



**Public Justice, Private Lives:
A New Approach to Confidentiality
in the Guardianship System**

Report
Volume 2

**Queensland
Law Reform Commission**

**Public Justice, Private Lives:
A New Approach to Confidentiality
in the Guardianship System**

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To: The Honourable Kerry Shine MP
Attorney-General and Minister for Justice and
Minister Assisting the Premier for Western Queensland

In accordance with section 15 of the *Law Reform Commission Act 1968* (Qld), the Commission is pleased to present its Report, *Public Justice, Private Lives: A New Approach to Confidentiality in the Guardianship System* Volume 2.

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Public Justice, Private Lives: A CD-ROM Companion, WP 62 (August 2006)

Confidentiality: Key questions for people who may need help with decision-making, MP 38 (July 2006)

Confidentiality: Key questions for families, friends and advocates, MP 39 (July 2006)

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Preface

A NEED FOR GREATER OPENNESS

1.1 In Volume 1 of this Report, the Commission set out its recommendations for a new approach to confidentiality in the guardianship system.

1.2 The central principle that has guided the Commission's recommendations is that there should be greater openness.¹ The Commission considers this is important for two reasons.

1.3 The first is the need for the community to have confidence in the guardianship system. The response to the Commission's consultation revealed some mistrust in the system, and issues of confidentiality often underpinned the concerns raised. Greater openness will promote the accountability and transparency of the current system and enhance community confidence.

1.4 The second reason why greater openness is needed is to promote and safeguard the rights and interests of adults with impaired capacity. Traditionally, it has been argued that an adult's rights and interests warrant the imposition of some level of confidentiality. However, the Commission considers that insufficient weight has been given to the important role that open justice and procedural fairness play in promoting and safeguarding the rights and interests of adults with impaired capacity, both individually and as a group.

KEY RECOMMENDATIONS

Tribunal proceedings²

1.5 The Commission has examined the Tribunal's power to close hearings to the public, to exclude people from hearings, and to withhold documents and information from active parties to proceedings. To achieve greater openness, the Commission has recommended the following reforms.

- The current provisions dealing with 'confidentiality orders' do not reflect the fact that it is only in limited circumstances that a document or information will be kept confidential from an active party. Accordingly, the Commission has recommended the creation of four new types of orders (collectively called limitation orders) that better reflect the nature of the decision being made:
 - adult evidence orders – which permit the Tribunal to speak with the adult in the absence of others if, for example, it is necessary to obtain relevant information that the Tribunal would otherwise not receive;

¹ See para 3.156, 3-2 in Volume 1 of this Report.

² See Chapters 4 and 5 in Volume 1 of this Report.

- closure orders – which permit the Tribunal to close a hearing or part of a hearing to all or some members of the public, or to exclude a particular person (including an active party) from a hearing or part of a hearing;
 - non-publication orders – which permit the Tribunal to prohibit the publication of information about Tribunal proceedings; and
 - confidentiality orders – which permit the Tribunal to withhold a document or information from an active party.
- The Commission has recommended that the criteria for making limitation orders be significantly narrowed. In particular, the Commission has recommended that there be a legislative presumption of openness and that, generally, the Tribunal must be satisfied that making such an order is necessary to avoid serious harm or injustice.
 - The Commission has recommended the establishment of a series of procedural safeguards to promote community confidence and ensure careful deliberation in the making of limitation orders. These safeguards include:³
 - granting standing to be heard, and to appeal, to the Public Advocate and others, such as the media; and
 - requiring the Tribunal to give written reasons for the making of a limitation order.

Tribunal decisions and reasons⁴

1.6 The Commission has recommended that the Tribunal’s power to withhold from active parties to a proceeding a decision and the reasons for it be removed. This reflects the Commission’s view that the provision of reasons for a decision is an integral part of ensuring transparent and accountable decision-making by the Tribunal.

1.7 The Commission has recommended, however, that the Tribunal may delay notification of a decision for a period up to 14 days to avoid serious harm to a person or the effect of the Tribunal’s decision being defeated.

Publication of information about Tribunal proceedings⁵

1.8 The Commission has recommended that, generally, the media and others should be able to publish information about Tribunal proceedings. The Commission considers that this will promote accountability and transparency in decision-making,

³ The Commission has recommended that not all of the procedural safeguards should apply to the making of adult evidence orders due to the different purpose of these orders and the nature of the guardianship system: see para 4.317–4.318 in Volume 1 of this Report.

⁴ See Chapter 6 in Volume 1 of this Report.

⁵ See Chapter 7 in Volume 1 of this Report.

and will also improve community understanding of the Tribunal and its role in the guardianship system.

1.9 However, the Commission recognises the potential vulnerability of adults with impaired capacity, and has therefore recommended that the publication of information that is likely to lead to the identification of people about whom applications are made should be prohibited. The Commission has also recommended that the Tribunal should have the power to vary this position so that publication of information otherwise permitted may be prohibited, and that publications generally prohibited may be permitted.

General duty of confidentiality⁶

1.10 The Commission has recommended that the general duty to keep information that is received in the course of performing a role under the guardianship legislation confidential be retained. However, the Commission has recommended that the duty be reconceptualised as a duty to use information appropriately rather than one that imposes a blanket prohibition on disclosure subject to the existence of an exception. This shift in the nature of the duty responds to concerns expressed during consultation that the imposition of a blanket duty inhibits disclosures of confidential information that are appropriate and necessary for the guardianship system to function effectively.

1.11 The Commission has recommended that a wider range of exceptions be introduced including exceptions permitting disclosures of confidential information to the police and guardianship agencies, and for the purpose of obtaining legal and financial advice. The retention of a specific exception for disclosures by the Adult Guardian during an investigation has also been recommended.

DRAFT LEGISLATION

1.12 Appendix 2 to this volume of the Report contains draft legislation, prepared by the Office of the Queensland Parliamentary Counsel, that gives effect to the Commission's legislative recommendations made in Volume 1 of this Report:

- draft Guardianship and Administration and Another Act Amendment Bill 2007; and
- draft Guardianship and Administration Tribunal Amendment Rule 2007.

1.13 The Guardianship and Administration and Another Act Amendment Bill also contains minor amendments that clarify uncertainty in particular provisions identified by the Commission and the Office of the Queensland Parliamentary Counsel during the drafting process.

6

See Chapter 8 in Volume 1 of this Report.

1.14 Appendix 1 to this volume of the Report identifies the particular recommendation or recommendations to which each substantive provision of the draft legislation gives effect.

1.15 The Commission would like to thank Ms Theresa Johnson, First Assistant Parliamentary Counsel, for her expertise and assistance in preparing the draft legislation.

Appendix 1

Table of provisions

The following table identifies, in relation to each substantive provision of the draft legislation in Appendix 2, the recommendation or recommendations in Volume 1 of this Report to which that provision gives effect.

DRAFT GUARDIANSHIP AND ADMINISTRATION AND ANOTHER ACT AMENDMENT BILL 2007

Clause	Substantive provision of the <i>Guardianship and Administration Act 2000</i> (Qld)	Recommendation or paragraph
4	80A Definitions for ch 5A	
	80A	para 2.109
5	80E Relationship with ch 7	
	80E	para 2.109
6	80G Open	
	80G	para 2.109
6	80N Decision and reasons to each active party	
	80N	para 2.109
7	98 Annual report	
	98	Rec 4-23
8	108 Procedural fairness	
	108(1)–(3)	Rec 3-5, 4-2, 5-3
	108(4)	Rec 4-2
	108(5)	Rec 4-2
8	108A Open	
	108A	Rec 4-3
8	109 Types of limitation order	
	109	para 4.187

8	109A	Basis of consideration for limitation order
	109A(1)(a)	Rec 4-6, 5-7
	109A(1)(b)	Rec 4-6, 5-7, 7-10
	109A(2)	Rec 5-3
8	109B	Adult evidence order
	109B(1)	Rec 4-9
	109B(2)	Rec 5-3
	109B(3)	Rec 4-16
	109B(4)	Rec 4-24
8	109C	Closure order
	109C(1)(a)	Rec 4-7, 4-8
	109C(1)(b)	Rec 4-7
	109C(2)	Rec 4-16
	109C(3)	Rec 4-24
8	109D	Non-publication order
	109D(1)	Rec 7-9
	109D(2)	Rec 4-16
	109D(3)	Rec 4-24
8	109E	Confidentiality order
	109E(1)(a)	Rec 5-6, 5-10
	109E(1)(b)	Rec 4-11, 4-12
	109E(2)	Rec 4-16
	109E(3)	Rec 4-24
8	109F	Non-publication or confidentiality order made other than at hearing
	109F	Rec 4-20
8	109G	Standing for limitation order
	109G	Rec 4-18, 5-9, 7-12

8	109H	Role of public advocate for limitation order (other than adult evidence order)
	109H	Rec 4-19, 5-9, 7-12
8	109I	Making and notifying decision for limitation order
	109I	Rec 4-21, 5-9, 7-12
8	109J	Written reasons for limitation order and copy of reasons
	109J	Rec 4-21, 5-9, 7-12
9	112	Publication about proceeding that discloses adult's identity
	112(1)	Rec 7-2
	112(2)	Rec 7-3, 7-4, 7-5
	112(3)(a)	Rec 7-6
	112(3)(b)	Rec 7-7
	112(3)(c)	Rec 7-8
	112(4)	Rec 7-8
	112(5)	Rec 7-8
	112(6)	Rec 7-8
	112(7) definition of 'prohibited publication'	Rec 7-6
	112(7) definition of 'relevant adult'	Rec 7-3
10	143A	Exclusion of disruptive person from tribunal
	143A	Rec 4-1
11	156	Making and notifying decision
	156(1)	Rec 4-21
	156(2)	para 1.13 (Volume 2)
	156(3)	para 1.13 (Volume 2)
	156(4)	Rec 6-4
	156(5)	Rec 6-4
	156(6)	Rec 6-2
	156(7)	Rec 6-2
	156(8)	para 1.13 (Volume 2)

11	157	Written reasons for decision	
	157(1)		Rec 4-21
	157(2)–(6)		para 1.13 (Volume 2)
11	158	Copy of reasons to be given	
	158(1)		Rec 4-21
	158(2)		para 1.13 (Volume 2)
	158(3)		para 1.13 (Volume 2)
	158(4)		Rec 6-2
	158(5)		Rec 6-2
12	159A	Definition for pt 7	
	159A		Rec 8-23
13	164A	Notice of appeal	
	164A(2)		Rec 6-5
14	193	Report after investigation or audit	
	193(4)		para 1.13 (Volume 2)
14	193A	Prohibited use of report after investigation or audit	
	193A		Rec 8-9
15	246	Definitions for pt 4	
	definition of ‘confidential information’		Rec 8-1, 8-6, 8-7
	definitions of ‘relevant person’ and ‘relevant tribunal person’		Rec 8-3
	definition of ‘use’		Rec 8-2
16	249	Protected use of confidential information	
	249		Rec 8-1
	249(1)		Rec 8-4
	249(2)		Rec 8-2, 8-3, 8-5, 8-8
	249(3)		Rec 8-10
	249(3)(a)		Rec 8-11
	249(3)(b)		Rec 8-12

	249(3)(c)	Rec 8-1
	249(3)(d)	Rec 8-13
	249(3)(e)	Rec 8-14
	249(3)(f)	Rec 8-14
	249(3)(g)	Rec 8-14
	249(3)(h)	Rec 8-14
	249(3)(i)	Rec 8-14
16	249A Prohibited use of confidential information	
	249A	Rec 8-1, 8-2, 8-3, 8-5, 8-8, 8-19, 8-20
16	250 Disclosure of information about investigations	
	250	Rec 8-15
	250(1)	Rec 8-16
	250(2)	Rec 8-17
	250(3)	Rec 8-18
17	Schedule 4 Dictionary	
	definition of ‘adult’	para 2.109
	definition of ‘adult evidence order’	Rec 4-9
	definition of ‘closure order’	Rec 4-7
	definition of ‘confidentiality order’	Rec 4-3, 4-11
	definition of ‘guardianship proceeding’	Rec 7-4
	definition of ‘limitation order’	para 4.187
	definition of ‘non-publication order’	Rec 7-9
	definition of ‘power of attorney’	para 1.13 (Volume 2)
Clause	Substantive provision of the <i>Powers of Attorney Act 1998</i> (Qld)	Recommendation or paragraph
19	74 Protected use of confidential information	
	74	Rec 8-1
	74(1)	Rec 8-4
	74(2)	Rec 8-2, 8-3, 8-5, 8-8

	74(3)	Rec 8-10
	74(3)(a)	Rec 8-11
	74(3)(b)	Rec 8-12
	74(3)(c)	Rec 8-1
	74(3)(d)	Rec 8-13
	74(3)(e)	Rec 8-14
	74(3)(f)	Rec 8-14
	74(3)(g)	Rec 8-14
	74(3)(h)	Rec 8-14
	74(3)(i)	Rec 8-14
	74(4) definition of 'confidential information'	Rec 8-1, 8-6, 8-7
	74(4) definition of 'guardianship proceeding'	Rec 7-4
	74(4) definition of 'use'	Rec 8-2
19	74A Prohibited use of confidential information	
	74A(1)	Rec 8-1, 8-2, 8-3, 8-5, 8-8, 8-19, 8-20
	74A(2) definition of 'confidential information'	Rec 8-1, 8-6, 8-7
	74A(2) definition of 'use'	Rec 8-2

DRAFT GUARDIANSHIP AND ADMINISTRATION TRIBUNAL AMENDMENT RULE 2007

Clause	Substantive provision of the <i>Guardianship and Administration Tribunal Rule 2004 (Qld)</i>	Recommendation or paragraph
3	Schedule Prescribed non-contentious matters	
	Schedule	Rec 4-17

Appendix 2

**Draft Guardianship and Administration and
Another Act Amendment Bill 2007**

and

**Draft Guardianship and Administration
Tribunal Amendment Rule 2007**



Queensland

Guardianship and Administration and Another Act Amendment Bill 2007

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2007

A Bill

for

**An Act to amend the *Guardianship and Administration Act 2000*
and another Act to implement the recommendations of the
Queensland Law Reform Commission to promote greater
openness in the guardianship system**

*Guardianship and Administration and Another Act
Amendment Bill 2007*

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Guardianship and Administration and Another Act Amendment Act 2007*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Part 2 Amendment of Guardianship and Administration Act 2000

3 Act amended in pt 2

This Act amends the *Guardianship and Administration Act 2000*.

4 Amendment of s 80A (Definitions for ch 5A)

Section 80A, definition *confidentiality order*—
omit.

5 Amendment of s 80E (Relationship with ch 7)

- (1) Section 80E(1), ‘109’—
omit, insert—
‘109B’.

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- (2) Section 80E(1), '(other than section 158)'—
omit.

6 Omission of s 80G and ch 5A, pt 3, div 4

Section 80G and chapter 5A, part 3, division 4—
omit.

7 Replacement of s 98 (Annual report)

Section 98—
omit, insert—

'98 Annual report

- '(1) As soon as practicable after the close of each financial year but not later than 4 months after that close, the president must—
- (a) prepare a report on the tribunal's operations during the year, including the number and type of limitation orders, if any, made by the tribunal; and
 - (b) give a copy of the report to the Minister.
- '(2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after the Minister receives the report.'

8 Replacement of ss 108 and 109

Sections 108 and 109—
omit, insert—

'108 Procedural fairness

- '(1) The tribunal must observe the rules of procedural fairness.
- '(2) Each active party in a proceeding must be given a reasonable opportunity to present the active party's case and, in particular—

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Amendment Bill 2007*

- (a) to access, before the start of a hearing, a document before the tribunal that is relevant to an issue in the proceeding; and
 - (b) to access, after the start of a hearing, a document or other information before the tribunal that is credible, relevant and significant to an issue in the proceeding; and
 - (c) to make submissions about a document or other information accessed under this subsection.
- ‘(3) For subsection (2), something is relevant only if it is directly relevant.
- ‘(4) The tribunal may displace the right to access a document or other information only by a confidentiality order.
- ‘(5) To remove any doubt, it is declared that the right to access a document or other information is not affected by an adult evidence order, a closure order or a non-publication order.

‘108A Open

- ‘(1) A hearing by the tribunal of a proceeding must be in public.
- ‘(2) However, the tribunal may make an adult evidence order or a closure order.

‘109 Types of limitation order

‘A *limitation order* means an order of the following type—

- (a) an adult evidence order;
- (b) a closure order;
- (c) a non-publication order;
- (d) a confidentiality order.

‘109A Basis of consideration for limitation order

- ‘(1) In considering whether to make a limitation order, the tribunal must take as the basis of its consideration—

*Guardianship and Administration and Another Act
Amendment Bill 2007*

- (a) that each active party in the proceeding is entitled to access a document or other information before the tribunal that is credible, relevant and significant to an issue in the proceeding; and
 - (b) that it is desirable that tribunal hearings be held in public and be able to be publicly reported.
- ‘(2) For subsection (1), something is relevant only if it is directly relevant.

‘109B Adult evidence order

- ‘(1) If the tribunal is satisfied it is necessary to avoid serious harm or injustice to a person or to obtain relevant information the tribunal would not otherwise receive, the tribunal may, by order (an *adult evidence order*), obtain relevant information from the adult concerned in the matter at a hearing in the absence of anyone else, including, for example—
 - (a) members of the public; or
 - (b) a particular person, including an active party.
- ‘(2) For subsection (1), something is relevant only if it is directly relevant.
- ‘(3) The tribunal may make an adult evidence order on its own initiative or on the application of an active party.
- ‘(4) A person must not contravene an adult evidence order, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—200 penalty units.

‘109C Closure order

- ‘(1) If the tribunal is satisfied it is necessary to avoid serious harm or injustice to a person, the tribunal may, but only to the extent necessary, by order (a *closure order*), do either or both of the following—
 - (a) close a hearing or part of a hearing to all or some members of the public;

*Guardianship and Administration and Another Act
Amendment Bill 2007*

- (b) exclude a particular person, including an active party, from a hearing or part of a hearing.
- ‘(2) The tribunal may make a closure order on its own initiative or on the application of an active party.
- ‘(3) A person must not contravene a closure order, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—200 penalty units.

‘109D Non-publication order

- ‘(1) If the tribunal is satisfied it is necessary to avoid serious harm or injustice to a person, the tribunal may, but only to the extent necessary, by order (a ***non-publication order***), prohibit publication of information about a tribunal proceeding the publication of which is not prohibited under section 112.
- ‘(2) The tribunal may make a non-publication order on its own initiative or on the application of an active party.
- ‘(3) A person must not contravene a non-publication order, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—200 penalty units.

‘109E Confidentiality order

- ‘(1) If the tribunal is satisfied it is necessary to avoid serious harm or injustice to a person, the tribunal may, but only to the extent necessary, by order (a ***confidentiality order***)—
 - (a) withhold from an active party a document, or part of a document, before the tribunal; or
 - (b) withhold from an active party other information before the tribunal.
- ‘(2) The tribunal may make a confidentiality order on its own initiative or on the application of an active party.
- ‘(3) A person must not contravene a confidentiality order, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—200 penalty units.

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Amendment Bill 2007*

‘109F Non-publication or confidentiality order made other than at hearing

- ‘(1) In a proceeding, a non-publication order or confidentiality order may be made before a hearing of the proceeding starts.
- ‘(2) However, a non-publication order or confidentiality order made other than at a hearing is vacated at the start of a hearing.
- ‘(3) Sections 109G to 109J do not apply in relation to a non-publication order or confidentiality order made before the hearing of the proceeding starts.

‘109G Standing for limitation order

- ‘(1) Each active party, and any entity that would be adversely affected by a proposed limitation order, has standing to be heard in relation to the making of the order.

Example—

A journalist who would be excluded from a hearing by a proposed closure order would be an entity that would be adversely affected by the proposed order.

- ‘(2) Each active party, and any entity adversely affected by a limitation order, may appeal against the tribunal decision to make the order.

‘109H Role of public advocate for limitation order (other than adult evidence order)

- ‘(1) Before making a limitation order (other than an adult evidence order), the tribunal must inform the public advocate of the order being considered and invite the public advocate to appear and make submissions to the tribunal on the making of the order.
- ‘(2) If requested by the public advocate, the tribunal must give the public advocate all information before the tribunal in its consideration of making the limitation order, including, for a confidentiality order, the document or other information being considered as the subject of the confidentiality order.

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Amendment Bill 2007*

- ‘(3) The public advocate has standing to be heard in relation to the making of the order.
- ‘(4) If the public advocate appears or makes submissions to the tribunal on the making of the order, the public advocate may appeal against a tribunal decision to make the order.

‘109I Making and notifying decision for limitation order

- ‘(1) The tribunal must give its decision on the making of a limitation order as soon as practicable after hearing any submissions, including any submissions from the public advocate, on the making of the order.
- ‘(2) As soon as practicable after making its decision, the tribunal must notify, and give a copy of its decision to—
 - (a) the adult concerned in the matter; and
 - (b) another active party in the proceeding; and
 - (c) each entity heard in relation to the order; and
 - (d) the public advocate.
- ‘(3) The tribunal must also give a copy of its decision to anyone else who requests a copy.
- ‘(4) For subsection (3), it is sufficient for the tribunal to give a copy of the decision in a form that does not contravene section 112.

‘109J Written reasons for limitation order and copy of reasons

- ‘(1) This section applies if the tribunal decides to make a limitation order.
- ‘(2) The tribunal must give written reasons for its decision to make the limitation order (other than an adult evidence order) and may give reasons for its decision to make an adult evidence order.
- ‘(3) If the tribunal gives written reasons for its decision, it must give a copy of the reasons within 28 days after making the decision to—

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- (a) the adult concerned in the matter; and
 - (b) each other active party in the proceeding; and
 - (c) each entity heard in relation to the order; and
 - (d) the public advocate.
- ‘(4) The tribunal must also give a copy of its written reasons to anyone else who requests a copy.
- ‘(5) For subsection (4), it is sufficient for the tribunal to give a copy of the written reasons in a form that does not contravene section 112.’.

9 Replacement of s 112 (Publication about proceeding or disclosure of identity)

Section 112—

omit, insert—

‘112 Publication about proceeding that discloses adult’s identity

- ‘(1) Generally, information about a guardianship proceeding may be published.
- ‘(2) However, a person must not, without reasonable excuse, publish information about a guardianship proceeding to the public, or a section of the public, if the publication is likely to lead to the identification of the relevant adult by a member of the public, or by a member of the section of the public to whom the information is published.

Maximum penalty—200 penalty units.

- ‘(3) Subsection (2) does not apply—
- (a) to publication of information by the adult guardian, or the public advocate, if the adult guardian, or the public advocate, considers it is necessary in the public interest to publish the information in response to a prohibited publication by another entity; or
 - (b) to publication of information after the relevant adult has died; or

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- (c) to publication of information authorised by an order made under this section.
- ‘(4) The court may make an order authorising publication of information about a guardianship proceeding that is otherwise prohibited under subsection (2).
- ‘(5) The tribunal may make an order authorising publication of information about a tribunal proceeding that is otherwise prohibited under subsection (2).
- ‘(6) The court or tribunal may make an order under subsection (4) or (5) authorising publication only if the court or tribunal is satisfied the publication is in the public interest or the relevant adult’s interest.
- ‘(7) In this section—

prohibited publication means publication of information about a guardianship proceeding to the public, or a section of the public, that is likely to lead to the identification of the relevant adult by a member of the public, or by a member of the section of the public to whom the information is published.

relevant adult means the adult concerned in the matter (whether or not the court or tribunal decides the adult is an adult with impaired capacity).’.

10 Insertion of new s 143A

After section 143—

insert—

‘143A Exclusion of disruptive person from tribunal

- ‘(1) The tribunal may make an order—
 - (a) excluding a disruptive person from the place the tribunal is sitting; and
 - (b) authorising the tribunal’s staff to use necessary and reasonable help and force to remove the disruptive person from the place the tribunal is sitting.
- ‘(2) If the tribunal makes an order under subsection (1)(b), it is lawful for the tribunal’s staff, and any person helping the

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tribunal's staff, to remove the disruptive person from the place the tribunal is sitting, using necessary and reasonable force for the purpose.

‘(3) In this section—

disruptive person means a person who the tribunal considers is contravening section 143 at the place the tribunal is sitting.’.

11 Replacement of ss 156–158

Sections 156 to 158—

omit, insert—

‘156 Making and notifying decision

‘(1) This section does not apply in relation to the making of a limitation order.

Note—

In relation to the making of a limitation order, see section 109I.

‘(2) The tribunal must make its decision on a matter involved in a proceeding within a reasonable time after the matter is heard.

‘(3) As soon as practicable after making its decision, the tribunal must notify, and give a copy of its decision to, each relevant person.

‘(4) However, the tribunal may, by order, delay notifying, and giving a copy of its decision to, a particular relevant person until a day that is no more than 14 days after the day the tribunal makes the decision.

‘(5) The tribunal may make an order under subsection (4) only if the tribunal considers that making the order is necessary to avoid—

(a) serious harm to a person; or

(b) the effect of the decision being defeated.

‘(6) The tribunal must also give a copy of its decision to anyone else who requests a copy.

‘(7) For subsection (6), it is sufficient for the tribunal to give a copy of the decision in a form that does not contravene section 112.

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‘(8) In this section—

relevant person means—

- (a) the adult concerned in the matter; or
- (b) another active party in the proceeding; or
- (c) another person given notice of the hearing of the application.

‘157 Written reasons for decision

‘(1) This section does not apply in relation to a decision to make a limitation order.

Note—

In relation to a decision to make a limitation order, see section 109J.

‘(2) If directed by the president to give written reasons for a decision, the tribunal must give written reasons for the decision within 28 days after the later of the following days—

- (a) the day the decision is made;
- (b) the day the direction is given.¹

‘(3) Also, the tribunal must give written reasons for a decision if a person aggrieved by the decision gives the tribunal a written request for the reasons within 28 days after the person is given notice under subsection (5).

‘(4) If requested under subsection (3), the tribunal must give written reasons for the decision within 28 days after receiving the request.

¹ *Acts Interpretation Act 1954*, section 27B—

27B Content of statement of reasons for decision

If an Act requires a tribunal, authority, body or person making a decision to give written reasons for the decision (whether the expression ‘reasons’, ‘grounds’ or another expression is used), the instrument giving the reasons must also—

- (a) set out the findings on material questions of fact; and
- (b) refer to the evidence or other material on which those findings were based.

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- ‘(5) When the tribunal gives a person a copy of a decision under section 156, the tribunal must also give the person a notice that, to obtain the tribunal’s written reasons for the decision, the person must make a written request to the tribunal within 28 days after the notice is given.
- ‘(6) Subsection (5) does not apply if the tribunal gives the person a copy of its written reasons when the tribunal gives the person a copy of its decision.

‘158 Copy of reasons to be given

- ‘(1) This section does not apply in relation to a decision to make a limitation order.

Note—

In relation to a decision to make a limitation order, see section 109J.

- ‘(2) This section applies if the tribunal gives written reasons for its decision on an application about a matter.
- ‘(3) The tribunal must give a copy of the written reasons to—
 - (a) the adult concerned in the matter; and
 - (b) each other active party in the proceeding.
- ‘(4) The tribunal must also give a copy of its written reasons to anyone else who requests a copy.
- ‘(5) For subsection (4), it is sufficient for the tribunal to give a copy of the written reasons in a form that does not contravene section 112.’.

12 Insertion of new s 159A

Part 7, before section 160—

insert—

‘159A Definition for pt 7

‘In this part—

decision includes a decision made after a hearing about access to documents held by the tribunal.’.

13 Replacement of s 164A (Notice of appeal)

Section 164A—

omit, insert—

‘164A Notice of appeal

- ‘(1) A notice of appeal must, unless the court orders otherwise—
- (a) be filed in the court registry within 28 days after the date of the tribunal decision appealed from, or the date of the written reasons for the tribunal’s decision, whichever is later; and
 - (b) be served as soon as practicable on all active parties to the proceeding.²
- ‘(2) However, if the tribunal makes an order under section 156(4) delaying notifying, and giving a copy, of its decision to a particular day, the notice of appeal may be filed within 28 days after the particular day, or the date of the written reasons for the tribunal’s decision, whichever is later.’.

14 Replacement of s 193 (Report after investigation or audit)

Section 193—

omit, insert—

‘193 Report after investigation or audit

- ‘(1) After the adult guardian has carried out an investigation or audit in relation to an adult, the adult guardian must make a written report and give a copy of the report to any person at whose request the investigation or audit was carried out and to every attorney, guardian or administrator, for the adult.
- ‘(2) It is a lawful excuse for the publication of a defamatory statement made in the report that the publication is made in good faith and is, or purports to be, made for this Act.

² See the *Uniform Civil Procedures Rules 1999*, rules 784 (Procedure for appeals to a court from other entities) and 785 (Application of rules to appeals and cases stated under this part).

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‘(3) The adult guardian must allow an interested person to inspect a copy of the report at all reasonable times and, at the person’s own expense, to be given a copy of the report.

‘(4) In this section—

attorney means—

- (a) an attorney under a power of attorney; or
- (b) an attorney under an advance health directive.

‘193A Prohibited use of report after investigation or audit

‘(1) If—

- (a) a report contains information about a person but does not identify the person (the ***de-identified person***); and
- (b) another person accesses the report;

the other person must not, unless the other person has a reasonable excuse, publish information contained in the report to the public, or a section of the public, if the publication is likely to result in the identification of the de-identified person by a member of the public, or by a member of the section of the public to whom the information is published.

Maximum penalty—200 penalty units.

‘(2) However, subsection (1) does not apply if the other person is a person who has access to the report because of being, or an opportunity given by being—

- (a) a relevant person; or
- (b) an attorney.

Note—

For the confidentiality requirements for a relevant person, see section 249A and for the confidentiality requirements for an attorney, see the *Powers of Attorney Act 1998*, section 74A.

‘(3) In this section—

attorney means—

- (a) an attorney under a power of attorney; or
- (b) an attorney under an advance health directive; or

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(c) a statutory health attorney.

relevant person see section 246.’.

15 Amendment of s 246 (Definitions for pt 4)

Section 246—

insert—

‘commission means the Law Reform Commission established under the *Law Reform Commission Act 1968*.

confidential information includes information about a person’s affairs but does not include—

- (a) information within the public domain unless further disclosure of the information is prohibited by law; or
- (b) statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates; or
- (c) information about a guardianship proceeding.

consultant means a person engaged under the *Law Reform Commission Act 1968*, section 9.

relevant person means—

- (a) a relevant tribunal person; or
- (b) the adult guardian or a member of the adult guardian’s staff; or
- (c) a professional consulted or employed by the adult guardian or an adult guardian’s delegate for an investigation; or
- (d) the public advocate or a member of the public advocate’s staff; or
- (e) a guardian or administrator; or
- (f) a community visitor or a public service officer involved in the administration of a program called the community visitor program; or
- (g) a member of the commission or its staff, or a consultant, involved in the substituted decision-making review.

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relevant tribunal person means—

- (a) the president, a deputy president or another tribunal member; or
- (b) the registrar, a member of the tribunal staff or a tribunal expert.

substituted decision-making review means the review of particular matters under this Act and the *Powers of Attorney Act 1998* referred to the Law Reform Commission by the Minister on 14 October 2005.

use, confidential information, includes disclose or publish.’.

16 Replacement of ss 249 and 250

Sections 249 and 250—

omit, insert—

‘249 Protected use of confidential information

- ‘(1) Despite section 249A, a relevant person may disclose confidential information that relates only to a particular person to the particular person.
- ‘(2) If a relevant person gains confidential information because of being a relevant person, or because of an opportunity given by being a relevant person, the person may use the information for the purposes of this Act or as provided under subsection (3).
- ‘(3) Confidential information may be used—
 - (a) if authorised or required under a regulation or another law; or
 - (b) for a proceeding arising out of or in connection with this Act; or
 - (c) if authorised by the person to whom the information relates; or
 - (d) if authorised by the court or the tribunal in the interests of justice; or
 - (e) if necessary to prevent a serious risk to a person’s life, health or safety; or

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- (f) for the purpose of obtaining legal or financial advice; or
- (g) if reasonably necessary to obtain counselling, advice or other treatment; or
- (h) in reporting a suspected offence to a police officer or assisting a police officer in the investigation of a suspected offence; or
- (i) in assisting a statutory official or public service officer in the performance of functions under this Act or the *Powers of Attorney Act 1998*; or
- (j) for the substituted decision-making review.

‘249A Prohibited use of confidential information

‘A relevant person must not use confidential information gained because of being a relevant person, or because of an opportunity given by being a relevant person, other than as provided under section 249, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

‘250 Disclosure of information about investigations

- ‘(1) Section 249A does not prevent the adult guardian from disclosing information to the public or a section of the public about an issue the subject of an ongoing investigation by the adult guardian if the adult guardian is satisfied the disclosure is necessary and reasonable in the public interest.
- ‘(2) In deciding whether the disclosure is necessary and reasonable in the public interest, the adult guardian must have regard to the following—
 - (a) any likely prejudice to the investigation;
 - (b) any need to protect the identity of a complainant or another entity;
 - (c) any circumstances of urgency.
- ‘(3) Also, if the disclosure would include information adverse to an entity and procedural fairness would ordinarily require the

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adult guardian to give the entity notice of the information and an opportunity to comment on it, the adult guardian—

- (a) must have regard to this fact in deciding whether the disclosure is necessary and reasonable in the public interest; but
- (b) may decide the disclosure is necessary and reasonable in the public interest despite the entity not being given notice of the information and an opportunity to comment on it.’.

17 Amendment of sch 4 (Dictionary)

- (1) Schedule 4, definition *confidentiality order*—

omit.

- (2) Schedule 4—

insert—

‘**adult**, for chapter 7 provisions applied under section 80E, means a child with an impairment.

adult evidence order see section 109B.

closure order see section 109C.

confidentiality order see section 109E.

guardianship proceeding—

- (a) means—
 - (i) a tribunal proceeding; or
 - (ii) an appeal to the court under part 8; or
 - (iii) a referral to the court under section 105A; or
 - (iv) a proceeding in which the court is exercising concurrent jurisdiction with the tribunal; or
 - (v) a proceeding in a court, taken under section 172, for the enforcement of a tribunal order; but
- (b) does not include a proceeding in which the court is exercising the powers of the tribunal under section 245.

limitation order see section 109.

non-publication order see section 109D.

power of attorney means—

- (a) a general power of attorney made under the *Powers of Attorney Act 1998*; or
- (b) an enduring power of attorney; or
- (c) a power of attorney made otherwise than under the *Powers of Attorney Act 1998*, whether before or after its commencement.’.

Part 3 Amendment of Powers of Attorney Act 1998

18 Act amended in pt 3

This Act amends the *Powers of Attorney Act 1998*.

19 Replacement of s 74 (Preservation of confidentiality)

Section 74—

omit, insert—

‘74 Protected use of confidential information

- ‘(1) Despite section 74A, an attorney, including a statutory health attorney, may disclose confidential information that relates only to a particular person to the particular person.
- ‘(2) If an attorney, including a statutory health attorney, gains confidential information because of being an attorney, or because of an opportunity given by being an attorney, the person may use the information for the purposes of this Act or as provided under subsection (3).
- ‘(3) Confidential information may be used—
 - (a) if authorised or required under a regulation or another law; or

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- (b) for a proceeding arising out of or in connection with this Act; or
- (c) if authorised by the person to whom the information relates; or
- (d) if authorised by the court or the tribunal in the interests of justice; or
- (e) if necessary to prevent a serious risk to a person's life, health or safety; or
- (f) for the purpose of obtaining legal or financial advice; or
- (g) if reasonably necessary to obtain counselling, advice or other treatment; or
- (h) in reporting a suspected offence to a police officer or assisting a police officer in the investigation of a suspected offence; or
- (i) in assisting a statutory official or public service officer in the performance of functions under this Act or the *Guardianship and Administration Act 2000*; or
- (j) for the substituted decision-making review.

‘(4) In this section—

commission means the Law Reform Commission established under the *Law Reform Commission Act 1968*.

confidential information includes information about a person's affairs but does not include—

- (a) information within the public domain unless further disclosure of the information is prohibited by law; or
- (b) statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates; or
- (c) information about a guardianship proceeding.

guardianship proceeding see *Guardianship and Administration Act 2000*, schedule 4.

Editor's note—

The *Guardianship and Administration Act 2000*, schedule 4, states—
guardianship proceeding—

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- (a) means—
- (i) a tribunal proceeding; or
 - (ii) an appeal to the court under part 8; or
 - (iii) a referral to the court under section 105A; or
 - (iv) a proceeding in which the court is exercising concurrent jurisdiction with the tribunal; or
 - (v) a proceeding in a court, taken under section 172, for the enforcement of a tribunal order; but
- (b) does not include a proceeding in which the court is exercising the powers of the tribunal under section 245.

substituted decision-making review means the review of particular matters under this Act and the *Guardianship and Administration Act 2000* referred to the commission by the Minister on 14 October 2005.

use, confidential information, includes disclose or publish.

‘74A Prohibited use of confidential information

- ‘(1) An attorney, including a statutory health attorney, must not use confidential information gained because of being an attorney, or because of an opportunity given by being an attorney, other than as provided under section 74, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

- ‘(2) In this section—

confidential information see section 74.

use, confidential information, see section 74.’.



Queensland

Guardianship and Administration Tribunal Amendment Rule (No. ..) 2007

Subordinate Legislation 2007 No. ...

made under the

Guardianship and Administration Act 2000

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*Guardianship and Administration Tribunal
Amendment Rule (No. ..) 2007*

1 Short title

This rule may be cited as the *Guardianship and Administration Tribunal Amendment Rule (No. ..) 2007*.

2 Rule amended

This rule amends the *Guardianship and Administration Tribunal Rule 2004*.

3 Amendment of schedule (Prescribed non-contentious matters)

Schedule, ‘Section 109(2) (Open)’—
omit.

ENDNOTES

1. Made by the Governor in Council on . . .
2. Notified in the gazette on . . .
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Justice and Attorney-General.

