

Explanatory Statement

HEALTH CARE DECISION MAKING BILL 2023

SERIAL NO. 95

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

GENERAL OUTLINE

The purpose of the Health Care Decision Making Bill 2023 (the Bill) is to create a stand-alone Act that provides a central framework for health care decision making for situations where an adult person has impaired decision making capacity (other than under the *Mental Health and Related Services Act 1998*), to make provision for urgent health care without consent for both adults and children and to make consequential amendments to related legislation.

The Bill provides for:

- (a) the circumstances in which a decision maker under an Advance Personal Plan, a guardian, a relative in terms of Aboriginal or other customary law or tradition, a spouse or de facto partner, a carer (non-commercial basis), a child, a parent, a sibling or a friend can make health care decisions for an adult person who has impaired decision making capacity to make decisions regarding health care;
- (b) responsibilities of health care providers in determining who is the appropriate health care decision maker for a person with impaired decision making capacity;
- (c) common decision making principles to be applied when making health care decisions;
- (d) the circumstances in which a health care provider can provide routine care without the consent of any health care decision maker;
- (e) health care decision makers to have a duty to exercise their authority for the person with impaired decision making capacity in a manner that the person does not needlessly suffer significant pain or distress;
- (f) the circumstances in which a health care provider can administer palliative care regardless of the views of the health care decision maker;
- (g) certain health care practices that are restricted;
- (h) the circumstances in which a health care provider may provide urgent health care to adults and children without consent of a health care provider (and for the repeal of the *Emergency Medical Operations Act 1973*);
- (i) the role of the Northern Territory Civil and Administrative Tribunal (NTCAT) in reviewing decisions made by health care decision makers and health care providers;
- (j) offences regarding the disclosure of identity information, false representations, improper exercise of authority and providing misleading information;
- (k) consequential amendments to the *Advance Personal Planning Act 2013*, the *Guardianship of Adults Act 2016* and the *Transplantation and Anatomy Act 1979* and;

- (l) the role of the Public Guardian and the Senior Practitioner in making health care decisions and in issuing guidelines and directives regarding the operation of the Bill.

NOTES ON CLAUSES

Part 1 Preliminary matters

Clause 1. Short Title

This is a formal clause which provides for the citation of the Act. The Bill when passed will be cited as the *Health Care Decision Making Act 2023*.

Clause 2. Commencement

This is a formal clause sets out how the Act will be commenced. In this case, the Bill will commence on the day fixed by the Administrator by *Gazette* notice but, if no date is fixed, the day of commencement is 18 May 2025.

Clause 3. Purposes of Act

This clause sets out the purposes of the Act are to:

- a) provide authority to a hierarchy of persons to make decisions regarding the health care of an adult with impaired decision making capacity;
- b) include, within that hierarchy, persons with authority under the *Advance Personal Planning Act 2013* and the *Guardianship of Adults Act 2016*;
- c) establish the principles and rules for making those decisions, which protecting the adult's freedom of decision and action;
- d) regulate the administration of certain types of health care and practices and prohibit or restrict the making of certain health care decisions in relation to an adult with impaired decision making capacity; and
- e) provide for the administration of health care without consent to both adults and children in urgent circumstances.

Clause 4. Definitions

This clause provides for definitions of:

advance care statement by making reference to section 3 of the *Advance Personal Planning Act 2013*, which in conjunction with section 8(1)(b) of that Act, defines it as a statement in an advance personal plan which sets out the adult's views, wishes and beliefs as the basis on which he or she wants anyone to act if they make decisions for him or her.

advance consent decision as meaning a health care decision set out in an advance personal plan under the *Advance Personal Planning Act 2013*.

health care by making reference to clause 6 of the Bill.

health care decision by making reference to clause 7 of the Bill.

health care decision maker as meaning a person determined under Part 2 who has authority under the Bill to make a health care decision.

health care provider as meaning an individual who provides health care.

impaired decision making capacity by making reference to clause 8 of the Bill.

Public Guardian means the Public Guardian established under section 60 of the *Guardianship of Adults Act 2016*.

Senior Practitioner by making reference to a person appointed under section 9 of the *National Disability Insurance Scheme (Authorisations) Act 2019*.

willing and able by referencing section 9 of the Bill.

A note is also included to clarify that the *Interpretation Act 1978* contains definitions and other provisions that may be relevant to the Bill.

Clause 5. Presumption of capacity to make health care decisions

This clause makes it clear that the Bill is to operate on the basis that a person is presumed to have capacity unless there is evidence to the contrary.

The clause notes that in the absence of other evidence, an adult who merely appears to have impaired decision making capacity is still presumed not to have impaired decision making capacity. It also notes that a guardianship order may be evidence to the contrary.

Clause 6. Meaning of *health care*

This clause defines 'health care' very broadly as meaning any kind of health care, including any service from those specifically provided for in this clause or anything provided as part of those services.

The clause commences by specifically providing for services provided by a health practitioner under the *Health Practitioner Regulation National Law*. This is set out in the Schedule to the *Health Provider Regulation National Law Act 2009* (Qld) as adopted in the Northern Territory by the *Health Practitioner Regulation (National Uniform Legislation) Act 2010*. It defines a 'health practitioner' as an individual who practices a 'health profession' which in turn is defined to mean the following professions, including a recognised specialty in any of them:

- Aboriginal and Torres Strait Islander health practice;
- Chinese medicine;
- chiropractic;
- dental (including the profession of a dentist, dental therapist, dental hygienist, dental prosthetist and oral health therapist);
- medical;
- medical radiation practice;
- midwifery;
- nursing;
- occupational therapy;
- optometry;
- osteopathy;
- paramedicine;
- pharmacy;

- physiotherapy;
- podiatry; and
- psychology.

The clause then specifically also provides for the following services:

- hospital services;
- mental health services;
- pharmaceutical services;
- ambulance services;
- community health services;
- health education services;
- welfare services necessary to implement any of the services mentioned above;
- services provided by dietitians, massage therapists, naturopaths, social workers, speech pathologists, audiologists or audiometrists;
- pathology services; or
- the removal of tissue from an adult's body in accordance with Part 2 of the *Transplantation and Anatomy Act 1979*.

This clause also provides that an assessment conducted by a health care provider for the purpose of assessing current or future health care is taken to be a form of health care. An example is provided of an aged care assessment made in relation to the care under the *Aged Care Act 1997* (Cth).

Clause 7. Meaning of *health care decision*

This clause defines “health care decision” as being a decision whether to commence, continue, withdraw or withhold health care for an adult.

Clause 8. Meaning of *impaired decision making capacity*

This clause defines “impaired decision making capacity” in relation to a health care decision. It is drafted to be consistent with the definition of the term in the *Advance Personal Planning Act 2013*. It provides that an impairment in any of the following is relevant in determining whether an adult's capacity to make the health care decision is impaired:

- (a) understanding and retaining information relevant to the health care decision;
- (b) weighing information relevant to the health care decision in order to make the health care decision;
- (c) communicating the health care decision in some way; or
- (d) understanding the effect of the health care decision.

The clause provides that an adult is taken to understand information relevant to a health care decision if the adult understands an explanation of the information given to the adult in a way that is appropriate to the adult's circumstances. It also provides that an adult is taken to communicate the health care decision if the adult communicates the decision in a way that is appropriate to the adult's circumstances. Usage

of modified language, visual aids or other means are provided to elaborate on what may be appropriate to the adult's circumstances.

The clause also provides that an adult may have impaired decision making capacity in relation to some matters and not others, and the degree may also vary over time. The cause of the impairment is immaterial.

The clause provides that an adult does not have impaired decision making capacity merely because the adult:

- (a) has a disability, illness or other medical condition, whether physical or mental;
- (b) requires the use of practicable and appropriate support, including additional time for explanation, modified language, visual or technological aids or other means of communication;
- (c) engages in unconventional behaviour or another form of personal expression;
- (d) chooses a living environment or lifestyle with which other people do not agree;
- (e) makes decisions with which other people do not agree; or
- (f) does not have a particular level of fluency in English; or
- (g) does not have a particular level of literacy or education; or
- (h) engages in particular cultural or religious practices; or
- (i) does or does not express a particular religious, political or moral opinion; or
- (j) is of a particular sexual orientation or gender identity or expresses particular sexual preferences; or
- (k) takes or took, or is or was dependent on, alcohol or drugs, unless the alcohol or drugs are causing actual impairment in relation to the health care decision; or
- (l) engages or engaged in illegal or immoral conduct.

Clause 9. Meaning of *willing and able*

This clause provides that a person is ***willing and able*** to make a health care decision for an adult with impaired decision making capacity if the person:

- (a) has capacity to make the decision;
- (b) is reasonably available, with an example provided of being available by telephone or video call;
- (c) is willing to make the decision;
- (d) understands the obligation to act in accordance with the decision making principles;
- (e) has the information reasonably needed to make a balanced decision;
- (f) has adequate time to consider that information;
- (g) understands the effect of making the decision; and
- (h) is able to make the decision voluntarily and without undue influence from any person.

Clause 10. Application of Criminal Code

This clause provides that the principles of criminal responsibility contained in Part IIAA of the Criminal Code apply to offences in the Bill.

Part 2 Health care decision makers

Clause 11. Authority of health care decision maker

This clause sets out that a health care decision maker has the authority to commence, continue, withdraw or withhold health care for a person who lacks capacity and has not made an advance consent decision in an advance personal plan in relation to the health care decision.

It also sets out that these powers do not extend to treatment or care ordered by the Local Court under the *Disability Services Act 1993*, specified treatment or care under the *Mental Health and Related Services Act 1998*, and neurosurgery for mental illness.

It inserts specific and relevant definitions that apply to this section as follows:

complex cognitive impairment as per section 6A of the *Mental Health and Related Services Act 1998*.

mental illness by making reference to section 6 of the *Mental Health and Related Services Act 1998*.

mentally disturbed by making reference to section 4 of the *Mental Health and Related Services Act 1998*.

Clause 12. Scope of health care decisions

This clause sets out the scope of health care decisions that can be made by health care decision makers when providing instructions to health care providers. Such decisions may relate to the care that is to be provided in specific circumstances or in relation to a course of health care. It is designed to ensure that instructions of a specific or general nature can be given but also to ensure that the health care decision maker cannot, in effect, abrogate responsibility.

Clause 13. Hierarchy of health care decision makers

This clause sets out the hierarchy of health care decision makers for an adult, in descending order of priority, as:

- a) a person with health care authority appointed by the adult under an advanced personal plan under the *Advance Personal Planning Act 2013*, or an equivalent document under a law of a State or another Territory;
- b) a guardian of the adult with health care authority appointed under the *Guardianship of Adults Act 2016*;
- c) a relative of the adult who is considered by Aboriginal or other customary law or tradition to be the appropriate person to be a health care decision maker;
- d) a spouse or de facto partner of the adult who has a close and continuing relationship with the adult;
- e) a person who is the carer of the adult and not providing that care as a service on a commercial basis;
- f) an adult child of the adult who has a close and continuing relationship with the adult;
- g) a parent of the adult who has a close and continuing relationship with the adult;

- h) a sibling of the adult who has a close and continuing relationship with the adult; and
- i) a friend of the adult who has a close and continuing relationship with the adult.

Note 1 to the clause clarifies persons appointed under paragraphs (a) and (b) are appointed under other legislation and therefore have statutory functions. On the other hand, the other persons in the list relate to familial or other connections the decision-maker may have with the adult.

There is also a note provided which spells out that clause 13(e) of the Bill is intended to operate so that a friend or relative is not precluded from being a health care decision maker because they are being paid by social services to be a carer of the adult.

There is another note which draws attention to fact that the Public Guardian may make guidelines under clause 54 of the Bill about applying and interpreting this clause. This includes such matters as determining who a decision maker is where there is more than one person and who could be a potential health care decision maker in a particular category.

Clause 14. Appropriate health care decision maker

This clause sets out the mechanism of how the hierarchy of health care decision makers in clause 13 of the Bill is to operate. It provides criteria which must be satisfied in order for a person to be considered as the appropriate health care decision maker. This criteria is that the person must have the highest priority under clause 13 of the Bill, be an adult, and be willing and able to make the decision.

To determine if a person has the highest priority under clause 13 of the Bill, the list of categories of health care decision makers must be considered in descending order of priority. If there is no person in a particular category which meets the other criteria set in clause 14 of the Bill, then any person in the next ranked category on the list can be a decision maker.

Any person in the first two categories who is appointed in the alternative, would need to be considered first prior to moving down to the next category in the hierarchy.

However, the appointment of a guardian with health care authority replaces the authority of any other person who had authority as a health care decision maker prior to the appointment of the guardian. This includes a person with health care authority appointed by the adult in an advanced personal plan (or similar document).

Section 18 of the *Guardianship of Adults Act 2016* requires NTCAT to take into account the existence of an advanced personal plan or an enduring power of attorney (similar document) in determining its guardianship order. NTCAT must not make an order that confers on a guardian authority for a matter which a relevant agent already has authority for. A relevant agent can include a decision maker under an Advanced Personal Plan or the donee under an enduring power of attorney. Should the NTCAT decide to confer on a guardian the same authority, it would require it to first scale back that authority which the relevant agent had.

In the case of the remaining categories of health care decision makers in clauses 13(c) to (i) of the Bill, there is also the possibility of there being two or more persons in a category who also meet the other criteria and could potentially be the health care decision maker. Determining who has priority will take place by referring to guidelines issued by the Public Guardian under clause 54 of the Bill.

To determine if a person is 'willing and able' to make a decision, reference is required to clause 9 of the Bill where this term is defined.

Clause 15. Multiple appointees

This clause sets out the principles governing the making of decisions if there are two or more potential decision makers with authority under the *Guardianship of Adults Act 2016* or the *Advance Personal Planning Act 2013*. The principles are:

- The decision making must be in accordance with their appointment. For example, under a guardianship order or under an advance care statement, a unanimous decision is required in the case of a joint appointment. This is also reflected in sections 21(2) and 59(2) (b) of the *Advance Personal Planning Act 2013*.
- If one of the persons is not willing and able to participate the remaining person or persons can make a decision, unless the persons are jointly appointed;
- If 2 or more persons who are severally appointed agree on the health care decision, any one of them may make the decision;
- If 2 or more persons who are jointly appointed do not agree on the health care decision, none of them may make the decision – this would mean that an application to NTCAT would be required in this case.

Clause 16. Relinquishing authority

This clause sets out circumstances in which a person who is health care decision maker under clause 13(c) – (j) may relinquish authority under the Bill. Such a person can, if they have taken on a role as health care decision maker, relinquish the role at any time and for any reason.

The *Guardianship of Adults Act 2016* governs the position where a guardian is not in a position to exercise responsibility.

The *Advance Personal Planning Act 2013* governs the position where a person with authority under that Act is not in a position to exercise responsibility.

No formal relinquishment is required if a person mentioned in clause 13(c)-(l) of the Bill as a potential decision maker does not ever take on the role (e.g. is not ever “willing and able” to make a health care decision).

Clause 17. Support to adult in making health care decision

This clause emphasises that a health care decision maker must make reasonable effort to assist a person in the making of a health care decision. In some circumstances that might include consulting with the person.

The clause also spells out that the health care decision maker can consult with other persons for information regarding the decisions that the person with impaired capacity might have wanted.

Clause 18. Decision making principles

This clause sets out the decision making principles that apply to health care decision makers.

The core principle is that of seeking to make the decision that the person with impaired decision making capacity would have made if that person still had capacity to make a decision for themselves.

Clause 19. Advance consent decision

This clause sets out the effect of an advance consent decision made by a decision maker under the *Advance Personal Planning Act 2013*. The effect is that the decision operates as if made by the person with impaired capacity and as if the person had capacity and was fully informed at the time when the health care decision was made.

This clause replaces section 26 of the *Advance Personal Planning Act 2013* concerning health care decisions.

Clause 20. Exemptions

This clause sets out the circumstances in which a health care decision maker is not required to comply with the decision making principles set out in clause 18 of the Bill.

A health care decision maker is not required to comply with 18(2) giving effect to an advance care statement if either; the adult made a written statement at a time they had decision making capacity, that they did not want the statement complied with; or there is no reasonable possibility the adult would have intended the statement to apply in the circumstances.

A health care decision maker is not required to comply the decision making principles generally if compliance would be impracticable, unlawful, unreasonably burdensome on another person; or it would so unreasonable as to justify overriding the wishes of the person with the impaired decision making capacity.

If a decision maker relies on clause 20 then they must keep a written record of reasons they did not comply.

These provisions essentially duplicate the section 23 of the *Advance Personal Planning Act 2013* which is being repealed and replaced by clause 69 of the Bill.

Clause 21. Benefit to third party

This clause sets out the circumstances in which a decision maker can make a decision that benefits a third party (e.g. a recipient of bone marrow). This can be done only if the provision of the benefit does not significantly and adversely affect the best interests of the adult. It must also be the kind of benefit that the person with impaired capacity provided before incapacity or which that person might reasonably have been expected to provide if they had capacity.

Clause 22. Role of Public Guardian

This clause clarifies that the Public Guardian role as the health care decision-maker of last resort for an adult with impaired decision make capacity if there is no advance consent decision, no appropriate health care decision under the section 13 hierarchy and no order made to NTCAT in relation to the decision.

The Public Guardian also has authority for an adult if:

- appointed as the adult's guardian with health care authority under the *Guardianship of Adults Act 2016*;
- appointed as a person with health care authority for the adult under the *Advance Personal Planning Act 2013*;
- ordered to be the health care decision maker by the NTCAT under clause 39(1)(c) of the Bill; and

Clause 22(3) of the Bill spells out the clauses of the Bill that apply to the Public Guardian when exercising his or her authority.

Part 3 Administering health care

Clause 23. Initial responsibilities of health care provider

This clause sets out that a health care provider must, when providing care to a person who lacks capacity, make reasonable attempts to determine whether a person has made an advance consent decision and, if not, make reasonable attempts to contact a health care decision maker for that person.

In taking these steps the health care provider must make reasonable efforts to follow any guidelines issued by the Public Guardian under clause 55 of the Bill. A written record of these steps must be kept.

Clause 24. Determination of capacity

This clause requires that, before a health care decision maker makes a health care decision for an adult with impaired decision making capacity, the health care provider must make an assessment as to the extent of the impaired capacity and make a determination as to whether there is a need for the health care decision maker to make a decision. If the assessment is that the incapacity is temporary, the range of health care decisions is limited as to what is necessary during the likely period of impairment.

Clause 25. Routine health care

This clause provides that a health care provider can administer routine care to an adult with impaired decision making capacity without the need for consent from a health care decision maker, which includes administering routine personal hygiene and grooming.

This clause clarifies the circumstances in which health care cannot be provided without consent. These include where the person with the impaired capacity objects to the treatment or where the treatment is ongoing or where there is significant intrusion into the body or where there is a significant risk of harm or side-effects or where there is significant pain or distress.

This clause also provides that a health care provider must make reasonable efforts to follow any guidelines issued by the Public Guardian under section 55(d).

Clause 26. Palliative care

This clause provides for the circumstances in which a health care provider can administer palliative care (as defined in clause 26(4)) without consent and despite objection from a health care decision maker. These circumstances are where the adult has an active, progressive and advanced disease and has little or no prospect of cure and there is an expectation of death. There is, however, a duty to consult with any health care decision maker and to take into account the preferences and values (if known) of the person with impaired decision making capacity.

Clause 27. Relief from pain and distress

This clause sets out the principle that a health care decision maker should exercise their authority so that the person with impaired decision making capacity does not needlessly suffer significant pain or distress.

The clause also provides that a health care provider can administer health care so as to provide relief from significant pain or distress despite any direction from a health care decision maker.

Clause 28. Cosmetic surgery and other treatments

This clause provides for various cosmetic procedures to be consented to by a health care decision maker if the procedure is justified as health care or if both of the following apply:

- The person has given explicit instructions for the procedure before loss of decision making capacity; and
- The procedure carries a low risk of harm to the person.

Clause 29. Role of health care decision makers regarding “restrictive practices”

This clause provides that as a general rule, health care decision makers have no authority to consent to “restrictive practices”. Restrictive practices are practices or health care that restrict a person’s rights or freedom of movement including seclusion, chemical restraint, mechanical restraint, physical restraint and environmental restraint.

However, clause 29(2) also expressly provides for a range of restrictive practices that can be consented to by a health care decision maker. These circumstances include in accordance with directions given by the Senior Practitioner under clause 54 of the Bill, a temporary practice approved by the Director of

medical services at a hospital or a practice authorised under another law of the Territory or prescribed by regulation.

Clause 29(4) provides that where an allowable restrictive practice is consented to by a health care decision maker for an adult, any health care provider implementing the practice must make reasonable efforts to follow directives issued by the Senior Practitioner under section 54.

Clause 30. Restricted health care

This clause sets out the kinds of decisions regarding which a health care decision maker has no authority to provide consent. These are sterilisation, pregnancy termination, removal of non-regenerative tissue, special medical research or experimental health care, electroconvulsive therapy, aversive stimuli and any other treatment prescribed in by regulation.

However, clause 29(2) also provides that that a health care decision maker can consent to sterilisation or termination of a pregnancy if the primary reason is to treat some other health issue and serious or irreversible damage is likely to be caused to the person's health if the procedure is not performed.

The clause also set out the circumstances in which data collection, clinical trials or psychological research may be carried out. These circumstances are where the trial or research is approved by a relevant ethics committee and is conducted in accordance with guidelines made under section 10 of the *National Health and Medical Research Council Act 1992* (Cth) or data collection, a clinical trial or psychological research that is prescribed by regulation.

This clause replaces section 25 of the *Advance Personal Planning Act 2013*.

Clause 31. Reliance on health care decision makers and others

This clause spells out that a health care provider is, in providing health care to a person, deemed to have consented to do so if the health care provider reasonably believes the person has impaired decision making capacity and relies on consent to the health care or a health care decision given by:

- an adult in an advance consent decision,
- by another person whom the health care provider believes on reasonable grounds to be the appropriate health care decision maker for the adult;
- the Public Guardian under clause 22 of the Bill; or
- the NTCAT under clause 41(1)(c) and (d) of the Bill.

The clause further provides that this has effect even if administering the health care will hasten the death of the adult.

If NTCAT has ordered that a health care decision be disregarded the health care provider is still protected regarding decisions made in accordance with a decision under the *Advance Personal Planning Act 2013* if they were not aware of the order and cannot be reasonably expected to have known about the NTCAT order.

Clause 32. Reliance on consent of adult with unknown impaired decision making capacity

This clause spells out that a health care provider is, in providing health care to a person with impaired decision making capacity, deemed to have appropriate consent if, in respect of a person with impaired decision making capacity if the health care provider relied in good faith on consent purportedly provided by that person and the health care provider did not know or could not reasonably be expected to know that the person had impaired decision making capacity.

Clause 33. Other responsibilities of health care provider

This clause spells out that nothing in the legislation affects any other duties of care owed by a health care provider. Also nothing in the Bill affects any obligations of a health care provider under another law of the Territory, requirements imposed by any professional organisation or operational requirements for the administration of health care.

Clause 34. Unnecessary health care

This clause provides that there is nothing in the Bill which requires a health care provider to administer health care that is extraordinary, excessively burdensome, intrusive or futile.

Clause 35. Deemed unprofessional conduct

This clause deems a health care provider to have engaged in unprofessional conduct under the Health Practitioner Regulation National Law and any other law prescribed by regulation if the health care provider believes on reasonable grounds that an adult has impaired decision making capacity to make a health care decision but still continues to administer health care to the adult without a decision from a health care decision maker where the health care was of a kind for which a decision from a health care decision maker was required.

Clause 36. Other laws allowing health care without consent not affected

This clause provides that the Bill does not affect the operation of any other law of the Territory that allows a person to administer health care to another person without the other person's consent. An example provided of this is Part 3 of the *Mental Health and Related Services Act 1998*.

Clause 37. Other rights preserved

This clause preserves other rights by stating that the Bill does not affect any right of an adult with capacity to make a health care decision and does not affect the common law relating to the recognition of an adult's instructions about their health care that are given other than in an advance personal plan.

Part 4 Urgent health care

This part applies to both adults and children.

Clause 38. Application

The clause provides the Part 4 applies to the administration of health care to both adults and children. Clause 38 also clarifies that Part 2 and 3 are subject to this Part and if there is an inconsistency, Part 4 prevails.

Clause 39. Urgent health care without consent

This clause provides that a health care provider may administer health care to an individual without their consent or the consent of any other person if there is a belief, on reasonable grounds, that the health care is necessary as a matter of urgency to save the individual's life, prevent serious damage to the individual's health or prevent the individual from continuing to suffer significant pain or distress.

The individual must have impaired decision making capacity in relation to the health care.

There is a requirement that it must not be practicable to delay the health care to attempt to obtain consent from the individual (where the impaired decision making capacity is temporary) or from a health care decision maker. The urgent health care must be limited to health care that is necessary as a matter of urgency.

A health care provider is not authorised to administer health care to an individual if the health care provider is aware the individual has refused that health care by way of an advance consent decision or a previously informed refusal when the individual did not have impaired decision making capacity.

This clause replaces the *Emergency Medical Operations Act 1973* (which is repealed by clause 59 of the Bill).

Part 5 NTCAT

This part provides for the role of NTCAT.

Clause 40. Application to NTCAT

This clause sets out who can make an application to NTCAT for an order under clause 41 of the Bill. The applicants include a health care provider who has the care of an adult or is administering health care to an adult, the health care decision maker for the adult, the Public Guardian and any other person whom the NTCAT is satisfied has a special interest in the affairs of the adult.

If an application is on the grounds that a health care decision maker made or is making a health care decision contrary to the wishes of an adult, such an application must be filed with the NTCAT no later than one day after the applicant forms a reasonable belief of those grounds.

Other applications must be commenced as soon as practicable.

Clause 41. Orders by NTCAT

This clause provides that NTCAT may, on application or its own initiative, as part of its original jurisdiction, make orders dealing with one or more of the following:

- limiting or varying the authority of a health care decision maker to make a decision under the Bill;
- deciding who the appropriate health care decision maker is for an adult with impaired decision making capacity;
- determining who should be the health care decision maker or making the health care decision itself where a health care decision maker is not willing and able to make a health care decision;
- approving a practice or health care which is otherwise prohibited under clause 30;
- disregarding an advance consent decision if NTCAT is satisfied there is no reasonable possibility that the adult would have intended the advance consent decision to apply in the circumstances, or giving effect to it would cause the adult unacceptable pain and suffering, or giving effect to it would otherwise be so wholly unreasonable that it is justifiable to override the adult's wishes; or
- any related matter NTCAT considers necessary.

Clause 42. Parties

This clause provides that the parties to any proceedings before NTCAT are:

- the adult to whom the health care is to be administered or for whom the health care decision is to be made,
- any person who commenced the proceeding;
- any health care decision maker who is the subject of the proceeding, and
- any person whose selection as a health care decision maker is the subject of the proceeding.

The clause also provides that the Public Guardian may intervene in any proceeding before NTCAT under the Bill.

Clause 43. Closed proceedings

This clause provides that, as a general rule, NTCAT proceedings under the legislation are to be closed and that information identifying the parties is not to be published. This may be put aside by NTCAT if it considers that it is in the public interest to do so. This is the same as section 80 of the *Guardianship of Adults Act 2016*.

Clause 44. Oral reasons and findings of fact

This clause provides the NTCAT with the discretion to give the reasons for a decision and any relevant findings of fact orally to the parties to the proceedings. It provides for the NTCAT to give the reasons in writing within 28 days of being requested by a party to a proceeding, with such request having to be made within 28 days from when the reasons are given orally. It also permits the President of NTCAT to be able to extend these time limits.

Clause 45. No internal review

This clause provides that there are no internal reviews of decisions by NTCAT. This negates the effect of section 140(1) of the *Northern Territory Civil and Administrative Tribunal Act 2014* which provides for a general right to internal review regarding NTCAT decisions.

Part 6 Offences

Clause 46. Disclosure of identity information

This clause provides that it is an offence to recklessly disclose information that might lead to the identification of a party to proceedings before NTCAT. It is not an offence if the disclosure is authorised by NTCAT, or if it relates to a purpose connected with the administration of the Bill or is to a person who is otherwise entitled to the information. A maximum penalty is provided of 200 penalty units (\$32 400) and/or two years imprisonment.

The offence is similar to the offence in section 90 of the *Guardianship of Adults Act 2016*.

Clause 47. False representation

This clause provides that it is an offence for a person to intentionally falsely misrepresent that they or another person is a health care decision maker or a health care decision maker with authority in respect of a particular matter. The maximum penalty is 200 penalty units (\$32 400) and/or two years imprisonment. If the false representation is done with the intention of obtaining a benefit, the maximum penalty is seven years imprisonment and/or 200 penalty units.

The offence is similar to the offence in section 86 of the *Guardianship of Adults Act 2016* and section 76 of the *Advance Personal Planning Act 2013*.

Clause 48. Misleading information

This clause provides that it is an offence for a person to intentionally give misleading information or a document containing misleading information to the Public Guardian, the Senior Practitioner, a member of NTCAT, a health care provider, a health care decision maker, or a person acting under the authority of these people. The person receiving the information must be acting in an official capacity and the person providing the information must have knowledge of that circumstance.

Two offence provisions are provided. One for misleading information and another for a document containing misleading information, with a maximum penalty of 400 penalty units (\$64 800) or two years imprisonment.

A defence is provided for the person if defendant being prosecuted against these offences if when giving the information or document the defendant drew the misleading aspect of it to the other person's attention and to the extent to which the defendant could reasonably do so, gave the other person the information necessary to remedy the misleading aspect of the information or document.

The offence is similar to the offences in section 89 of the *Guardianship of Adults Act 2016* and section 80 of the *Advance Personal Planning Act 2013*.

Clause 49. Improper exercise of authority

This clause provides that it is an offence for a person to intentionally engage in conduct purporting to be the exercise of authority as a health care decision maker for an adult when the adult does not have impaired decision making capacity for that health care decision and the person is reckless in relation to that circumstance.

The maximum penalty is 400 penalty units (\$64 800) or five years imprisonment. If the person engages in this conduct with the intention of obtaining a benefit then maximum penalty is 400 penalty units (\$64 800) or seven years imprisonment.

The offence is similar to the offence in section 87 of the *Guardianship of Adults Act 2016* and section 79 of the *Advance Personal Planning Act 2013*.

Clause 50. Acting without authority

This clause provides for an offence with a maximum penalty of 400 penalty units (\$64 800) or imprisonment for five years if a person intentionally makes a health care decision in relation to an adult with impaired decision making capacity without having authority to do so as the health care decision maker and while being reckless to the circumstance of not having authority.

Clause 51. Contravention of decision making principles

This clause provides for an offence if a person is a health care decision maker and intentionally engages in conduct in contravention of the decision making principles in clause 18 of the Bill, is reckless in relation to that result and the conduct is not exempted by clause 20 of the Bill.

A maximum penalty of 400 penalty units (\$64 800) or imprisonment for five years is provided for. If the person engages in this conduct with the intention of obtaining a benefit then the maximum penalty is 400 penalty units (\$64 800) or seven years imprisonment.

Clause 52. Inducing contravention of decision making principles

This clause provides for an offence for a person to intentionally engage in conduct that induces a health care decision maker to contravene the decision making principles in clause 18 of the Bill. The person must have intention in relation to that result and the result must not be exempted by clause 20 of the Bill.

A maximum penalty of 400 penalty units (\$64 800) or five years imprisonment is provided for this offence. If the person engages in this conduct with the intention of obtaining a benefit then the maximum penalty is 400 penalty units (\$64 800) or seven years imprisonment.

The offence is similar to the offence in section 88 of the *Guardianship of Adults Act 2016*.

Clause 53. Limitation period for prosecutions

This clause provides a limitation period of two years from the day on which an offence was committed under the Bill to bring proceedings. If an offence is committed on multiple days, the time period will count from the last day on which the offence was committed.

However, proceedings may be brought after the end of the limitation period if fresh evidence is discovered relevant to the offence and a court of competent jurisdiction is satisfied that the evidence could not reasonably have been discovered within the limitation period.

Part 7 Administrative and other matters

Clause 54. Senior Practitioner directives and approvals

This clause provides for certain directives and approvals to be issued by the Senior Practitioner in consultation with the Public Guardian regarding the use of a restrictive practice prohibited under clause 29 of the Bill.

Clause 55. Public Guardian guidelines

This clause provides that the Public Guardian can make guidelines for applying and interpreting clause 13 of the Bill which deals with the hierarchy of health care decision makers. This would include making guidelines on how to determine the appropriate health care decision maker when more than one person may be the appropriate health care decision maker.

The Public Guardian can also make guidelines with regard to how a health care provider can satisfy their duties and responsibilities under clause 23, determining capacity under clause 24 of the Bill, administering routine health care under clause 25 of the Bill and the making of health care decisions generally under the Bill.

Clause 56. Report to Public Guardian

This clause provides that a health care provider must provide notice to the Public Guardian if the person is aware a health care decision maker is refusing consent in circumstance where the health care provider believes on reasonable grounds that the health care decision maker does not know or cannot infer the wishes of the person with impaired decision making capacity.

It is noted that the Public Guardian has powers under the *Guardianship of Adults Act 2016* to take action if appropriate to the circumstances.

Clause 57. Liability of health care providers

This clause provides that a health care provider who, in good faith and takes health care action under this act for a person will be protected in relation to civil or criminal proceedings or other civil matters such as professional misconduct.

Clause 58. Regulations

This clause provides for the making of regulations by the Administrator and it provides that the Regulations may apply, adopt or incorporate another document in force at a particular time or existing at a particular time.

Part 8 Repeal

Clause 59. Act repealed

This clause repeals the *Emergency Medical Operations Act 1973* (Act No. 45, 1973). This Bill incorporates the provisions of that Act.

Part 9 **Consequential Amendments**

Division 1 **Advance personal planning legislation**

Subdivision 1 **Advance Personal Planning Act 2013**

Clause 60. **Act amended**

This clause provides that this subdivision amends the *Advance Personal Planning Act 2013*.

Clause 61. **Long title amended**

This clause amends the long title by omitting the word “lose” from the phrase “lose decision-making capacity” and replacing it with “have impaired”. This brings the terminology into line as that proposed for health care decision making under this Bill.

Clause 62. **Section 3 amended (definitions)**

This clause omits definitions of “health care”, “health care provider”, “impaired decision-making capacity” and “willing and able to make an informed consent decision” and replaces them with new definitions. The terms “health care” and “health care provider” are redefined with reference to clause 6 of the Bill. The term “impaired decision-making capacity” is redefined with reference to new section 6A of the *Advance Personal Planning Act 2013*, as inserted by clause 65 of the Bill.

Clause 63. **Section 5 amended (Meaning of *reasonably believes*)**

This clause omits section 5(3) of the *Advance Personal Planning Act 2013* that current provides that a belief by a health care provider in relation to health care action is not reasonable under that Act unless it is consistent with the generally accepted standards of good professional practice or the relevant profession.

This provision is being omitted as the Bill now provides a stand-alone framework for exercising health care decision making and the principles underlying it, and section 5(3) is no longer necessary to guide the actions of health care providers in relation to health care decisions for persons with impaired capacity.

Clause 64. **Section 6 amended (Decision-making capacity and impaired decision-making capacity)**

This clause repeals and replaces the heading for section 6 and repeals sections 6(3), (4) and (5) of the *Advance Personal Planning Act 2013* which deal with the definition of impaired decision-making capacity.

Clause 65. **Sections 6A and 6B inserted**

This clause inserts new sections 6A and 6B into the *Advance Personal Planning Act 2013*.

6A Meaning of *impaired decision making capacity*

The new section 6A of the *Advance Personal Planning Act 2013* provides a meaning for ‘impaired decision making capacity’. It provides various listed circumstances under which an impairment is relevant in determining whether an adult’s capacity to make a decision is impaired. It also provides various circumstances under which an adult does not have impaired decision making capacity. This provision is consistent with clause 8 of the Bill.

6B Health Care Decision Making Act 2023

This new section 6B clarifies that the *Advance Personal Planning Act 2013* is subject to the *Health Care Decision Making Act 2023* and if a provision of the *Advance Personal Planning Act 2013* is inconsistent with the Act then the Act prevails to the extent of the inconsistency.

Clause 66. Section 8 amended (Adult may make advance personal plan)

This clause modernises drafting language by making the clause gender neutral.

Clause 67. Section 20 amended (Authority of decision maker)

This clause omits and replaced section 20(3) of the *Advance Personal Planning Act 2013*. The effect of the amendment is that a decision maker's authority operates subject to the *Advance Personal Planning Act 2013*, the Bill and the terms of the advance personal plan by which the decision maker was appointed.

Clause 68. Section 21 amended (Exercise of authority by decision maker)

This clause amends section 21(1)(b)(iii) of the *Advance Personal Planning Act 2013* by including a reference to the *Health Care Decision Making Act 2023* in addition to the *Advance Personal Planning Act 2013* as to what a decision maker is required to comply with.

Clause 69. Sections 22 and 23 replaced

This clause repeals and replaces sections 22 and 23 of the *Advance Personal Planning Act 2013* with new sections 22 and 23 of the *Advance Personal Planning Act 2013*.

22 Decision making principles

New section 22 of the *Advance Personal Planning Act 2013* replaces the decision-making principles in the existing section 22 of the *Advance Personal Planning Act 2013* so as to provide consistency with the principles under the Bill, specifically clause 18.

23 Exemptions

This clause sets out the circumstances in which a decision maker under the *Advance Personal Planning Act 2013* is not required to comply with the decision making principles set out in the new section 22 of the *Advance Personal Planning Act 2013*. The circumstances include impracticability, unlawfulness, burdens that are unreasonable, no reasonable possibility that the adult would have intended that an advance care statement would apply if compliance is so unreasonable so as to justify overriding the wishes of the person with the impaired decision making capacity. This new provision is consistent with the exemption provisions under clause 20 of the Bill.

Clause 70. Sections 25 and 39A repealed

This clause repeals sections 25 and 39A.

Clause 71. Part 4, Divisions 2, 3 and 4 repealed

This clause repeals Divisions 2, 3 and 4. These sections all deal with decision and consents to health care actions in relation to adults with impaired decision making capacity, which are all to be dealt with by the new decision making framework under the Bill.

Clause 72. Sections 63 and 64 repealed

This clause repeals sections 63 and 64.

Clause 73. Part 8, Division 4 inserted

This clause inserts new Division 4 providing for transitional matters relating to the commencement of the Bill. It provides that an advance consent decision set out in an advance personal plan, or a consent decision made by a decision maker or adult guardian, about health care action under the *Advance Personal Planning Act 2013* which is in effect immediately before the commencement of Part 2 of the Bill continues to have effect in accordance with its terms after commencement of Part 2 of the Bill.

Subdivision 2 Advance Personal Planning Regulations 2014

Clause 74. Regulations amended

This clause provides that this subdivision amends the *Advance Personal Planning Regulations 2014*.

Clause 75. Regulation 4 repealed (Restricted health matters)

This clause repeals Regulation 4 dealing with restricted health matters as these matters are dealt under clause 30 of the Bill.

Clause 76. Regulation 9 amended (Exercise of rights and powers under recognized interstate documents)

This clause omit references to 24 and 25 of the *Advance Personal Planning Act 2013* and replaces them with references to section 24 of that Act and clause 30 of the Bill.

Division 2 Guardianship of adults legislation

Subdivision 1 Guardianship of Adults Act 2016

Clause 77. Act amended

This clause provides that this subdivision amends the *Guardianship of Adults Act 2016*.

Clause 78. Section 3 amended (Definitions)

This clause also omits and replaces a number of definitions such as “health care” and “health care provider” in section 3 of the *Guardianship of Adults Act 2016* and replaces them with definitions linked to these terms as defined in the Bill.

This clause also omits the definition of “impaired decision-making capacity” in section 3 of the *Guardianship of Adults Act 2016* and replaces it with a definition contained in a new section 5A of the *Guardianship of Adults Act 2016* as inserted by clause 79 of the Bill.

This clause also amends the definition of “agent” for an adult, in section 3 of the *Guardianship of Adults Act 2016*, by repealing and replacing paragraph (d) to define an agent as a health care decision maker with authority under the *Health Care Decision Making Act 2023*.

Clause 79. Section 4 amended (Guardianship principles)

This clause amends the guardianship principles contained in section 4 of the *Guardianship of Adults Act 2016* by inserting subsection (1A) to carve out the health care or consent decisions about health care action from that Act as these are to be dealt with under the Bill i.e. according to decision making principles provided for in clause 18 of the Bill.

Clause 80. Section 5 amended

This clause amends the heading of section 5 of the *Guardianship of Adults Act 2016* so that it reads “Meaning of *decision-making capacity*” instead of “Meaning of *decision-making capacity and impaired decision-making capacity*”.

This clause also removes section 5(3), (4), (5) and (6) of the *Guardianship of Adults Act 2016* which deal with impaired decision-making capacity as this will be covered under new section 5A as inserted by clause 81 of the Bill.

Clause 81. Section 5A and 5B inserted

This clause inserts new sections 5A and 5B.

5A Meaning of *impaired decision making capacity*

This clause inserts a new section 5A in the *Guardianship of Adults Act 2016* which provides a revised definition for the term ‘impaired decision-making capacity’. It is similar to the definition in clause 8 of the Bill with a notable exception being that it is not limited to health care.

5B *Health Care Decision Making Act 2023*

This clause inserts a new section 5B into the *Guardianship of Adults Act 2016* to make the *Guardianship of Adults Act 2016* subject to the *Health Care Decision Making Act 2023* (when made) and if a provision of the *Guardianship of Adults Act 2016* is inconsistent with the Act then the Act is to prevail to the extent of the inconsistency.

Clause 82. Section 8 repeal (Meaning of *restricted health care*)

This clause repeals section 8 of the *Guardianship of Adults Act 2016* which provides a definition of the term “restricted health care”. This term will be covered under clause 30 of the Bill.

Clause 83. Section 23 replaced

This clause omits and replaces section 23 of the *Guardianship of Adults Act 2016* and provides that the authority of a guardian regarding a health care decision is subject to both the *Advance Personal Planning Act 2013* and the *Health Care Decision Making Act 2023*.

Clause 84. Part 8, Division 4 inserted

This clause inserts new Division 4 and inserts a transitional provision, section 105, which provides that a consent decision about health care action made by a guardian under the *Guardianship of Adults Act 2016* which is in effect immediately before the commencement of clause 83 of the Bill continues to have effect in accordance with its terms after the commencement of clause 83 of the Bill.

Subdivision 2 Guardianship of Adults Regulations 2016

Clause 85. Regulations amended

This clause provides that this subdivision deals with a consequential amendment to the *Guardianship of Adults Regulations 2016*.

Clause 86. Regulation 3 repealed (Restricted health care)

This clause repeals Regulation 3 of the *Guardianship of Adults Regulations 2016* which covers types of restricted health care under section 8(1)(e) of the *Guardianship of Adults Act 2016* which is being repealed by clause 82 of the Bill due to it being covered by clause 30 of the Bill.

Division 3 Mental Health and Related Services Act 1998

Clause 87. Act amended

This clause provides that this division amends the *Mental Health and Related Services Act 1998*.

Clause 88. Section 4 amended (Definitions)

This clause omits and replaces the definition of “health care decision maker” in section 4 of the *Mental Health and Related Services Act 1998*. While the previous definition was limited to a decision maker appointed under an advanced person plan, the new definition expands this to cover a person who has authority under the *Health Care Decision Making Act 2023* to make health care decisions for the person. This would include a decision maker under an advanced personal plan as well as various other health care decision makers possible under the Bill as per the hierarchy of decision makers.

This clause also amends the definition of “adult guardian” under the *Mental Health and Related Services Act 1998* to remove the reference to “best interests”.

Clause 89. Section 25 amended (Voluntary admission)

This clause provides that that family/friends decision makers, as with guardians and decision makers under the *Advance Personal Planning Act 2013*, cannot make an application for a person to be voluntarily admitted under section 25 of *Mental Health and Related Services Act 1998*.

Clause 90. Section 54 amended (Treatment after voluntary admission)

This clause omits and replaces section 54(1) of the *Mental Health and Related Services Act 1998* to reflect the fact that no health care decision maker can consent to a voluntary admission of an adult with impaired decision making capacity under the *Mental Health and Related Services Act 1998*.

Clause 91. Section 63 amended (Non-psychiatric treatment)

Section 63 of the *Mental Health and Related Services Act 1998* sets out the circumstances in which a person may be subjected to non-psychiatric treatment. Section 63(3)(c) of the *Mental Health and Related Services Act 1998* provides that non-psychiatric treatment must not be performed unless informed consent for the treatment is obtained from an adult guardian or decision maker for the person, or from the NTCAT, in accordance with Part 4 of the *Advance Personal Planning Act 2013*. This clause amends section 63(3) (c) of the *Mental Health and Related Services Act 1998* to instead require informed consent for the treatment to be obtained in accordance with the *Health Care Decision Making Act 2023*.

Clause 92. Section 64 amended (Major medical procedure)

Section 64 of the *Mental Health and Related Services Act 1998* sets out that a person must not perform a major medical procedure on a person who is an involuntary patient or subject to a community management order unless exceptions exist.

One of the exceptions is if it is approved by the NTCAT. Another exception is if informed consent is obtained from a health care decision maker for the person, or from the NTCAT, in accordance with Part 4 of the *Advance Personal Planning Act 2013*. The amendment is to expand the scope of the latter by instead providing an exception if informed consent is obtained in accordance with the *Health Care Decision Making Act 2023*.

It continues to permit an authorised psychiatric practitioner to authorise the performance of a major medical procedure on a person where it is immediately necessary to save their life or prevent irreparable harm to them. The practitioner is required to report any such authorisation within one day to the person who should have given informed consent under the *Health Care Decision Making Act 2023*.

Clause 93. Section 66 amended (Electroconvulsive therapy)

This clause omits and replaces section 66(1) of the *Mental Health and Related Services Act 1998* to reflect the fact that health care decision makers can no longer consent to electroconvulsive therapy for an adult with impaired decision making capacity.

Clause 94. Section 80A amended (Voluntary admission of prisoner)

This clause omits and replaces section 80A(1)(b)(ii) of the *Mental Health and Related Services Act 1998* to reflect the fact that health care decision makers cannot consent to the voluntary admission of an adult with impaired decision making capacity, which extends to prisoners.

Clause 95. Section 91 amended (Disclosure of information)

This clause provides an offence of providing personal information regarding a person contained in a record kept by an approved treatment facility or agency. However, section 91(2) sets out a list where this information is able to be provided. This clause will insert a new paragraph 91(2)(ka) to provide the

this type of information can be provided to a health care decision maker if required for a health care decision under the *Health Decision Making Act 2023*.

Clause 96. Section 92 amended (Access to records)

This clause inserts new section 92(1)(bb) into the *Mental Health and Related Services Act 1998* to provide that a health care decision maker can apply for access to records about a person if the information is required for a health care decision under the *Health Decision Making Act 2023*.

Clause 97. Section 94 amended (Inclusion of written comments into records)

This clause amends section 94 of the *Mental Health and Related Services Act 1998* by inserting a reference to health care decision maker (which is defined under section 4 to be as per the definition in the *Health Care Decision Making Act 2023*) so that the provision also applies so that approved treatment facilities and agencies requirements to maintain records of a person with impaired capacity must include details in those records of that person's health care decision maker's comments.

Clause 98. Section 99 amended (Withholding of certain correspondence)

This clause amends section 99 by inserting subclause 99(2)(hc) so that a health care decision maker for a person with impaired capacity is one of the persons added to the list of persons entitled to receive letters or postal articles addressed to a person with impaired capacity who is the subject of restriction order under section 98.

Division 4 Powers of Attorney Act 1980

Clause 99. Act amended

This clause provides that Division 4 of the Bill amends the *Powers of Attorney Act 1980*.

Clause 100. Section 15A amended (Exercise of power)

This clause amends section 15A of the *Powers of Attorney Act 1980* to correct a cross reference to section 23 of the *Advance Personal Planning Act 2013* to ensure consistency with a consequential amendment being made to section 23 of the *Advance Personal Planning Act 2013* by this Bill.

Division 5 Transplantation and Anatomy Act 1979

Clause 101. Act amended

This clause provides that Division 5 of the Bill contains amendments to the *Transplantation and Anatomy Act 1979*.

Clause 102. Section 8 amended (Consent by adult living donor to removal of tissue)

This clause amends section 8(1) of the *Transplantation and Anatomy Act 1979* to modernise drafting language by making the clause gender neutral.

It also amends the notes to section 8 of the *Transplantation and Anatomy Act 1979* to insert references to the *Health Care Decision Making Act 2023* and its operation.

Clause 103. Section 10 amended (Certificate of medical practitioner)

This clause amends section 10 of the *Transplantation and Anatomy Act 1979* to update the provision by omitting the current reference to the *Advance Personal Planning Act 2013* and replaces with reference to the *Health Care Decision Making Act 2023*.

Clause 104. Section 11 amended (When consent authorises removal of tissue)

This clause corrects section 11 of the *Transplantation and Anatomy Act 1979* to reflect the fact that the Local Court no longer has jurisdiction under section 44 of the *Advance Personal Planning Act 2013*, as it now rests with the NTCAT under the *Health Care Decision Making Act 2023*.

Clause 105. Section 14 amended (Consent to removal of blood)

This clause amends section 14 of the *Transplantation and Anatomy Act 1979* to modernise drafting language by making the clause gender neutral.

It also amends note 2 to section 14 of the *Transplantation and Anatomy Act 1979* to insert references to the *Health Care Decision Making Act 2023* and its operation.

Clause 106. Section 16 amended (How consent is revoked)

This clause amends the note to section 16 of the *Transplantation and Anatomy Act 1979* to insert references to the *Health Care Decision Making Act 2023* and its operation.

Clause 107. Section 26 amended (Act does not prevent specified removals of tissue etc.)

This clause provides for the removal of a reference to the *Emergency Medical Operations Act 1973* that is being repealed and replaced with provisions of the *Health Care Decision Making Act 2023*. This clause will remove that reference and replace it with a reference to Part 4 of the *Health Care Decision Making Act 2023*.

Division 6 Repeal of Part

Clause 108. Repeal of Part

This is a standard clause for parts of legislation that consist entirely of amendments to other legislation. It provides that this Part of the Bill is repealed the day after it has performed its function of repealing or amending by commencement.