

Serial 160  
Guardianship of Adults Bill 2016  
Mr Elferink

A Bill for an Act to provide for the guardianship of adults, and for  
related purposes



NORTHERN TERRITORY OF AUSTRALIA

GUARDIANSHIP OF ADULTS ACT 2016

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Act No. [ ] of 2016

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# NORTHERN TERRITORY OF AUSTRALIA

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Act No. [ ] of 2016

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An Act to provide for the guardianship of adults, 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 *Guardianship of Adults Act 2016*.

### 2 Commencement

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

### 3 Definitions

In this Act:

***advance personal plan***, see section 8 of the *Advance Personal Planning Act*.

***agent***, for an adult, means any of the following:

- (a) a guardian for the adult;
- (b) an APP decision maker for the adult;
- (c) if the adult is the donor of an enduring power of attorney – the donee of the power;

- (d) any other person who has lawful authority to make decisions for the adult about personal matters or financial matters.

**APP decision maker** means a decision maker as defined in section 3 of the *Advance Personal Planning Act*.

**authority**, of a guardian, means a power or function of the guardian.

**best interests**, of an adult, means the adult's best interests as determined in accordance with section 4(3).

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

**corresponding law**, for Part 3, see section 53.

**decision-making capacity**, see section 5(1).

**enduring power of attorney** means an enduring power as defined in section 5 of the *Powers of Attorney Act*.

**exercise**, in relation to an authority, means to exercise a power or perform a function, including deciding whether or not to do so.

**financial matter**, for an adult, means a matter relating to the adult's property or financial affairs.

*Examples for definition financial matter*

- 1 Receipt and payment of money.
- 2 Banking.
- 3 Property (including real estate) ownership.
- 4 Investment and management of assets.
- 5 Carrying on a trade or business.
- 6 Insurance for an adult or the adult's property.
- 7 Legal matters relating to a financial matter, other than as mentioned in section 24(e).

**guardian** means:

- (a) a person appointed as a guardian for an adult under a guardianship order; or
- (b) the Public Guardian when the Public Guardian is a guardian for an adult under section 44 or 45.

**guardianship order** means one of the following:

- (a) an order made under section 11;

- (b) an interim guardianship order made under section 20;
- (c) a registered order.

**guardianship principles**, see section 4.

**health care** means health care of any kind, including:

- (a) anything that is part of a health service, as defined in section 5 of the Health Practitioner Regulation National Law; and
- (b) the removal of tissue from a person's body in accordance with Part 2 of the *Transplantation and Anatomy Act*.

**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 decision-making capacity**, see section 5(3).

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

- (a) a relative of the adult;
- (b) a guardian for the adult;
- (c) the Public Guardian;
- (d) the Public Trustee;
- (e) an agent for the adult;
- (f) a person who is primarily responsible for providing support or care to the adult;
- (g) any other person who has a genuine and sufficient interest in protecting the adult's best interests.

**interstate order**, for Part 3, see section 53.

**personal matter**, for an adult, means a matter relating to the adult's personal affairs (including health care) or lifestyle.

*Examples for definition personal matter*

- 1 Accommodation.
- 2 Health care.
- 3 The provision of care services to the adult.
- 4 Employment.
- 5 Education and training.

- 6 *Day-to-day living matters, such as diet and daily activities.*
- 7 *Relationships with other people, including decisions about who may or may not visit the adult.*
- 8 *Legal matters relating to a personal matter, other than as mentioned in section 24(e).*

**proceedings**, for Part 5, see section 76.

**Public Guardian** means the Public Guardian mentioned in section 60.

**publication**, for Part 5, see section 76.

**reasonably believes**, see section 6.

**registered order**, for Part 3, see section 53.

**Registrar**, see section 3 of the *Northern Territory Civil and Administrative Tribunal Act*.

**relative**, of an adult, see section 7.

**represented adult** means an adult for whom a guardianship order is in force.

**restricted health care**, see section 8.

**Tribunal** means the Civil and Administrative Tribunal.

**Tribunal Act**, for Part 5, see section 76.

*Note for section 3*

*The Interpretation Act contains definitions and other provisions that may be relevant to this Act.*

#### 4 **Guardianship principles**

- (1) A person or the Tribunal (the **decision maker**) exercising authority under this Act in relation to an adult must exercise that authority in accordance with the requirements described in this section (the **guardianship principles**).
- (2) The decision maker must exercise the decision maker's authority in the way that the decision maker reasonably believes is in the adult's best interests.
- (3) In determining what is in the adult's best interests, the decision maker must:
  - (a) seek to obtain the adult's current views and wishes, as far as it is practicable to do so; and

- (b) take into account all relevant considerations; and
  - (c) weigh up the relevant considerations, giving each of them the weight that the decision maker reasonably believes is appropriate in the circumstances.
- (4) In determining what is appropriate in the circumstances, the decision maker must ensure that the decision maker's authority is exercised in a way that:
- (a) is the least restrictive of the adult's freedom of decision and action as is practicable; and
  - (b) provides the adult with as much support as is practicable to make the adult's own decisions.
- (5) For subsection (3)(b), the **relevant considerations** include, but are not limited to, the following:
- (a) the adult's current views and wishes and previously stated views and wishes;
  - (b) any views and wishes stated by an interested person for the adult;
  - (c) maintenance of the adult's freedom of decision and action to the greatest extent practicable;
  - (d) the ability of the adult to be as independent as is practicable;
  - (e) protection of the adult from harm, neglect, abuse and exploitation;
  - (f) the provision to the adult of appropriate care, including health care;
  - (g) promotion of the adult's happiness, enjoyment of life and wellbeing;
  - (h) the ability of the adult to achieve the adult's maximum physical, social, emotional and intellectual potential;
  - (i) the ability of the adult to live in the general community and take part in community activities;
  - (j) maintenance of the adult's right to be treated with dignity and respect;
  - (k) the ability of the adult to maintain the adult's preferred living environment and lifestyle;

- (l) maintenance or creation of a support network for the adult;
  - (m) protection of the adult's property and financial resources from loss, damage or misuse;
  - (n) protection of the adult's right to confidentiality of information about the adult.
- (6) Subsection (2) does not prevent a decision maker from exercising authority under this Act in relation to an adult in a way that may be beneficial to another person if:
- (a) the benefit to the other person is of a kind that the adult:
    - (i) provided when the adult had decision-making capacity for the matter; or
    - (ii) might reasonably be expected to provide; and
  - (b) the benefit being provided 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 (6)*

- 1 *It may be appropriate for a guardian to make provision out of the adult's money for educational expenses for the adult's 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 the adult's own expenses.*
- 2 *It may be appropriate for the Tribunal 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.*

- (7) Despite subsection (2), if the adult has made an advance care statement (as defined in section 3 of the *Advance Personal Planning Act*), the decision maker must exercise the decision maker's authority under this Act so as to give effect to the statement even if doing so is not in adult's best interests, unless:
- (a) the adult, having capacity to do so, states that the adult does not want that statement to be given effect; or
  - (b) a circumstance mentioned in section 23(2)(a) to (e) of the *Advance Personal Planning Act* exists.

**5      *Meaning of decision-making capacity and impaired decision-making capacity***

- (1) An adult has ***decision-making capacity*** if the adult has the capacity to:
  - (a) understand and retain information about the adult's personal matters and financial matters; and
  - (b) weigh the information in order to make reasoned and informed decisions about those matters; and
  - (c) communicate those decisions in some way.
- (2) An adult is presumed to have decision-making capacity until the contrary is shown.
- (3) An adult has ***impaired decision-making capacity*** if the adult's decision-making capacity is impaired.
- (4) An adult's decision-making capacity may be impaired even if:
  - (a) the impairment is episodic and from time to time the adult's decision-making capacity is not impaired; or
  - (b) the adult's decision-making capacity for some personal matters or financial matters is not impaired; or
  - (c) the extent of impairment varies from time to time or depending on circumstances.
- (5) The cause of the impairment of an adult's decision-making capacity is immaterial.
- (6) An adult does not have impaired decision-making capacity only because the adult:
  - (a) has a disability, illness or other medical condition (whether physical or mental); or
  - (b) engages in unconventional behaviour or other forms of personal expression; or
  - (c) chooses a living environment or lifestyle with which other people do not agree; or
  - (d) makes decisions with which other people do not agree; or
  - (e) does not speak English to a particular standard or at all; or
  - (f) does not have a particular level of literacy or education; or

- (g) engages in particular cultural or religious practices; or
- (h) does or does not express a particular religious, political or moral opinion; or
- (i) is of a particular sexual orientation or gender identity or expresses particular sexual preferences; or
- (j) 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
- (k) engages or has engaged in illegal or immoral conduct.

## **6 Meaning of *reasonably believes***

- (1) A person ***reasonably believes*** something at a particular time if the person 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 in relation to health care action is not reasonable unless it is consistent with the generally accepted standards of good professional practice of members of the health care provider's profession.

## **7 Meaning of *relative***

- (1) Each of the following is a relative of an adult:
  - (a) a spouse or de facto partner;
  - (b) a child;
  - (c) a stepchild;
  - (d) a parent;
  - (e) a foster parent;
  - (f) a brother or sister;
  - (g) a grandparent;
  - (h) an uncle or aunt;
  - (i) a nephew or niece;



- (j) a person who is related to the adult in accordance with customary law or tradition (including Aboriginal customary law or tradition).
- (2) For subsection (1)(f), a brother or sister of an adult includes:
- (a) a half-brother or half-sister; and
  - (b) a person who was adopted by one or both of the adult's parents.

## 8 **Meaning of *restricted health care***

- (1) Each of the following is ***restricted health care***:
- (a) sterilisation of an adult, unless it occurs as a consequence of health care action that is taken primarily to treat an illness of or injury to the adult;
  - (b) termination of a pregnancy of an adult, unless it occurs as a consequence of health care action that is taken primarily to treat an illness of or injury to the adult;
  - (c) removal from an adult of non-regenerative tissue (as defined in section 4 of the *Transplantation and Anatomy Act*) for transplantation to another person;
  - (d) health care provided for medical research purposes;
  - (e) health care prescribed by regulation to be restricted health care.
- (2) For subsection (1)(a), ***sterilisation***, of an adult, means any procedure that is intended, or is reasonably likely, to have the effect of rendering the adult infertile.
- (3) For subsection (1)(a) and (b), health care action is taken ***primarily to treat an illness of or injury to*** 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.
- (4) For subsection (1)(d), ***health care provided for medical research purposes*** does not include the following:
- (a) a non-intrusive examination of an adult;
  - (b) observation of an adult's activities;
  - (c) collecting information from or about an adult;

- (d) health care prescribed by regulation as not provided for medical research purposes.

## **9            Application of Criminal Code**

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

*Note for section 9*

*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 2            Guardianship**

## **Division 1        Applications**

### **10            Application for guardianship order**

An application may be made to the Tribunal for a guardianship order for an adult by:

- (a) the adult; or
- (b) an interested person for the adult.

## **Division 2        Appointment of guardian**

### **11            When Tribunal may make guardianship order**

- (1) The Tribunal may make an order appointing a guardian for an adult if satisfied that:
  - (a) the adult has impaired decision-making capacity; and
  - (b) the effect of the impairment is that, for some or all personal matters or financial matters, the adult is unable to exercise decision-making capacity; and
  - (c) the adult is in need of a guardian for some or all of those matters.

- (2) In determining whether an adult is in need of a guardian, the Tribunal must take the following into account:
- (a) the nature and extent of the impairment of the adult's decision-making capacity, including:
    - (i) whether the impairment is continuous or episodic; and
    - (ii) whether the impairment is likely to be permanent or, if not, the likely duration of the impairment; and
    - (iii) the matters for which the adult's decision-making capacity is impaired;
  - (b) whether the adult already has an agent with authority for the matters for which the adult's decision-making capacity is impaired;
  - (c) any views and wishes stated by an interested person for the adult;
  - (d) the desirability of preserving existing family relationships and other relationships that are important to the adult;
  - (e) whether the adult's needs could be adequately provided for in a way that is less restrictive of the adult's freedom of decision and action than appointing a guardian.
- (3) The Tribunal must make a guardianship order on the terms the Tribunal considers appropriate.

## **12 Appointment in advance for young person**

- (1) The Tribunal may make a guardianship order for an individual who is at least 17 years of age but has not turned 18 (a **young person**) if the Tribunal is reasonably satisfied that, when the young person turns 18, they will satisfy the criteria mentioned in section 11(1).
- (2) However, the order has no effect until the young person turns 18.
- (3) This Act applies in relation to the order and an application for the order as if a reference in this Act to an adult included a reference to the young person.

## **13 Who may be appointed**

- (1) The Tribunal may appoint any of the following as a guardian:
- (a) an individual who, under section 15, is eligible for appointment;

- (b) the Public Guardian;
  - (c) the Public Trustee.
- (2) The Tribunal may appoint the Public Guardian only if there is no individual who is eligible for appointment under section 15.
- (3) The Tribunal may appoint the Public Trustee only if:
- (a) there is no individual who is eligible for appointment under section 15; and
  - (b) the authority of the Public Trustee under the order is limited to financial matters; and
  - (c) the Public Trustee agrees to the appointment.
- (4) This section does not prevent the Public Guardian or Public Trustee from being appointed as one of 2 or more guardians for an adult under section 14.

#### **14            Number of guardians**

- (1) The Tribunal may appoint one guardian, or 2 or more guardians, for an adult.
- (2) If the Tribunal appoints 2 or more guardians for an adult, they may be appointed jointly, severally or jointly and severally.
- (3) Two or more guardians are appointed jointly unless the Tribunal provides otherwise.

#### **15            Eligibility for appointment**

- (1) An individual is eligible for appointment as a guardian for an adult under section 13 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 a guardian for the adult.
- (2) In determining an individual's suitability to be a guardian for the adult, the Tribunal must take the following into account:
- (a) whether the individual is likely to comply with this Act;

- (b) the individual's ability to properly exercise the authority of a guardian;
- (c) the views and wishes of the adult;
- (d) the desirability of preserving any existing support network for the adult;
- (e) the compatibility of the individual with:
  - (i) the adult; and
  - (ii) any other person also proposed to be appointed as a guardian for the adult; and
  - (iii) any other agent for the adult;
- (f) the individual's availability and accessibility to the adult and to other interested persons for the adult;
- (g) whether the individual has, or has had, a professional relationship with the adult, the nature of that relationship and whether it is appropriate for an individual with that relationship to be the adult's guardian;
- (h) the extent to which the individual's interests are likely to conflict with the adult's interests;
- (i) the individual's history and experience as a guardian or in a similar role in the Territory or elsewhere;
- (j) if it is proposed that the individual will have authority for financial matters – the individual's bankruptcy history (if any);
- (k) the individual's criminal history (if any) in the Territory or elsewhere;
- (l) any other matter the Tribunal considers relevant.

*Examples for subsection (2)(g)*

*A professional relationship with the adult may include being the adult's doctor or financial advisor, or the manager of the nursing home where the adult lives.*

## **16            Scope of authority**

- (1) The Tribunal must specify in a guardianship order the personal matters or financial matters, or both personal matters and financial matters, for which the guardian has authority.
- (2) If 2 or more guardians are appointed, the Tribunal may specify different matters for which different guardians have authority.

**17            Restrictions, requirements and directions**

- (1) The Tribunal may do one or more of the following in a guardianship order, as the Tribunal considers appropriate:
  - (a) impose restrictions on the guardian's authority;
  - (b) impose requirements to be complied with by the guardian in relation to the exercise of the guardian's authority;
  - (c) give directions to the guardian about the exercise of the guardian's authority.
- (2) If 2 or more guardians are appointed, the Tribunal may make different provision under subsection (1) for different guardians.

**18            Order if adult has advance personal plan or enduring power of attorney**

- (1) This section applies if the adult who is the subject of an application for a guardianship order has an advance personal plan or is the donor of an enduring power of attorney.
- (2) The Tribunal must take the advance personal plan or enduring power of attorney into account in determining:
  - (a) whether the adult is in need of a guardian; and
  - (b) whether to make a guardianship order; and
  - (c) if a guardianship order is to be made – the terms of the order.
- (3) The Tribunal must not make a guardianship order that confers on the guardian authority for a matter for which a relevant agent has authority.

*Note for subsection (3)*

*If a relevant agent has authority for a matter and the Tribunal considers the authority ought to be conferred on a guardian, the advance personal plan or enduring power of attorney might be amended to limit the authority of the other agent. See section 61 of the Advance Personal Planning Act or section 15 of the Powers of Attorney Act.*

- (4) In this section:

***relevant agent*** means:

- (a) if the adult has an advance personal plan – an APP decision maker appointed by the plan; or

- (b) if the adult is the donor of an enduring power of attorney – the donee of the power.

## **19            Reassessment and expiry dates**

- (1) In a guardianship order, the Tribunal:
  - (a) must specify a reassessment date for section 36; and
  - (b) may specify an expiry date as mentioned in section 40(b)(i).
- (2) However, a reassessment date is not required if the order will expire earlier than 1 year after it is made.

## **20            When Tribunal may make interim guardianship order**

- (1) This section applies if an application has been made for a guardianship order for an adult and the application has not yet been determined.
- (2) The Tribunal may make an interim guardianship order appointing a guardian for the adult pending determination of the application if the Tribunal reasonably believes that the adult:
  - (a) has impaired decision-making capacity; and
  - (b) is in urgent need of a guardian for some or all of the matters mentioned in section 11(1)(b).
- (3) The Tribunal may appoint any of the following as a guardian for the adult:
  - (a) the Public Guardian;
  - (b) the Public Trustee, if the Public Trustee agrees to the appointment;
  - (c) an individual who appears to the Tribunal, on the basis of the information then available to it, to be eligible under section 15(1) for appointment.
- (4) The Tribunal must make an interim guardianship order on the terms the Tribunal considers appropriate.
- (5) An interim guardianship order comes into force when it is made and remains in force until the first of the following occurs:
  - (a) the order expires;
  - (b) the order is revoked by the Tribunal;

- (c) the Tribunal decides the application for a guardianship order.
- (6) The Tribunal may vary or revoke an interim guardianship order as the Tribunal considers appropriate.
- (7) An interim guardianship order expires 90 days after the order is made but may be renewed once by the Tribunal for a period not exceeding 90 days.
- (8) Sections 19 and 36 to 40 do not apply in relation to an interim guardianship order.

### **Division 3            Authority of guardian**

#### **21            Authority of guardian**

- (1) A guardian for an adult must:
  - (a) make decisions in relation to the personal matters and financial matters for which the guardian has authority under the guardianship order as and when such decisions are required; and
  - (b) act as an advocate for the adult in relation to those matters.
- (2) For the purpose of doing so, the guardian is authorised to do anything on behalf of the adult that the adult could lawfully do if the adult had full legal capacity.
- (3) However, the guardian's authority is subject to this Act and the terms of the guardianship order.

#### **22            Exercise of authority by guardian**

- (1) In exercising authority under this Act, a guardian must:
  - (a) act in accordance with the guardianship principles; and
  - (b) comply with:
    - (i) the guardianship order; and
    - (ii) any other order of the Tribunal; and
    - (iii) this Act; and
  - (c) cooperate with any other agents for the represented adult to enable them all to properly exercise their authority; and
  - (d) act honestly and with care, skill and diligence.



- (2) Two or more guardians who are appointed jointly for a matter must exercise their authority unanimously.

*Note for section 22*

*If joint guardians are unable to reach a unanimous decision, they may seek orders from the Tribunal under section 33(2)(b).*

## **23            Consent decisions about health care action**

- (1) If the matters for which a guardian has authority under the guardianship order include health care actions then, subject to sections 41 and 42 of the *Advance Personal Planning Act*, the guardian can make consent decisions about those health care actions for the represented adult.

*Note for subsection (1)*

*Under section 39A of the Advance Personal Planning Act, the fact that the guardian has authority to make consent decisions about health care action is prima facie evidence that the adult has impaired decision-making capacity for the health care action.*

- (2) However, a guardian cannot make a consent decision about health care action for restricted health care for the represented adult.

*Note for section 23*

*Part 4 of the Advance Personal Planning Act governs the giving of consent for health care action for an adult who has impaired decision-making capacity, including represented adults. Depending on the circumstances, a consent decision might be made:*

- (a) *by the adult themselves by way of an advance consent decision (see section 41 of the Advance Personal Planning Act); or*
- (b) *by a guardian or by a decision maker appointed under the Advance Personal Planning Act (see section 42 of the Advance Personal Planning Act); or*
- (c) *by the Local Court (see section 44 of the Advance Personal Planning Act); or*
- (d) *by a person with a right to do so under another law (see section 44A of the Advance Personal Planning Act).*

*If health care action needs to be taken, and there is no advance consent decision and no guardian or decision maker with authority to make a consent decision, the guardian may apply to the Local Court under the Advance Personal Planning Act for the Local Court to make the consent decision.*

## **24            Excluded matters**

A guardian is not authorised to do any of the following for the represented adult:

- (a) exercise the adult's right to vote in a Commonwealth, Territory or local government election or referendum;

- (b) make or give effect to a decision about:
  - (i) the care and wellbeing of any child of the adult; or
  - (ii) the adoption of a child of the adult;
- (c) make a decision about the adult:
  - (i) marrying or divorcing; or
  - (ii) entering into or ending a de facto or sexual relationship;
- (d) make, vary or revoke any of the following for the adult:
  - (i) a will;
  - (ii) a power of attorney;
  - (iii) an advance personal plan, or anything (by whatever name) having a similar effect in another jurisdiction;
- (e) exercise the adult's rights as an accused person in relation to criminal investigations or criminal proceedings, including assessments and proceedings under Part 10 of the *Mental Health and Related Services Act*.

## **25            Effect of exercise of authority by guardian**

An act done or omission made by a guardian in the exercise of the guardian's authority has effect as if it were done or made by the represented adult and the adult had full legal capacity.

## **Division 4            Specific powers and duties**

### **26            Right to documents and information**

- (1) A guardian has the same right to documents and information (including the represented adult's own documents and information) relevant to the exercise of the guardian's authority as the represented adult would have if the adult had full legal capacity.
- (2) A person who has custody or control of a relevant document or relevant information (an **information holder**) must give it to the guardian if requested by the guardian 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 order the information holder to give the document or information to the guardian.

- (4) An information holder who gives a document or 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.

## **27            Information and things may be given to guardian**

- (1) This section applies 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 a guardian has authority.
- (2) The person required to give the information or thing may give it to the guardian instead of giving it to the represented adult.
- (3) A person who gives information or a thing to the guardian 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 guardian.
- (4) This section does not apply in relation to a document that the other law requires to be personally served on the represented adult.

## **28            Record keeping and reporting requirements**

- (1) A guardian must:
- (a) keep the records in relation to the exercise of the guardian's authority that it is reasonable in the circumstances to keep; and
  - (b) comply with any record keeping and reporting requirements prescribed by regulation.
- (2) Without limiting what may be provided for in regulations, a regulation may provide for any 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;

- (e) who must or may be given copies of, or access to, records or reports.

## **29            Property to be managed as if trust property**

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

*Note for subsection (1)*

*This subsection does not constitute a trust or cause the property to vest in the guardian.*

- (2) However, the guardian may deal with property otherwise 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 guardianship order; or
    - (ii) by order under section 33(2)(c).
- (3) Subsection (1) does not prevent the continuation of joint ownership of property by the represented adult and the guardian (whether as joint tenants or tenants in common) if the joint ownership commenced:
  - (a) before the guardian was appointed; or
  - (b) after the appointment but while the represented adult had decision-making capacity for the matter.
- (4) Despite subsection (1)(b), section 24A of the *Trustee Act* does not apply in relation to property that is being dealt with under this section as if it were trust property.

### **30            Gifts**

- (1) A guardian who has authority for financial matters may make a gift from the represented adult's property if:
  - (a) the gift is of a kind the represented adult:
    - (i) made when the represented adult had decision-making capacity; or
    - (ii) might reasonably be expected to make; and
  - (b) the value of the gift is reasonable in the circumstances.
- (2) However, the Tribunal may, in the guardianship order or by order under section 33(2)(c):
  - (a) restrict the guardian's authority to make gifts; or
  - (b) authorise the guardian to make a gift not otherwise permitted by this section.
- (3) Despite subsection (1), the guardian must not make a gift from the represented adult's property to that guardian unless specifically authorised to do so under subsection (2)(b).

### **31            Maintenance of dependants**

- (1) A guardian who has authority for financial matters 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 the represented adult had decision-making capacity; 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 guardianship order or by order under section 33(2)(c):
  - (a) restrict the guardian's authority to provide for dependants; or
  - (b) authorise the guardian to provide for the needs of a dependant in a way not otherwise permitted by subsection (1).

### **32            Asset management planning**

- (1) This section applies if:
  - (a) a guardian, other than the Public Guardian or Public Trustee, has authority for financial matters; and
  - (b) the guardianship order or an order under section 33(2)(c) requires the guardian to comply with this section.
- (2) The guardian 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 any of the following:
  - (a) the form of an asset management plan, which may be in a form approved by the Tribunal or a specified person;
  - (b) the matters to be dealt with by an asset management plan;
  - (c) the requirement for an asset management plan to be approved by the Tribunal or a specified person;
  - (d) the persons who must or may be given copies of the asset management plan.

## **Division 5            Orders about exercise of authority**

### **33            Orders to guardians**

- (1) The Tribunal may make orders as to the exercise by a guardian of the guardian's authority.
- (2) Without limiting subsection (1), the Tribunal may make orders as follows:
  - (a) as to how the guardian may or must exercise the guardian's authority, or the circumstances in which the guardian must not exercise the guardian's authority, so as to comply with section 22(1);
  - (b) if 2 or more guardians who are appointed jointly are unable to reach a unanimous decision as required by section 22(2) – to facilitate the resolution of their differences;

- (c) as to the guardian's dealing with the represented adult's property, as mentioned in section 29(2)(b)(ii), 30(2), 31(2) or 32(1)(b);
  - (d) approving reimbursement or remuneration for the guardian, as mentioned in section 47(2), 48(2) or 49(3);
  - (e) if the represented adult has 2 or more agents – to facilitate a reasonable and workable division of decision-making authority between the agents.
- (3) The Tribunal may make an order as to the exercise of the guardian's authority generally or for a particular circumstance.
- (4) An application for an order under this section may be made by:
- (a) a guardian; or
  - (b) the represented adult; or
  - (c) an interested person for the represented adult.

#### **34 Orders to former guardian**

- (1) This section applies if a person (the *former guardian*) has ceased to be a guardian for an adult.
- (2) The Tribunal may make the orders the Tribunal considers appropriate to provide for:
- (a) if the adult is still alive – the orderly transfer of decision-making authority from the former guardian to the adult or to another agent for the adult (as appropriate); or
  - (b) if the adult has died – the orderly transfer of the adult's estate to the executor or administrator of the estate.

### **Division 6 Orders about represented adult's compliance**

#### **35 Represented adult to comply with guardian's decisions**

- (1) The Tribunal may make an order that a guardian, or another specified person, is authorised to take specified measures to ensure the represented adult complies with the guardian's decisions in the exercise of the guardian's authority.
- (2) The Tribunal must conduct a reassessment of an order made under subsection (1) as soon as is practicable after making the order but in any event within 42 days after making the order.

- (3) On completing the reassessment, the Tribunal must do one of the following:
  - (a) confirm the order;
  - (b) vary the order;
  - (c) revoke the order and make another in its place;
  - (d) revoke the order.
- (4) The Tribunal may make an order under subsection (1), or confirm, vary or replace the order under subsection (3), only if satisfied that, having regard to the represented adult's best interests, authorising the specified measures to be taken under the order is the only appropriate way to protect the adult from harm, neglect, abuse or exploitation.
- (5) The guardian or other person authorised by an order under this section is not liable to any action for false imprisonment or assault, or any other action, liability, claim or demand arising out of taking a measure under the order, if the guardian or other person took that measure in the belief that:
  - (a) having regard to the represented adult's best interests, there was no other appropriate way to protect the adult from harm, neglect, abuse or exploitation; and
  - (b) it was reasonable to take that measure in the circumstances.
- (6) An application for an order under this section may be made by:
  - (a) a guardian; or
  - (b) an interested person for the represented adult.

## **Division 7            Reassessment and variation of guardianship orders**

### **36            Guardianship order to be reassessed**

- (1) The Tribunal must conduct a reassessment of a guardianship order on, or as soon as practicable after, the reassessment date specified in the order.
- (2) The represented adult or an interested person for the represented adult may apply to the Tribunal for a reassessment of a guardianship order at any time.



### **37            Matters to be considered on reassessment**

- (1) On a reassessment of a guardianship order the Tribunal must consider the following:
  - (a) whether it is appropriate for the order to remain in force, having regard to the criteria mentioned in section 11;
  - (b) whether any change should be made in the persons who are appointed by the order, having regard to sections 13 to 15;
  - (c) whether any changes should be made to any other terms of the order.
- (2) For subsection (1)(b), in determining whether a person remains suitable as mentioned in section 15(1)(b), the Tribunal must take into account the way in which the person has exercised authority as a guardian, including whether the person has complied with section 22(1), since the guardianship order was made or last reassessed.

### **38            Outcome of reassessment**

- (1) On completing a reassessment of a guardianship order, the Tribunal must do one of the following:
  - (a) confirm the order;
  - (b) vary the order;
  - (c) revoke the order and make another in its place;
  - (d) revoke the order.
- (2) Despite section 40(b)(i), a guardianship order that reaches its expiry date while being reassessed continues in force until the Tribunal completes the reassessment and makes an order under subsection (1).

### **39            Variation or revocation of guardianship order**

- (1) On application or on its own initiative, the Tribunal may vary a guardianship order as the Tribunal considers appropriate.
- (2) The Tribunal may revoke a guardianship order only after conducting a reassessment in accordance with sections 36 to 38.

## **Division 8            Duration of orders and appointment**

### **40            Duration of guardianship order**

A guardianship order:

- (a) subject to section 12, comes into force when it is made; and
- (b) remains in force until the first of the following occurs:
  - (i) if the order is expressed to expire on a specified date – the order expires;
  - (ii) the order is revoked by the Tribunal;
  - (iii) the represented adult dies.

*Note for section 40*

*If a guardianship order is made under section 12 for a young person, the order does not come into force until the young person turns 18.*

### **41            When appointment of guardian ends**

- (1) A person ceases to be a guardian if any of the following occurs:
  - (a) the person 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 guardianship order appointing the person:
    - (i) ceases to be in force; or
    - (ii) is varied so as to terminate the person's appointment;
  - (e) the person's appointment is terminated under section 94.
- (2) If the Tribunal is given notice of a person's resignation under subsection (1)(b), the Tribunal must give a copy of the notice to the Public Guardian.

### **42            Notification requirements**

- (1) If a represented adult dies, a guardian must notify the following of the death as soon as practicable after becoming aware of it:
  - (a) the Tribunal;

- (b) the Public Guardian.
- (2) If a guardian dies, any other guardian for the represented adult must notify the following of the death as soon as practicable after becoming aware of it:
  - (a) the Tribunal;
  - (b) the Public Guardian.
- (3) Subsections (1)(b) and (2)(b) do not apply if the guardian giving the relevant notification is the Public Guardian.

**43            Effect of appointment of joint guardians for matter ceasing**

- (1) This section applies if:
  - (a) 2 or more persons were jointly appointed as guardians for an adult with authority for a matter; and
  - (b) one of them ceases to be a guardian under section 41(1)(a), (b) or (e).
- (2) If there were 2 jointly appointed guardians, the remaining person becomes the sole guardian with authority for the matter.
- (3) If there were 3 or more jointly appointed guardians, the remaining persons continue as jointly appointed guardians with authority for the matter.
- (4) The guardianship order is taken to have been varied accordingly.

**44            Effect of appointment of sole guardian for matter ceasing**

- (1) This section applies if:
  - (a) a person who was a guardian for an adult with authority for a matter ceases to be a guardian under section 41(1)(a), (b) or (e); and
  - (b) there is no other guardian with authority for the matter.
- (2) The Public Guardian becomes the guardian for the adult with authority for the matter.
- (3) The guardianship order is taken to have been varied accordingly.

**45            Guardian temporarily unable to act**

- (1) The Public Guardian becomes the guardian for an adult if:
  - (a) a person who is the guardian for the adult with authority for a matter becomes unable to act; and
  - (b) there is no other guardian with authority for the matter who is able to act.
- (2) The Public Guardian remains the guardian until the person is again able to act.
- (3) The guardianship order is taken to have been varied accordingly.
- (4) A guardian must notify the Public Guardian:
  - (a) before, or as soon as practicable after, becoming unable to act; and
  - (b) as soon as practicable after again becoming able to act.
- (5) In this section:

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

**46            Registrar to update guardianship order**

- (1) This section applies if a person ceases to be a guardian and the guardianship order remains in force.
- (2) The Registrar may update the order to reflect:
  - (a) the fact that the person has ceased to be a guardian; and
  - (b) the effect of section 43 or 44 (as applicable).
- (3) An application for an order to be updated may be made by:
  - (a) the former guardian; or
  - (b) the represented adult; or
  - (c) an interested person for the represented adult.

## **Division 9            Reimbursement and remuneration**

### **47            Reimbursement of expenses**

- (1) A guardian is entitled to reimbursement from the represented adult, as approved by the Tribunal, for reasonable expenses incurred in exercising authority as guardian.
- (2) The Tribunal may give approval for reimbursement of expenses in the guardianship order or by order under section 33(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 47*

*This section applies only to expenses incurred by the guardian in the person's capacity as guardian. For reimbursement of expenses incurred in providing other services, see section 49.*

### **48            Remuneration for professional guardian**

- (1) A professional guardian is entitled to reasonable remuneration from the represented adult as approved by the Tribunal.
- (2) The Tribunal may give approval for remuneration in the guardianship order or by order under section 33(2)(d).
- (3) This section does not affect any right of the Public Trustee to remuneration or commission under another Act.
- (4) In this section:

***professional guardian*** means one of the following:

- (a) the Public Trustee;
- (b) the Public Guardian;
- (c) an individual who carries on the business of, or including, providing services as a guardian.

*Note for section 48*

*This section applies only to remuneration for services provided by a professional guardian in the person's capacity as guardian. For remuneration for providing other services, see section 49.*

**49            Reimbursement and remuneration for other services provided by guardian to represented adult**

- (1) This section applies if a person who is exercising authority as a guardian 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 of expenses 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 guardianship order or by order under section 33(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 guardian to also provide the other services; and
  - (b) the amount to be paid is reasonable.
- (5) In this section:

***provide other services***, to a represented adult, includes to act as a carer for the represented adult.

**Division 10       Miscellaneous matters about guardians**

**50            Guardian unaware of extent of authority**

- (1) This section applies if, under a guardianship order, a guardian is entitled to exercise authority for the represented adult in some circumstances but not in other circumstances.

*Example for subsection (1)*

*If the represented adult's impaired decision-making capacity is due to an episodic illness, the guardian may have authority to act when the represented adult is ill but not when the adult is well.*

- (2) If:
  - (a) the guardian purports to exercise authority for the adult in good faith and reasonably believing that circumstances exist that entitle the guardian to do so; and
  - (b) those circumstances do not exist;

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

- (3) If:
- (a) circumstances exist in which the guardian is entitled to exercise authority for the adult; and
  - (b) the guardian is unaware, and could not reasonably have been expected to be aware, of the existence of those circumstances;

the guardian is not liable for a failure to exercise the authority.

## **51            Protection for guardian in financial matters**

A guardian who has authority for financial matters is not civilly liable in relation to any contract entered into, or other act done or omitted to be done, in relation to a financial matter on behalf of the represented adult in good faith and within the scope of the guardian's authority.

## **52            Tribunal unaware of advance personal plan or enduring power of attorney when making guardianship order**

- (1) This section applies if at the time the Tribunal makes a guardianship order:
- (a) the represented adult has an advance personal plan or is the donor of an enduring power of attorney; and
  - (b) the Tribunal is unaware of the advance personal plan or enduring power of attorney.
- (2) The Tribunal's failure to apply section 18(2) or (3) in relation to the making of the guardianship order:
- (a) does not affect the validity of the order; and
  - (b) does not affect the validity of, or the liability of the guardian for, anything done by the guardian in the exercise of authority under the order.
- (3) However, subsection (2)(b) does not apply if the guardian was aware, when the thing was done by the guardian, that it was something that a relevant agent had authority to do.

(4) As soon as practicable after becoming aware of the circumstances mentioned in subsection (1) in relation to a guardianship order, the guardian or Public Guardian must apply to the Tribunal for a reassessment of the guardianship order under section 36, unless another person has already done so.

(5) In this section:

**relevant agent** means:

- (a) if the represented adult has an advance personal plan – an APP decision maker appointed by the plan; or
- (b) if the represented adult is the donor of an enduring power of attorney – the donee of the power.

## **Part 3 Interstate orders**

### **Division 1 Preliminary matters**

#### **53 Definitions**

In this Part:

**corresponding law** means a law of another jurisdiction that is prescribed by regulation to be a corresponding law.

**interstate order** means an order:

- (a) made under a corresponding law; and
- (b) of a kind prescribed by regulation to be an interstate order.

**registered order** means an interstate order that is registered under section 54.

### **Division 2 Registration of interstate orders**

#### **54 Tribunal may register interstate order**

- (1) The Tribunal may register an interstate order.
- (2) The Tribunal may do so on application by:
  - (a) the adult to whom the order relates; or
  - (b) an interested person for that adult.



- (3) When registering an interstate order, the Tribunal may do either or both of the following:
  - (a) vary the order;
  - (b) make an order under section 33 or 39.
- (4) The variation of an interstate order may consist of or include the appointment of a person in the Territory as an additional guardian for the adult.

#### **55 Duration of registration**

An interstate order:

- (a) becomes a registered order when it is registered under section 54; and
- (b) ceases to be a registered order when the first of the following occurs:
  - (i) it ceases to be in force in the jurisdiction in which it was made;
  - (ii) it ceases to be in force in the Territory under section 40.

#### **56 Effect of registered order**

- (1) A registered order has effect in the Territory as if it were a guardianship order made under this Act.
- (2) However, a person (by whatever name called) appointed by a registered order cannot do in the Territory anything that the person could not do in the jurisdiction in which the order was made.
- (3) The regulations may limit, or impose conditions on the exercise of, the authority of a person under a registered order.

#### **57 Application of Act to registered order**

- (1) This Act applies in relation to a registered order as if it were a guardianship order made under this Act.
- (2) For section 36(1), the reassessment date for the registered order is the date 1 year after the date on which it is registered.
- (3) Despite subsection (1):
  - (a) the variation of a registered order under this Act has effect only as the variation of the order in its application in the Territory; and

- (b) the revocation of a registered order under this Act has effect only as the revocation of the registration of the order.

**58            Notification of tribunal or other body in other jurisdiction**

The Registrar must notify the court, tribunal, board or other body that made an interstate order of any of the following:

- (a) the registration of the order under section 54;
- (b) any variation to the order in its application in the Territory;
- (c) the order ceasing to be in force in the Territory.

**Division 3            Administrative matters**

**59            Minister to make arrangements**

The Minister may make an arrangement with the Minister of another jurisdiction responsible for the administration of a corresponding law for the purpose of giving effect to this Part or equivalent provisions of the corresponding law.

**Part 4            Public Guardian**

**Division 1            Establishment and functions**

**60            Public Guardian**

There is to be a Public Guardian.

**61            Functions**

- (1) The Public Guardian has the following functions:
  - (a) to be a guardian for an adult when appointed by a guardianship order or acting under section 44 or 45;
  - (b) to obtain, and provide to the Tribunal, information relevant to applications made, or to be made, to the Tribunal under this Act;
  - (c) to promote access to support services for adults with impaired decision-making capacity and the guardians, families and carers of those adults;

- (d) to provide advice and support to persons who are:
  - (i) making, or proposing to make, applications for guardianship orders; or
  - (ii) guardians;
- (e) to monitor, and investigate complaints about, the conduct of guardians;
- (f) to encourage the providers of support services to monitor and review the delivery of those services;
- (g) to advocate for adults with impaired decision-making capacity generally, including by promoting understanding and awareness of relevant issues;
- (h) to provide, or encourage the provision of, education about relevant issues;
- (i) to undertake, or encourage the undertaking of, research into relevant issues;
- (j) to ensure compliance with, and prosecute offences against, this Act;
- (k) to advise the Minister on relevant issues;
- (l) to perform any other functions conferred on the Public Guardian under this Act or any other Act.

(2) In this section:

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

- (a) the rights and interests of adults with impaired decision-making capacity;
- (b) the role of the Public Guardian and Public Trustee in relation to adults with impaired decision-making capacity;
- (c) the role of guardians;
- (d) the role of family and the community in the support of adults with impaired decision-making capacity;
- (e) support services;

- (f) 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) guardians;
- (c) families and carers of adults with impaired decision-making capacity.

## **62            Compliance with guardianship principles**

The Public Guardian must act in accordance with the guardianship principles.

## **63            Independence**

- (1) The Public Guardian is not subject to direction in relation to the way in which the Public Guardian's functions are performed.
- (2) However, if the Public Guardian is a guardian for an adult, the Public Guardian is, in that capacity, subject to the supervision and direction of the Tribunal to the same extent as any other guardian.

## **Division 2            Public Guardian's powers**

### **64            General powers**

The Public Guardian has the powers necessary to perform the Public Guardian's functions.

### **65            Information gathering power**

- (1) This section applies if the Public Guardian reasonably believes that a person (an **information holder**) has a document or information that is relevant to the performance or exercise of the Public Guardian's functions or powers under this Act.
- (2) The Public Guardian may, by written notice, require the information holder to do one or both of the following:
  - (a) give the document (or a copy of it) or information to the Public Guardian;
  - (b) answer questions asked by the Public Guardian.

- (3) The information holder commits an offence if the information holder contravenes the notice.

Maximum penalty:        100 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 has a reasonable excuse.
- (6) An information holder who gives a document or 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.

## **66            Obtaining health assessment**

- (1) This section applies if the Public Guardian reasonably believes that a matter relating to the health of an adult is relevant to the performance or exercise of the Public Guardian's functions or powers under this Act.
- (2) The Public Guardian may, by written notice, request the adult to obtain, and provide to the Public Guardian, a report on the matter from:
- (a) a health care provider chosen by the Public Guardian; or
  - (b) an appropriate health care provider chosen by the adult.
- (3) If the Public Guardian is satisfied that it is reasonable in the circumstances to do so, the Public Guardian may pay the reasonable expenses incurred by the adult in obtaining the report.

## **67            Health assessment order**

- (1) The Tribunal may, on application by the Public Guardian, make a health assessment order if satisfied that:
- (a) a matter relating to the health of an adult is relevant to the performance or exercise of the Public Guardian's functions or powers under this Act; and
  - (b) either:
    - (i) a request made under section 66 has not been complied with; or

- (ii) there are reasonable grounds for suspecting that:
  - (A) the adult does not have capacity to consent to being examined by an appropriate health care provider; and
  - (B) there is no other person available who has authority to give that consent.
- (2) A **health assessment order** is an order that:
  - (a) requires the adult to submit to being examined by a health care provider named in the order; and
  - (b) authorises the health care provider to examine the adult, (whether or not the adult consents); and
  - (c) requires the health care provider to prepare, and give to the Public Guardian, a report about the matter mentioned in subsection (1)(a).
- (3) The Tribunal may include in a health assessment order any ancillary orders the Tribunal considers necessary:
  - (a) to enable the health care provider to examine the adult and prepare the report; and
  - (b) to provide for the payment of the health care provider's reasonable fees for examining the adult and preparing the report.
- (4) The Public Guardian must give a copy of the report to the adult as soon as practicable after the Public Guardian receives it.

### **Division 3      Appointment provisions**

#### **68      Appointment of Public Guardian**

- (1) The Administrator may, by *Gazette* notice, appoint a person to be the Public Guardian.
- (2) The Administrator may do so only on the recommendation of the Minister.
- (3) The recommendation must be made on the basis that the person:
  - (a) has qualifications or experience relating to the Public Guardian's functions; and

- (b) is committed to advancing the interests of persons with impaired decision-making capacity and promoting the guardianship principles.

**69            Term of appointment**

The Public Guardian holds office for 5 years or a shorter period specified in the appointment and is eligible for reappointment.

**70            Conditions of appointment**

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

**71            Resignation**

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

**Division 4            Administrative matters**

**72            Delegation**

The Public Guardian may, in writing, delegate any of the Public Guardian's functions or powers under this Act to a person.

**73            Staff and facilities for Public Guardian**

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

**74            Annual report**

- (1) The Public Guardian must prepare and give to the Minister a report on the performance of the Public Guardian'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 Public Guardian was a guardian during the year and any changes in that number from the previous year;
  - (b) details of the staff and facilities provided to the Public Guardian and their adequacy in relation to the performance of the Public Guardian's functions;
  - (c) any other matters the Public Guardian 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, a represented adult or other person who has been the subject of proceedings before the Tribunal in relation to a matter under this Act.
- (5) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after the Minister receives the report.

## **75            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 a power or performance of a function as the Public Guardian.
- (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 a power, includes the purported exercise of the power.

**performance**, of a function, includes the purported performance of the function.



## **Part 5 Civil and Administrative Tribunal**

### **Division 1 Preliminary matters**

#### **76 Definitions**

In this Part:

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

***publication*** includes broadcast and dissemination.

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

### **Division 2 Jurisdiction of Tribunal**

#### **77 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.

#### **78 Tribunal to act in accordance with guardianship principles**

In exercising its jurisdiction in relation to a matter under this Act, the Tribunal must act in accordance with the guardianship principles.

### **Division 3 General matters about proceedings**

#### **79 How proceedings to be commenced**

- (1) Proceedings must be commenced by application made in accordance with the Tribunal Act.
- (2) Subsection (1) does not apply to proceedings relating to a reassessment of a guardianship order the Tribunal is required to conduct under section 36(1).
- (3) Unless another provision of this Act states otherwise, an application may be made by:
  - (a) the adult to whom the proceedings relate; or
  - (b) an interested person for the adult.

## **80 Proceedings not open to public**

- (1) Despite section 60 of the Tribunal Act, proceedings are not open to the public.
- (2) The publication of information about proceedings that identifies the adult to whom the proceedings relates or enables the identity of the adult to be ascertained is prohibited.

*Note for subsection (2)*

*A person commits an offence against section 90 if the person publishes, without authorisation under subsection (3), information mentioned in subsection (2).*

- (3) However, the Tribunal may make an order authorising the publication of information that is otherwise prohibited under subsection (2) if satisfied that publication:
  - (a) is consistent with the guardianship principles; and
  - (b) is in the public interest.
- (4) An application for the order may be made by any person who the Tribunal is satisfied has a proper interest in the proceedings.

## **81 Parties**

- (1) In proceedings, in addition to the persons mentioned in section 127 of the Tribunal Act, each of the following is a party:
  - (a) the adult to whom the proceedings relate;
  - (b) any guardian or proposed guardian for that adult;
  - (c) the Public Guardian.
- (2) However, the Public Guardian is not a party to particular proceedings if:
  - (a) the Public Guardian is not the applicant or a guardian or proposed guardian for the adult to whom the proceedings relate; and
  - (b) the Public Guardian informs the Tribunal in writing that the Public Guardian does not wish to be a party to those proceedings.

- (3) Subsection (2) does not prevent the Tribunal from ordering the Public Guardian to be joined as a party to proceedings under section 128 of the Tribunal Act.

*Note for section 81*

*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.*

## **82 Representation**

Without limiting section 130 of the Tribunal Act, the Public Guardian may authorise a delegate or a member of the Public Guardian's staff mentioned in section 73 to appear on behalf of the Public Guardian in proceedings to which the Public Guardian is a party.

## **83 Public Guardian to ensure information is presented**

The Tribunal may make an order that requires the Public Guardian to conduct an inquiry or investigation, or otherwise to take all reasonable steps, to ensure that any information relevant to any proceedings, as specified in the order, is presented to the Tribunal.

## **84 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 proceedings and any relevant findings of fact (the **reasons**) orally to the parties to the proceedings.
- (2) A party to the proceedings 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 proceedings 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).

## **85 No fees**

No application fees or other fees are payable in relation to proceedings.

## **Part 6            Enforcement**

### **Division 1        Offences**

#### **86            Falsely representing to be guardian**

(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 guardian; or
  - (ii) is a guardian 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 guardian; or
  - (ii) is a guardian 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.

#### **87            Improper exercise of authority by guardian**

(1) A guardian commits an offence if:

- (a) the guardian intentionally engages in conduct in the exercise of the guardian's authority as a guardian; and
- (b) the conduct results in a contravention of section 22 and the guardian is reckless in relation to the result.

Maximum penalty:        Imprisonment for 5 years.

- (2) A guardian commits an offence if:
- (a) the guardian intentionally engages in conduct in the exercise of the guardian's authority as a guardian; and
  - (b) the conduct results in a contravention of section 22 and the guardian is reckless in relation to the result; and
  - (c) the guardian engages in the conduct with the intention of obtaining a benefit for the guardian or another person.

Maximum penalty:        Imprisonment for 7 years.

**88            Inducing guardian to exercise authority improperly**

- (1) A person commits an offence if:
- (a) the person intentionally engages in conduct; and
  - (b) the conduct induces a guardian to contravene section 22 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 guardian to contravene section 22 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.

**89            Misleading information**

- (1) A person commits an offence if:
- (a) the person intentionally gives information to another person; and
  - (b) the other person is an official; and
  - (c) the information is misleading and the person has knowledge of that circumstance; and





(iii) for legal proceedings arising out of the operation of this Act; or

(b) the information is otherwise available to the public.

*Note for subsection (3)*

*In addition to the circumstances mentioned in subsection (3), a person who discloses confidential information will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).*

## **92            Transfer of authority or estate by former guardian**

(1) A person who ceases to be a guardian (a **former guardian**) for an adult must take all reasonable steps to provide for:

(a) if the adult is still alive – the orderly transfer of decision-making authority from the former guardian to the adult or to another agent for the adult (as appropriate); or

(b) if the adult has died – the orderly transfer of the adult's estate to the executor or administrator of the estate.

(2) A person commits an offence if:

(a) the person intentionally engages in conduct; and

(b) the conduct results in a contravention of subsection (1)(a) or (b) and the person is reckless in relation to the result.

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

## **93            Alternative verdicts**

(1) This section applies if, in a proceeding against 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 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**

<b>Prosecuted offence</b>	<b>Alternative offence</b>
section 86(2)	section 86(1)
section 87(2)	section 87(1)
section 88(2)	section 88(1)

## **Division 2 Consequences of finding of guilt**

### **94 Termination of appointment as guardian and disqualification**

- (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 guardian – terminate the person's appointment;
  - (b) disqualify the person from being a guardian for the period specified by the Tribunal.
- (2) A person who is disqualified under subsection (1)(b) cannot be appointed, or exercise authority, as a guardian during the period of the disqualification.

### **95 Payment of compensation for loss**

- (1) This section applies if a person (the **offender**) is found guilty of an offence against section 86, 87 or 88.
- (2) If the court finding the offender guilty is satisfied that the conduct of the offender in committing the offence caused loss to the represented adult, the court may make an order for the offender to pay compensation for that loss to:
- (a) the represented adult; or
  - (b) if the represented adult is dead – the adult's estate.
- (3) The standard of proof for a matter under this section is the balance of probabilities.

(4) 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 a later civil action.

(5) In this section:

***represented adult***, for an offence against section 86, includes a person for whom the offender represented that the offender was a guardian.

### **Division 3      Legal proceedings**

#### **96      Who may commence prosecution**

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

- (a) the Public Guardian; or
- (b) a person authorised by the Minister.

#### **97      Time for commencing prosecution**

Proceedings for an offence against this Act, other than an indictable offence, must be commenced within 2 years after the date on which the Public Guardian first became aware of the commission of the offence.

### **Part 7              Miscellaneous matters**

#### **98      Regulations**

The Administrator may make regulations under this Act.

### **Part 8              Repeal and transitional matters for Guardianship of Adults Act 2016**

#### **Division 1      Repeal**

#### **99      Act repealed**

The *Adult Guardianship Act 1988* (Act No. 45 of 1988) is repealed.

## Division 2 Transitional matters

### 100 Definitions

In this Division:

**commencement** means the commencement of section 99.

**Court** means the Local Court.

**repealed Act** means the *Adult Guardianship Act* repealed by section 99.

### 101 Existing guardianship orders continue

- (1) On the commencement, an existing guardianship order becomes a guardianship order under this Act.
- (2) For section 21, the order is taken to confer on the guardian:
  - (a) authority for the personal matters for which the person had authority under the repealed Act; and
  - (b) if the guardian was also the manager of the adult's estate under an existing management order – authority for the financial matters for which the person had authority under the repealed Act.
- (3) For section 36(1), the reassessment date for the order after the commencement is:
  - (a) if a review date is specified in the order – the review date; or
  - (b) if not, 3 years after the commencement.
- (4) In this section:

**existing guardianship order** means an order under section 15 of the repealed Act appointing a person as a guardian that is in force immediately before the commencement.

**existing management order** means an order under section 16(1)(a) of the repealed Act appointing a person to be the manager of an adult's estate that is in force immediately before the commencement.

## **102 Pending applications for guardianship order**

- (1) This section applies if, before the commencement:
  - (a) an application was made under section 8 of the repealed Act for the making of a guardianship order; and
  - (b) the application was not finally determined by the Court.
- (2) The Court must deal with and determine the application under the repealed Act as if this Act had not commenced.
- (3) If the Court determines the application by making a guardianship order:
  - (a) the Court must specify in the order a reassessment date for the purposes of section 36 (which must be not more than 3 years after the order is made); and
  - (b) section 101 (other than section 101(3)) applies in relation to the order as if it were an existing guardianship order mentioned in that section.

## **103 Pending reviews**

- (1) This section applies if, before the commencement:
  - (a) either:
    - (i) an application was made under section 23 of the repealed Act for the review of a guardianship order; or
    - (ii) the Court, of its own volition, commenced a review of a guardianship order; and
  - (b) the review was not finally determined by the Court.
- (2) The Court must complete the review and make any orders it considers appropriate under the repealed Act as if this Act had not commenced.
- (3) If the Court makes a new guardianship order under the repealed Act, section 101 applies in relation to the order as if it were an existing guardianship order mentioned in that section.
- (4) Any other order of the Court has effect as if it were an order made under this Act by the Tribunal.

## 104 Other applications

- (1) This section applies if, before the commencement:
  - (a) an application was made under the repealed Act to vary or revoke a guardianship order or an order under section 16 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 under the repealed Act as if this Act had not commenced.
- (3) Any order of the Court has effect as if it were an order made under this Act by the Tribunal.

## Part 9 Consequential and related amendments

### Division 1 Advance Personal Planning Act

#### 105 Act amended

This Division amends the *Advance Personal Planning Act*.

#### 106 Section 3 amended

- (1) Section 3, definition **Public Guardian**  
*omit, insert*  
**Public Guardian**, see section 3 of the *Guardianship of Adults Act*.
- (2) Section 3, definition **adult guardian**  
*omit*  
*Adult Guardianship*  
*insert*  
*Guardianship of Adults*

**107 Section 39A inserted**

After section 39, in Part 4, Division 1

*insert*

**39A Guardian having authority prima facie evidence of adult's lack of capacity**

- (1) This section applies if:
  - (a) a health care provider proposes to take health care action for an adult; and
  - (b) there is an adult guardian for the adult who has authority to make consent decisions about the health care action.
- (2) For the purposes of this Part, the fact that the adult guardian has that authority:
  - (a) is prima facie evidence that the adult has impaired decision-making capacity for the health care action; and
  - (b) may be relied on by the health care provider as grounds for reasonably believing that the adult has impaired decision-making capacity for the health care action.

**108 Section 43 amended**

- (1) Section 43(e)(ii)

*omit*

all words from "sections" to "Act"

*insert*

the guardianship principles under the *Guardianship of Adults Act*

- (2) Section 43, note for paragraph (a)

*omit*

all words from "his" to "21"

*insert*

*the guardianship order and Guardianship of Adults Act*

**109 Section 46 amended**

Section 46(1), at the end

*insert*

*Note for subsection (1)(a)*

*Under section 39A, the fact that a guardian has authority to make consent decisions about health care action may constitute grounds for the reasonable belief mentioned in paragraph (a).*

**Division 2 Unit Title Schemes (Management Modules) Regulations**

**110 Regulations amended**

This Division amends the *Unit Title Schemes (Management Modules) Regulations*.

**111 Schedule 1 amended**

Schedule 1, clause 46

*omit, insert*

**46 Voting by children**

If a member of the body corporate is under 18 years of age:

- (a) the member cannot exercise the member's right to vote; but
- (b) that right may be exercised by the member's parent or guardian.

**112 Schedule 2 amended**

Schedule 2, clause 46

*omit, insert*

**46 Voting by children**

If a member of the body corporate is under 18 years of age:

- (a) the member cannot exercise the member's right to vote; but
- (b) that right may be exercised by the member's parent or guardian.

**113 Schedule 3 amended**

Schedule 3, clause 37

*omit, insert*

**37 Voting by children**

If a member of the body corporate is under 18 years of age:

- (a) the member cannot exercise the member's right to vote; but
- (b) that right may be exercised by the member's parent or guardian.

**Division 3 Unit Titles (Management Modules) Regulations**

**114 Regulations amended**

This Division amends the *Unit Titles (Management Modules) Regulations*.

**115 Schedule 1 amended**

Schedule 1, clause 45

*omit, insert*

**45 Voting by children**

If a member of the corporation is under 18 years of age:

- (a) the member cannot exercise the member's right to vote; but
- (b) that right may be exercised by the member's parent or guardian.

**116 Schedule 2 amended**

Schedule 2, clause 36

*omit, insert*

**36 Voting by children**

If a member of the corporation is under 18 years of age:

- (a) the member cannot exercise the member's right to vote; but
- (b) that right may be exercised by the member's parent or guardian.



**Division 4            Other laws amended**

**117            Other laws amended**

The Schedule amends the laws mentioned in it.

**Division 5            Expiry of Part**

**118            Expiry of Part**

This Part expires on the day after it commences.

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**Schedule Other laws amended**

section 117

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
<b><i>Aged and Infirm Persons' Property Act</i></b>		
section 4, definition <b><i>agent</i></b> , paragraph (b)	<i>Adult Guardianship</i>	<i>Guardianship of Adults</i>
section 29A, Note 2	<i>Adult Guardianship</i>	<i>Guardianship of Adults</i>
<b><i>Alcohol Mandatory Treatment Act</i></b>		
section 5, definition <b><i>guardian</i></b>	section 3(1) of the <i>Adult Guardianship</i>	section 3 of the <i>Guardianship of Adults</i>
<b><i>Child Protection (Offender Reporting and Registration) Act</i></b>		
section 3		<i>(in alphabetical order)</i> <b><i>guardian</i></b> , in relation to a child who is over the age of 17 years, includes a guardian under the <i>Guardianship of Adults Act</i> .
section 75(4)(b)(ii)	<i>Adult Guardianship</i>	<i>Guardianship of Adults</i>
<b><i>Child Protection (Offender Reporting and Registration) Regulations</i></b>		
regulation 3(2)(b)	<i>Adult Guardianship</i>	<i>Guardianship of Adults</i>
<b><i>Correctional Services Act</i></b>		
section 91, Note 2	<i>Adult Guardianship</i>	<i>Guardianship of Adults</i>
<b><i>Criminal Code</i></b>		
section 43A, definition <b><i>appropriate person</i></b> , paragraph (c)	person within the meaning of the <i>Adult Guardianship Act</i>	adult as defined in section 3 of the <i>Guardianship of Adults Act</i>

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**Disability Services Act**

section 2(1), definition <b>guardian</b>	whole definition	<b>guardian</b> , for a person, means a guardian (as defined in section 3 of the <i>Guardianship of Adults Act</i> ) for the person who has authority under that Act to make decisions relating to the treatment and care of the person.
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**Juries Act**

section 10(3)(c)	an order under section 15 of the <i>Adult Guardianship</i>	a guardianship order under the <i>Guardianship of Adults</i>
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**Mental Health and Related Services Act**

section 4, definition <b>adult guardian</b>	section 3(1) of the <i>Adult Guardianship</i>	section 3 of the <i>Guardianship of Adults</i>
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**Partnership Act**

section 39(2)	his or her guardian or administrator, if appointed under the <i>Adult Guardianship Act</i> , or	
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**Powers of Attorney Act**

section 5, definition <b>agent</b> , paragraph (b)	<i>Adult Guardianship</i>	<i>Guardianship of Adults</i>
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section 5, definition <b>Public Trustee</b>	whole definition	(in alphabetical order) <b>Public Guardian</b> , see section 3 of the <i>Guardianship of Adults Act</i> .
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section 5, definition <b>Public Trustee</b>		<b>Public Trustee</b> , see section 5 of the <i>Public Trustee Act</i> .
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section 15(2), after "Public Trustee,"		the Public Guardian,
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section 21A, heading	<b><i>Adult Guardianship Act</i></b>	<b>guardianship</b>
section 21A(1)	(1) The appointment of a guardian under the <i>Adult Guardianship</i>	The appointment of a guardian under the <i>Guardianship of Adults</i>
section 21A(2)	whole subsection	
<b><i>Retirement Villages Act</i></b>		
section 32(1)(a)	all words from "an adult" to "Act)"	a guardian under the <i>Guardianship of Adults Act</i> – that guardian
<b><i>Volatile Substance Abuse Prevention Act</i></b>		
section 32, Example	<i>Adult Guardianship</i>	<i>Guardianship of Adults</i>

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