

Serial 54
Advance Personal Planning (Consequential Amendments) Bill 2013
Mr Elferink

A Bill for an Act to amend various laws in consequence of the
enactment of the *Advance Personal Planning Act*

NORTHERN TERRITORY OF AUSTRALIA

ADVANCE PERSONAL PLANNING (CONSEQUENTIAL
AMENDMENTS) ACT 2013

Act No. [] of 2013

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2013

An Act to amend various laws in consequence of the enactment of the *Advance Personal Planning Act*

[Assented to [] 2013]
[Second reading [] 2013]

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 (Consequential Amendments) Act 2013*.

2 Commencement

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

Part 2 Amendment of Adult Guardianship Act

3 Act amended

This Part amends the *Adult Guardianship Act*.

4 Section 3 amended

Section 3(1)

insert (in alphabetical order)

advance care statement, see section 3 of the *Advance Personal Planning Act*.

advance personal plan, see section 3 of the *Advance Personal Planning Act*.

agent, for a person, means any of the following:

- (a) a decision maker for the person;
- (b) a manager appointed for the person under the *Aged and Infirm Persons' Property Act*,
- (c) the donee of an enduring power of attorney made by the person under Part III of the *Powers of Attorney Act*,
- (d) any other person who has lawful authority to manage the person's affairs.

decision maker, see section 3 of the *Advance Personal Planning Act*.

5 Section 4 amended

- (1) Section 4, before "Every"

insert

(1)

- (2) Section 4, at the end

insert

- (2) However, if the represented person has made an advance care statement, the function, power, authority, discretion, jurisdiction or duty must be exercised or performed so as to give effect to the statement even if doing so is not in the represented person's best interests, unless:
- (a) the represented person, having capacity to do so, states that he or she does not want effect to be given to that statement;
or

- (b) a circumstance mentioned in section 23(2)(a) to (e) of the *Advance Personal Planning Act* exists.

6 Section 8 amended

Section 8(1), after "relative of,"

insert

an agent for,

7 Section 9 amended

After section 9(3)(c)

insert

- (ca) whether the proposed represented person has an advance personal plan and, if so, the terms of the plan (including as to any appointment of a decision maker);

8 Section 13 amended

After section 13(1)(c)

insert

- (ca) an agent for the person in respect of whom the application is made;

9 Section 14 amended

- (1) After section 14(2)(a)

insert

- (aa) whether the proposed guardian is an agent for the proposed represented person;

- (2) Section 14(2)(c)

omit, insert

- (c) the compatibility of the person proposed as guardian with the proposed represented person and with any agents for the person; and

- (3) Section 14(3), after "relative of"

insert

an agent for,

10 Section 15 amended

Section 15(3)

omit, insert

- (3) The Executive Officer shall forward a copy of the order made to:
- (a) each person who made representations to the Court at the hearing; and
 - (b) each agent for the person in respect of whom the application was made of whom the Executive Officer is aware.

11 Section 16A insert

After section 16

insert

16A Restriction on orders if person has advance personal plan

- (1) This section applies if the person in respect of whom an application for a guardianship order has been made has an advance personal plan.
- (2) The Court must take the plan (including any appointment of a decision maker) into account in determining:
- (a) whether the person is in need of an adult guardian; and
 - (b) whether to make a guardianship order; and
 - (c) if a guardianship order is to be made, the terms of the order; and
 - (d) whether to make an order under section 16; and
 - (e) if an order is to be made under section 16, the terms of the order.

- (3) Further, if the person has a decision maker the Court cannot make a guardianship order or an order under section 16 that will give the guardian authority to do anything that the decision maker has authority to do.

Note for section 16A(3)

If authority for a matter has been conferred on a decision maker and the Court considers that the authority ought to be conferred on a guardian, the Court might be able to amend the advance personal plan to limit the decision maker's authority. However, the Court could do so only if grounds for amending the plan exist under section 61 of the Advance Personal Planning Act.

12 Section 17 amended

Section 17(2)(d), after "21,"

insert

and subject to Part 4 of the *Advance Personal Planning Act*,

13 Section 20 amended

- (1) After section 20(2)

insert

- (2A) However, if the represented person has made an advance care statement, the guardian must exercise and perform his or her powers and duties so as to give effect to the statement even if doing so is not in the represented person's best interests, unless:

- (a) the represented person, having capacity to do so, states that he or she does not want effect to be given to that statement;
or
- (b) a circumstance mentioned in section 23(2)(a) to (e) of the *Advance Personal Planning Act* exists.

- (2) After section 20(3)

insert

- (4) If the represented person has one or more agents, the guardian must cooperate with all such persons to enable all of them to properly exercise their powers and perform their duties for the represented person.

14 Section 21 amended

(1) Section 21(1) and (2)

omit, insert

- (1) Despite sections 17 to 19 and the terms of any guardianship order, an adult guardian does not have authority to give consent for the carrying out, in relation to the represented person, of a major medical procedure.

Note for subsection (1)

The scope of a guardian's authority to consent to the provision of health care to the represented adult is determined by section 17, 18 or 19. This section imposes a limit on that authority.

(2) Section 21(4)(a)

omit

nature; and

insert

nature; or

(3) Section 21(5) to (9)

omit, insert

Note for section 21

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 persons. Depending on the circumstances, a consent decision might be made:

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

A guardian can only make decisions that are within the scope of his or her authority. A guardian does not have authority to make decisions about major medical procedures. For matters about which a guardian does not have authority, if there is no advance consent decision and no available decision maker, the guardian may apply under the Advance Personal Planning Act to the Local Court for the court to give consent.

15 Section 23 amended

(1) After section 23(1)

insert

(1A) The Court must, on application by the Executive Officer or a decision maker under section 23B(3) or (4), hold a hearing to review a guardianship order.

(2) After section 23(2)(b)

insert

(ba) on the application of an agent for the represented person;

(3) After section 23(3)(b)

insert

(ba) any agent for the represented person of whom the Executive Officer is aware;

16 Sections 23A and 23B inserted

After section 23

insert

23A Additional orders if represented person has agents

- (1) This section applies if a represented person has one or more agents.
- (2) The Court may make such orders as the Court thinks fit in relation to the exercise by a guardian of his or her powers, functions and duties for the purpose of facilitating a reasonable and workable division of decision making authority between the guardian and the agents for the represented person.
- (3) An application for an order under this section may be made by a guardian or agent for a person.

Notes for section 23A

- 1 *The Court also has power to impose conditions or restrictions on a guardianship order under section 17(3), 18(2) or 19(5).*
- 2 *Comparable orders may also be given to agents under the Advance Personal Planning Act, Aged and Infirm Persons Property Act and Powers of Attorney Act.*

23B Consequences if Court not aware of advance personal plan

- (1) This section applies if:
 - (a) the Court has made a guardianship order; and
 - (b) before the order was made the represented person had made an advance personal plan; and
 - (c) when it made the guardianship order the Court was unaware of the advance personal plan.
- (2) The guardianship order is not invalid only because section 9(3)(ca), 13(1)(ca), 14(2)(aa) or (c), or 16A was not complied with in relation to the making of the order.
- (3) As soon as practicable after becoming aware of the advance personal plan, the Executive Officer must apply to the Court for a review of the guardianship order under section 23(1A), unless a decision maker has already done so under subsection (4).
- (4) If the advance personal plan includes the appointment of a decision maker, the decision maker may apply for a review of the guardianship order under section 23(1A).

Part 3 Amendment of Advance Personal Planning Act**17 Act amended**

This Part amends the *Advance Personal Planning Act*.

18 Section 3 amended

- (1) Section 3

insert (in alphabetical order)

Advance Personal Planning (Part 4A) Register, see section 55B.

registered, for Part 4A, means registered in the Advance Personal Planning (Part 4A) Register.

- (2) Section 3, definition ***best interests***

omit

section 22(7).

insert

section 22(6A) and (7).

19 Section 22 amended

(1) After section 22(5)

insert

- (5A) If subsection (3) or (4) requires the decision maker to exercise the decision maker's authority in the way the decision maker reasonably believes the adult would have done in the circumstances, the decision maker must exercise the authority in that way even if doing so may not be in the adult's best interests.

Note for subsection (5A)

However, the decision maker does not have authority to do anything that would be unlawful (see s20(1) and 23(2)(b)).

(2) After section 22(6)

insert

- (6A) For subsection (6), in determining what is in the adult's best interests, the decision maker must:
- (a) take into account all relevant considerations; and
 - (b) weigh up those considerations, giving each of them the weight that the decision maker reasonably believes is appropriate in the circumstances.

(3) Section 22(7)

omit

An adult's ***best interests***

insert

For subsection (6A), the relevant considerations

(4) Section 22(7)(b)

omit, insert

- (b) the provision to the adult of appropriate care, including the taking of appropriate health care action;

(ba) promotion of the adult's happiness, enjoyment of life and wellbeing;

(5) Section 22(7)(e)

omit

and enjoyment of life

(6) Section 22(8)

omit

and (7)

insert

to (7)

20 Section 42 amended

Section 42(4)(a)(i)

omit

act in the best interests of the represented adult

insert

make a consent decision in accordance with the decision-making principles

21 Section 44A inserted

After section 44 in Part 4, Division 2

insert

44A Consent decisions by persons under other laws

(1) If a person has a right under another law of the Territory to make a consent decision about the health care action, the person may exercise that right only if:

(a) either:

(i) the adult has not made an advance consent decision about the health care action; or

- (ii) the Court has made an order under section 41(2) that the adult's advance consent decision be disregarded; and
 - (b) there is no available consentor who is willing and able to make a consent decision about the health care action under section 42; and
 - (c) the Court has not made a consent decision about the health care action under section 44.
- (2) This section does not affect any power under another law of the Territory of a court, tribunal or statutory office holder to order that health care action be taken for an adult without the consent of the adult.

22 Section 53 amended

After section 53(4)

insert

- (5) If the health care action is an operation, as defined in the *Emergency Medical Operations Act*, section 3(3A) of that Act applies.

23 Part 4A inserted

After section 55

insert

Part 4A Dealings in relation to land

Division 1 Dealings by decision makers

55A Advance personal plan must be registered

- (1) A dealing in relation to land purporting to take effect as a result of the exercise of authority by a decision maker is of no effect unless, at the time the authority was purportedly exercised, an advance personal plan conferring authority to enter into the dealing on the decision maker was registered.
- (2) However, if:
 - (a) at the time the authority was purportedly exercised, an advance personal plan conferring the authority on the decision maker was in force (although not registered); and

- (b) an advance personal plan conferring that authority on the decision maker is subsequently registered;

the dealing takes effect immediately after the plan is registered.

- (3) For the purpose of this section, if an advance personal plan has been registered:
 - (a) the terms of the plan at a particular time are taken to be the terms of the plan when it was first registered as amended by any amendments that have been registered before the time in question; and
 - (b) a person appointed by the plan as a decision maker is taken to continue to be a decision maker until a notice to the contrary is registered as mentioned in section 55C(1)(c); and
 - (c) the plan is taken to remain in force until a notice to the contrary is registered as mentioned in section 55C(1)(d).
- (4) Subsection (3) does not apply in relation to a person who, at any relevant time, knows that:
 - (a) the advance personal plan has been amended in a material way by an amendment that has not been registered; or
 - (b) a person's appointment as a decision maker under the plan has ceased under section 19(1); or
 - (c) the plan has ceased to be in force under section 11(b).
- (5) This section does not apply in relation to a dealing in relation to land that is a lease for a period not exceeding 1 year.

Division 2 Advance Personal Plans (Part 4A) Register

55B Advance Personal Planning (Part 4A) Register

- (1) The Registrar-General must establish and maintain a register of advance personal plans under which a decision maker is authorised to enter into dealings in relation to land (the *Advance Personal Planning (Part 4A) Register*).
- (2) Subject to the regulations, the Registrar-General may keep the Advance Personal Planning (Part 4A) Register in any form the Registrar-General considers appropriate.

- (3) Registration of an advance personal plan in the Advance Personal Planning (Part 4A) Register is optional and non registration does not affect the validity or effect of the advance personal plan.

Note for subsection (3)

While non registration does not affect the validity or effect of the plan, non registration does affect the effectiveness of any dealing in relation to land entered into by the decision maker (see section 55A).

55C Registration of advance personal plans

- (1) The Registrar-General may register any of the following in the Advance Personal Planning (Part 4A) Register:
- (a) an advance personal plan under which a decision maker is authorised to enter into a dealing in relation to land for the represented adult;
 - (b) an amendment to a registered advance personal plan;
 - (c) a notice that a person who was a decision maker under a registered advance personal plan has ceased to be a decision maker as mentioned in section 19(1);
 - (d) a notice that a registered advance personal plan has ceased to be in force as mentioned in section 11(b);
 - (e) any other document relating to an advance personal plan:
 - (i) that is prescribed by the regulations; or
 - (ii) that the Registrar-General considers it is appropriate to record in the Advance Personal Planning (Part 4A) Register.
- (2) An application for registration must be:
- (a) made in accordance with the regulations; and
 - (b) accompanied by any fee prescribed as mentioned in section 55D.

55D Fees

Regulations under the *Registration Act* may prescribe fees payable in relation to the Advance Personal Planning (Part 4A) Register.

24 Section 78 amended

(1) After section 78(1)

insert

(1A) A decision maker commits an offence if the decision maker:

- (a) engages in conduct purportedly in the exercise of the person's authority as a decision maker for a matter; and
- (b) is reckless as to whether the represented adult does not have impaired decision-making capacity for the matter.

Maximum penalty: Imprisonment for 5 years.

(2) Section 78(2)(a), after "(1)"

insert

or (2)

25 Section 87 amended

(1) Section 87, heading

omit, insert

87 Advance Personal Plans (General) Register

(2) Section 87(2), at the end

insert

Note for subsection (2)

Part 4A makes provision in relation to decision makers entering into dealings in relation to land, including requiring registration of the advance personal plan in the Advance Personal Planning (Part 4A) Register, which is a separate register established under that Part.

26 Section 88 amended

After section 88(5)

insert

(5A) This section applies regardless of when the recognised interstate document was made.

Part 4 Amendment of Aged and Infirm Persons' Property Act

27 Act amended

This Part amends the *Aged and Infirm Persons' Property Act*.

28 Section 4 amended

(1) Section 4, definition *Master of the Supreme Court*

omit

(2) Section 4

insert (in alphabetical order)

advance personal plan, see section 3 of the *Advance Personal Planning Act*.

agent, for a person, means any of the following:

- (a) a decision maker for the person;
- (b) a guardian appointed for the person under the *Adult Guardianship Act*;
- (c) the donee of an enduring power of attorney made by the person under Part III of the *Powers of Attorney Act*;
- (d) any other person who has lawful authority to manage the person's affairs.

Court, means the Local Court.

decision maker, see section 3 of the *Advance Personal Planning Act*.

Registrar, see section 3 of the *Local Court Act*.

29 Section 5 amended

(1) Section 5, heading

omit

Supreme

(2) Section 5(1) and (2)

omit (all references)

Supreme

30 Section 6 repealed

Section 6

repeal

31 Section 7 amended

(1) Section 7(1)

omit

Supreme

(2) After section 7(1)(b)

insert

(ba) an agent for the person; or

(3) Section 7(1)(a), at the end

insert

or

(4) Section 7(2) and (3)

omit

Supreme

32 Section 8 amended

(1) Section 8(1)(a), after "7(1)(b),"

insert

(ba),

(2) Section 8(1)(b), (2) and (3)

omit (all references)

Supreme

33 Section 9 amended

Section 9

omit

Supreme

34 Section 10 amended

(1) Section 10(1)

omit, insert

- (1) The Court may, before making a protection order, order an investigation to be made by the Minister and may adjourn the proceedings until a report of that investigation is received by the Court.

(2) Section 10(2)

omit (all references)

Supreme

35 Section 11 amended

Section 11

omit

Supreme

36 Section 12 amended

Section 12(1) and (2)

omit

Supreme

37 Section 12A inserted

After section 12

insert

12A Restriction on orders if person has advance personal plan

- (1) This section applies if the person to whose estate an application for or proposal to make a protection order relates has an advance personal plan.
- (2) The Court must take the plan (including any appointment of a decision maker) into account in determining:
 - (a) whether it is necessary for the person's estate to be protected; and
 - (b) whether to make a protection order; and
 - (c) if a protection order is to be made, the terms of the order.
- (3) Further, if the person has a decision maker the Court cannot make a protection order that will give the manager authority to do anything that the decision maker has authority to do.

Note for section 12A(3)

If authority for a matter has been conferred on a decision maker and the Court considers that the authority ought to be conferred on a manager, the Court might be able to amend the advance personal plan to limit the decision maker's authority. However, the Court could do so only if grounds for amending the plan exist under section 61 of the Advance Personal Planning Act.

38 Section 13 amended

Section 13(2)

omit (all references)

Supreme

39 Section 14 amended

- (1) Section 14(1) and (2)

omit

Master of the Supreme Court

insert

Registrar

- (2) After section 14(2)
insert
- (3) The Registrar must cause a copy of the protection order to be given to each agent for the protected person of which the Registrar is aware (other than an agent who is being appointed as a manager).

40 Section 15 amended

Section 15(2) and (3)

omit

Supreme

41 Section 16 amended

- (1) Section 16(1)
omit
Supreme
- (2) Section 16(2)(a) and (b)(i), at the end
insert
and
- (3) Section 16(2)(c)
omit
estate.
insert
estate; and
- (4) After section 16(2)(c)
insert
- (d) terms and conditions the Court considers appropriate for ensuring an appropriate division of decision making authority between the manager and any agents for the protected person.

42 Section 17 amended

After section 17(3)

insert

- (4) If the protected person has one or more agents, the manager must cooperate with all such persons to enable all of them to properly exercise their powers and perform their duties for the protected person.

43 Section 18 amended

- (1) Section 18, before "Subject to this Act"

insert

(1)

- (2) Section 18, at the end

insert

- (2) However, if the protected person has made an advance care statement (as defined in section 3 of the *Advance Personal Planning Act*), the manager must exercise and perform his or her powers and duties so as to give effect to the statement even if doing so is not in the protected person's best interests, unless:
- (a) the protected person, having capacity to do so, states that he or she does not want effect to be given to that statement; or
- (b) a circumstance mentioned in section 23(2)(a) to (e) of the *Advance Personal Planning Act* exists.

44 Section 20 amended

Section 20(1)(b)

omit

Supreme

45 Section 22 amended

Section 22(3)

omit (all references)

Supreme

46 Section 24 amended

Section 24(1) and (3)

omit

Supreme

47 Section 25 amended

Section 25(1)

omit

Supreme

48 Section 28A inserted

After section 28

insert

28A Consequences if Court not aware of advance personal plan

- (1) This section applies if:
 - (a) the Court has made a protection order; and
 - (b) before the order was made the protected person had made an advance personal plan; and
 - (c) when it made the protection order the Court was unaware of the advance personal plan.
- (2) The protection order is not invalid only because section 12A was not complied with in relation to the making of the order.
- (3) A decision maker appointed by the plan, or any other person who the Court considers has a proper interest in the matter, may apply to the Court to have the protection order amended or revoked on the ground that had it been aware of the advance personal plan the Court would not have made a protection order or would have made a protection order on different terms.

49 Section 29 amended

Section 29(1) and (2)

omit

Supreme

50 Section 29A inserted

After section 29

insert

29A Additional orders if protected person has agents

- (1) This section applies if a protected person has one or more agents.
- (2) The Court may make such orders as the Court thinks fit in relation to the exercise by a manager of his or her powers, functions and duties for the purpose of facilitating a reasonable and workable division of decision making authority between the manager and the agents for the protected person.
- (3) An application for an order under this section may be made by a manager or agent for a person.

Notes for section 29A

- 1 *The Court also has power to impose conditions on a protection order under section 16.*
- 2 *Comparable orders may also be given to agents under the Advance Personal Planning Act, Adult Guardianship Act and Powers of Attorney Act.*

Part 5 Amendment of Alcohol Mandatory Treatment Act**51 Act amended**

This Part amends the *Alcohol Mandatory Treatment Act*.

52 Section 5 amended

- (1) Section 5, definition ***guardian***

omit

- (2) Section 5

insert (in alphabetical order)

decision maker, for a person, means a decision maker (as defined in section 3 of the *Advance Personal Planning Act*) for the person who has authority for matters relating to the assessment, treatment and management of the person under this Act.

guardian, for a person, means a guardian (as defined in section 3(1) of the *Adult Guardianship Act*) for the person who has power under that Act to make decisions relating to the assessment, treatment and management of the person under this Act.

- (3) Section 5, definition **primary contact**, paragraph (b)

omit

guardian – the guardian

insert

guardian or decision maker – the guardian or decision maker

53 Section 16 amended

- (1) Section 16(a)

omit, insert

- (a) the following persons are notified that the assessable person has been admitted to the assessment facility:
- (i) the assessable person's primary contact;
 - (ii) the assessable person's guardian (if any);
 - (iii) the assessable person's decision maker (if any);

- (2) Section 16(b)(i)

omit, insert

- (i) his or her primary contact; and
- (ia) his or her guardian (if any); and
- (ib) his or her decision maker (if any); and

54 Section 23 amended

Section 23(1)(b)

omit, insert

- (b) the assessable person's primary contact;
- (ba) the assessable person's guardian (if any);
- (bb) the assessable person's decision maker (if any);

55 Section 31 amended

Section 31(4)(b)

omit, insert

- (b) the affected person's primary contact;
- (ba) the affected person's guardian (if any);
- (bb) the affected person's decision maker (if any);

56 Section 45 amended

Section 45(4)(b)

omit, insert

- (b) the affected person's primary contact;
- (ba) the affected person's guardian (if any);
- (bb) the affected person's decision maker (if any);

57 Section 53 amended

Section 53(2)(b)(ii)

omit, insert

- (ii) the name and contact details of:
 - (A) the person's primary contact; and
 - (B) the person's guardian (if any); and
 - (C) the person's decision maker (if any).

58 Section 59 amended

Section 59(2)(b)(ii)

omit, insert

- (ii) the name and contact details of:
 - (A) the person's primary contact; and
 - (B) the person's guardian (if any); and
 - (C) the person's decision maker (if any).

59 Section 65 amended

After section 65(3)(b)

insert

(ba) the person's decision maker (if any);

60 Section 69 amended

After section 69(1)(b)

insert

(ba) the person's decision maker (if any);

61 Section 82 amended

Section 82(1)(b)

omit, insert

(b) the primary contacts, guardians (if any) and decision makers (if any) of those persons.

62 Section 92 amended

Section 92(1)

omit (all references)

and guardian (if any)

insert

, guardian (if any) and decision maker (if any)

63 Section 137A inserted

After section 137

insert

137A Requirements in relation to decision makers

- (1) If a person (*person A*) is required by a provision of this Act to perform a function in relation to a decision maker for a person (*person B*), it is sufficient compliance with that provision if person A:

- (a) takes reasonable steps to ascertain whether person B has a decision maker; and
 - (b) takes reasonable steps to perform the function in relation to any decision maker for person B whom person A is aware of after complying with paragraph (a).
- (2) In this section, to *perform a function* in relation to a decision maker includes the following:
- (a) to notify the decision maker;
 - (b) to consult the decision maker;
 - (c) to give person B the opportunity to speak to the decision maker;
 - (d) to give the decision maker's name and contact details to another person.

Part 6 Amendment of Disability Services Act

64 Act amended

This Part amends the *Disability Services Act*.

65 Section 2 amended

Section 2(1)

insert (in alphabetical order)

decision maker, for a person with a disability, means a decision maker (as defined in section 3 of the *Advance Personal Planning Act*) for the person who has authority for matters relating to the treatment and care of the person.

66 Section 9 amended

After section 9(1)(b)

insert

(ba) if the person has a decision maker - the decision maker;

67 Section 10 amended

After section 10(b)

insert

(ba) if the person has a decision maker - the decision maker;

68 Section 17 amended

After section 17(2)(b)

insert

(ba) if the person has a decision maker - the decision maker;

69 Section 30 amended

Section 30(4)(b)

omit, insert

(aa) if the resident has a decision maker - the decision maker;

(b) if the resident has a primary carer other than the Agency – the primary carer;

70 Section 36 amended

After section 36(3)(c)(i)

insert

(ia) if the person has a decision maker - the decision maker;

71 Section 39 amended

After section 39(3)(c)(i)

insert

(ia) if the person has a decision maker - the decision maker;

72 Section 45 amended

Section 45(3)(b)

omit, insert

(b) if the resident has a guardian – the guardian;

(c) if the resident has a decision maker - the decision maker.

73 Section 46 amended

After section 46(1)(b)

insert

(ba) if the resident has a decision maker - the decision maker;

74 Section 58 amended

After section 58(2)(a)

insert

(aa) if the resident has a decision maker - the decision maker;

75 Section 72A inserted

After section 72

insert

72A Requirement to notify or consult with decision maker

- (1) If the CEO is required by a provision of this Act to notify or consult with a person's decision maker, it is sufficient compliance with that provision if the CEO:
 - (a) takes reasonable steps to ascertain whether the person has a decision maker; and
 - (b) takes reasonable steps to notify or consult with any decision maker whom the CEO is aware of after complying with paragraph (a).
- (2) If the manager of a residential facility is required by a provision of this Act to notify a resident's decision maker about a matter, it is sufficient compliance with the provision if the manager takes reasonable steps to notify each decision maker for the resident of whom the CEO or manager is aware.

Part 7 Amendment of Emergency Medical Operations Act**76 Act amended**

This Part amends the *Emergency Medical Operations Act*.

77 Section 3 amended

(1) Section 3(3)

omit, insert

(3) If the patient is an adult who has impaired decision-making capacity, a medical practitioner is not entitled to perform an operation under subsection (1) unless the medical practitioner is of the opinion that it is not practicable to delay performing the operation until:

(a) it can be ascertained that the patient has made an advance consent decision about the operation; or

(b) a consent decision about the operation can be made, in accordance with Part 4 of the *Advance Personal Planning Act*.

(i) by a decision maker or guardian for the patient under section 42 of that Act; or

(ii) by the Local Court under section 44 of that Act; or

(iii) by another person who has a right under another law of the Territory to make a consent decision about the operation, as mentioned in section 44A of that Act.

(3A) Further, if the patient is an adult who has impaired decision-making capacity, a medical practitioner is not entitled to perform an operation under subsection (1) in circumstances in which section 53 of the *Advance Personal Planning Act* applies.

Note for subsection (3A)

In broad terms, section 53 of the Advance Personal Planning Act applies if the medical practitioner knows that the patient has made an advance consent decision refusing consent for the operation, or that a decision maker, adult guardian or the Local Court has refused consent for the operation.

(2) Section 3(5)

omit

(3) After section 3(6)

insert

(7) Terms used in subsections (3) and (3A) that are defined in the *Advance Personal Planning Act* have the same meanings in those subsections as they have in that Act.

Part 8 **Amendment of Land Title Act****78** **Act amended**

This Part amends the *Land Title Act*

79 **Part 7, Division 3 heading amended**

Part 7, Division 3, heading

omit

disabilities

insert

persons lacking capacity

80 **Section 149 inserted**

After section 148

insert

149 **Decision makers**

- (1) This section applies in relation to a dealing that takes effect as a result of the exercise of authority by a decision maker.
- (2) If, at the time the authority was purportedly exercised, an advance personal plan conferring authority to enter into the dealing on the decision maker was registered in the Advance Personal Planning (Part 4A) Register, the Registrar-General may register the dealing without needing to be satisfied:
 - (a) that the plan has not been amended by an unregistered amendment; or
 - (b) that the plan has not ceased to be in force; or
 - (c) that the person purportedly exercising the authority has not ceased to be a decision maker; or
 - (d) that circumstances exist that entitle the decision maker to exercise the authority.
- (3) However, the Registrar-General must not register the dealing if, before the time the authority was purportedly exercised, either of the following had been registered in the Advance Personal Planning (Part 4A) Register:

-
- (a) a notice that the person purporting to exercise the authority has ceased to be a decision maker;
 - (b) a notice that the advance personal plan has ceased to be in force.
- (4) For this section, if an advance personal plan has been registered in the Advance Personal Planning (Part 4A) Register, the terms of the plan at a particular time are taken to be the terms of the plan when it was first registered, as amended by any amendments that have been registered in that Register before the time in question.
- (5) In this section:

advance personal plan, see section 3 of the *Advance Personal Planning Act*.

Advance Personal Planning (Part 4A) Register, see section 55B of the *Advance Personal Planning Act*.

decision maker, see section 3 of the *Advance Personal Planning Act*.

Part 9 Amendment of Mental Health and Related Services Act

81 Act amended

This Part amends the *Mental Health and Related Services Act*.

82 Section 4 amended

- (1) Section 4, definition *adult guardian*

omit

- (2) Section 4

insert (in alphabetical order)

adult guardian, for a person, means a guardian (as defined in section 3(1) of the *Adult Guardianship Act*) for the person who has power under that Act to consent to any health care that is in the best interests of the represented person.

advance consent decision, see section 3 of the *Advance Personal Planning Act*.

decision maker, for a person, means a decision maker (as defined in section 3 of the *Advance Personal Planning Act*) for the person who has authority for matters relating to the treatment and care of the person under this Act.

83 Section 25 amended

After section 25(9)

insert

- (10) An adult guardian or decision maker for a person cannot make an application under this section for the person.

Note for subsection (10)

An adult guardian or decision maker may be able to make an application under section 27.

84 Section 27 amended

- (1) Section 27, heading

omit, insert

27 Admission as voluntary patients of persons with adult guardians or decision makers

- (2) Section 27(1)

omit, insert

- (1) An adult guardian or decision maker for a person may apply to have the person admitted to an approved treatment facility as a voluntary patient.

- (3) Section 27(3)(a) and (b)

omit

guardian

insert

adult guardian or decision maker

85 Section 29 amended

Section 29(5)

omit

guardian

insert

adult guardian or decision maker

86 Section 41 amended

After section 41(1)(b)

insert

(ba) if the person has a decision maker – the decision maker;

87 Section 43 amended

After section 43(1)(b)

insert

(ba) if the person has a decision maker – the decision maker;

88 Section 44D amended

After section 44D(1)(b)

insert

(ba) if the person has a decision maker – the decision maker;

89 Section 47 amended

After section 47(1)(b)(ii)

insert

(iia) if the person has a decision maker – the decision maker;

90 Section 50A amended

After section 50A(1)(b)(ii)

insert

(iia) if the person has a decision maker – the decision maker;

91 Section 53 amended

After section 53(3)(a)(i)

insert

(ia) if the person has a decision maker – the decision maker;

92 Section 54 amended

(1) Section 54(1)(b)

omit, insert

(b) informed consent for the treatment is obtained from an adult guardian or decision maker for the person, or from the Local Court, in accordance with Part 4 of the *Advance Personal Planning Act*.

(2) Section 54(2) and (3)

omit

93 Section 61 amended

Section 61(15)

omit

all words from "The person-in-charge" to "been applied"

insert

If a patient to whom mechanical restraint has been applied has an adult guardian or decision maker, the person-in-charge of the approved treatment facility must ensure that the adult guardian or decision maker

94 Section 62 amended

Section 62(15)

omit

all words from "The person-in-charge" to "seclusion is"

insert

If a patient who is kept in seclusion has an adult guardian or decision maker, the person-in-charge of the approved treatment facility must ensure that the adult guardian or decision maker is

95 Section 63 amended

(1) Section 63(3)(c)

omit, insert

- (c) informed consent for the treatment is obtained from an adult guardian or decision maker for the person, or from the Local Court, in accordance with Part 4 of the *Advance Personal Planning Act*.

(2) Section 63(6)

omit, insert

- (6) A person who performs non-psychiatric treatment on a person who has an adult guardian or decision maker without consent being obtained under subsection (3)(c) must report the fact to the adult guardian or decision maker as soon as possible after the treatment is performed.

96 Section 64 amended

(1) Section 64(2)(b)

omit, insert

- (b) informed consent for the major medical procedure is obtained from a decision maker for the person, or from the Local Court, in accordance with Part 4 of the *Advance Personal Planning Act*.

(2) Section 64(4)(b)

omit

guardian.

insert

guardian; and

(3) After section 64(4)(b)

insert

- (c) if the person has a decision maker – the decision maker.

97 Section 65 amended

Section 65(b)(i), after "person"

insert

, or a decision maker for the person,

98 Section 66 amended

Section 66(1)(b)

omit, insert

(b) informed consent for the treatment is obtained from an adult guardian or decision maker for the person, or from the Local Court, in accordance with Part 4 of the *Advance Personal Planning Act*.

99 Section 80A amended

Section 80A(1)(b)(ii)

omit, insert

(ii) both:

(A) informed consent to the admission has been obtained from an adult guardian or decision maker for the prisoner, or from the Local Court, in accordance with Part 4 of the *Advance Personal Planning Act*, and

(B) the prisoner is willing to be admitted.

100 Section 87 amended

After section 87(1A)(b)

insert

(ba) if the person has a decision maker – the decision maker; and

101 Section 88 amended

After section 88(2)(b)

insert

(ba) if the person has a decision maker – the decision maker;

102 Section 89 amended

After section 89(4)(b)

insert

(ba) if the person has a decision maker – the decision maker;

103 Section 91 amended

(1) After section 91(2)(b)(ii)

insert

(iia) if the person has a decision maker – the decision maker;
or

(2) Section 91(2)(d)

omit, insert

(d) when it is required in the course of proceedings:

- (i) relating to the guardianship of the person to whom the information relates; or
- (ii) relating to the administration of property of the person to whom the information relates; or
- (iii) under the *Advance Personal Planning Act* in relation to the person to whom the information relates; or

104 Section 92 amended

After section 92(1)(b)

insert

(ba) if the person has a decision maker – the decision maker;

105 Section 93 amended

(1) Section 93, heading, after "guardian"

insert

, **decision maker**

- (2) Section 93(1) and (2), after "adult guardian"

insert

, decision maker

106 Section 94 amended

Section 94, after "adult guardian"

insert

, decision maker

107 Section 98 amended

- (1) Section 98(5)(a)(ii)

omit

and

- (2) After section 98(5)(a)(ii)

insert

- (iii) if the person has a decision maker – the decision maker;
and

108 Section 99 amended

After section 99(2)(ha)

insert

(hb) if the person has a decision maker – the decision maker;

109 Section 100 amended

- (1) Section 100(1), after "her"

insert

decision maker or

- (2) After section 100(5)(b)

insert

(ba) if the person has a decision maker – the decision maker;

110 Section 108 amended

Section 108(1), after "any"

insert

decision maker or other

111 Section 122 amended

Section 122(2)(aa)

omit

all words from "is someone" to "force"

insert

has an adult guardian or a decision maker

112 Section 127 amended

After section 127(3)(b)(i)

insert

(ia) if the person has a decision maker – the decision maker;

113 Section 132 amended

(1) After section 132(1A)(a)

insert

(aa) if the person has a decision maker – the decision maker;

(2) Section 132(3) and (4), after "adult guardian" (*all references*)

insert

, decision maker

114 Section 136 amended

Section 136(4) and (5), after "adult guardian" (*all references*)

insert

, decision maker

115 Section 154 amended

After section 154(2)(a)

insert

(aa) if the person has a decision maker – the decision maker; and

116 Section 161 amended

Section 161, after "guardian"

insert

, decision maker

117 Section 166A amended

After section 166A(5)(a)

insert

(aa) if the person has a decision maker – the decision maker;

118 Section 168A amended

After section 168A(1)(b)(i)

insert

(ia) if the person has a decision maker – the decision maker;

119 Sections 168B and 168C inserted

After section 168A

insert

168B Requirement to ascertain if patient has decision maker

- (1) This section applies if an authorised psychiatric practitioner treating a person who is a patient in an approved treatment facility or who is subject to a community management order is of the opinion that the person has impaired decision-making capacity for matters relating to his or her treatment and care under this Act.
- (2) The authorised psychiatric practitioner must take reasonable steps to ascertain:
 - (a) whether the patient has made any advance consent decisions that are relevant to his or her treatment under this Act; and

- (b) whether the patient has a decision maker and, if so, his or her contact details.
- (3) It is sufficient compliance with subsection (2) if the authorised psychiatric practitioner informs the person-in-charge of the approved treatment facility or approved treatment agency at which the patient is being treated of the practitioner's opinion and that person takes the steps required by subsection (2).

168C Notifying decision makers

- (1) If a person (*person A*) is required by a provision of this Act to notify or inform a patient's decision maker about a matter, it is sufficient compliance with the provision if person A takes reasonable steps to notify or inform each known decision maker for the patient.
- (2) For subsection (1), a decision-maker for a patient is *known* if either of the following is aware that the person is a decision maker for the patient:
 - (a) person A;
 - (b) the person-in-charge of the approved treatment facility or approved treatment agency at which the patient is being treated.

Part 10 Amendment of Powers of Attorney Act

120 Act amended

This Part amends the *Powers of Attorney Act*.

121 Section 5 amended

Section 5

insert (in alphabetical order)

agent, for a person, means any of the following:

- (a) a decision maker appointed by the person under the *Advance Personal Planning Act*,
- (b) a guardian appointed for the person under the *Adult Guardianship Act*,
- (c) a manager appointed for the person under the *Aged and Infirm Persons' Property Act*,

-
- (d) any other person who has lawful authority to manage the person's affairs.

Court, means the Local Court.

122 Section 6A amended

- (1) Section 6A(4)(b)

omit

incapable.

insert

incapable; and

- (2) After section 6A(4)(b)

insert

- (c) the instrument creating the power is not a recognised interstate document under section 88 of the *Advance Personal Planning Act*.

123 Part III, note inserted

After Part III, heading

insert

Note for Part III

Although a new enduring power of attorney cannot be created in the Territory after the commencement of section 8 of the Advance Personal Planning Act, this Part continues to have effect in relation to enduring powers of attorney created in the Territory before that date and to interstate enduring powers recognised under section 6A(4) regardless of when they were created.

124 Section 13 amended

- (1) Before section 13(a)

insert

- (aa) was executed before the commencement of section 8 of the *Advance Personal Planning Act*, and

- (2) Section 13(a), at the end

insert

and

125 Section 15 amended

- (1) Section 15, heading

omit

Supreme

- (2) Section 15(1) to (5)

omit (all references)

Supreme

- (3) Section 15(2), after "Trustee"

insert

, an agent for the donor of an enduring power

- (4) Section 15(2)(a), at the end

insert

or

- (5) Section 15(2)(c)

omit

power).

insert

power); or

- (6) After section 15(2)(c)

insert

- (d) giving such orders to the donee of the power as the Court thinks fit for the purpose of facilitating a reasonable and workable division of decision making authority between the donee and any agents for the donor of the power.

(7) After section 15(5)

insert

- (6) In deciding whether to make an order under subsection (2)(c) or (d), the Court must take into account whether the donor of the enduring power has an advance personal plan (as defined in section 3 of the *Advance Personal Planning Act*) and, if so, the terms of the plan (including as to any appointment of a decision maker).

126 Section 15A inserted

After section 15, in Part III

insert

15A Exercise of power

- (1) If the donor of an enduring power has made an advance care statement (as defined in section 3 of the *Advance Personal Planning Act*), the donee of the power must exercise that power so as to give effect to the statement even if doing so is not in the donor's best interests, unless:
- (a) the donor, having capacity to do so, states that he or she does not want effect to be given to that statement; or
 - (b) a circumstance mentioned in section 23(2)(a) to (e) of the *Advance Personal Planning Act* exists.
- (2) If the donor of an enduring power has one or more agents, the donee of the power must cooperate with all such persons to enable all of them to properly exercise their powers and perform their duties for the donor.

127 Section 19 amended

Section 19(2)(c) and (3)

omit (all references)

Supreme

Part 11 Amendment of Retirement Villages Act

128 Act amended

This Part amends the *Retirement Villages Act*.

129 Section 32 replaced

Section 32

repeal, insert

32 Notice of hearing

- (1) The Court must cause notice of proceedings under this Act to be given to the following persons:
 - (a) if a party to the proceedings has an adult guardian under the *Adult Guardianship Act* - that guardian and the Public Guardian (as defined in section 3(1) of that Act);
 - (b) if a party to the proceedings has a manager under the *Aged and Infirm Persons' Property Act* - that manager;
 - (c) if a party to the proceedings has a registered enduring power (as defined in section 5 of the *Powers of Attorney Act*) - the donor of that power;
 - (d) if the Court is aware that a party to the proceedings has a decision maker (as defined in section 3 of the *Advance Personal Planning Act*) who has authority for matters relevant to the proceedings - that decision maker.
- (2) The Court may cause notice of the proceedings to be given to any other person the Court thinks fit.

Part 12 Amendment of Transplantation and Anatomy Act**130 Act amended**

This Part amends the *Transplantation and Anatomy Act*.

131 Section 8 amended

Section 8, note

omit, insert

Notes for section 8

- 1 *The donor's consent may be given by way of an advance consent decision in an advance personal plan. If so, it has effect even if the person loses decision-making capacity for the removal of the tissue (see Part 4 of the Advance Personal Planning Act).*

2 *If the donor does not have decision-making capacity, Part 4 of the Advance Personal Planning Act may permit consent to be given:*

(a) *in relation to regenerative tissue – by a decision maker or adult guardian; or*

(b) *in relation to any tissue – by the Local Court.*

Such consent has effect as the consent of the donor.

132 Section 10 amended

(1) Section 10, after the heading

insert

(1) This section applies in relation to consent under section 8 given by the donor personally or by another individual as permitted by section 42 of the *Advance Personal Planning Act*.

(2) Section 10, before "A medical practitioner"

insert

(2)

(3) Section 10(b)

omit

from the body of that person

133 Section 11 replaced

Section 11

repeal, insert

11 When consent authorises removal of tissue

(1) This section applies in relation to consent to remove tissue from a person's body for an authorised purpose if:

(a) a medical practitioner has given a certificate under section 10 for the consent; or

(b) the consent was given by the Local Court as permitted by section 44 of the *Advance Personal Planning Act*.

-
- (2) The consent authorises the removal of the tissue stated in the consent from the person's body for the stated authorised purpose by:
- (a) for consent given by an individual – a medical practitioner other than the medical practitioner who gave the certificate under section 10; or
- (b) for consent given by the Local Court – a medical practitioner.

Note for subsection (2)

A consent for the removal of non-regenerative tissue does not have effect until 24 hours after the consent is given, see section 8(2).

134 Section 13 amended

Section 13

omit

sections 11 and 12

insert

section 11

135 Section 14 amended

Section 14, at the end

insert

Notes for section 14

- 1 *If the donor is over 18 years of age, his or her consent may be given by way of an advance consent decision in an advance personal plan, If so, it has effect even if the person loses decision-making capacity for the removal of blood (see Part 4 of the Advance Personal Planning Act).*
- 2 *If the donor is over 18 years of age and does not have decision-making capacity, Part 4 of the Advance Personal Planning Act may permit consent to be given by a decision maker or adult guardian or the Local Court. Such consent has effect as the consent of the donor.*

136 Section 16 amended

- (1) Section 16

omit

all words from "A person (the *donor*)" to "the consent"

insert

If consent to the removal of tissue from a person's body has been given for the purposes of this Act, the donor may revoke the consent

- (2) Section 16, at the end

insert

Note for section 16

If the donor is over 18 years of age and does not have decision-making capacity, Part 4 of the Advance Personal Planning Act may permit consent to be revoked by a decision maker, adult guardian or the Local Court.

137 Section 16A amended

- (1) Section 16A(1)

omit

donor has revoked the consent

insert

consent has been revoked

- (2) Section 16A(2)(a)(ii)

omit

donor's

138 Section 17 amended

Section 17(1)(a)

omit

the donor's

Part 13 Amendment of other laws

139 Other laws amended

The Schedule amends the laws mentioned in it.

Part 14 Expiry

140 Expiry of Part

This Act expires on the day after it commences.

Schedule Other laws amended

section 139

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
<i>Carers Recognition Act</i>		
section 5(3)(a)	or guardian	, guardian or decision maker (as defined in section 3 of the <i>Advance Personal Planning Act</i>)
<i>Child Protection (Offender Reporting and Registration) Regulations</i>		
regulation 3(1), definition <i>support person</i> , paragraph (b)(i), after "guardian"		, decision maker (as defined in section 3 of the <i>Advance Personal Planning Act</i>)
<i>Criminal Code</i>		
after section 236(b)		(ba) a decision maker (as defined in section 3 of the <i>Advance Personal Planning Act</i>); or
section 236(a), (b) and (c), at the end		or
<i>Power of Attorney Regulations</i>		
regulation 3(2)(f)	an order of the Supreme Court	a court order
regulation 7, heading	whole heading	7 Court orders to be served on Registrar-General
regulation 7(a)	Supreme	

regulation 14, heading	order of Supreme Court	court order to be served on Registrar-General
regulation 14	Supreme	
<i>Public Trustee Act</i>		
section 32(1), after "to appoint"		any of the following
section 32(1)(h)	or	
section 32(1)(j)	attorney,	attorney;
after section 32(1)(j)		(k) a decision maker (as defined in section 3 of the <i>Advance Personal Planning Act</i>);
<i>Serious Crime Control Act</i>		
after section 36(3)(a)		(aa) associations between a person who has impaired decision-making capacity (as defined in section 3 of the <i>Advance Personal Planning Act</i>) for a matter and a decision maker (as defined in that section) for the person for that matter;
<i>Terrorism (Emergency Powers) Act</i>		
section 21ZL(2)(a)	or guardian	, guardian or decision maker (as defined in the <i>Advance Personal Planning Act</i>)
section 21ZL(3)(a), after "more guardians"		or decision makers
section 21ZL(3)(a)	or guardians	, guardians or decision makers

section 21ZL(7)(a)	all words from "or" to "detainee"	, guardian or decision maker of the detainee (<i>person A</i>)
section 21ZL(7)(b)	all words from "or" to "detainee,"	, guardian or decision maker of the detainee (<i>person B</i>);
section 21ZL(7)	all words from "the parent" to "the other parent or guardian"	person A that person A must not disclose to person B
