

Serial 161
Advance Personal Planning Amendment Bill 2016
Mr Elferink

A Bill for an Act to amend the *Advance Personal Planning Act*, to repeal the *Aged and Infirm Persons' Property Act*, and for related purposes

NORTHERN TERRITORY OF AUSTRALIA

ADVANCE PERSONAL PLANNING AMENDMENT BILL 2016

Act No. [] of 2016

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Schedule 1 Advance Personal Planning Act further amended

Schedule 2 Other laws amended



NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2016

An Act to amend the *Advance Personal Planning Act*, to repeal the *Aged and Infirm Persons' Property Act*, and for related purposes

[Assented to [] 2016]
[Second reading [] 2016]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Advance Personal Planning Amendment Act 2016*.

2 Commencement

This Act commences immediately after the commencement of the *Guardianship of Adults Act 2016*.

Part 2 Amendment of Advance Personal Planning Act

3 Act amended

This Part amends the *Advance Personal Planning Act*.

4 Section 3 amended

(1) Section 3, definitions ***AIPPA manager***, ***Court*** and ***original decision***

omit

- (2) Section 3
insert (in alphabetical order)
proceeding, for Part 5, see section 55E.
Tribunal means the Civil and Administrative Tribunal.
Tribunal Act, for Part 5, see section 55E.
- (3) Section 3, definition **agent**
omit
, AIPPA manager
- (4) Section 3, definition **interested person**, paragraph (c)
omit

5 Section 4 amended

- (1) Section 4
omit
her or she
insert
the adult
- (2) Section 4(b)
omit
or AIPPA manager

6 Section 5 amended

- Section 5(1)
omit
personally

7 Section 28 amended

(1) Section 28(3)

omit

Court

insert

Tribunal

(2) Section 28(4)

omit

8 Part 5 and Part 5, Division 1 headings replaced and section 55E inserted

Part 5 and Part 5, Division 1 headings

omit, insert

Part 5 Civil and Administrative Tribunal

Division 1 Preliminary matters

55E Definitions

In this Part:

proceeding means a proceeding before the Tribunal in relation to a matter under this Act.

Tribunal Act means the *Northern Territory Civil and Administrative Tribunal Act*.

Division 1A Jurisdiction of Tribunal

9 Section 56 replaced

Section 56

repeal, insert

56 Jurisdiction of Tribunal

(1) The Tribunal has jurisdiction to deal with matters under this Act.

- (2) The jurisdiction comes within the Tribunal's original jurisdiction.

10 Section 57 amended

- (1) Section 57, heading

omit

Court

insert

Tribunal

- (2) Section 57

omit

proceedings coming before it under this Act, the Court

insert

exercising its jurisdiction in relation to a matter under this Act, the Tribunal

11 Section 62 amended

- (1) Section 62, heading

omit

Court

insert

Tribunal

- (2) Section 62(2)

omit

all words from "a registrar" to "the registrar"

insert

the Registrar (as appointed under section 143 of the Tribunal Act) is satisfied that this section applies, the Registrar"

12 Section 65 repealed

Section 65

repeal

13 Section 66 amended

(1) Section 66, heading

omit

started

insert

commenced

(2) Section 66(1)

omit, insert

(1) A proceeding must be commenced by application made in accordance with the Tribunal Act.

(3) Section 66(4)

omit

whom the Court

insert

who the Tribunal

(4) Section 66(5)

omit

14 Sections 67 and 68 replaced

Sections 67 and 68

repeal, insert

67 Parties

In a proceeding, in addition to the persons mentioned in section 127 of the Tribunal Act, each of the following is a party:

(a) if the applicant is not the affected adult – the affected adult;

-
- (b) any other interested person for the affected adult who, on application, is permitted by the Tribunal to join the proceeding.

Note for section 67

Under section 127(1)(a) of the Tribunal Act, the applicant is a party to proceedings. Under section 128 of that Act, the Tribunal may join any other person as a party if the Tribunal considers it desirable for the person to be a party.

15 Section 69 amended

- (1) Section 69, heading

omit

Court

insert

Tribunal

- (2) Section 69(1)

omit

A proceeding before the Court

insert

Despite section 60 of the Tribunal Act, a proceeding

- (3) Section 69(2)

omit (all references)

Court

insert

Tribunal

16 Section 69A inserted

After section 69

insert

69A Reasons may be given orally

- (1) Despite section 105(2) of the Tribunal Act, the Tribunal may give the reasons for the decision in any proceeding and any relevant findings of fact (the **reasons**) orally to the parties to the proceeding.

- (2) A party to the proceeding may apply to the Tribunal to give the reasons in writing, and the Tribunal must do so within 28 days after the application is made.
- (3) A party to the proceeding who proposes to make an application under subsection (2) must do so within 28 days after the reasons are given orally.
- (4) Section 105(4) of the Tribunal Act applies to the time limit mentioned in subsection (2).

17 Section 70 amended

- (1) Section 70(1)(a) and (b)

omit, insert

- (a) the person intentionally engages in conduct; and
- (b) the conduct results in the publication of information about Part 4 proceedings that identifies the adult who is the subject of the proceedings or enables the identity of the adult to be ascertained and the person is reckless in relation to the result.

- (2) Section 70(2) and (3)

omit

Court

insert

Tribunal

- (3) Section 70(4), definition **publish**

omit, insert

publication includes broadcast and dissemination.

18 Part 5, Division 3 repealed

Part 5, Division 3

repeal

19 Section 76 replaced

Section 76

repeal, insert

76 Falsely representing to be decision maker

(1) A person commits an offence if:

- (a) the person intentionally represents, by words or conduct, that the person or another person:
 - (i) is a decision maker; or
 - (ii) is a decision maker with authority for a particular matter; and
- (b) the representation is false and the person has knowledge of that circumstance.

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

(2) A person commits an offence if:

- (a) the person intentionally represents, by words or conduct, that the person or another person:
 - (i) is a decision maker; or
 - (ii) is a decision maker with authority for a particular matter; and
- (b) the representation is false and the person has knowledge of that circumstance; and
- (c) the person makes the representation with the intention of obtaining a benefit for the person or another person.

Maximum penalty: Imprisonment for 7 years.

20 Sections 78 and 79 replaced

Sections 78 and 79

repeal, insert

78 Improper exercise of authority by decision maker

- (1) A decision maker commits an offence if:
- (a) the decision maker intentionally engages in conduct in the exercise of the decision maker's authority as a decision maker; and
 - (b) the conduct results in a contravention of section 21(1) and the decision maker is reckless in relation to the result.

Maximum penalty: Imprisonment for 5 years.

- (2) A decision maker commits an offence if:
- (a) the decision maker intentionally engages in conduct purportedly in the exercise of the decision maker's authority as a decision maker for a matter; and
 - (b) the represented adult does not have impaired decision-making capacity for the matter and the decision maker is reckless in relation to that circumstance.

Maximum penalty: Imprisonment for 5 years.

- (3) A decision maker commits an offence if:
- (a) the decision maker intentionally engages in conduct in the exercise of the decision maker's authority as a decision maker; and
 - (b) the conduct results in a contravention of section 21(1) and the decision maker is reckless in relation to the result; and
 - (c) the decision maker engages in the conduct with the intention of obtaining a benefit for the decision maker or another person.

Maximum penalty: Imprisonment for 7 years.

- (4) A decision maker commits an offence if:
- (a) the decision maker intentionally engages in conduct purportedly in the exercise of the decision maker's authority as a decision maker for a matter; and

- (b) the represented adult does not have impaired decision-making capacity for the matter and the decision maker is reckless in relation to that circumstance; and
- (c) the decision maker engages in the conduct with the intention of obtaining a benefit for the decision maker or another person.

Maximum penalty: Imprisonment for 7 years.

79 Inducing decision maker to exercise authority improperly

(1) A person commits an offence if:

- (a) the person intentionally engages in conduct; and
- (b) the conduct induces a decision maker to contravene section 21(1) and the person has intention in relation to that result.

Maximum penalty: Imprisonment for 5 years.

(2) A person commits an offence if:

- (a) the person intentionally engages in conduct; and
- (b) the conduct induces a decision maker to contravene section 21(1) and the person has intention in relation to that result; and
- (c) the person engages in the conduct with the intention of obtaining a benefit for the person or another person.

Maximum penalty: Imprisonment for 7 years.

21 Section 80 amended

(1) Section 80(1)(a), after "the person"

insert

intentionally

(2) Section 80(1)(c) and (d)

omit, insert

- (c) the information is misleading and the person has knowledge of that circumstance; and

- (d) the Agency officer is acting in an official capacity and the person has knowledge of that circumstance.
- (3) Section 80(2)(a), after "the person"
insert
intentionally
- (4) Section 80(2)(c) and (d)
omit, insert
- (c) the document contains misleading information and the person has knowledge of that circumstance; and
- (d) the Agency officer is acting in an official capacity and the person has knowledge of that circumstance.

22 Section 81 amended

Section 81(2), Table

omit

section 78(2) section 78(1)

insert

section 78(3) section 78(1)

section 78(4) section 78(2)

23 Part 6, Division 4 heading amended

Part 6, Division 4 heading

omit

conviction

insert

finding of guilt

24 Section 82 amended

Section 82(1)

omit, insert

- (1) If a court finds a person guilty of an offence against this Act, the Tribunal, in addition to any penalty imposed by the court on the person, may make an order to do either or both of the following:
- (a) if the person is a decision maker – terminate the person's appointment as decision maker;
 - (b) disqualify the person from being a decision maker for the period specified by the Tribunal.

25 Section 83 amended

(1) Section 83(1)

omit

convicted

insert

found guilty

(2) Section 83(2)

omit

convicting the offender

insert

finding the offender guilty

26 Part 8, Division 3 inserted

After section 92

insert

Division 3 Transitional matters for Advance Personal Planning Amendment Act 2016**93 Definitions**

In this Division:

amending Act means the *Advance Personal Planning Amendment Act 2016*.

commencement means the commencement of the amending Act.

Court means the Local Court.

new APP Act means the *Advance Personal Planning Act*, as in force immediately after the commencement.

old APP Act means the *Advance Personal Planning Act*, as in force immediately before the commencement.

94 Appeals to Supreme Court

- (1) This section applies if, immediately before the commencement:
 - (a) a decision of the Court was the subject of an appeal to the Supreme Court under section 71 of the old APP Act that had not been decided by the Supreme Court; or
 - (b) an appeal against a decision of the Court could be, but had not been, made to the Supreme Court under section 71 of the old APP Act.
- (2) For subsection (1)(a), the Supreme Court must decide the appeal under the old APP Act.
- (3) For subsection (1)(b), an appeal may be made to the Supreme Court as if the old APP Act still applied and the Supreme Court must decide the appeal under the old APP Act.
- (4) If, as a result of deciding the appeal, the Supreme Court refers the matter back to the Court for reconsideration under section 74(1)(e) of the old APP Act, the Court must reconsider the matter under the old APP Act.

- (5) Any order of the Court following the reconsideration of the matter has effect as if it were an order made by the Tribunal under the new APP Act.

95 Applications to Local Court

- (1) This section applies if, before the commencement:
- (a) an application was made to the Court under the old APP Act; and
 - (b) the application was not determined by the Court.
- (2) The Court must hear and determine the application under the old APP Act.
- (3) Any order of the Court has effect as if it were an order made by the Tribunal under the new APP Act.

96 Offence provisions – before and after commencement

- (1) The offence provisions, as amended by the amending Act, apply only in relation to offences committed after the commencement.
- (2) The offence provisions, as in force before the commencement, continue to apply in relation to offences committed before the commencement.
- (3) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.
- (4) In this section:

offence provisions means the provisions of this Act that create or relate to offences (including in relation to criminal responsibility, defences and penalties).

27 Act further amended

The Schedule has effect.

Part 3 Repeal of Aged and Infirm Persons' Property Act

28 Act repealed

The *Aged and Infirm Persons' Property Act* (Act No. 118 of 1979) is repealed.

Part 4 Consequential amendments

Division 1 Guardianship of Adults Act 2016

29 Act amended

This Division amends the *Guardianship of Adults Act 2016*.

30 Section 23 amended

Section 23, note

omit (all references)

Local Court

insert

Tribunal

31 Part 2, Division 6A inserted

After section 35

insert

Division 6A Certain orders taken to be instruments for Land Title Act

35A Certain orders taken to be instruments for *Land Title Act*

If a guardianship order confers on the guardian authority for financial matters, the order is taken to be an instrument for the *Land Title Act*.

32 Part 8 heading amended

Part 8 heading

omit

for Guardianship of Adults Act 2016

33 Part 8, Division 2 heading amended

Part 8, Division 2 heading, after "**matters**"

insert

for Guardianship of Adults Act 2016

34 Part 8, Division 3 inserted

After section 104

insert

Division 3 Transitional matters for Advance Personal Planning Amendment Act 2016

104A Definitions

In this Division:

commencement means the commencement of the *Advance Personal Planning Amendment Act 2016*.

Court means the Local Court.

repealed Act means the *Aged and Infirm Persons' Property Act* repealed by section 28 of the *Advance Personal Planning Amendment Act 2016*.

104B Existing protection orders continue

- (1) On the commencement:
 - (a) an existing protection order becomes a guardianship order under this Act; and
 - (b) an existing protected person becomes a represented adult under this Act; and
 - (c) an existing manager becomes a guardian under this Act.
- (2) For section 21, the order is taken to confer on a person who becomes a guardian under subsection (1)(c) authority for the matters for which the person had authority as an existing manager under the repealed Act.
- (3) For section 36(1), the reassessment date for the order is 1 year after the commencement.
- (4) In this section:

existing manager means the person specified as the manager in an existing protection order.

existing protected person means the person in respect of whose estate an existing protection order is in force.

existing protection order means an order under section 11 of the repealed Act that was in force immediately before the commencement.

104C Pending applications for protection order

- (1) This section applies if, before the commencement:
 - (a) an application was made under section 7 of the repealed Act for the making of a protection order; and
 - (b) the application was not finally determined by the Court.
- (2) The Court must deal with and determine the application as if the repealed Act had not been repealed.
- (3) If the Court makes a protection order, section 104B applies in relation to the order as if the commencement were the day after the order is made.

104D Other applications

- (1) This section applies if, before the commencement:
 - (a) an application was made:
 - (i) under section 7 of the repealed Act to vary or revoke a protection order; or
 - (ii) under section 29 or 29A of the repealed Act; and
 - (b) the application was not finally determined by the Court.
- (2) The Court must deal with and determine the application as if the repealed Act had not been repealed.
- (3) Any order made by the Court under this section has effect as if it were an order made under this Act by the Tribunal.

Division 2 Other laws amended

35 Other laws amended

Schedule 2 amends the laws mentioned in it.

Part 5 Expiry of Act

36 Expiry of Act

This Act expires on the day after it commences.

Schedule 1 Advance Personal Planning Act further amended

section 27

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
sections 11(b)(ii), 13(3), 21(1)(b)(ii), 31(2)(b)(ii), 32(3), 33(3), 35(1)(b), (2) and (3), 36(1)(b) and (2), 37(3)(b) and (4), 41(2) to (4), 42(1)(a)(ii) and (c), 44(1)(a)(ii), (2) and (4), 44A(1)(a)(ii) and (c), 45(1)(c), 46(1)(d), 47(1)(b), 53(1)(c)(i) and (ii), (2)(c)(i) and (ii) and (3)(b), 58, 59(1) to (4), 60(2), 61(3) to (5), 63(2) and (3) and 64	Court <i>(all references)</i>	Tribunal
sections 12, 14, 21(2), 41(3), 42(4)(b) and 63(3), notes	<i>Court</i> <i>(all references)</i>	<i>Tribunal</i>
sections 35(2) and 44(3)	Court's	Tribunal's
sections 44, 47, 61 and 64, headings	Court	Tribunal
Part 5, Division 2, heading	Local Court	Tribunal

Schedule 2 Other laws amended

section 35

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
<i>Administration and Probate Act</i>		
section 6(1), definition <i>committee</i>	all words after "includes"	a guardian for that person's financial matters appointed under the <i>Guardianship of Adults Act</i> .
<i>Companies (Trustees and Personal Representatives) Act</i>		
section 5, definition <i>statutory manager</i>	whole definition	<i>(in alphabetical order)</i> <i>statutory manager</i> means a guardian for an adult's financial matters appointed under the <i>Guardianship of Adults Act</i> .
<i>Juries Act</i>		
section 10(3)(e)	all words from "protected" to "Act"	represented adult, as defined in section 3 of the <i>Guardianship of Adults Act</i>
<i>Limitation Act</i>		
section 38(1)	manager <i>(all references)</i> section 13 of the <i>Aged and Infirm Persons' Property Act</i>	guardian the <i>Guardianship of Adults Act</i>
<i>Mental Health and Related Services Act</i>		
sections 54(1)(b), 63(3)(c), 64(2)(b), 66(1)(b) and 80A(1)(b)(ii)(A)	Local Court	Civil and Administrative Tribunal

Powers of Attorney Act

section 5, definition
agent, paragraph (c) whole paragraph

section 18, heading

protection

guardianship

section 18

protection order under
the *Aged and Infirm
Persons' Property Act*

guardianship order
under the *Guardianship
of Adults Act*

protection order.

guardianship order.

Powers of Attorney Regulations

regulation 3(2)(e)

protection order under
the *Aged and Infirm
Persons' Property Act*

guardianship order
under the *Guardianship
of Adults Act*

regulation 7(b)

protection order is
made under the *Aged
and Infirm Persons'
Property Act*,

guardianship order is
made under the
*Guardianship of Adults
Act*;

Retirement Villages Act

section 32(1)(b)

whole paragraph

Supreme Court Rules

rule 88.56(5)(b)

whole paragraph

rule 88.56(5)(c)

no such manager has
been appointed or

rule 88.59(12)

whole subrule
