the Territory, the Public Trustee is not subject to the direction of anyone in relation to the way in which the Public Trustee's authorities under this Act are exercised.
- (2) Despite subsection (1), if the Public Trustee is the ADM for an adult, the Public Trustee is, in that capacity, subject to the supervision and direction of the Tribunal to the same extent as any other ADM.

148 Annual report

- (1) The Public Trustee's annual report under section 18 of the *Public Trustee Act* for a financial year must include a report on the performance by the Public Trustee of the Public Trustee's functions under this Act for the financial year.
- (2) The report must include the following:
 - (a) the number of persons for whom the Public Trustee was an ADM (tribunal) or ADM (substitute) during the year and changes in those numbers from the previous year;
 - (b) any other matters the Public Trustee considers appropriate;
 - (c) any matter required by the Minister to be included in the report;
 - (d) any matter required by regulation to be included in the report.
- (3) The report must not include the name of, or any information that might identify, any adult with impaired decision-making capacity.

Part 5.3 Tribunal for Adult Decision Making

Division 1 Preliminary matters

149 Definitions

In this Part:

affected adult, for a proceeding before the Tribunal, means:

- (a) if the proceeding is an application for an ADM order – the adult for whom the order is sought; or

- (b) if the proceeding relates to a represented adult – the represented adult; or
- (c) if the proceeding relates to a consent decision for health care action for an adult – that adult; or
- (d) for any other proceeding – the adult to whom the proceeding relates.

legal member, see section 151(3)(a).

medical member, see section 151(3)(b).

member means a member of the membership pool for the Tribunal under section 151.

party, see section 166.

president means the president of the Tribunal under section 152.

Division 2 Establishment and membership of Tribunal

150 Tribunal for Adult Decision Making established

The Tribunal for Adult Decision Making is established.

151 Membership pool

- (1) The Administrator must appoint, to form a membership pool for the Tribunal, the number of persons the Administrator considers appropriate to ensure the Tribunal has capacity to properly exercise its functions.
- (2) A person is eligible to be appointed if the person:
 - (a) is a lawyer with at least 5 years experience as a legal practitioner; or
 - (b) a medical practitioner with at least 5 years experience as a medical practitioner; or
 - (c) is a health care provider with experience working with people with impaired decision-making capacity; or
 - (d) otherwise has demonstrated knowledge or experience in relation to people with impaired decision-making capacity.

- (3) The membership pool must include:
- (a) at least 2 persons who are eligible under subsection (2)(a) (each being a *legal member*); and
 - (b) at least 2 persons who are eligible under subsection (2)(b) (each being a *medical member*).
- (4) A person is not eligible to be appointed if the person is any of the following:
- (a) the Commissioner;
 - (b) the Public Trustee;
 - (c) the Chief Executive Officer of an Agency to which the administration of any provision of this Act is allotted;
 - (d) the Ombudsman;
 - (e) the Health and Community Services Complaints Commissioner.

152 President and deputy president

- (1) The Administrator must appoint:
- (a) a legal member to be the president of the Tribunal; and
 - (b) another member to be the deputy president of the Tribunal.
- (2) The deputy president may exercise the authority of the president if the president is absent or otherwise unable to do so.

153 Duration of appointment

- (1) A member holds office for 3 years or the shorter period specified in the appointment.
- (2) A person may be reappointed as a member.

154 Vacation of office

A person ceases to be a member if:

- (a) the person resigns by giving written notice to the Administrator; or
- (b) the person ceases to be eligible to be appointed under section 151(2); or

- (c) the person's appointment is terminated under section 155.

155 Termination of appointment

- (1) The Administrator may terminate the appointment of a person as a member:
 - (a) on the ground of misbehaviour or misconduct; or
 - (b) on the ground of physical or mental inability to satisfactorily perform the duties of the office; or
 - (c) if the person is found guilty of an offence of such a nature that it would be inappropriate for the person to continue to be a member; or
 - (d) if the person fails to comply with section 159(2); or
 - (e) if the person:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with creditors or makes an assignment of the member's remuneration for their benefit.
- (2) A termination of appointment must be made in writing.

Division 3 Jurisdiction and exercise of functions

156 Tribunal's jurisdiction

The Tribunal has jurisdiction to deal with and determine all matters coming before it under this or any other Act.

157 Tribunal to act in accordance with decision-making principles

The Tribunal must act in accordance with the decision-making principles.

158 Convening Tribunal for a proceeding

- (1) The president must convene the Tribunal for each proceeding that comes before it.
- (2) The Tribunal must be comprised of one or more members as prescribed by regulation for a proceeding of that kind.

- (3) The president must select the member or members to comprise the Tribunal for the proceeding.
- (4) Two or more sittings of the Tribunal may be conducted at the same time.

159 Selected members to be impartial

- (1) The president must not select a member under section 158(3) for a proceeding if the member has an interest in the proceeding.
- (2) If a member selected for a proceeding has an interest in the proceeding, the member must notify the president and withdraw from the proceeding as soon as practicable after he or she becomes aware of the interest.
- (3) For this section, a member has an *interest* in a proceeding if the member:
 - (a) is a relative of the affected adult; or
 - (b) is a health care provider for the affected adult; or
 - (c) has any other personal, professional or commercial relationship with the affected adult, or with any interested person for the affected adult, that could reasonably be seen as likely to influence the member's decision in the proceeding.

160 Member withdrawing, vacating office etc. during proceeding

- (1) If a member selected for a proceeding withdraws, vacates office or otherwise becomes unable to deal with the proceeding, the president must alter the constitution of the Tribunal for the proceeding by:
 - (a) replacing the member with another member; or
 - (b) reconstituting the Tribunal to consist of the remaining selected members.
- (2) A change in the constitution of the Tribunal does not affect the continuity of the proceeding.

161 Tribunal decisions by majority decision

- (1) If the Tribunal convened for a proceeding comprises more than one member, the decision of the majority of the members is the decision of the Tribunal.

- (2) If the Tribunal is constituted by an even number of people, in the event of an equality of votes, the presiding member has a casting vote.

Division 4 Tribunal proceedings

Subdivision 1 Starting a proceeding

162 How proceeding may be started

A proceeding before the Tribunal may be started:

- (a) by application by a person as permitted by this Act; or
- (b) by the Tribunal on its own initiative as permitted by this Act.

163 Application requirements

- (1) An application to the Tribunal must:
- (a) be made in the form provided by the rules made under section 189; and
 - (b) be accompanied by the information specified in the form.
- (2) If no form is provided for by the rules, an application may be made in writing.

164 Notice of proceedings

- (1) As soon as practicable after a proceeding is commenced, the Tribunal must give notice of the proceeding to:
- (a) each party to the proceeding, other than the applicant; and
 - (b) the Commissioner; and
 - (c) if the proceeding relates to a matter relating to the affected adult's property or financial affairs – the Public Trustee.
- (2) Notice must be given in the way prescribed by regulation.
- (3) However, the regulations may provide that notice need not be given to a person mentioned in subsection (1) in specified circumstances.

165 Tribunal may decline to deal with a matter

- (1) The Tribunal may decline to deal with an application, or discontinue a proceeding, if satisfied that:
 - (a) the applicant does not have standing to make the application;
or
 - (b) the application:
 - (i) is frivolous or vexatious; or
 - (ii) is misconceived or lacking in substance; or
 - (iii) was not made in good faith; or
 - (c) the application does not comply with section 163.
- (2) The Tribunal must advise the parties of its decision.
- (3) When exercising a power under subsection (1), the Tribunal may order the applicant to pay some or all of the costs of the proceeding.

166 Parties in proceeding

- (1) In a proceeding, each of the following is a *party*:
 - (a) the applicant;
 - (b) the affected adult;
 - (c) if the proceeding is an application for an ADM order – each person proposed for appointment as an ADM (tribunal);
 - (d) any ADM for the affected adult;
 - (e) a person joined as a party to the proceeding by the Tribunal.
- (2) The Tribunal may join as a party to the proceeding any person the Tribunal is satisfied:
 - (a) is an interested person for the affected adult; or
 - (b) otherwise has a proper interest in the proceeding.

Subdivision 2 Conduct of proceeding

167 Conduct of proceeding generally

- (1) A proceeding before the Tribunal is an inquiry, not an adversarial proceeding.
- (2) The Tribunal must conduct a proceeding:
 - (a) as expeditiously as is reasonably practicable; and
 - (b) with as little formality and technicality as is reasonably practicable.
- (3) Subject to this Act, the Tribunal may conduct a proceeding in the way the Tribunal considers appropriate.
- (4) The Tribunal must comply with the rules of natural justice.
- (5) The Tribunal is not bound by the rules of evidence but may inform itself in any way the Tribunal considers appropriate.
- (6) The Tribunal may conduct a proceeding, or any part of a proceeding:
 - (a) at any place the Tribunal considers appropriate; or
 - (b) by telephone, video conference or any other means of communication as the Tribunal considers appropriate.
- (7) In dealing with a proceeding, the Tribunal may hold a formal hearing but is not required to do so.

168 Right to be heard

- (1) In a proceeding, each party has a right to be heard and must be given a reasonable opportunity to exercise that right.
- (2) Without limiting subsection (1), the Tribunal must seek to obtain the views of the affected adult as far as it is practicable to do so.

169 Obtaining information

- (1) Without limiting section 167(5), the Tribunal may do one or more of the following:
 - (a) obtain relevant information from any persons the Tribunal considers appropriate;
 - (b) consult with any persons the Tribunal considers appropriate;

- (c) make any inquiries the Tribunal considers appropriate.
- (2) Without limiting subsection (1)(a), the Tribunal may require a person to do one or more of the following:
 - (a) appear before the Tribunal;
 - (b) answer questions asked by the Tribunal;
 - (c) produce documents to the Tribunal.
- (3) The Tribunal may require the person to give answers on oath or to verify documents by statutory declaration.
- (4) A person must not engage in conduct that results in a contravention of a requirement under subsection (2) or (3).

Maximum penalty: 200 penalty units.

- (5) It is a defence to a prosecution for an offence against subsection (4) if the person establishes a reasonable excuse.
- (6) A health care provider who gives information or produces a document to the Tribunal in compliance with a requirement under subsection (2) does not breach patient confidentiality by doing so.

170 Self-incrimination

- (1) An individual is not excused from answering a question or producing a document to the Tribunal on the ground that doing so may tend to incriminate the individual or expose the individual to a penalty.
- (2) However, an answer or document provided by an individual is not admissible as evidence against the individual in civil or criminal proceedings, other than proceedings arising out of the false or misleading nature of the answer or document.

171 Information not admissible as evidence in other proceedings

Information given to the Tribunal in a proceeding cannot be used as evidence in civil or criminal proceedings.

172 Questions of law

- (1) This section applies if the Tribunal convened for a proceeding does not include a legal member.
- (2) If a question of law arises for determination in the proceeding the Tribunal may refer the question to the president for determination.

- (3) However, if the deputy president is acting as president and is not a legal member, the Tribunal may refer the question to another legal member.
- (4) A decision by the president or other legal member on the question of law is taken to be part of the decision of the Tribunal in the proceeding.

173 Assistance to affected adult

- (1) The Tribunal may appoint a legal practitioner to represent an affected adult if:
 - (a) the adult is unrepresented; and
 - (b) the Tribunal considers legal representation is desirable.
- (2) The Tribunal may appoint an interpreter or communications assistant for an affected adult if:
 - (a) the adult does not speak English at a level that will enable the adult to understand the proceeding or has any other communication difficulty; and
 - (b) the Tribunal considers the assistance of an interpreter or other assistant is desirable.
- (3) The Tribunal may appoint any other person to assist or support the affected adult if the Tribunal considers it desirable to do so.
- (4) The Tribunal may appoint a person under this section despite any objections of the affected adult.
- (5) The services of a person appointed under this section are to be provided at no cost to the affected adult.

Subdivision 3 Proceeding to be private, reporting etc.

174 Tribunal proceeding to be private

A proceeding before the Tribunal, including any hearing held as part of the proceeding, is to be conducted in private and not open to the public.

175 Record of proceeding

- (1) The Tribunal must keep an accurate record of all proceedings.
- (2) The Tribunal must, on request, give a party to the proceeding access to the record of the proceeding at no cost.

176 Notice of Tribunal decision

- (1) After determining a proceeding, the Tribunal must give notice of the Tribunal's decision to each party.
- (2) The Tribunal may give notice of the decision to any other person the Tribunal considers appropriate.
- (3) A notice under subsection (1) must inform the party of the party's right:
 - (a) to request written reasons under subsection (4)(b); and
 - (b) to appeal under Division 5.
- (4) The Tribunal must:
 - (a) give reasons for its decision; and
 - (b) on request by a party, give the party written reasons for its decision.

177 Publication of information about proceeding

- (1) A person commits an offence if:
 - (a) the person engages in conduct that results in the publication of information about a proceeding; and
 - (b) the information identifies the affected adult or enables the identity of the affected adult to be ascertained.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) Subsection (1) does not apply if the Tribunal has authorised the publication of the information.
- (3) The Tribunal may authorise publication of information that is otherwise prohibited only if satisfied that publication is:
 - (a) consistent with the decision-making principles; and
 - (b) in the public interest.
- (4) The Tribunal may authorise publication under subsection (3):
 - (a) at any time on its own initiative; or

(b) on the application of:

- (i) a party to the proceeding; or
- (ii) another person the Tribunal is satisfied has a proper interest in the proceeding.

(5) In this section:

publish includes broadcast or disseminate.

Division 5 Appeal to Supreme Court

178 Definitions

In this Division:

original decision, for an appeal, means the Tribunal's decision that is the subject of the appeal.

original proceeding, for an appeal, means the proceeding before the Tribunal in which the original decision was made.

179 Appeal to Supreme Court

- (1) Any of the following persons may appeal to the Supreme Court against a decision of the Tribunal:
 - (a) a party to the proceeding;
 - (b) the Commissioner;
 - (c) the Public Trustee.
- (2) An appeal must be lodged with the Supreme Court within 28 days after the Tribunal's decision is made.

Note for subsection (2)

The Supreme Court Rules set out the procedure for making an appeal, including the form and content of the notice of appeal and requirements for service.

180 Parties to appeal and notice

- (1) The respondent to an appeal under section 179 is the Tribunal.
- (2) The Supreme Court may add any of the following as a party to the appeal:
 - (a) a person who was a party to the original proceeding;
 - (b) the Commissioner;

- (c) the Public Trustee.
- (3) The Supreme Court may add a person as a party:
 - (a) at any time on its own initiative; or
 - (b) on the application of:
 - (i) a party to the appeal; or
 - (ii) a party to the original proceeding.
- (4) However, the Supreme Court cannot add a person as an appellant without the person's consent.
- (5) Subsection (2) does not limit the Supreme Court's power under the *Supreme Court Act* to add or remove a person as a party to an appeal.

Note for subsection (5)

Rule 83.07 of the Supreme Court Rules allow the Supreme Court to add as a party to an appeal any person who is directly affected by the relief sought or who is interested in maintaining the decision under appeal.

- (6) As soon as practicable after being served with a notice of appeal, the Tribunal must give notice of the appeal to each party to the original proceeding other than the appellant.

181 Stay of decision and other interim orders

- (1) Pending determination of the appeal the Supreme Court may do either or both of the following:
 - (a) stay the operation of the original decision;
 - (b) make other interim orders as it considers appropriate.
- (2) A stay or other interim order may be given on any conditions specified by the Supreme Court.

182 Hearing of appeal

At the hearing of an appeal, fresh evidence or evidence in addition to, or in substitution for, the evidence before the Tribunal may be given.

183 Power of Supreme Court

- (1) After hearing an appeal, the Supreme Court must do one of the following:
 - (a) confirm the original decision;
 - (b) vary the original decision;
 - (c) set aside the original decision;
 - (d) set aside the original decision and replace it with the Court's own decision;
 - (e) set aside the original decision and refer the matter back to the Tribunal for reconsideration.
- (2) In making its decision, the Supreme Court must act in accordance with the decision-making principles.
- (3) The Supreme Court may make any ancillary orders as to costs or other matters as it considers appropriate.
- (4) If it makes a decision as mentioned in subsection (1)(e), the Supreme Court may give directions to the Tribunal as it considers appropriate.

Division 6 Administrative matters for Tribunal

184 Staff and facilities for Tribunal

The Chief Executive Officer must provide the Tribunal with staff and facilities to enable it to properly exercise its authorities.

185 Annual report

- (1) The president must prepare and give to the Minister a report on the performance by the Tribunal of its functions during each financial year.
- (2) The report must be given to the Minister by 31 October following the end of the financial year.
- (3) The report must not include the name of, or any information that might identify, any adult with impaired decision-making capacity.
- (4) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after the Minister receives the report.

Division 7 Miscellaneous matters

186 Tribunal may make orders as to costs etc.

In any proceeding, the Tribunal may make any ancillary orders as to costs or other matters as it considers appropriate.

187 Tribunal decisions generally

An order, determination, direction or other decision of the Tribunal:

- (a) has effect according to its terms; and
- (b) may be varied or revoked by the Tribunal.

188 Validity of actions

Anything done by the Tribunal is valid even if:

- (a) the appointment of a person as a member was defective; or
- (b) a person appointed as a member was ineligible to be a member.

189 Tribunal rules and practice directions

- (1) The president may make rules for the practice and procedure of the Tribunal.
- (2) The rules may deal with the following:
 - (a) the conduct of proceedings;
 - (b) the conduct of hearings held during proceedings;
 - (c) access by parties to information and documents provided to the Tribunal for proceedings;
 - (d) representation of parties;
 - (e) determination of proceedings in the absence of one or more of the parties in a proceeding;
 - (f) forms for use in proceedings and documents required to accompany forms.
- (3) Rules dealing with forms as mentioned in subsection (2)(f) may provide for the use of forms approved by the president.
- (4) The president may issue practice directions about the practice or procedure of the Tribunal.

Part 5.4 Other administrative matters

190 Protection from liability

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of authority as an official.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.
- (3) In this section:
exercise, of authority, includes the purported exercise of authority.

191 Confidentiality of information

- (1) A person commits an offence if the person:
 - (a) obtains information while exercising authority as an official; and
 - (b) engages in conduct that results in the disclosure of information.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) Subsection (1) does not apply if the person discloses the information:
 - (a) for the administration of this Act; or
 - (b) with the consent of the person to whom the information relates; or
 - (c) for legal proceedings arising out of the operation of this Act.
- (3) In this section:
exercise, of authority, includes the purported exercise of authority.

Chapter 6 Enforcement

Part 6.1 Investigations

Division 1 Preliminary matters

192 Definitions

In this Part:

appointor, see section 194(1).

at a place includes in or on the place.

connected with an offence, for Division 4, see section 206.

investigative purposes means one or more of the following:

- (a) monitoring, or investigating a complaint about, the conduct of an ADM;
- (b) assessing whether or not the provisions of this Act are being complied with;
- (c) seeking evidence of a suspected offence against this Act.

investigator, see section 193.

occupier, of a place, means a person who is, or reasonably appears to be, in occupation or control of the place.

person entitled, to a thing, means one of the following:

- (a) the owner of the thing;
- (b) a person authorised by the owner to have possession of the thing;
- (c) another person who is legally entitled to possession of the thing.

place includes the following:

- (a) an area of land;
- (b) a building or a part of a building;
- (c) a vehicle, vessel or aircraft.

seized thing means a thing seized under section 207.

Division 2 Investigators

193 Investigators

- (1) Each of the following is an *investigator*.
 - (a) the Commissioner;
 - (b) the Public Trustee;
 - (c) a person appointed under section 194.
- (2) A police officer has all the powers and functions of an investigator.

194 Appointment of investigators

- (1) Each appointor must appoint the number of investigators the appointor considers necessary for the proper performance of the appointor's investigation functions.
- (2) An appointor must not appoint a person unless satisfied the person has the appropriate qualifications or experience to properly exercise the functions of an investigator.
- (3) An appointor may appoint a person subject to any conditions or restrictions the appointor considers appropriate.
- (4) In this section:

appointor means the Commissioner or the Public Trustee.

investigation functions means:

- (a) for the Commissioner – the functions mentioned in section 130(1)(e) and (3)(b); or
- (b) for the Public Trustee – the functions mentioned in section 144(d) and (f) to the extent it relates to the Commissioner's functions mentioned in paragraph (a).

195 Identity card

- (1) Each appointor must issue an identity card to:
 - (a) himself or herself; and
 - (b) each investigator appointed by the appointor under section 194.

- (2) The identity card must:
 - (a) state the following:
 - (i) the investigator's name;
 - (ii) that the person is an investigator;
 - (iii) the card's expiry date; and
 - (b) show a recent photograph of the investigator.
- (3) A person who ceases to be an investigator must return his or her identity card to the appointor who issued it within 2 weeks after the cessation.

Maximum penalty: 5 penalty units.
- (4) An offence against subsection (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes a reasonable excuse.

196 Production of identity card

- (1) An investigator exercising authority under this Part in relation to a person must, if asked by the person, produce the investigator's identity card for the person's inspection.
- (2) If the investigator does not do so:
 - (a) the investigator is not authorised to exercise the authority; and
 - (b) the person is not required to comply with a requirement made by the investigator.

197 Exercise of powers

- (1) An investigator may exercise authority under this Part only if the investigator reasonably believes that doing so is reasonably necessary for investigative purposes.
- (2) An investigator may exercise authority under this Part alone or with the number of persons to assist the investigator that is necessary and reasonable.
- (3) In exercising authority under this Part an investigator may use the force that is necessary and reasonable.

- (4) In exercising authority under this Part an investigator appointed under section 194 is subject to directions of the appointor by whom he or she was appointed.

Division 3 Powers of entry and inspection

198 Powers of entry

- (1) For investigative purposes an investigator may enter and remain at a place:
- (a) if the place is not used exclusively or primarily as a residence – at any reasonable time; or
 - (b) with the consent of the occupier of the place obtained in accordance with section 199; or
 - (c) under the authority of a warrant issued under section 200.
- (2) To enter a vehicle, vessel or aircraft under subsection (1), the investigator may require a person to do any of the following in relation to the vehicle, vessel or aircraft:
- (a) to stop it;
 - (b) to move or not move it;
 - (c) to take it to a stated place and remain in control of it until the investigator permits the person to leave.
- (3) If the place is Aboriginal land within the meaning of the *Aboriginal Land Act*, the investigator may enter the place even though the investigator does not hold a permit under that Act to do so.

199 Consent to entry

- (1) An investigator seeking the consent of the occupier of a place to enter the place under section 198(1)(b) must:
- (a) identify himself or herself as an investigator; and
 - (b) explain to the occupier the reasons why entry is sought; and
 - (c) inform the occupier that the occupier may refuse to give consent.
- (2) If the investigator does not comply with this section, the occupier is taken not to have given consent.

200 Warrant to enter place

- (1) An investigator may apply to a Magistrate for a warrant to enter a place if:
 - (a) entry under section 198(1)(a) would cause an unreasonable delay; and
 - (b) consent under section 198(1)(b) has been refused or cannot be obtained within a reasonable time.
- (2) The Magistrate may issue a warrant to the investigator if satisfied by evidence on oath that there are reasonable grounds for entering the place.
- (3) The warrant authorises the investigator:
 - (a) to enter and remain at the place; and
 - (b) to exercise authority under this Part for the purpose stated in the warrant.
- (4) The warrant may be executed by the investigator to whom it is issued or another investigator.
- (5) The investigator executing a warrant must, when asked by a person at the place, show the warrant to the person.
- (6) If the investigator does not show the warrant when asked, the investigator is not authorised to remain at the place.

201 Powers of inspection

- (1) An investigator who enters a place under section 198 may do any of the following:
 - (a) inspect the place or anything at the place;
 - (b) open anything found at the place;
 - (c) take measurements of the place or anything at the place;
 - (d) photograph, film or otherwise make a record of the place or anything at the place;
 - (e) take copies of, or extracts from, documents at the place;
 - (f) operate or test anything at the place;
 - (g) exercise another power prescribed by regulation.

- (2) An investigator who enters a place under section 198 may require a person who is at the place to do any of the following:
- (a) give the person's full name and address;
 - (b) provide information to the investigator;
 - (c) make available to the investigator documents kept at the place;
 - (d) answer questions asked by the investigator;
 - (e) give the investigator reasonable help to exercise powers under this section.

202 Requirement to provide information

For investigative purposes an investigator may require a person whom the investigator reasonably believes has information that is relevant for those purposes to do any of the following:

- (a) give the person's full name and address;
- (b) provide the information to the investigator;
- (c) answer questions asked by the investigator.

203 Requirement to produce documents of things

- (1) For investigative purposes an investigator may require a person whom the investigator reasonably believes has a document or other thing that is relevant for those purposes to produce the document or thing to the investigator.
- (2) The investigator may exercise any of the powers mentioned in section 201(1) in relation to the document or thing.

204 How requirements to be made

- (1) This section applies in relation to a requirement under section 198(2)(b) or (c), 201(2), 202 or 203.
- (2) The requirement must be given in writing.
- (3) When giving the requirement, the investigator must:
 - (a) identify himself or herself as an investigator; and
 - (b) inform the person to whom the requirement is given that it is an offence not to comply with it unless the person establishes a reasonable excuse.

- (4) If the investigator does not comply with this section, the person is not required to comply with the requirement.

205 Failing to comply with requirement

- (1) A person who is given a requirement under this Division must not engage in conduct that results in a contravention of the requirement.

Maximum penalty: 200 penalty units.

- (2) Subsection (1) applies subject to sections 196(2)(b) and 204(4).
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.
- (4) Without limiting subsection (3), it is a reasonable excuse for an individual to fail comply with the requirement if doing so might tend to incriminate the individual.

Division 4 Seizure and forfeiture of things

206 When thing is *connected with an offence*

For this Division, a thing is *connected with an offence* if:

- (a) the offence has been committed in relation to the thing; or
- (b) the thing will provide evidence of the commission of the offence; or
- (c) the thing was used, is being used or is intended to be used for the purpose of committing the offence.

207 Powers of seizure

For investigative purposes an investigator may seize a thing if the investigator reasonably believes the thing is connected with an offence against this Act and the seizure is necessary:

- (a) to prevent the thing from being used to commit the offence; or
- (b) for forensic or evidentiary purposes.

208 Notice of seizure

- (1) As soon as practicable after seizing a thing, the investigator must give the person from whom it is seized written notice of the seizure.

(2) The notice must include the following:

- (a) a description of the thing;
- (b) the reason for its seizure;
- (c) details of the right to apply to a court for the release of the thing under section 212.

209 Commissioner to keep seized things

(1) If a thing has been seized, the Commissioner:

- (a) is taken to be in possession of it; and
- (b) must take reasonable steps to ensure it is kept safely and securely.

(2) The Commissioner may keep the thing at the place where it was seized or remove it to another place.

210 Retention of seized things

The Commissioner may retain a seized thing until one of the following occurs:

- (a) the Commissioner is satisfied it is no longer necessary to retain it for forensic or evidentiary purposes or to prevent it being used in the commission of an offence;
- (b) a court orders its release or forfeiture to the Territory under section 212 or 213.

211 Release of seized thing to person entitled to it

If the Commissioner is satisfied it is no longer necessary to retain the thing as mentioned in section 210(a), the Commissioner must release it to a person whom the Commissioner reasonably believes is a person entitled to it.

212 Court may order release or forfeiture of seized thing

(1) If a seized thing remains in the possession of the Commissioner, an appropriate court may:

- (a) on application by a person entitled to the thing – order the Commissioner to release the thing to the applicant or another person entitled to it; or
- (b) on application by the Commissioner – order that the thing is forfeited to the Territory.

- (2) The court must not make an order under subsection (1)(a) unless satisfied that:
 - (a) there are no reasonable grounds on which the Commissioner could remain satisfied that it was necessary to retain it as mentioned in section 210(a); or
 - (b) there are other exceptional circumstances justifying the making of the order.
- (3) The court must not make an order under subsection (1)(b) unless satisfied that the Commissioner has taken all reasonable steps to find a person entitled to the thing but has been unable to do so.
- (4) In this section:

appropriate court means:

- (a) if the value of the animal or thing is within the jurisdictional limit of the Local Court (as defined in section 3 of the *Local Court Act*) – the Local Court; or
- (b) otherwise – the Supreme Court.

213 Court hearing charge may order release or forfeiture of seized thing

- (1) This section applies if:
 - (a) a seized thing remains in the possession of the Commissioner; and
 - (b) a person has been charged with an offence to which the thing is connected.
- (2) The court hearing the charge may, on application or on its own initiative, make orders it thinks fit for the release of the thing to a person entitled to it or for its forfeiture to the Territory.

Part 6.2 Offences

214 Misleading information

- (1) A person commits an offence if:
 - (a) the person gives information to another person; and
 - (b) the other person is an official; and
 - (c) the person knows the information is misleading; and

- (d) the person knows the official is acting in an official capacity.

Maximum penalty: 400 penalty units or imprisonment for
2 years.

- (2) A person commits an offence if:

- (a) the person gives a document to another person; and
- (b) the other person is an official; and
- (c) the person knows the document contains misleading information; and
- (d) the person knows the official is acting in an official capacity.

Maximum penalty: 400 penalty units or imprisonment for
2 years.

- (3) Strict liability applies to subsections (1)(b) and (2)(b).

- (4) Subsection (2) does not apply if the person, when giving the document:

- (a) draws the misleading aspect of the document to the official's attention; and
- (b) to the extent to which the person can reasonably do so – gives the official the information necessary to remedy the misleading aspect of the document.

- (5) In this section:

acting in an official capacity, in relation to an official, means the official is exercising authority under, or otherwise related to the administration of, this Act.

misleading information means information that is misleading in a material particular or because of the omission of a material particular.

215 Obstruction of official or Tribunal

- (1) A person commits an offence if:

- (a) the person obstructs another person; and
- (b) the other person is an official; and

(c) the person knows the official is acting in an official capacity.

Maximum penalty: 50 penalty units or imprisonment for
6 months.

(2) Strict liability applies to subsection (1)(b).

(3) A person commits an offence if the person obstructs the Tribunal.

Maximum penalty: 50 penalty units or imprisonment for
6 months.

(4) In this section:

acting in an official capacity, in relation to an official, means the official is exercising authority under, or otherwise related to the administration of, this Act.

obstruct includes hinder and resist.

216 Falsely representing to be an official

A person commits an offence if the person:

- (a) represents, by words or conduct, that the person or another person is an official; and
- (b) knows the representation is false.

Maximum penalty: 200 penalty units or imprisonment for
2 years.

217 Falsely representing to be ADM

(1) A person commits an offence if the person:

- (a) represents, by words or conduct, that the person or another person:
 - (i) is an ADM; or
 - (ii) is an ADM with authority for a particular matter; and
- (b) knows the representation is false.

Maximum penalty: 200 penalty units or imprisonment for
2 years.

(2) A person commits an offence against this subsection if the person:

- (a) commits an offence against subsection (1); and

- (b) does so with intent to obtain a benefit for the person or another person.

Maximum penalty: Imprisonment for 7 years.

218 Improperly inducing person to make life management document

A person commits an offence if:

- (a) the person engages in conduct with intent to induce another person to make or amend a life management document; and
- (b) the conduct involves threats, dishonesty or the use of other undue influence.

Maximum penalty: Imprisonment for 7 years.

219 Improper exercise of authority by ADM

- (1) A person commits an offence if:

- (a) the person is an ADM; and
- (b) the person engages in conduct that contravenes section 39(2), 75(2) or 99(2); and
- (c) the person is reckless as to whether the conduct contravenes that provision.

Maximum penalty: Imprisonment for 5 years.

- (2) A person commits an offence if:

- (a) the person is an ADM; and
- (b) the person engages in conduct that contravenes section 39(2), 75(2) or 99(2); and
- (c) the person does so with intent to obtain a benefit for the person or another person.

Maximum penalty: Imprisonment for 7 years.

220 Inducing ADM to exercise authority improperly

- (1) A person commits an offence if the person engages in conduct with intent to induce an ADM to engage in conduct that contravenes section 39(2), 75(2) or 99(2).

Maximum penalty: Imprisonment for 5 years.

- (2) A person commits an offence against this subsection if the person:
- (a) commits an offence against subsection (1); and
 - (b) does so with intent to obtain a benefit for the person or another person.

Maximum penalty: Imprisonment for 7 years.

Part 6.3 Criminal liability for offences

221 Conduct of representative

- (1) This section applies to a prosecution of an individual for an offence against a provision of this Act.

Note for subsection (1)

This section deals with prosecutions of individuals. Part IIAA, Division 5 of the Criminal Code contains provisions about corporate criminal responsibility.

- (2) Conduct engaged in by a representative of an individual within the scope of the representative's actual or apparent authority is taken to have been also engaged in by the individual.
- (3) However, subsection (2) does not apply if the individual proves he or she took reasonable steps to prevent the conduct.
- (4) In deciding whether the individual took reasonable steps to prevent the conduct, a court must consider:
- (a) any action the individual took to ensure the representative had a reasonable knowledge and understanding of the requirement to comply with the contravened provision; and
 - (b) the level of management, control or supervision that was appropriate for the individual to exercise over the representative.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) If it is relevant to prove an individual had a fault element in relation to a physical element of an offence, it is enough to show:
- (a) the conduct relevant to the physical element was engaged in by a representative of the individual within the scope of the representative's actual or apparent authority; and
 - (b) the representative had the fault element in relation to the physical element.

- (7) An individual may rely on section 43AX of the Criminal Code in relation to conduct by a representative that would be an offence by the individual only if:
- (a) the representative was under a mistaken but reasonable belief about the facts that, had they existed, would have meant that the conduct would not have constituted an offence; and
 - (b) the individual proves he or she exercised due diligence to prevent the conduct.

Note for subsection (7)

Section 43AX of the Criminal Code provides a person is not criminally responsible if the person engaged in conduct under a mistake of fact in relation to an offence of strict liability.

- (8) An individual may not rely on section 43BA of the Criminal Code in relation to a physical element of an offence brought about by another person if the other person is a representative of the individual.

Note for subsection (8)

Section 43BA of the Criminal Code provides a person is not criminally responsible in circumstances of an intervening conduct or event.

- (9) An individual who is convicted of an offence cannot be punished by imprisonment for the offence if he or she would not have been convicted of the offence without subsection (2) or (6).
- (10) In this section:

fault element includes intention, knowledge, recklessness, opinion, belief and purpose, but does not include negligence.

representative, of an individual, means an employee or agent of the individual.

222 Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if:
- (a) the body corporate commits an offence (a ***relevant offence***) by contravening a declared provision; and
 - (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
 - (c) the officer failed to take reasonable steps to prevent the contravention; and

-
- (d) the officer was reckless about whether the contravention would happen.

Maximum penalty: The maximum penalty that may be imposed on an individual for the relevant offence.

- (2) In deciding whether or not the executive officer took reasonable steps to prevent the contravention, a court must consider the following:

- (a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):

- (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
- (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
- (iii) the body corporate's employees, agent and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;

- (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.

- (3) Subsection (2) does not limit the matters the court may consider.

- (4) This section does not affect the liability of the body corporate.

- (5) This section applies whether or not the body corporate is prosecuted for, or convicted of, the relevant offence.

- (6) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.

- (7) In this section:

declared provision means section 42(4), 57(3), 78(4), 92(3), 102(4), 169(4), 177(1), 191(1), 205(1), 214(1) or (2), 215(1) or (3), 217(1) or (2), 218, 219(1) or (2) or 220(1) or (2).

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

223 Alternative verdicts

- (1) This section applies if, on the trial of a person charged with an offence against a provision mentioned in the following Table (the *prosecuted offence*), the trier of fact:
 - (a) is not satisfied beyond reasonable doubt that the person committed the prosecuted offence; but
 - (b) is satisfied beyond reasonable doubt that the person committed the offence, or the offence of attempting to commit the offence, specified in the Table as the alternative offence for the prosecuted offence.
- (2) The trier of fact may find the person not guilty of the prosecuted offence but guilty of the alternative offence.

Table Alternative verdicts

| Prosecuted offence | Alternative offence |
|---------------------------|----------------------------|
| section 217(2) | section 217(1) |
| section 219(2) | section 219(1) |
| section 220(2) | section 220(1) |

Part 6.4 Consequences of conviction

224 Termination of appointment as ADM and disqualification

- (1) A court convicting a person of an offence against this Act may, in addition to imposing any penalty on the person, do either or both of the following:
 - (a) if the person is an ADM – terminate the person's appointment as ADM;
 - (b) disqualify the person from being an ADM for the period specified by the court.
- (2) If a person's appointment is terminated under subsection (1)(a), this Act applies as if the person had died.
- (3) A person who is disqualified under subsection (1)(b) cannot be appointed as an ADM (tribunal) or ADM (substitute) and cannot act as an ADM (health) during the period of the disqualification.

225 Payment of compensation to represented adult

- (1) This section applies if a person (the *offender*) is convicted of an offence against sections 217 to 220.
- (2) If the court convicting the offender is satisfied that the conduct of the offender in committing the offence caused loss to the represented adult, the court may order the offender to pay compensation to the represented adult for that loss.
- (3) If the represented adult is dead, a reference in subsection (2) to the represented adult includes a reference to the adult's estate.
- (4) The standard of proof for a matter under this section is beyond reasonable doubt.
- (5) This section does not affect any civil liability the offender may have in relation to the conduct constituting the offence, but any compensation paid under this section must be taken into account in assessing damages in any later civil action.
- (6) In this section:

represented adult includes:

- (a) for an offence against section 217 – a person for whom the offender represented that the offender was an ADM; and
- (b) for an offence against section 218 – a person whom the offender sought to induce to make a life management document.

Part 6.5 Legal proceedings

226 Commencement of prosecution

Proceedings for an offence against this Act may only be started by:

- (a) the Commissioner; or
- (b) the Chief Executive Officer; or
- (c) a person authorised by the Minister.

227 When prosecution to be started

Proceedings for an offence against this Act that is a simple offence may be started within 2 years after the date on which an investigator first became aware of the commission of the offence.

Chapter 7 Miscellaneous matters

228 Regulations

- (1) The Administrator may make regulations under this Act.
- (2) Without limiting subsection (1), the regulations may provide for the following:
 - (a) recognition in the Territory of:
 - (i) orders made in other jurisdictions that have an effect similar to that of an ADM order; and
 - (ii) documents made by persons under laws of other jurisdictions that have an effect similar to that of a life management document;
 - (b) fees payable under this Act.