

Queensland



**ASSISTED AND SUBSTITUTED  
DECISION-MAKING BILL 1995**

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**1995**

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**A BILL**

**FOR**

**An Act facilitating the decision-making of and for adults with  
impaired decision-making capacity because of a mental or  
intellectual impairment, and for other purposes**

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<b>The Parliament of Queensland enacts—</b>	1
<b>CHAPTER 1—SHORT TITLE AND EXPLANATION</b>	2
	3
<b>Short title</b>	4
1. This Act may be cited as the <i>Assisted and Substituted Decision-making Act 1995</i> .	5 6
<b>Acknowledgments</b>	7
2. This Act acknowledges the following—	8
(a) an adult's right to make decisions is fundamental to the adult's inherent dignity;	9 10
(b) the right to make decisions includes the right to make decisions with which others may not agree;	11 12
(c) the decision-making capacity of an adult with a mental or intellectual impairment may differ according to—	13 14
(i) the nature and extent of the impairment; and	15
(ii) the complexity of the decision to be made; and	16
(iii) the support available from members of the adult's existing support network;	17 18
(d) the right of an adult with a mental or intellectual impairment to make decisions should be restricted, and interfered with, as little as possible;	19 20 21
(e) an adult with a mental or intellectual impairment has a right to adequate and appropriate support about decision-making.	22 23
<b>Purpose to achieve balance</b>	24
3. This Act seeks to strike a balance between—	25

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(a) the right of an adult with a mental or intellectual impairment to the greatest possible degree of autonomy in decision-making; and	1 2
(b) the adult's right to adequate and appropriate support about decision-making.	3 4
<b>Way purpose achieved</b>	5
<b>4. This Act—</b>	6
(a) provides that an adult is presumed to be capable of making a decision unless there is evidence to rebut the presumption; and	7 8
(b) provides a comprehensive scheme to facilitate decision-making by an adult needing a decision-making assistant and for an adult needing a substitute decision maker; and	9 10 11
(c) states principles to be observed by anyone performing a function or exercising a power under the scheme; and	12 13
(d) encourages involvement in decision-making of the members of the adult's existing support network; and	14 15
(f) reforms the law about enduring powers of attorney; and	16
(g) establishes an independent tribunal to administer certain aspects of the scheme; and	17 18
(h) recognises the Public Trustee is available as a possible substitute decision maker for financial and litigation related decisions; and	19 20
(i) establishes an office of the Adult Guardian to be available for appointment as a possible substitute decision maker for personal decisions and for other purposes; and	21 22 23
(j) establishes an office of the Public Advocate to carry out systemic advocacy for adults with a mental or intellectual impairment.	24 25

<b>CHAPTER 2—OPERATION OF ACT</b>	1
<b>Act binds all persons</b>	2
5. This Act binds all persons, including the State, and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.	3 4 5
<b>Parens patriae jurisdiction not affected</b>	6
6. This Act does not affect the parens patriae jurisdiction <sup>1</sup> of the Supreme Court.	7 8
<b>Next friend and guardian ad litem process not affected</b>	9
7. This Act does not affect rules of court of the Supreme Court, District Courts or Magistrates Court about a person with impaired decision-making capacity suing by a 'next friend', or defending proceedings by a 'guardian ad litem', appointed by the relevant court. <sup>2</sup>	10 11 12 13
<b>Sanction of settlement requirement not affected</b>	14
8. This Act does not affect section 59 of the <i>Public Trustee Act 1978</i> . <sup>3</sup>	15

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<sup>1</sup> This jurisdiction is based on the need to protect those who lack the capacity to protect themselves. It allows the Supreme Court to appoint decision-makers for people who, because of mental illness, intellectual disability, illness, accident or old age, are unable to adequately safeguard their own interests.

<sup>2</sup> The Commission recommends the repeal of the *Mental Health Act 1974*, Schedule 5. This will require consequential amendments of the court rules and section 7 will then be made subject to these amendments. However, no consequential amendments have been drafted for the purposes of including this Bill in the Commission's draft report.

<sup>3</sup> Settlement of claims for money or damages must be sanctioned by the Public Trustee or the appropriate court. It does not matter whether proceedings have been started.



<b>CHAPTER 3—INTERPRETATION</b>	1
<b>PART 1—DEFINITIONS AND DICTIONARY</b>	2
<b>Definitions and dictionary</b>	3
9.(1) The dictionary <sup>4</sup> in Schedule 1 defines particular words used in this Act.	4 5
(2) This Chapter also contains certain definitions in separate sections and these definitions are signposted <sup>5</sup> in the dictionary.	6 7
<b>PART 2—TYPES OF CAPACITY</b>	8
<b>Explanation</b>	9
10. This Act categorises capacity for a decision as follows—	10
• decision-making capacity (section 11)	11
• impaired decision-making capacity (section 12).	12
<b>Meaning of “decision-making capacity”</b>	13
11. An adult has “ <b>decision-making capacity</b> ” for a decision if, whether with or without assistance, the adult is capable of—	14 15
(a) understanding the nature and foreseeing the effects of the decision; and	16 17
(b) communicating the decision in some way.	18

<sup>4</sup> In some Acts, definitions are contained in a dictionary that appears as the last schedule and forms part of the Act—*Acts Interpretation Act 1954*, section 14.

<sup>5</sup> The signpost definitions in the dictionary alert the reader to the terms defined elsewhere in the Act and tell the reader where these definitions can be found. For example, the definition ‘“decision-making capacity” see section 11’ tells the reader that the term “decision-making capacity” is defined in section 11.

<b>Meaning of “impaired decision-making capacity”</b>	1
12. An adult has “impaired decision-making capacity” for a decision if the adult does not have decision-making capacity for the decision.	2 3
<b>PART 3—TYPES OF DECISION</b>	4
<b>Explanation</b>	5
13. This Act categorises decisions as follows—	6
• personal decisions (section 14)	7
• excluded personal decisions (section 15)	8
• health care decisions (section 16)	9
• special consent health care decisions (section 18)	10
• financial decisions (section 23)	11
• litigation related decisions (section 24).	12
<b>Meaning of “personal decision”</b>	13
14. A “personal decision” of, or for, an adult is a decision about the adult’s care or welfare (other than an excluded personal decision, health care decision or special consent health care decision), including, for example, a decision about 1 or more of the following—	14 15 16 17
(a) where the adult will live;	18
(b) with whom the adult will live;	19
(c) whether the adult will work and, if so, the kind and place of work and the employer;	20 21
(d) what education or training the adult will undertake;	22
(e) whether the adult will apply for a licence or permit;	23
(f) day-to-day issues, including, for example, diet and dress.	24

<b>Meaning of “excluded personal decision”</b>	1
<b>15.</b> An “ <b>excluded personal decision</b> ” of an adult is a decision about 1	2
or more of the following—	3
(a) making or revoking the adult’s will;	4
(b) making or revoking an enduring power of attorney or advance	5
health care directive of the adult;	6
(c) exercising the adult’s right to vote in a local government, State or	7
Commonwealth election;	8
(d) consenting to adoption of an individual who is under 18 and a	9
child of the adult;	10
(e) consenting to marriage of the adult.	11
<b>Meaning of “health care decision”</b>	12
<b>16.(1)</b> A “ <b>health care decision</b> ” of, or for, an adult is a decision about	13
health care (other than special consent health care) of the adult.	14
<b>(2)</b> However, if an adult is terminally ill or in a persistent vegetative state,	15
a health care decision of, or for, the adult does not include a decision to	16
withhold or withdraw health care intended to sustain or prolong the adult’s	17
life.	18
<b>(3)</b> Subsection (2) does not affect any common law right to have health	19
care withheld or withdrawn.	20
<b>Meaning of “health care”</b>	21
<b>17.(1)</b> “ <b>Health care</b> ” of an adult is any care, treatment, service or	22
procedure—	23
(a) to maintain, diagnose or treat the adult’s physical or mental	24
condition; and	25
(b) carried out by, or under the supervision of, a health care provider.	26
<b>(2)</b> However, “ <b>health care</b> ” does not include—	27
(a) the administration of a pharmaceutical drug if—	28
(i) a prescription is not needed to obtain the drug; and	29

- (ii) the drug is normally self-administered; and 1
- (iii) the administration is for a recommended purpose and at a recommended dosage level; and 2  
3
- (b) first aid treatment of the adult; and 4
- (c) a nonintrusive examination made for diagnostic purposes. 5

*Example of subsection (2)(c)—* 6

A visual examination of an adult's mouth, throat, nasal cavity, eyes or ears. 7

**Meaning of "special consent health care decision"** 8

18. A "special consent health care decision" of, or for, an adult is a decision consenting to special consent health care of the adult. 9  
10

**Meaning of "special consent health care"** 11

19. "Special consent health care" of an adult is— 12

- (a) removal of tissue from the adult for donation to someone else; or 13
- (b) sterilisation of the adult; or 14
- (c) termination of a pregnancy of the adult; or 15
- (d) participation by the adult in research or experimental health care; 16  
or 17
- (e) psychiatric health care of the adult prescribed under the regulations;<sup>6</sup> or 18  
19
- (f) other health care of the adult prescribed under the regulations. 20

**Meaning of "removal of tissue for donation"** 21

20.(1) "Removal of tissue from an adult for donation" to someone else includes removal of tissue from the adult so that laboratory reagents, or 22  
23

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<sup>6</sup> The Commission does not intend to make recommendations about the psychiatric health care to be prescribed pending the outcome of a departmental review of mental health legislation, including a review of the need for special consent criteria for certain forms of psychiatric health care.

reference and control materials, derived completely or partly from pooled human plasma may be given to the other person. 1  
2

(2) “Tissue” is— 3

(a) an organ, blood or part of a human body; or 4

(b) a substance that may be extracted from an organ, blood or part of a human body. 5  
6

**Meaning of “sterilisation”** 7

21. “Sterilisation” is a surgical procedure— 8

(a) performed on an adult who is, or is reasonably likely to be, fertile; and 9  
10

(b) intended, or reasonably likely, to make the adult, or ensure the adult is, permanently infertile. 11  
12

**Meaning of “object” to health care** 13

22.(1) An adult is taken to “object” to health care if— 14

(a) the adult indicates the adult does not wish to have the health care; or 15  
16

(b) the adult previously indicated, in similar circumstances, the adult did not then wish to have the health care and since then the adult has not indicated otherwise. 17  
18  
19

(2) An indication may be given in an enduring power of attorney or advance health care directive or in another way, including, for example, orally or by conduct. 20  
21  
22

**Meaning of “financial decision”** 23

23.(1) A “financial decision” of, or for, an adult includes a decision (other than a litigation related decision) about the possession, custody, control or management of the adult’s property. 24  
25  
26

(2) A “financial decision” includes a decision about 1 or more of the following— 27  
28

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(a) paying maintenance and accommodation expenses for the adult and the adult's dependants;	1 2
(b) paying the adult's debts;	3
(c) to the extent that the decision is not a litigation related decision, receiving and recovering money payable to the adult;	4 5
(d) discharging a mortgage over the adult's property;	6
(e) paying rates, taxes, insurance premiums or other outgoings for the adult's property;	7 8
(f) insuring the adult or the adult's property;	9
(g) otherwise preserving or improving the adult's estate;	10
(h) carrying on any trade or business of the adult;	11
(i) performing contracts entered into by the adult;	12
(j) buying or selling real property for the adult;	13
(k) investing for the adult in authorised investments;	14
(l) with the tribunal's approval, investing for the adult in investments that are not authorised investments;	15 16
(m) taking up rights to issues of new shares, or options for new shares, to which the adult becomes entitled by the adult's existing shareholding (whether or not the shares are an authorised investment).	17 18 19 20
<b>Meaning of "litigation related decision"</b>	21
24.(1) A "litigation related decision" of, or for, an adult is a decision about a legal matter of a civil or criminal nature involving the adult or the adult's property, including, for example, a decision to agree to a settlement of a claim. <sup>7</sup>	22 23 24 25
(2) Subsection (1) applies whether or not a proceeding has been started.	26

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<sup>7</sup> However, section 59 of the *Public Trustee Act 1978* will require certain settlements to be sanctioned by the Public Trustee or appropriate court.

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**PART 4—APPOINTED ASSISTANT AND  
SUBSTITUTE DECISION MAKER**

**Meaning of “appointed assistant”** 3

25. An “appointed assistant” for a decision of an adult is a person appointed<sup>8</sup> by the tribunal to assist the adult to make the adult’s own decision. 4  
5  
6

**Meaning of “substitute decision maker”** 7

26.(1) A “substitute decision maker” for a decision for an adult is a person who makes the decision for the adult. 8  
9

(2) This Act categorises substitute decision makers as follows— 10

- chosen decision makers (section 27) 11
- statutorily authorised health care decision makers (section 28) 12
- appointed decision makers (section 29). 13

**Meaning of “chosen decision maker”** 14

27. A “chosen decision maker” is a substitute decision maker chosen by an adult in an enduring power of attorney<sup>9</sup> or advance health care directive.<sup>10</sup> 15  
16  
17

**Meaning of “statutorily authorised health care decision maker”** 18

28. Each member of an adult’s family or a close friend of the adult is a “statutorily authorised health care decision maker” for the adult.<sup>11</sup> 19  
20

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<sup>8</sup> An appointed assistant may be appointed under Chapter 7.

<sup>9</sup> Chapter 5 deals with enduring powers of attorney.

<sup>10</sup> Chapter 6 deals with advance health care directives.

<sup>11</sup> A statutorily authorised health care decision maker may make a health care decision for an adult with impaired decision-making capacity for the decision if the decision is not made under an enduring power of attorney, tribunal order or advance health care directive of the adult—section 108(2)(b).

<b>Meaning of “appointed decision maker”</b>	1
<b>29.</b> An “appointed decision maker” is a substitute decision maker appointed by the tribunal. <sup>12</sup>	2 3
<b>CHAPTER 4—GENERAL PRINCIPLES</b>	4
<b>PART 1—WAY GENERAL PRINCIPLES TO BE USED</b>	5
<b>General principles must be complied with by all</b>	6
<b>30.</b> The principles in Part 2 (the “general principles”) must be complied with by a person or other entity who performs a function or exercises a power under this Act.	7 8 9
<b>General application and promotion by community</b>	10
<b>31.</b> The community is encouraged to apply and promote the general principles.	11 12
<b>PART 2—LIST OF GENERAL PRINCIPLES</b>	13
<b>Presumption of capacity to make decisions</b>	14
<b>32.</b> An adult is presumed to have the capacity to make the adult’s own decisions.	15 16

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<sup>12</sup> An appointed decision maker may be appointed under Chapter 7.



<b>Valued social role</b>	1
33. The adult's valued social role must be recognised and taken into account.	2 3
<b>Participation in community life</b>	4
34.(1) The importance of encouraging and supporting an adult to live, as fully as practicable, a life in the general community must be taken into account.	5 6 7
(2) The importance of encouraging and supporting an adult to take part, as fully as practicable, in activities enjoyed by the general community must also be taken into account.	8 9 10
<b>Encouragement of self-reliance</b>	11
35. The importance of encouraging and supporting the adult to achieve the adult's maximum potential and to become as self-reliant as practicable must be taken into account.	12 13 14
<b>Minimal limitations on right to make decisions</b>	15
36.(1) The importance of preserving, to the greatest extent practicable, an adult's right to make his or her own decisions must be taken into account.	16 17
(2) This means, for example, that, to the greatest extent practicable—	18
(a) the adult's views and wishes are to be sought and taken into account; and	19 20
(b) if, from the adult's previous actions, it is reasonably practicable to work out what the adult's views and wishes would be—a person or other entity in performing a function or exercising a power under this Act must take into account what the person or other entity considers would be the adult's views and wishes; and	21 22 23 24 25
(c) a person or other entity in performing a function or exercising a power under this Act must do so in the way that is least restrictive of the adult's rights but consistent with the adult's proper care and protection.	26 27 28 29

(3) Views and wishes may be expressed orally, in writing or in another way, including, for example, by conduct.	1 2
<b>Maintenance of existing supportive relationships</b>	3
37. The importance of maintaining the existing supportive relationships of which the adult is part must be taken into account.	4 5
<b>Maintenance of environment and values</b>	6
38. The importance of maintaining the adult's cultural and linguistic environment, and set of values (including any religious beliefs), must be taken into account.	7 8 9
<b>Appropriate to circumstances</b>	10
39. Assistance given to an adult to make a decision and a decision made for or about an adult should be appropriate to the adult's characteristics and needs.	11 12 13
<b>CHAPTER 5—DECISION MAKER CHOSEN BY ENDURING POWER OF ATTORNEY</b>	14 15
<b>PART 1—MAKING AN ENDURING POWER OF ATTORNEY</b>	16 17
<i>Division 1—Benefit of an enduring power of attorney</i>	18
<b>Overview</b>	19
40.(1) An adult who understands the matters <sup>13</sup> necessary to make an	20

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<sup>13</sup> See section 42.

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enduring power of attorney may make an enduring power of attorney choosing 1 or more decision makers to make decisions for the adult.	1 2
(2) Division 3 deals with who may be chosen as a decision maker by an enduring power of attorney.	3 4
(3) Power to make personal decisions, health care decisions, financial decisions and litigation related decisions may be given by an enduring power of attorney.	5 6 7
(4) However, power to make excluded personal decisions or special consent health care decisions may not be given by an enduring power of attorney.	8 9 10
(5) Division 4 deals with when the power of attorney begins to operate.	11
(6) An enduring power of attorney is not revoked by the adult becoming an adult with impaired decision-making capacity.	12 13
<b>What an enduring power of attorney may do</b>	14
41. In an enduring power of attorney, an adult may—	15
(a) give a chosen decision maker power to make all types, or a particular type, of decision (other than an excluded personal decision or special consent health care decision); and	16 17 18
(b) limit the power given to a chosen decision maker; and	19
(c) state instructions for a chosen decision maker to apply when making decisions; and	20 21
(d) for financial decisions or litigation related decisions—state when the power begins (for example, immediately, on a stated day or only if the adult becomes an adult with impaired decision-making capacity).	22 23 24 25
 <i>Division 2—Formal matters</i>	 26
<b>When an enduring power of attorney may be made</b>	27
42. An adult may make an enduring power of attorney only if the adult understands the following matters—	28 29

- 
- (a) in the power of attorney, the adult may specify or limit the power to be given to a chosen decision maker and instruct a chosen decision maker about the exercise of the power; 1  
2  
3
  - (b) when the power will begin; 4
  - (c) if the power for a type of decision begins, the chosen decision maker will make, and have full control over, all the adult's decisions of the type unless limitations or instructions are included in the power of attorney; 5  
6  
7  
8
  - (d) the power the adult has given will continue even if the adult becomes an adult with impaired decision-making capacity; 9  
10
  - (e) the adult may revoke the power of attorney at any time the adult is capable of making another enduring power of attorney; 11  
12
  - (f) at any time the adult is not capable of revoking the enduring power of attorney, the adult will not be able to oversee the use of the power. 13  
14  
15

### **How to make an enduring power of attorney** 16

- 43.(1) An adult's enduring power of attorney must—** 17
- (a) be in the approved form;<sup>14</sup> and 18
  - (b) be signed by the adult or, if the adult instructs, for the adult and in the adult's presence by a person who is at least 18 and not the witness or a chosen decision maker for the adult; and 19  
20  
21
  - (c) be signed and dated by a witness who is— 22
    - (i) a justice,<sup>15</sup> commissioner for declarations or lawyer;<sup>16</sup> and 23
    - (ii) not a chosen decision maker of the adult; and 24

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<sup>14</sup> Forms recommended by the Queensland Law Reform Commission are included in this report.

<sup>15</sup> "[J]ustice" means justice of the peace—*Acts Interpretation Act 1954*, section 36.

<sup>16</sup> "[L]awyer" means a barrister, solicitor, barrister and solicitor or legal practitioner of the High Court of the Supreme Court of a State (including the Australian Capital Territory and the Northern Territory—*Acts Interpretation Act 1954*, sections 33A and 36.

- |  |                |
|--|----------------|
| (iii) not a relation of the adult or a chosen decision maker; and  | 1              |
| (iv) if the power of attorney gives power to make a health care decision—not a current health care provider of the adult.  | 2<br>3         |
| (2) If the enduring power of attorney is signed by the adult, it must include a certificate signed by the witness stating that the adult—  | 4<br>5         |
| (a) signed the enduring power of attorney in the witness' presence; and  | 6<br>7         |
| (b) at the time, appeared to the witness to understand the matters necessary to make an enduring power of attorney. <sup>17</sup>  | 8<br>9         |
| (3) If the enduring power of attorney is signed by a person for the adult, it must include a certificate signed by the witness stating that—   | 10<br>11       |
| (a) in the witness' presence, the adult instructed the person to sign the enduring power of attorney for the adult; and  | 12<br>13       |
| (b) the person signed it in the presence of the adult and witness; and   | 14             |
| (c) at the time, the adult appeared to the witness to understand the matters necessary to make an enduring power of attorney.  | 15<br>16       |
| (4) The power of attorney is only effective to give power to a chosen decision maker if the chosen decision maker has signed the power of attorney acknowledging the power has been given. | 17<br>18<br>19 |

*Division 3—Who may be a chosen decision maker* 20

**Eligibility—personal or health care decision** 21

- |  |                |
|--|----------------|
| 44. A person may be chosen by an enduring power of attorney as a chosen decision maker for a personal decision or health care decision for an adult only if the person is— | 22<br>23<br>24 |
| (a) an individual who is at least 18; and  | 25             |
| (b) not a paid carer, or current health care provider, for the adult.  | 26             |

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<sup>17</sup> “[M]atters necessary to make an enduring power of attorney” means the matters in section 42—see Dictionary.

<b>Eligibility—financial or litigation related decision</b>	1
<b>45.</b> A person may be chosen by an enduring power of attorney as a chosen decision maker for a financial decision or litigation related decision only if the person is—	2 3 4
(a) an individual who is at least 18, the Public Trustee or a trustee company under the <i>Trustee Companies Act 1968</i> ; and	5 6
(b) not a paid carer, or current health care provider, for the adult.	7
 <b>More than 1 decision maker may be chosen</b>	 8
<b>46.</b> By an enduring power of attorney, an adult may choose—	9
(a) 1 chosen decision maker for a decision or type of decision or for all decisions; and	10 11
(b) joint or joint and several chosen decision makers for a decision or type of decision or for all decisions; and	12 13
(c) different chosen decision makers for different decisions or types of decision; and	14 15
(d) a person to act as a chosen decision maker for a decision or type of decision in a circumstance stated in the power of attorney; and	16 17
(e) alternative chosen decision makers for a decision or type of decision so that power is given to a particular chosen decision maker only in a circumstance stated in the power of attorney; and	18 19 20
(f) successive chosen decision makers for a decision or type of decision or for all decisions so that power is given to a particular chosen decision maker only when power given to another chosen decision maker ends.	21 22 23 24
 <b>Division 4—When power exercisable</b>	 25
 <b>Personal or health care decision-making</b>	 26
<b>47.(1)</b> Power to make a personal decision or health care decision under an adult's enduring power of attorney—	27 28
(a) begins when (if ever) the adult has impaired decision-making	29

capacity for the decision; and	1
(b) cannot begin before then.	2
(2) However, the power is exercisable only while the adult has impaired decision-making capacity for the decision.	3 4
<b>Financial or litigation related decision-making</b>	5
48.(1) If an adult's power of attorney gives power to make a financial decision or litigation related decision and does not state a time when, or occasion on which the power to make the decision begins, power to make the decision begins when the power of attorney is made.	6 7 8 9
(2) If the power of attorney states a time when or occasion on which the power to make the decision begins, power to make the decision begins at the earlier of—	10 11 12
(a) the stated time or occasion; and	13
(b) when (if ever) the adult has impaired decision-making capacity for the decision.	14 15
(3) However, if the stated time or occasion has not happened, the power is exercisable only while the adult has impaired decision-making capacity for the decision.	16 17 18

## **PART 2—USING AN ENDURING POWER OF ATTORNEY**

### *Division 1—Chosen decision maker*

<b>Chosen decision maker's power</b>	22
49.(1) When an adult's enduring power of attorney for a decision begins, it gives the chosen decision maker for the decision power to do, for the adult, anything the adult could lawfully authorise someone else to do in relation to the decision if the adult had decision-making capacity for the	23 24 25 26

decision. 1  
 (2) Functions and powers are also given to the chosen decision maker by 2  
 this Act.<sup>18</sup> 3

*Division 2—Assistance from tribunal* 4

**Declaration of impaired decision-making capacity** 5

50.(1) A chosen decision maker or another interested person may apply 6  
 to the tribunal for a declaration that— 7

(a) the adult who made the enduring power of attorney has become 8  
 an adult with impaired decision-making capacity for all decisions 9  
 or a particular decision or type of decision (an “**impaired** 10  
**capacity declaration**”); or 11

(b) a power given by the power of attorney has begun (a 12  
**commencement declaration**). 13

(2) In this section— 14

“**interested person**”, for an application about power to make a health care 15  
 decision under an adult’s enduring power of attorney, includes a health 16  
 care provider for the adult. 17

**Advice and directions about exercise of power** 18

51.(1) A chosen decision maker or another interested person may apply 19  
 to the tribunal for advice or directions about the exercise of a power under 20  
 the enduring power of attorney or the interpretation of its terms. 21

(2) In this section— 22

“**interested person**”, for an application about power to make a health care 23  
 decision under an adult’s enduring power of attorney or the 24  
 interpretation of the enduring power of attorney’s terms about a health 25  
 care decision, includes a health care provider for the adult. 26

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<sup>18</sup> Chapter 9 states the functions and powers given to substitute decision makers. A chosen decision maker must exercise power as required by the terms of the enduring power of attorney under which the person is appointed—section 127.



<b>Removal</b>	1
<b>52.(1)</b> If there is power to make a decision under an enduring power of attorney, an interested person may apply to the tribunal for an order—	2 3
(a) removing a chosen decision maker and appointing a substitute decision maker to replace the removed chosen decision maker; and	4 5 6
(b) removing a power from a chosen decision maker and giving the removed power to a substitute decision maker.	7 8
<b>(2)</b> The substitute decision maker mentioned in the application may be another chosen decision maker under the enduring power of attorney or a substitute decision maker to be appointed by the tribunal.	9 10 11
<b>(3)</b> The tribunal may only make an order under subsection (1) if the tribunal considers that—	12 13
(a) a relevant interest of the adult who made the enduring power of attorney has not been, or is not being, adequately protected; and	14 15
(b) if the order removes a chosen decision maker—the chosen decision maker failed to act, is unfit to act or incapable of acting; and	16 17 18
(c) if the order removes a power from a chosen decision maker—the chosen decision maker failed to act, is unfit to act or incapable of acting, in relation to the power. <sup>19</sup>	19 20 21
<b>(4)</b> The tribunal may make an order stated in subsection (1) on its own initiative.	22 23

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<sup>19</sup> “[F]ail” includes refuse—*Acts Interpretation Act 1954*, section 36.

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**PART 3—CHANGING AND REVOKING AN  
ENDURING POWER OF ATTORNEY**

**Change or revocation by tribunal**

**53.(1)** An interested person may, when there is power to make a decision under an enduring power of attorney, apply to the tribunal for an order—

- (a) changing the terms of the power; or
- (b) revoking the power.

**(2)** The tribunal may only make an order under subsection (1) if the tribunal considers—

- (a) a relevant interest of the adult who made the enduring power of attorney has not been, or is not being, adequately protected; or
- (b) circumstances (including, for a power to make a health care decision, advances in medical science) have changed to the extent that the terms of the power or the power itself is inappropriate.

**(3)** An enduring power of attorney is changed if the tribunal makes an order changing its terms.

**(4)** An enduring power of attorney is revoked to the extent that the tribunal makes an order revoking it.

**(5)** If the tribunal changes or revokes an adult's enduring power of attorney,<sup>20</sup> the tribunal must take reasonable steps to advise the adult and all chosen decision makers under the enduring power of attorney of the change or revocation.

**(6)** The tribunal may make an order under subsection (1) on its own initiative.

**Formal revocation by adult who made it**

**54.(1)** An adult's enduring power of attorney is revoked if the adult

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<sup>20</sup> The tribunal can remove and replace a decision maker under section 52 on its own initiative. This allows the tribunal to do so as part of hearing an application for change or revocation of the enduring power of attorney.

- revokes the enduring power of attorney under this section when the adult understands the matters necessary for making the same enduring power of attorney<sup>21</sup>. 1  
2  
3
- (2) A revocation under this section of an enduring power of attorney by the adult who made it must— 4  
5
- (a) be in the approved form; and 6
- (b) be signed by the adult revoking it or, if the adult revoking it instructs, for the adult and in the adult's presence by an individual who is at least 18 and not the witness or a chosen decision maker for the adult; and 7  
8  
9  
10
- (c) be signed and dated by a witness who is— 11
- (i) a justice,<sup>22</sup> commissioner for declarations or lawyer;<sup>23</sup> and 12
- (ii) not a chosen decision maker for the adult; and 13
- (iii) not a relation of the adult or a chosen decision maker; and 14
- (iv) if the revocation revokes power to make a health care decision—not a current health care provider of the adult. 15  
16
- (3) If the revocation is signed by the adult, it must include a certificate signed by the witness stating that the adult— 17  
18
- (a) signed the revocation in the witness' presence; and 19
- (b) at the time, appeared to the witness to understand the matters necessary to make the same enduring power of attorney. 20  
21
- (4) If the revocation is signed by a person for the adult, it must include a certificate signed by the witness stating that— 22  
23
- (a) in the witness' presence, the adult instructed the person to sign the revocation for the adult; and 24  
25

<sup>21</sup> “[M]atters necessary to make an enduring power of attorney” means the matters in section 42—see Dictionary.

<sup>22</sup> “[J]ustice” means justice of the peace—*Acts Interpretation Act 1954*, section 36.

<sup>23</sup> “[L]awyer” means a barrister, solicitor, barrister and solicitor or legal practitioner of the High Court of the Supreme Court of a State (including the Australian Capital Territory and the Northern Territory)—*Acts Interpretation Act 1954*, sections 33A and 36.

- (b) the person signed it in the presence of the adult and witness; and 1
- (c) at the time, the adult appeared to the witness to understand the 2  
matters necessary to make the same enduring power of attorney. 3
- (5) If the adult revokes an enduring power of attorney under this section, 4  
the adult must take reasonable steps to advise all chosen decision makers 5  
under the enduring power of attorney of the revocation. 6
- Revocation by other action of adult** 7
- 55.(1) In this section— 8
- “affecting document” means an enduring power of attorney or advance 9  
health care directive. 10
- (2) An adult’s enduring power of attorney is also revoked— 11
- (a) to the extent it gives a particular power to a chosen decision 12  
maker, if the adult includes the decision in a later advance health 13  
care directive or gives the particular power to a different chosen 14  
decision maker by a later affecting document; or 15
- (b) unless it was made in express contemplation of the marriage, if 16  
the adult who made it marries after making it; or 17
- (c) to the extent it gives power to the married spouse of the adult, if 18  
they become divorced; or 19
- (d) if the adult who made it dies. 20
- Revocation by action of chosen decision maker** 21
- 56.(1) An adult’s enduring power of attorney is also revoked to the 22  
extent it gives power to a chosen decision maker for a decision, if the 23  
chosen decision maker— 24
- (a) withdraws with the tribunal’s leave;<sup>24</sup> or 25

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<sup>24</sup> The tribunal may give leave under section 140(1).

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- (b) withdraws by notice given to the adult under this Act;<sup>25</sup> or 1
- (c) is a paid carer for the adult; or 2
- (d) is a health care provider for the adult; or 3
- (e) has impaired decision-making capacity for the decision; or 4
- (f) dies. 5
- (2) An enduring power of attorney is also revoked to the extent it gives 6  
power to make a financial decision or litigation related decision to a chosen 7  
decision maker, if the chosen decision maker becomes bankrupt or 8  
insolvent. 9
- Example—* 10
- Under an enduring power of attorney, chosen decision maker, XYZ exercises 11  
power to make all financial decisions. XYZ becomes bankrupt. Therefore, the 12  
enduring power of attorney is revoked to the extent it gives power to XYZ to make 13  
financial decisions. 14
- If XYZ was a joint chosen decision maker with ABC, the enduring power of 15  
attorney is revoked to the extent it gives power to XYZ and ABC to make financial 16  
decisions. If XYZ was a joint and several decision maker with ABC, the enduring 17  
power of attorney is only revoked to the extent it gives power to XYZ and ABC can 18  
continue to exercise the power. 19
- If XYZ was not a joint and several chosen decision maker and the enduring power 20  
of attorney provides an alternative or successive decision maker for financial 21  
decisions, the alternative or next chosen decision maker is then able to make 22  
financial decisions under it. Otherwise, no one is able to make financial decisions 23  
under the enduring power of attorney. 24

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<sup>25</sup> If an adult who has given a chosen decision maker power to make a decision has decision-making capacity for the decision, the chosen decision maker may withdraw by signed notice given to the adult—section 140(3).

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**PART 4—OTHER MATTERS**
**Offence to dishonestly induce the making of enduring power of attorney**

**57.(1)** A person must not dishonestly induce an adult to make an enduring power of attorney.

**Maximum penalty—**

**(2)** A person found guilty of an offence under subsection (1) loses an interest the person might otherwise have had in the estate of the adult.

*Examples of a lost interest—*

1. If the offender is a beneficiary under the will of the adult who made the enduring power of attorney—the offender's interest in the adult's estate.

2. If the offender would be entitled to an interest in the estate of the adult who made the enduring power of attorney on the death intestate of the adult—the offender's interest in the adult's estate.

3. If the offender has an interest under an instrument under which the adult who made the enduring power of attorney is the donor, settlor or grantor—the offender's interest under the instrument.

**(3)** However, the court may, if it considers it fair, completely or partly relieve a forfeiture under subsection (2).

**Application of Property Law Act**

**58.** The following provisions of the *Property Law Act 1974* apply to an enduring power of attorney—

- section 169(2) (Execution of powers of attorney)
- section 171 (Registration of powers and instruments revoking powers)
- section 172 (Execution of instruments etc. by donee of power of attorney)
- section 175 (Proof of instruments creating powers).

<b>Recognition of enduring powers of attorney made in other States</b>	1
<b>59. If—</b>	2
(a) an enduring power of attorney is made by an adult in another State; and	3 4
(b) the enduring power of attorney complies with the requirements in the other State in relation to an enduring power of attorney;	5 6
then, to the extent the enduring power of attorney could validly have been made in Queensland, it must be treated as if it had been made in Queensland and complied with the requirements in this Chapter.	7 8 9
<b>Protection against change or revocation</b>	10
<b>60.(1)</b> If a power under an adult's enduring power of attorney has been changed or revoked, a chosen decision maker who—	11 12
(a) purports to exercise the power; and	13
(b) does not know the power has been changed or revoked;	14
does not incur any liability (either to the adult or anyone else) because of the variation or revocation.	15 16
<b>(2)</b> If—	17
(a) a power under an adult's enduring power of attorney has been changed or revoked; and	18 19
(b) a person deals with a chosen decision maker who purports to exercise the power; and	20 21
(c) the person does not know the power has been changed or revoked;	22 23
the transaction between them is, in favour of the person, as valid as if the power had not been changed or revoked.	24 25
<b>(3)</b> Knowledge of change or revocation includes—	26
(a) knowledge of the happening of an event <sup>26</sup> having the effect of	27

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<sup>26</sup> For example, an adult's enduring power of attorney is revoked if the adult dies (section 55) or the chosen decision maker becomes a health care provider for the adult (section 56(1)(d)).

changing or revoking; and	1
(b) having reason to believe change or revocation has happened.	2
<b>Protection against noncompliance with interstate enduring power of attorney</b>	3
	4
61.(1) If an adult's enduring power of attorney has been made in another State and does not comply with the other State's requirements in relation to an enduring power of attorney, a chosen decision maker who—	5
	6
	7
(a) purports to exercise power under the enduring power of attorney; and	8
	9
(b) does not know of the noncompliance;	10
does not incur any liability (either to the adult or anyone else) because of the noncompliance.	11
	12
(2) If—	13
(a) an adult's enduring power of attorney has been made in another State and does not comply with the other State's requirements in relation to an enduring power of attorney; and	14
	15
	16
(b) a person deals with a chosen decision maker who purports to exercise power under the enduring power of attorney; and	17
	18
(c) the person does not know of the noncompliance;	19
the transaction between them is, in favour of the person, as valid as if the enduring power of attorney complied with the other State's requirements in relation to an enduring power of attorney.	20
	21
	22
(3) Knowledge of noncompliance includes—	23
(a) knowledge of the happening of an event having the effect of noncompliance; and	24
	25
(b) having reason to believe there is noncompliance.	26



<b>CHAPTER 6—ADVANCE HEALTH CARE DIRECTIVES</b>	1 2
<b>PART 1—MAKING AN ADVANCE HEALTH CARE DIRECTIVE</b>	3 4
<i>Division 1—Benefit of advance health care directive</i>	5
<b>Overview</b>	6
<b>62.(1)</b> An adult who understands the matters necessary to make an advance health care directive <sup>27</sup> may make an advance health care directive including decisions about the adult’s future health care.	7 8 9
<b>(2)</b> An advance health care directive may include health care decisions and special consent health care decisions of the adult.	10 11
<b>(3)</b> It may also—	12
<b>(a)</b> include information relevant to a future health care or special consent health care decision of, or for, the adult; and	13 14
<b>(b)</b> choose 1 or more decision makers to make future health care decisions for the adult if the decisions included in the directive are inadequate.	15 16 17
<b>(4)</b> A chosen decision maker may not make a special consent health care decision for the adult.	18 19
<b>(5)</b> Section 68 deals with when the directive begins.	20
<b>(6)</b> The advance health care directive is not revoked by the adult becoming an adult with impaired decision-making capacity for a decision.	21 22
<b>Chosen decision maker to supplement advance health care directive</b>	23
<b>63.</b> Chapter 5 applies to a chosen decision maker chosen by an adult in	24

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<sup>27</sup> “[M]atters necessary to make an advance health care directive” means the matters in section 65—see Dictionary.

an advance health care directive as if the chosen decision maker were chosen by the adult in an enduring power of attorney.	1 2
<b>Common law not affected</b>	3
64. This Act does not affect common law recognition of instructions about health care given by an adult that are not given in an advance health care directive made under this Act.	4 5 6
<b><i>Division 2—Formal matters</i></b>	7
<b>When an advance health care directive may be made</b>	8
65. An adult may make an advance health care directive including a health care or special consent health care decision only if the adult is capable of understanding the nature and foreseeing the likely effects of the decision and understands the following—	9 10 11 12
(a) the directive will continue to operate even if the adult becomes an adult with impaired decision-making capacity;	13 14
(b) the adult may revoke the directive at any time the adult is capable of making another advance health care directive;	15 16
(c) at any time the adult is not capable of revoking the directive, the adult will not be able to oversee the implementation of the directive.	17 18 19
<b>How to make an advance health care directive</b>	20
66.(1) An advance health care directive of an adult must—	21
(a) be written; and	22
(b) be signed by the adult or, if the adult instructs, for the adult and in the adult's presence by a person who is at least 18 and not the witness or a chosen decision maker for the adult; and	23 24 25
(c) be signed and dated by a witness who is—	26

*Assisted and Substituted Decision-making*

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- |  |                      |
|--|----------------------|
| (i) a justice, <sup>28</sup> commissioner for declarations or lawyer; <sup>29</sup> and  | 1                    |
| (ii) not a chosen decision maker of the adult; and   | 2                    |
| (iii) not a relation of the adult or a chosen decision maker; and  | 3                    |
| (iv) not a current health care provider of the adult.  | 4                    |
| (2) The directive may be in the approved form.   | 5                    |
| (3) If the directive is signed by the adult, it must include a certificate signed by the witness stating that the adult—   | 6<br>7               |
| (a) signed the advance health care directive in the witness' presence; and   | 8<br>9               |
| (b) at the time, appeared to the witness to understand the matters necessary to make an advance health care directive  | 10<br>11             |
| (4) If the directive is signed by a person for the adult, it must include a certificate signed by the witness stating that—  | 12<br>13             |
| (a) in the witness' presence, the adult instructed the person to sign the advance health care directive on the adult's behalf; and   | 14<br>15             |
| (b) the person signed the advance health care directive in the presence of the adult and witness; and  | 16<br>17             |
| (c) at the time, the adult appeared to the witness to understand the matters necessary to make an advance health care directive.   | 18<br>19             |
| (5) If the directive chooses 1 or more decision makers to make future health care decisions, it is only effective to give power to a chosen decision maker if the chosen decision maker has signed the directive acknowledging the power has been given. | 20<br>21<br>22<br>23 |

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<sup>28</sup> “[J]ustice” means justice of the peace—*Acts Interpretation Act 1954*, section 36.

<sup>29</sup> “[L]awyer” means a barrister, solicitor, barrister and solicitor or legal practitioner of the High Court of the Supreme Court of a State (including the Australian Capital Territory and the Northern Territory)—*Acts Interpretation Act 1954*, sections 33A and 36.

<b><i>Division 3—Who may be a chosen decision maker</i></b>	1
<b>Eligibility—personal or health care decision</b>	2
67. A person may be chosen by an advance health care directive as a chosen decision maker for a health care decision for an adult only if the person is—	3 4 5
(a) an individual who is at least 18; and	6
(b) not a paid carer, or current health care provider, for the adult.	7
<b><i>Division 3—When directive exercisable</i></b>	8
<b>Exercise of directive</b>	9
68.(1) An adult's advance health care directive about a health care decision or special consent health care decision—	10 11
(a) begins when (if ever) the adult has impaired decision-making capacity for the decision; and	12 13
(b) cannot begin before then.	14
(2) However, the directive is exercisable only while the adult has impaired decision-making capacity for the decision.	15 16
 <b>PART 2—USING A HEALTH CARE DIRECTIVE</b>	 17
<b><i>Division 1—Effect of directive</i></b>	18
<b>Advance decision effective when needed</b>	19
69. When an advance health care directive begins, a health care or special consent health care decision included in the directive is as effective as if—	20 21

*Assisted and Substituted Decision-making*

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|--|---|
| (a) the adult made the decision when it needed to be made; and | 1 |
| (b) the adult had capacity to make the decision then.          | 2 |

*Division 2—Health care provider* 3**Protection if unaware of directive** 4

70. A health care provider is not affected by an advance health care directive to the extent that the health care provider does not know, or have reason to believe, that an adult has an advance health care directive—

- |   |               |
|---|---------------|
| (a) containing a health care or special consent health care decision; or  | 8             |
| (b) choosing 1 or more chosen decision makers to make future health care decisions for the adult if the decisions included in the directive are inadequate. | 9<br>10<br>11 |

**Protection if unaware of change or revocation** 12

71. A health care provider is not affected by a change or revocation of an advance health care directive to the extent that the health care provider does not know, or have reason to believe, that an adult has changed or revoked an advance health care directive.

*Division 3—Assistance from tribunal* 17**Declaration of impaired decision-making capacity** 18

72. A chosen decision maker, a health care provider for an adult or another interested person may apply to the tribunal for a declaration (an “impaired capacity declaration”) that the adult who made the advance health care directive has become an adult with impaired decision-making capacity for all health care decisions and special consent health care decisions or a particular decision or type of decision.

<b>Advice and directions about exercise of power</b>	1
73. A chosen decision maker, a health care provider for an adult or another interested person may apply to the tribunal for advice or directions about a decision, information or something else included in the adult's advance health care directive or the interpretation of the directive's terms.	2 3 4 5
<b>PART 3—CHANGING AND REVOKING AN ADVANCE HEALTH CARE DIRECTIVE</b>	6 7
<b>Change and revocation by tribunal</b>	8
74.(1) An interested person may apply to the tribunal for an order—	9
(a) changing the terms of an adult's advance health care directive; or	10
(b) revoking the directive.	11
(2) The tribunal may only make an order under subsection (1) if the tribunal considers circumstances (including advances in medical science) have changed to the extent that the terms of the advance health care directive are inappropriate.	12 13 14 15
(3) The tribunal may make an order under subsection (1) on its own initiative.	16 17
<b>Effect of tribunal change or revocation</b>	18
75.(1) An advance health care directive is changed if the tribunal makes an order changing its terms.	19 20
(2) An advance health care directive is revoked to the extent the tribunal makes an order revoking it.	21 22
<b>Duty to advise of tribunal change or revocation</b>	23
76. If the tribunal changes or revokes an adult's advance health care directive, the tribunal must take reasonable steps to advise the adult of the change or revocation.	24 25 26

**Formal revocation by adult**

- 1
- 2 **77.(1)** An adult's advance health care directive is revoked if the adult  
3 revokes it under this section when the adult understands the matters  
4 necessary for making the same advance health care directive.<sup>30</sup>
- 5 **(2)** A revocation under this section of an advance health care directive by  
6 the adult who made it must—
- 7 (a) be written; and
- 8 (b) be signed by the adult revoking it or, if the adult revoking it  
9 instructs, for the adult and in the adult's presence by an individual  
10 who is at least 18 and not the witness or a chosen decision maker  
11 for the adult; and
- 12 (c) be signed and dated by a witness who is—
- 13 (i) a justice,<sup>31</sup> commissioner for declarations or lawyer;<sup>32</sup> and
- 14 (ii) not a chosen decision maker of the adult; and
- 15 (iii) not a relation of the adult or a chosen decision maker; and
- 16 (iv) not a current health care provider for the adult.
- 17 **(3)** If the revocation is signed by the adult, it must include a certificate  
18 signed by the witness stating that the adult—
- 19 (a) signed the revocation in the witness' presence; and
- 20 (b) at the time, appeared to the witness to understand the matters  
21 necessary to make the same advance health care directive.
- 22 **(4)** If the revocation is signed by a person for the adult, it must include a  
23 certificate signed by the witness stating that—
- 24 (a) in the witness' presence, the adult instructed the person to sign the  
25 revocation for the adult; and

<sup>30</sup> "[M]atters necessary to make an advance health care directive" means the matters in section 65—see Dictionary.

<sup>31</sup> "[J]justice" means justice of the peace—*Acts Interpretation Act 1954*, section 36.

<sup>32</sup> "[L]awyer" means a barrister, solicitor, barrister and solicitor or legal practitioner of the High Court of the Supreme Court of a State (including the Australian Capital Territory and the Northern Territory)—*Acts Interpretation Act 1954*, sections 33A and 36.

- (b) the person signed the revocation in the presence of the adult and witness; and 1  
2
- (c) at the time, the adult appeared to the witness to understand the matters necessary to make the same advance health care directive. 3  
4
- (5) A revocation of an advance health care directive may be in the approved form. 5  
6
- Revocation by other action of adult** 7
- 78.(1) In this section— 8
- “affecting document” means an enduring power of attorney or advance health care directive. 9  
10
- (2) An adult’s advance health care directive is also revoked, to the extent it includes a particular decision, if the adult— 11  
12
- (a) includes the decision in a later advance health care directive; or 13
- (b) gives a chosen decision maker power in a later affecting document to make the decision. 14  
15
- (3) An adult’s advance health care directive is also revoked to the extent it chooses a particular decision maker to make a particular decision if the adult— 16  
17  
18
- (a) includes the decision in a later advance health care directive; or 19
- (b) gives a different chosen decision maker power in a later affecting document to make the decision. 20  
21
- Revocation by action of chosen decision maker** 22
79. An adult’s advance health care directive is also revoked, to the extent it gives power to a chosen decision maker for a decision, if the chosen decision maker— 23  
24  
25
- (a) withdraws with the tribunal’s leave;<sup>33</sup> or 26

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<sup>33</sup> The tribunal may give leave under section 140(1).



(b) withdraws by notice given to the adult under this Act; <sup>34</sup> or	1
(c) is a paid carer for the adult; or	2
(d) is a health care provider for the adult; or	3
(e) has impaired decision-making capacity; or	4
(f) dies.	5
<b>CHAPTER 7— APPOINTED ASSISTANT OR</b>	6
<b>APPOINTED DECISION MAKER APPOINTED BY</b>	7
<b>TRIBUNAL</b>	8
<b>PART 1—EXPLANATION</b>	9
<b>Explanation of Chapter</b>	10
80.(1) This Chapter allows the tribunal to appoint an appointed assistant or appointed decision maker.	11 12
(2) Part 2 states when an appointment may be made.	13
(3) Part 3 states whom the tribunal may appoint.	14
(4) Part 4 states the steps needed to have an appointment made.	15

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<sup>34</sup> If an adult, who has given a chosen decision maker power to make a decision, has decision-making capacity for the decision, the chosen decision maker may withdraw by signed notice given to the adult—section 140(3).

**PART 2—WHEN APPOINTMENT MAY BE MADE****General—appointment of appointed assistant**

**81.(1)** The tribunal may appoint an appointed assistant for a decision for an adult if—

- (a) the adult—
  - (i) needs to make the decision; or
  - (ii) is likely to make the decision and the decision involves, or is likely to involve, substantial risk to the adult's health, welfare or property; and
- (b) the adult would have decision-making capacity for the decision with the assistance of an appointed assistant; and
- (c) there is an appropriate person available for appointment; and
- (d) without an appointment—
  - (i) the adult's needs cannot be adequately met; or
  - (ii) the adult's interests cannot be adequately protected.

(2) The appointment may be on terms considered appropriate by the tribunal.

**General—appointment of appointed decision maker**

**82.(1)** The tribunal may appoint an appointed decision maker for a decision for an adult if—

- (a) the adult—
  - (i) needs to make the decision; or
  - (ii) is likely to make the decision and the decision involves, or is likely to involve, substantial risk to the adult's health, welfare or property; and
- (b) the adult has impaired decision-making capacity for the decision; and
- (c) there is an appropriate person available for appointment; and

- 
- (d) without an appointment— 1
- (i) the adult's needs cannot be adequately met; or 2
- (ii) the adult's interests cannot be adequately protected. 3
- (2) The appointment may be on terms considered appropriate by the 4  
tribunal. 5
- Advance appointment of appointed assistant** 6
- 83.(1)** The tribunal may make an advance appointment of an appointed 7  
assistant for a decision for an individual who is at least 17½ but not 18 if— 8
- (a) there is a reasonable likelihood that, when the individual turns 18, 9  
the individual— 10
- (i) will need to make the decision; or 11
- (ii) is likely to make the decision and the decision involves, or is 12  
likely to involve, substantial risk to the individual's health, 13  
welfare or property; and 14
- (b) there is a reasonable likelihood that, when the individual turns 18, 15  
the individual will have decision-making capacity for the decision 16  
only with the assistance of an appointed assistant; and 17
- (c) there is an appropriate person available for appointment; and 18
- (d) there is a reasonable likelihood that, without an appointment, 19  
when the individual turns 18— 20
- (i) the individual's needs could not be adequately met; or 21
- (ii) the individual's interests could not be adequately protected. 22
- (2) The appointment begins when the individual turns 18. 23
- (3) The appointment ends when the individual turns 19 unless the 24  
tribunal orders that the appointment is for a longer period. 25
- (4) The tribunal may order the appointment for a longer period only if the 26  
tribunal considers— 27
- (a) the need for an appointment will continue for the longer period; 28  
and 29
- (b) the need for the tribunal to review the appointment is very limited. 30

(5) The longer period may be up to 3 years.	1
(6) The appointment may be on terms considered appropriate by the tribunal.	2 3
<b>Advance appointment of appointed decision maker</b>	4
84.(1) The tribunal may make an advance appointment of an appointed decision maker for a decision for an individual who is at least 17 <sup>1</sup> / <sub>2</sub> but not 18 if—	5 6 7
(a) there is a reasonable likelihood that, when the individual turns 18, the individual—	8 9
(i) will need to make the decision; or	10
(ii) is likely to make the decision and the decision involves, or is likely to involve, substantial risk to the individual's health, welfare or property; and	11 12 13
(b) there is a reasonable likelihood that, when the individual turns 18, the individual will have impaired decision-making capacity for the decision; and	14 15 16
(c) there is an appropriate person available for appointment; and	17
(d) there is a reasonable likelihood that, without an appointment, when the individual turns 18—	18 19
(i) the individual's needs could not be adequately met; or	20
(ii) the individual's interests could not be adequately protected.	21
(2) The appointment begins when the individual turns 18.	22
(3) The appointment ends when the individual turns 19 unless the tribunal orders that the appointment is for a longer period.	23 24
(4) The tribunal may order the appointment for a longer period only if the tribunal considers—	25 26
(a) the need for an appointment will continue for the longer period; and	27 28
(b) the need for the tribunal to review the appointment is very limited.	29
(5) The longer period may be up to 3 years.	30

- (6) The appointment may be on terms considered appropriate by the tribunal. 1  
2

### **PART 3—WHO MAY BE APPOINTED** 3

#### *Division 1—Eligibility* 4

##### **Eligibility—personal or health care decision** 5

85. A person may be appointed as an appointed assistant, or appointed decision maker, for a personal decision or health care decision of, or for, an adult only if the person— 6  
7  
8

- (a) is— 9
- (i) a relation of the adult, or close friend of the adult, who is at least 18; or 10  
11
  - (ii) another individual who is at least 18; or 12
  - (iii) the Adult Guardian; and 13
- (b) is not a paid carer, or current health care provider, for the adult; and 14  
15
- (c) is considered by the tribunal as appropriate for appointment having regard to the appropriateness considerations.<sup>35</sup> 16  
17

##### **Eligibility—excluded personal or special consent health care decision** 18

86.(1) A person may be appointed as an appointed assistant for an excluded personal decision, or special consent health care decision, of an adult only if the person— 19  
20  
21

- (a) is— 22
- (i) a relation of the adult, or close friend of the adult, who is at 23

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<sup>35</sup> See section 88.

least 18; or	1
(ii) another individual who is at least 18; or	2
(iii) the Adult Guardian; and	3
(b) is not a paid carer, or current health care provider, for the adult;	4
and	5
(c) is considered by the tribunal as appropriate for appointment	6
having regard to the appropriateness considerations. <sup>36</sup>	7
(2) No-one may be appointed as an appointed decision maker for an	8
excluded personal decision or special consent health care decision.	9
<b>Eligibility—financial or litigation related decision</b>	10
87. A person may be appointed as an appointed assistant or appointed	11
decision maker for a financial decision or litigation related decision of, or	12
for, an adult only if the person—	13
(a) is—	14
(i) a relation of the adult, or close friend of the adult, who is at	15
least 18; or	16
(ii) another individual who is at least 18; or	17
(iii) a trustee company under the <i>Trustee Companies Act 1968</i> ;	18
or	19
(iv) the Public Trustee; and	20
(b) is not a paid carer, or current health care provider, for the adult;	21
and	22
(c) is considered by the tribunal as appropriate for appointment	23
having regard to the appropriateness considerations.	24

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<sup>36</sup> See section 88.

<b><i>Division 2—Appropriateness considerations</i></b>	1
<b>Tribunal to consider</b>	2
<b>88.(1)</b> In deciding whether a person is appropriate for appointment for an adult, the tribunal must consider the following matters (“ <b>appropriateness considerations</b> ”)—	3 4 5
(a) the general principles and whether the person is likely to comply with them;	6 7
(b) if the appointment is for a health care decision—the health care principle and whether the person is likely to comply with it;	8 9
(c) whether the adult’s and person’s interests are likely to conflict;	10
(d) whether the adult and person are compatible;	11
(e) if more than 1 person is to be appointed—whether the persons are compatible;	12 13
(f) whether the person would be available and accessible to the adult;	14
(g) the person’s suitability and competence to perform functions and exercise powers under an appointment order.	15 16
<b>(2)</b> The fact that a person is a relation of the adult does not, of itself, mean the adult’s and person’s interests are likely to conflict.	17 18
<b>(3)</b> Also, the fact that, on the adult’s death, a person may be a beneficiary of the adult’s estate does not, of itself, mean the adult’s and person’s interests are likely to conflict.	19 20 21
<b>(4)</b> In considering the person’s suitability and competence, the tribunal must have regard to the following—	22 23
(a) the nature and circumstances of any criminal conviction of the person including the likelihood that the commission of the offence may adversely affect the adult;	24 25 26
(b) if the person’s appointment is for a financial decision or litigation related decision and the person is an individual—	27 28
(i) the nature and circumstances of any bankruptcy; and	29
(ii) the nature and circumstances of any insolvency of any company of which the person was, or is, a director, secretary	30 31

or other principal officer; and	1
(c) the nature and circumstances of any refusal of, or removal from, appointment (whether in Queensland or elsewhere) as—	2 3
(i) a person assisting someone else to make decisions; or	4
(ii) a person making decisions for someone else.	5
(5) An individual who has agreed to proposed appointment must advise <sup>37</sup> the tribunal on oath or affirmation whether he or she—	6 7
(a) is under 18; or	8
(b) is a paid carer or current health care provider for the adult; or	9
(c) has any criminal conviction; or	10
(d) if the proposed appointment is for a financial or litigation related decision—	11 12
(i) is, or has been, bankrupt; or	13
(ii) is, or has been, a director, secretary or other principal officer of a company that is, or has been, insolvent; or	14 15
(e) has been (whether in Queensland or elsewhere) refused, or removed from, appointment as—	16 17
(i) a person assisting someone else to make decisions; or	18
(ii) a person making decision for someone else.	19
(6) In this section—	20
“conviction” includes being found guilty.	21

## **PART 4—STEPS FOR APPOINTMENT** 22

### **Step 1—Apply for appointment** 23

**89.(1)** An adult or another interested person may apply to the tribunal for 24

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<sup>37</sup> Section 260 (Preservation of confidentiality) applies to the advice.



- the appointment of an appointed assistant or appointed decision maker for the adult. 1  
2
- (2) The application must be written and filed with the tribunal. 3
- (3) The application must include the following— 4
- (a) the reasons for the application; 5
- (b) to the best of the applicant's knowledge, information about the following people— 6  
7
- (i) the applicant; 8
- (ii) the adult if the adult is not the applicant; 9
- (iii) the appointee proposed by the applicant; 10
- (iv) the members of the adult's family; 11
- (v) any primary carer of the adult (other than a family member); 12
- (vi) all current appointed assistants and substitute decision makers for the adult; 13  
14
- (c) the written agreement of the appointee proposed by the applicant to appointment; 15  
16
- (d) other information prescribed under the regulations. 17
- (4) The information required under subsection (3)(b) is to enable the tribunal to give notice of the hearing and must consist of— 18  
19
- (a) each person's name; and 20
- (b) either— 21
- (i) details the applicant knows of the person's address and telephone and facsimile number; or 22  
23
- (ii) if the applicant does not know the details—a way known to the applicant of contacting the person. 24  
25

**Step 2—Tribunal advises people concerned of hearing** 26

- 90.(1)** At least 7 days before the hearing of an application, the tribunal must give notice of the hearing to the adult for whom the applicant asks that an appointment be made and, as far as practicable, to the following— 27  
28  
29

(a) the applicant;	1
(b) the appointee proposed by the applicant;	2
(c) the members of the adult's family;	3
(d) any primary carer of the adult (other than a family member);	4
(e) all current appointed assistants and substitute decision makers for the adult;	5 6
(f) anyone else the tribunal considers should be notified.	7
(2) Notice to the adult must be given in the way the tribunal considers most appropriate having regard to the person's needs.	8 9
<i>Example—</i>	10
If the tribunal is aware that the adult is not literate in English but is literate in another language, the notice must be given in the other language.	11 12
(3) However, the adult's failure to understand the notice does not affect its validity.	13 14
(4) The tribunal may—	15
(a) dispense with the requirement to give notice to all or any of the people listed in subsection (1) other than the adult; and	16 17
(b) reduce the time stated in subsection (1).	18
(5) Failure to comply with the requirement to give notice to all or any of the people listed in subsection (1), other than the adult, does not affect the validity of a hearing or the tribunal's decision about an application.	19 20 21
<b>Step 3—Satisfy tribunal appointment needed</b>	22
91.(1) If the tribunal is satisfied of the matters in section 81(1), it may appoint an appointed assistant for the decision of the adult.	23 24
(2) If the tribunal is satisfied of the matters in section 82(1), it may appoint an appointed decision maker for the decision for the adult.	25 26
<b>Step 4—Tribunal decides who should be appointed</b>	27
92.(1) If an appointment is to be made, the tribunal then decides who should be appointed.	28 29

(2) The tribunal may appoint—	1
(a) a single appointee for a decision or type of decision; or	2
(b) joint or joint and several appointees for a decision or type of decision; or	3
decision; or	4
(c) different appointees for different decisions or types of decision; or	5
(d) alternative appointees for a decision or type of decision so power is given to a particular appointee only in stated circumstances; or	6
is given to a particular appointee only in stated circumstances; or	7
(e) successive appointees for a decision or type of decision so power is given to a particular appointee only when the power of a previous appointee ends.	8
	9
	10
 <b>Step 5—Tribunal decides whether to change review period</b>	11
<b>93.(1) If an appointment is to be made<sup>38</sup> and the tribunal considers—</b>	12
(a) the need for an appointment will continue for more than 2 years;	13
and	14
(b) the need for the tribunal to review the appointment is very limited;	15
the tribunal may order a period of up to 3 years as the first review period <sup>39</sup>	16
for the appointment.	17
(2) If an appointment is to be made and the tribunal considers it appropriate, the tribunal may order that the first review period for the appointment is a period less than 2 years.	18
	19
	20
(3) An order under this section is an “ <b>order changing the review period</b> ”.	21
	22
 <b>Certain steps also apply to advance appointments</b>	23
<b>94.(1) Steps 1, 2 and 4 apply, with necessary changes, to the advance appointment of an appointed assistant or appointed decision maker for an</b>	24
	25

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<sup>38</sup> The tribunal must give its decision within a reasonable time (section 211), give written reasons for its decision (section 212) and generally give a copy of its decision and reasons to each participant (section 213).

<sup>39</sup> Normally 2 years—see section 95.

- individual who is at least 17 $\frac{1}{2}$  but not 18. 1
- (2) If the tribunal is satisfied of the matters in section 83(1), instead of 2  
step 3, it may make an advance appointment of an appointed assistant for 3  
the decision for the individual. 4
- (3) If the tribunal is satisfied of the matters in section 84(1), it may make 5  
an advance appointment of an appointed decision maker for the decision for 6  
the individual. 7

## **PART 5—REVIEW OF APPOINTMENT** 8

### **Periodic automatic review** 9

95. The tribunal must periodically review an appointment. 10

### **Other review** 11

96. The tribunal may review an appointment at any time on its own 12  
initiative or on the application of an interested person. 13

### **Type of review** 14

97.(1) The tribunal may conduct a review in the way it considers 15  
appropriate. 16

(2) At the end of a review of an appointment, the tribunal must revoke its 17  
order making the appointment unless it is satisfied that it would make 18  
another appointment if a new application for an appointment were to be 19  
made. 20

(3) If the tribunal is satisfied there are appropriate grounds for an 21  
appointment to continue, it may either— 22

- (a) continue its order making the appointment; or 23
- (b) change its order making the appointment, including, for example, 24  
by— 25
  - (i) changing the terms of the appointment; or 26

(ii) removing an appointed decision maker; or	1
(iii) making a new appointment; or	2
(iv) making an order, or further order, changing the review period <sup>40</sup> .	3 4
(4) However, the tribunal may make an order removing an appointed decision maker only if the tribunal considers—	5 6
(a) a relevant interest of the adult has not been, or is not being, adequately protected; or	7 8
(b) the appointed decision maker is no longer suitable or competent to act as substitute decision maker; or	9 10
(c) the appointed decision maker has neglected the appointed decision maker's duties or abused the appointed decision maker's powers; or	11 12 13
(d) the appointed decision maker has otherwise contravened this Act.	14
<b>First automatic review</b>	15
98.(1) The first review of an appointment must happen before the first review period ends.	16 17
(2) In this section—	18
<b>“first review period”</b> for an appointment (including an appointment made when changing an earlier order making an appointment) means—	19 20
(a) 2 years after the first mentioned appointment is made; or	21
(b) the period stated in an order changing the review period. <sup>41</sup>	22
<b>Subsequent automatic review</b>	23
99. A review of an appointment (other than the first review) must happen no more than 3 years after the most recent review.	24 25

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<sup>40</sup> See section 93.

<sup>41</sup> See section 93.

**PART 6—OTHER MATTERS****Automatic ending of appointment**

**100.** If an appointed assistant, or appointed decision maker, for an adult becomes a paid carer, or health care provider, for the adult, the appointment ends.

**Protection of appointed decision maker—decision maker already chosen**

**101.(1)** In this section—

“**document**” means an enduring power of attorney or advance health care directive.

**(2)** If—

- (a)** a power is given to a chosen decision maker under a document of an adult; and
- (b)** after the document was made but without reference to it, the tribunal gives the power to an appointed decision maker; and
- (c)** the appointed decision maker uses the power and does not know the power is given to a chosen decision maker;

the appointed decision maker does not incur any liability (either to the adult or anyone else) because of power having been given to the chosen decision maker.

**(3)** If—

- (a)** a power is given to a chosen decision maker under a document of an adult; and
- (b)** after the document was made but without reference to it, the tribunal gives the power to an appointed decision maker; and
- (c)** a person deals with the appointed decision maker who purports to exercise the power given by the tribunal; and
- (c)** the person does not know the power is given to a chosen decision maker;

the transaction between them is, in favour of the person, as valid as if the power had not been given to the chosen decision maker. 1  
2

(4) Knowledge of the power having been given to a chosen decision maker includes having reason to believe the power has been given to a chosen decision maker. 3  
4  
5

**Protection of appointed decision maker—decision already made by advance health care directive** 6  
7

**102.(1) If—** 8

(a) a decision about an issue is included in an adult's advance health care directive; and 9  
10

(b) after the directive was made but without reference to it, the Tribunal appoints an appointed decision maker to make a decision about the issue; and 11  
12  
13

(c) the appointed decision maker makes a decision about the issue and does not know a decision about the issue is included in the adult's advance health care directive; 14  
15  
16

the appointed decision maker does not incur any liability (either to the adult or anyone else) because of a decision about the issue being included in the adult's advance health care directive. 17  
18  
19

**(2) If—** 20

(a) a decision about an issue is included in an adult's advance health care directive; and 21  
22

(b) after the directive was made but without reference to it, the Tribunal appoints an appointed decision maker to make a decision about the issue; and 23  
24  
25

(c) a person deals with the appointed decision maker who purports to exercise power given by the Tribunal; and 26  
27

(d) the person does not know a decision about the issue is included in the adult's advance health care directive; 28  
29

the transaction between them is, in favour of the person, as valid as if a decision about the issue had not been included in the adult's advance health care directive. 30  
31  
32

- (3) Knowledge of a decision about the issue being included in the adult's advance health care directive includes having reason to believe the issue is included in the adult's advance health care directive. 1  
2  
3

## **CHAPTER 8—HEALTH CARE DECISIONS AND SPECIAL CONSENT HEALTH CARE DECISIONS** 4 5

### **PART 1—OVERVIEW** 6

#### *Division 1—Purpose* 7

#### **Purpose to achieve balance** 8

**103.** This Chapter seeks to strike a balance between— 9

- (a) ensuring an adult is not deprived of necessary health care merely because the adult is an adult with impaired decision-making capacity for a health care or special consent health care decision; and 10  
11  
12  
13
- (b) ensuring health care given to the adult is only for the purpose of promoting and maintaining the adult's health and wellbeing. 14  
15

#### *Division 2—Health care with consent* 16

#### **Who decides for health care requiring consent** 17

**104.** This division deals with who may consent to health care. 18

#### **Adult with decision-making capacity** 19

**105.** If an adult has decision-making capacity for a health care decision or special consent health care decision, only the adult may make the decision. 20  
21



<b>Adult may make enduring power of attorney</b>	1
<b>106.(1)</b> An adult who understands the matters <sup>42</sup> necessary to make an enduring power of attorney may make an enduring power of attorney for health care decisions. <sup>43</sup>	2 3 4
<b>(2)</b> However, power to make a special consent health care decision may not be given by enduring power of attorney.	5 6
<b>Adult may make advance health care directive</b>	7
<b>107.</b> An adult who understands the matters <sup>44</sup> necessary to make an advance health care directive may make an advance health care directive, including health care decisions and special consent health care decisions, about the adult's future health care. <sup>45</sup>	8 9 10 11
<b>Adult with impaired decision-making capacity—health care decisions</b>	12
<b>108.(1)</b> In this section—	13
“ <b>document</b> ” means an enduring power of attorney or advance health care directive.	14 15
<b>(2)</b> If an adult has impaired decision-making capacity for a health care decision, the decision is to be made—	16 17
<b>(a)</b> in accordance with the adult's most recent document (if any) dealing with the decision; <sup>46</sup> or	18 19
<b>(b)</b> if paragraph (a) does not apply—	20
<b>(i)</b> by a statutorily authorised health care decision maker; or	21
<b>(ii)</b> if there is no statutorily authorised health care decision maker or the tribunal considers it impracticable or	22 23

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<sup>42</sup> See section 42.

<sup>43</sup> See Chapter 5 about enduring powers of attorney.

<sup>44</sup> See section 65.

<sup>45</sup> See Chapter 6 about advance health care directives.

<sup>46</sup> A later document prevails over an earlier document to the extent of an inconsistency—section 259.

inappropriate for a statutorily authorised health care decision maker to make the decision—by the appointed decision maker authorised to make the decision.	1 2 3
<b>Adult with impaired decision-making capacity—special consent health care decisions</b>	4 5
<b>109.</b> If an adult has impaired decision-making capacity for a special consent health care decision, the decision is to be made—	6 7
(a) by the adult in accordance with the adult’s most recent advance health care directive (if any) containing the decision; or	8 9
(b) if paragraph (a) does not apply—by the tribunal.	10
 <i>Division 3—Health care without consent</i>	 11
<b>Adult with impaired decision-making capacity—urgency</b>	12
<b>110.(1)</b> Health care of an adult may be carried out without consent if—	13
(a) the adult has impaired decision-making capacity for a decision about the health care; and	14 15
(b) a health care provider considers the health care should be urgently carried out—	16 17
(i) to meet imminent risk to the adult’s life or health; or	18
(ii) to prevent significant pain or distress to the adult.	19
<b>(2)</b> Subsection (1) does not apply if the adult objects to the health care unless—	20 21
(a) the adult has minimal or no understanding of what the health care involves; and	22 23
(b) the health care is likely to cause the adult—	24
(i) no distress; or	25
(ii) temporary distress that is outweighed by the benefit to the adult of the proposed health care.	26 27

<b>PART 2—RELEVANT PRINCIPLES</b>	1
<b>Principles to be complied with when making health care or special consent health care decision</b>	2 3
<b>111.(1)</b> In making a health care decision for an adult, or assisting an adult to make a health care decision or special consent health care decision, a person must comply with the general principles <sup>47</sup> and health care principle. <sup>48</sup>	4 5 6 7
<b>(2)</b> In making a special consent health care decision for an adult, the tribunal must comply with the general principles and health care principle.	8 9
<b>Health care principle—most appropriate decision</b>	10
<b>112.(1)</b> A health care or special consent health care decision for an adult should be made only if the decision is the most appropriate decision to promote and maintain the adult's health and well-being. This principle is the "health care principle".	11 12 13 14
<b>(2)</b> In deciding whether a decision is the most appropriate decision, the tribunal or relevant person must, to the greatest extent practicable—	15 16
(a) seek the adult's views and wishes and take them into account; and	17
(b) take the information given to the person or tribunal under section 120 into account.	18 19
<b>(3)</b> Views and wishes may be expressed orally, in writing or in another way, including, for example, by conduct.	20 21

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<sup>47</sup> See section 30.

<sup>48</sup> See section 112.

<b>PART 3—STATUTORILY AUTHORISED HEALTH CARE DECISION MAKERS</b>	1 2
<b>Power</b>	3
<b>113. If—</b>	4
(a) an adult has impaired decision-making capacity for a health care decision; and	5 6
(b) the tribunal has not appointed a decision maker for the decision; and	7 8
(c) it is not possible to make the decision in accordance with a tribunal order or an advance health care directive, or enduring power of attorney, of the adult;	9 10 11
a statutorily authorised health care decision maker for the adult may make the decision. <sup>49</sup>	12 13
<b>PART 4—TRIBUNAL'S POWER TO MAKE SPECIAL CONSENT HEALTH CARE DECISIONS</b>	14 15
<b>Donation of tissue</b>	16
<b>114.(1)</b> The tribunal may consent, for an adult with impaired decision-making capacity for the decision, to removal of tissue from the adult for donation to another person only if the tribunal is satisfied that—	17 18 19
(a) the risk to the adult is small; and	20
(b) the risk of failure of the donated tissue is low; and	21
(c) the life of the proposed recipient would be in danger without the donation; and	22 23
(d) no other compatible donor is reasonably available; and	24

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<sup>49</sup> If statutorily authorised health care decision makers disagree about a health care decision, an application should be made to the tribunal.

- (e) there is, or has been, a close personal relationship between the adult and proposed recipient. 1  
2
- (2) The tribunal may not consent if the adult objects<sup>50</sup> to the health care. 3
- (3) If the tribunal consents to removal of tissue for donation, the tribunal's order must specify the proposed recipient. 4  
5

### **Sterilisation**

 6

115.(1) The tribunal may consent, for an adult with impaired decision-making capacity for the decision, to sterilisation of the adult only if the tribunal is satisfied that— 7  
8  
9

- (a) 1 of the following applies— 10
- (i) sterilisation is medically necessary; 11
- (ii) the adult is, or is likely to be, sexually active and there is no method of contraception that could reasonably be expected to be successfully applied; 12  
13  
14
- (iii) if the adult is female—the adult has problems with menstruation and cessation of menstruation by sterilisation is the only practicable way of overcoming the problems; and 15  
16  
17
- (b) sterilisation cannot reasonably be postponed; and 18
- (c) the adult is unlikely, in the foreseeable future, to have decision-making capacity for a decision about sterilisation. 19  
20

*Examples of paragraph (1)(a)(i)—* 21

1. Sterilisation may be medically necessary if the adult has uterine cancer, bilateral testicular cancer or cryptorchidism. 22  
23

2. Sterilisation may also be medically necessary if the adult has a severe psychiatric depressive illness that is likely to make the adult suicidal if the adult becomes pregnant. 24  
25  
26

(2) Also, in deciding whether to consent for the adult to a sterilisation procedure, the tribunal must take into account— 27  
28

- (a) alternative forms of health care (including other sterilisation 29

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<sup>50</sup> Section 119 (which effectively enables an adult's objection to be overridden in some cases) does not apply.

procedures) presently available or likely to become available in the foreseeable future; and	1 2
(b) the nature and extent of any significant risk associated with the proposed procedure and available alternative forms of health care (including other sterilisation procedures).	3 4 5
(3) If the tribunal consents to sterilisation, the adult's sterilisation is not unlawful. <sup>51</sup>	6 7
<b>Termination of pregnancy</b>	8
116.(1) The tribunal may consent, for an adult with impaired decision-making capacity for the decision, to termination of the adult's pregnancy only if the tribunal is satisfied that the termination is necessary to preserve the adult from serious danger to her life or physical or mental health.	9 10 11 12 13
(2) If the tribunal consents to termination, the termination is not unlawful.	14 15
<b>Research and experimental health care</b>	16
117.(1) The tribunal may consent, for an adult with impaired decision-making capacity for the decision, to the adult's participation in research or experimental health care to diagnose or treat the adult only if the tribunal is satisfied about the following matters—	17 18 19 20
(a) the research or health care is approved by an appropriate ethics committee;	21 22
(b) the risk to the adult is small;	23
(c) the research or health care relates to a condition the adult has;	24
(d) the research or health care may result in significant benefit to the adult;	25 26
(e) the potential benefit cannot be achieved in any other way.	27
(2) The tribunal may consent, for an adult with impaired	28

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<sup>51</sup> Whether this subsection is necessary depends on the proposed new Criminal Code.

decision-making capacity for the decision, to the adult's participation in research or experimental health care treatment intended to gain knowledge that can be used in the diagnosis or treatment of a condition affecting the adult only if the tribunal is satisfied about the following matters—	1 2 3 4
(a) the research or treatment is approved by an appropriate ethics committee;	5 6
(b) the risk to the adult is small;	7
(c) the research or health care relates to a condition the adult has;	8
(d) the research or health care may result in significant benefit to the adult or other persons with the condition;	9 10
(e) the research or health care cannot be carried out without a person with the condition taking part.	11 12
(3) The tribunal may not consent if the adult objects <sup>52</sup> to the research or health care.	13 14

### **Prescribed psychiatric or other health care** 15

118. The tribunal may consent, for an adult with impaired decision-making capacity for the decision, to the adult having psychiatric health care, or other health care, prescribed under the regulations only if the tribunal is satisfied of the matters prescribed under the regulations.	16 17 18 19
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## **PART 5—OTHER MATTERS** 20

### **Objection by adult** 21

119. If an adult objects to having health care—	22
(a) the health care decision or special consent health care decision (other than consent to removal of tissue for donation or research or experimental health care) is effective despite the adult's	23 24 25

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<sup>52</sup> Section 119 (which effectively enables an adult's objection to be overridden in some cases) does not apply.

objection if—	1
(i) the adult has minimal or no understanding of what the health care entails; and	2 3
(ii) the proposed health care is likely to cause the adult—	4
(A) no distress; or	5
(B) temporary distress that is outweighed by the benefit to the adult of the proposed health care; and	6 7
(b) in other cases—the health care decision or special consent health care decision is ineffective to give consent to the health care if the health care provider is aware, or ought reasonably to be aware, that the adult objects to the health care.	8 9 10 11
<b>Health care providers to give information</b>	12
<b>120.(1)</b> A health care provider who is treating an adult must give information—	13 14
(a) to a person who may assist an adult to make a health care decision or make a health care decision for the adult; or	15 16
(b) to the tribunal if the tribunal is considering making a special consent health care decision for the adult.	17 18
<b>(2)</b> The information to be given is information about the following—	19
(a) the nature of the adult's condition;	20
(b) the alternative forms of health care available, or likely to be available in the foreseeable future, for the condition;	21 22
(c) the general nature and effect of each form of health care;	23
(d) the nature and degree of any significant risks associated with each form of health care;	24 25
(e) the reasons why it is proposed that a particular form of health care should be carried out.	26 27
<b>Protection of health care provider</b>	28
<b>121.(1)</b> To the extent a health care provider complies with a purported	29



health care decision made by a person who represented to the health care provider that the person had the right to make the decision, the health care provider is taken to have the adult's consent to the decision. 1  
2  
3

(2) Subsection (1) does not apply if the health care provider knew, or could reasonably be expected to have known, that the person did not have the right to make the decision. 4  
5  
6

**Offence to make decision for adult if no right to do so** 7

122. It is an offence for a person who knows the person has no right to make a health care decision for an adult, or who is recklessly indifferent about whether the person has a right to make a health care decision for an adult, to— 8  
9  
10  
11

(a) purport to make the health care decision; or 12

(b) represent to a health care provider for the adult that the person has a right to make the health care decision. 13  
14

Maximum penalty— 15

**Offence to carry out health care** 16

123.(1) It is an offence for a person to carry out special consent health care of an adult with impaired decision-making capacity unless— 17  
18

(a) this Act provides that the health care may be carried out without consent;<sup>53</sup> or 19  
20

(b) consent to the health care is given under this or another Act;<sup>54</sup> or 21

(c) the health care is authorised by an order of the Supreme Court made in its *parens patriae* jurisdiction.<sup>55</sup> 22  
23

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<sup>53</sup> See section 110 (Adult with impaired decision-making capacity—urgency).

<sup>54</sup> A medical superintendent or medical practitioner may consent to a surgical procedure in certain cases under the *Medical Act 1939*, section 52.

<sup>55</sup> This jurisdiction is based on the need to protect those who lack the capacity to protect themselves. It allows the Supreme Court to appoint decision-makers for people who, because of mental illness, intellectual disability, illness, accident or old age, are unable to adequately safeguard their own interests.

Maximum penalty—	1
(2) It is an offence for a person to carry out other health care of an adult with impaired decision-making capacity unless—	2 3
(a) this Act provides that the health care may be carried out without consent; <sup>56</sup> or	4 5
(b) consent to the health care is given under this Act or another Act; <sup>57</sup> or	6 7
(c) the health care is authorised by an order of the Supreme Court made in its <i>parens patriae</i> jurisdiction.	8 9
Maximum penalty—	10
(3) This section does not affect the application of section 282 of the Criminal Code. <sup>58</sup>	11 12
<b>Other liability not affected</b>	13
124. This Chapter does not affect liability for health care given to an adult to which a person would have been subject if—	14 15
(a) the adult had been capable of consenting to the health care; and	16
(b) the health care had been given with the adult's consent.	17

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<sup>56</sup> See section 110 (Adult with impaired decision-making capacity—urgency).

<sup>57</sup> A medical superintendent or medical practitioner may consent to a surgical procedure in certain cases under the *Medical Act 1939*, section 52.

<sup>58</sup> **'Surgical operations**  
**282.** A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for the patient's benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable having regard to the patient's state at the time and to all the circumstances of the case.' (Criminal Code, section 282)

<b>CHAPTER 9—SUBSTITUTE DECISION MAKER</b>	1
<b>PART 1—GENERAL FUNCTIONS AND POWERS</b>	2
<b>Comply with principles</b>	3
125.(1) A substitute decision maker must comply with the general principles.	4 5
(2) In making a health care decision, a substitute decision maker must also comply with the health care principle.	6 7
<b>Act honestly and reasonably</b>	8
126. A substitute decision maker who may make a decision for an adult must exercise the power honestly and with the degree of care that is reasonable for a person having the substitute decision maker's experience and expertise.	9 10 11 12
Maximum penalty—	13
<b>Act as required by terms of power</b>	14
127. A substitute decision maker who may make a decision for an adult must, when exercising the power, exercise it as required by the terms of the power.	15 16 17
<i>Example—</i>	18
A decision maker chosen under an enduring power of attorney must exercise power as required by the terms of the enduring power of attorney.	19 20
<b>Consult with adult's other substitute decision makers</b>	21
128. A substitute decision maker who may make a decision for an adult must consult on a regular basis with another substitute decision maker who may make a decision for the adult to ensure that the adult's interests are not prejudiced by a breakdown in communication between them.	22 23 24 25

<b>Act together with joint substitute decision makers</b>	1
129.(1) Substitute decision makers who may make a decision jointly for an adult must exercise the power unanimously.	2 3
(2) If it is impracticable or impossible to exercise the power unanimously, 1 or more of the joint substitute decision makers may apply to the tribunal for directions.	4 5 6
<b>Comply with other tribunal requirement</b>	7
130.(1) The tribunal may impose a requirement, including a requirement about giving security, on a substitute decision maker or a person who is to become a substitute decision maker.	8 9 10
(2) A substitute decision maker or person who is to become a substitute decision maker must comply with the requirement.	11 12
<b>PART 2—FUNCTIONS AND POWERS FOR FINANCIAL AND LITIGATION RELATED DECISIONS</b>	13 14 15
<b>Present management plan if asked</b>	16
131. A substitute decision maker who may make a financial decision or litigation related decision for an adult must, if ordered by the tribunal, present a plan of management to the tribunal or its nominee for approval.	17 18 19
<b>Keep records</b>	20
132. A substitute decision maker who may make a financial decision or litigation related decision for an adult must keep sufficient records to enable the substitute decision maker to comply with an order under	21 22 23

section 209(1). <sup>59</sup>	1
Maximum penalty—	2
<b>Keep property separate</b>	3
133.(1) A substitute decision maker who may make a financial decision for an adult must keep the substitute decision maker's property separate from the adult's property.	4 5 6
(2) Subsection (1) does not affect another obligation imposed by law.	7
(3) Subsection (1) does not apply to property owned jointly by the adult and substitute decision maker.	8 9
<b>Get approval for unauthorised investments</b>	10
134. A substitute decision maker who may invest for an adult may invest in investments that are not authorised investments only with the tribunal's approval.	11 12 13
<b>Avoid potential conflict transaction</b>	14
135.(1) A substitute decision maker who may make a financial decision or litigation related decision for an adult must not enter into a potential conflict transaction.	15 16 17
(2) However, a substitute decision maker may enter into a potential conflict transaction if—	18 19
(a) the transaction provides for a person's needs and—	20
(i) the adult might reasonably be expected to provide for the needs; and	21 22
(ii) what is provided is not more than what is reasonable having regard to all the circumstances and, in particular, the adult's financial circumstances; or	23 24 25

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<sup>59</sup> An order under section 209 may require a substitute decision maker to file a summary of receipts and expenditure or more detailed accounts of dealings and transactions.

(b) the substitute decision maker obtains the tribunal's consent; or	1
(c) for a chosen decision maker empowered by an enduring power of attorney—the enduring power of attorney includes the adult's consent to the conflict transaction.	2 3 4
(3) The needs mentioned in subsection (2)(a) may include the substitute decision maker's needs.	5 6
(4) This section does not affect another obligation imposed by law.	7
(5) In this section—	8
<b>“potential conflict transaction”</b> is a transaction in which there could be conflict between—	9 10
(a) the interests and duty of the adult in relation to the transaction; and	11
(b) the interests and duty of the substitute decision maker or a relation, business associate or close friend of the substitute decision maker in relation to the transaction.	12 13 14
(6) The fact that a person is a relation of the adult does not, in itself, mean the adult's and person's interests could conflict.	15 16
(7) Also, the fact that on the adult's death, a person may be a beneficiary of the adult's estate does not, in itself, mean the adult's and person's interests could conflict.	17 18 19
<i>Example—</i>	20
A potential conflict transaction happens if a substitute decision maker who may make financial decisions for an adult buys the adult's car. The sale price does not have to be less than market value for the sale to be a potential conflict transaction.	21 22 23
<b>Gifts</b>	24
<b>136.(1)</b> A substitute decision maker who may make a financial decision for an adult may give away the adult's property only if—	25 26
(a) the gift is to a relation or close friend of the adult and is of a seasonal nature or because of a special event (including, for example, a birth or marriage); or	27 28 29
(b) the gift is in the nature of a donation that the adult made or might reasonably be expected to make;	30 31

and the gift's value is not more than what is reasonable having regard to all the circumstances and, in particular, the adult's financial circumstances. 1  
2

(2) The relation or close friend mentioned in subsection (1)(a) may include the substitute decision maker if the substitute decision maker is a relation or close friend of the adult. 3  
4  
5

(3) The recipient of the gift in the nature of a donation may include a charity with which the substitute decision maker has a connection. 6  
7

(4) The application of this section may be changed by the terms of the power given. 8  
9

#### **Maintain adult's dependants** 10

137.(1) A substitute decision maker who may make a financial decision for an adult may provide from the adult's estate for the needs of a person who is completely or mainly dependent on the adult. 11  
12  
13

(2) However, what is provided must not be more than what is reasonable having regard to all the circumstances and, in particular, the adult's financial circumstances. 14  
15  
16

(3) The application of this section may be changed by the terms of the power given. 17  
18

### **PART 3—MISCELLANEOUS** 19

#### **Power to excuse failure** 20

138. If a substitute decision maker is prosecuted in a court for a failure to comply with this Chapter, the court may, if it considers it fair, completely or partly excuse the failure. 21  
22  
23

#### **Compensation for failure to comply** 24

139.(1) A substitute decision maker who may make a decision for an adult may be required by the tribunal to compensate the adult (or, if the adult has died, the adult's estate) for a loss caused by the substitute decision 25  
26  
27

maker's failure to comply with this Chapter.	1
(2) Compensation paid under a tribunal order must be taken into account in assessing damages in a later civil proceeding in relation to the substitute decision maker's exercise of the power.	2 3 4
<b>Withdrawal of appointed assistant or substitute decision maker</b>	5
140.(1) A person may, with the tribunal's leave, withdraw as appointed assistant or substitute decision maker for a decision or type of decision the person has been given power to make.	6 7 8
(2) If the tribunal gives leave for an appointed assistant or substitute decision maker to withdraw for a decision or type of decision, the tribunal may appoint someone else to replace the withdrawing person for the decision or type of decision.	9 10 11 12
(3) If an adult who has given a chosen decision maker power to make a decision has decision-making capacity for the decision, a person may also withdraw as the chosen decision maker for the decision by signed notice given to the adult.	13 14 15 16

## **CHAPTER 10—TRIBUNAL**

### **PART 1—ESTABLISHMENT, FUNCTIONS AND POWERS**

<b>Tribunal</b>	20
141.(1) An Assisted and Substituted Decisions Tribunal is established.	21
(2) It consists of the president, deputy president and members.	22
<b>Tribunal's functions</b>	23
142.(1) The tribunal has the functions given to it by this Act, including the following functions—	24 25



*Assisted and Substituted Decision-making*

(a) performing certain functions in relation to enduring powers of attorney;	1 2
(b) considering applications for appointment of appointed assistants and appointed decision makers;	3 4
(c) making orders appointing, about the functions of, and giving directions to, appointed assistants and substitute decision makers;	5 6
(d) making declarations about the decision-making capacity of an adult, appointed assistant or substitute decision maker;	7 8
(e) reviewing appointment orders;	9
(f) making special consent health care decisions for adults with impaired decision-making capacity for the decisions.	10 11
(2) The tribunal also has the other functions given to it by another Act.	12
<b>Tribunal's powers</b>	13
143.(1) The tribunal has the powers given under this Act.	14
(2) The tribunal also may do all things necessary or convenient to be done for performing the tribunal's functions.	15 16
 <b>PART 2—ADMINISTRATIVE PROVISIONS</b>	 17
 <b>Appointment of president and deputy president</b>	 18
144.(1) There are to be a president and deputy president of the tribunal appointed on a full-time basis by the Governor in Council.	19 20
(2) The president and deputy president are members of the tribunal.	21
(3) A person is eligible for appointment under this section only if the	22

person is a lawyer<sup>60</sup> of at least 5 years standing whose training or experience, in the Governor in Council's opinion, makes the person suitable to be the president or deputy president. 1  
2  
3

(4) A person ceases to be a member if the person ceases to be the president or deputy president. 4  
5

### **Appointment of members** 6

145.(1) The members are to be appointed by the Governor in Council. 7

(2) Members may be appointed as full-time or part-time members. 8

(3) A person is eligible for appointment as a member only if the person is— 9  
10

(a) a lawyer<sup>61</sup> of at least 5 years standing whose training or experience, in the Governor in Council's opinion, makes the person suitable to be a member (a **“person eligible for appointment because of a legal background”**); or 11  
12  
13  
14

(b) in the Governor in Council's opinion, a person with extensive knowledge or experience in the professional assessment or treatment of persons with a mental or intellectual impairment (a **“person eligible for appointment because of a professional background”**); or 15  
16  
17  
18  
19

(c) in the Governor in Council's opinion, a person with extensive knowledge or experience in working with, or caring for, a person with a mental or intellectual impairment (a **“person eligible for appointment because of contact”**). 20  
21  
22  
23

### **Selection** 24

146.(1) For selecting a person for recommendation for appointment as president, deputy president or a member, the Minister must advertise for 25  
26

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<sup>60</sup> “[L]awyer” means a barrister, solicitor, barrister and solicitor or legal practitioner of the High Court of the Supreme Court of a State (including the Australian Capital Territory and the Northern Territory)—*Acts Interpretation Act 1954*, sections 33A and 36.

<sup>61</sup> See footnote 60.

applications from suitably qualified persons to be considered for selection. 1

(2) The Governor in Council may appoint a president, deputy president 2  
or member only if subsection (1) has been complied with for the 3  
appointment. 4

### **Duration of appointment** 5

147.(1) The president or deputy president hold office for a term of not 6  
longer than 5 years.<sup>62</sup> 7

(2) A member holds office for a term of not longer than 3 years.<sup>63</sup> 8

(3) The office of president, deputy president or a member becomes 9  
vacant if the holder of the office resigns by signed notice of resignation 10  
given to the Minister. 11

(4) The Governor in Council may remove the president, deputy president 12  
or a member from office for— 13

(a) physical or mental incapacity to perform official duties 14  
satisfactorily; or 15

(b) neglect of duty; or 16

(c) dishonourable conduct; or 17

(d) being found guilty of an offence that, in the Governor in 18  
Council's opinion, makes the person unsuitable to perform 19  
official duties. 20

### **Terms of appointment** 21

148.(1) The Governor in Council may decide the remuneration and 22  
allowances payable to the president, deputy president, and other full-time 23  
and part-time members. 24

(2) The president, deputy president and other full-time and part-time 25  
members are to be paid the remuneration and allowances decided by the 26

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<sup>62</sup> The president or deputy president may be reappointed—*Acts Interpretation Act 1954*, section 25(1)(c).

<sup>63</sup> A member may be reappointed—*Acts Interpretation Act 1954*, section 25(1)(c).

<b>Governor in Council.</b>	1
(3) To the extent this Act does not state the terms on which a president, deputy president or other member holds office, the person holds office on the terms set by the Governor in Council.	2 3 4
<b>Leave of absence</b>	5
149. The Minister may give the president, deputy president or another member leave of absence on the terms the Minister considers appropriate.	6 7
<b>Acting appointment</b>	8
150.(1) The Governor in Council may appoint a person to act as president or deputy president—	9 10
(a) for any period the office is vacant; or	11
(b) for any period, or all periods, when the president or deputy president is absent from duty or Australia or cannot, for another reason, perform the duties of the office.	12 13 14
(2) The Governor in Council may appoint a person to act as a member—	15
(a) while the office is vacant; or	16
(b) for a period when 1 of the members is absent from duty or Australia or cannot, for another reason, perform the duties of the office.	17 18 19
<b>Registrar and tribunal staff</b>	20
151.(1) The registrar of the tribunal, and other staff necessary to enable the tribunal to exercise its functions, are to be appointed under the <i>Public Service Management and Employment Act 1988</i> .	21 22 23
(2) The registrar may hold another office in the public service at the same time.	24 25
(3) The president has all the functions and powers of the chief executive of a department, so far as the functions and powers relate to the organisation unit made up of the registrar and tribunal staff, as if—	26 27 28
(a) the unit were a department within the meaning of the <i>Public</i>	29

<i>Service Management and Employment Act 1988; and</i>	1
(b) the president were the chief executive of the department.	2
<b>PART 3—PRESIDENT’S ROLE</b>	3
<b>Rule making power</b>	4
<b>152.(1)</b> The president may make rules (“ <b>tribunal rules</b> ”) about the practices and procedure of the tribunal or the tribunal registry.	5 6
<b>(2)</b> A rule is subordinate legislation.	7
<b>President may delegate to deputy president</b>	8
<b>153.</b> The president may delegate the president’s powers under this Act to the deputy president.	9 10
<b>Training</b>	11
<b>154.(1)</b> It is the duty of the president to ensure members are adequately and appropriately trained to enable the tribunal to perform its functions effectively and efficiently.	12 13 14
<b>(2)</b> The president may direct a member to attend at, and take part in, a training program stated in the direction.	15 16
<b>(3)</b> A member must not, without reasonable excuse, fail to comply with a direction given under subsection (2).	17 18

<b>CHAPTER 11—INTERNAL OPERATION OF</b>	1
<b>TRIBUNAL</b>	2
<b>Arrangement of business</b>	3
<b>155.(1)</b> The president is responsible for ensuring the quick and efficient discharge of the tribunal's business.	4
	5
<b>(2)</b> For example, the president may give directions ("presidential directions") about—	6
	7
<b>(a)</b> the arrangement of the tribunal's business; and	8
<b>(b)</b> the members who are to constitute the tribunal for a particular proceeding; and	9
	10
<b>(c)</b> the places where the tribunal is to sit; and	11
<b>(d)</b> the tribunal's procedure.	12
<b>(3)</b> Directions under subsection (2) may be of general or limited application.	13
	14
<b>Members constituting tribunal</b>	15
<b>156.</b> At a hearing, the tribunal must be constituted by 3 members as follows—	16
	17
<b>(a)</b> the president, deputy president or a member who was a person eligible for appointment because of a legal background; <sup>64</sup>	18
	19
<b>(b)</b> a member who was a person eligible for appointment because of a professional background; <sup>65</sup>	20
	21
<b>(c)</b> a member who was a person eligible for appointment because of contact. <sup>66</sup>	22
	23

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<sup>64</sup> See section 145(3)(a).

<sup>65</sup> See section 145(3)(b).

<sup>66</sup> See section 145(3)(c).

<b>Disqualification from hearing</b>	1
<b>157.(1)</b> This section applies if—	2
(a) the president, deputy president or other member has a personal interest, or a direct or indirect financial interest, in a matter before the tribunal; and	3 4 5
(b) the interest could conflict with the proper performance of the member's duties on the matter	6 7
<b>(2)</b> If this section applies for the president, the president must give written notice of the nature of the interest to the deputy president as soon as practicable after the relevant facts come to the president's attention.	8 9 10
<b>(3)</b> If this section applies for the deputy president or another member, the deputy president or member must give written notice of the nature of the interest to the president as soon as practicable after the relevant facts come to the deputy president's or member's attention.	11 12 13 14
<b>(4)</b> The person giving notice must not—	15
(a) be present when the tribunal considers the matter; or	16
(b) take part in a tribunal decision about the matter.	17
<b>(5)</b> Subsection (4) does not apply to the person giving notice if the person to whom notice is given decides the interest is not of a material nature.	18 19 20
<b>Presiding member</b>	21
<b>158.</b> At the hearing of a proceeding before the tribunal, the president, deputy president or member who was a person eligible for appointment because of a legal background <sup>67</sup> must preside.	22 23 24
<b>Way procedure to be decided</b>	25
<b>159.</b> In a proceeding before the tribunal, procedure is within the presiding member's discretion if it is not provided for by—	26 27
(a) this Act; or	28

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<sup>67</sup> See section 145(3)(a).

(b) tribunal rules; <sup>68</sup> or	1
(c) presidential directions. <sup>69</sup>	2
<b>Way question of law to be decided</b>	3
<b>160.</b> A question of law arising in a proceeding before the tribunal is to be decided according to the presiding member's opinion.	4 5
<b>Way other question to be decided</b>	6
<b>161.</b> If the members constituting the tribunal for a particular proceeding are divided in opinion about the decision to be made on a question (other than a question of law)—	7 8 9
(a) if there is a majority of the same opinion—the question is decided according to the majority opinion; or	10 11
(b) in other cases—the question is decided according to the opinion of the presiding member.	12 13
 <b>CHAPTER 12—EXTERNAL OPERATION OF TRIBUNAL</b>	 14 15
 <b>PART 1—GENERAL PROCEDURE</b>	 16
<b>Informal</b>	17
<b>162.(1)</b> A proceeding before the tribunal must be conducted as simply and quickly as the requirements of this Act and an appropriate consideration of the matters before the tribunal allow.	18 19 20

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<sup>68</sup> See section 152.

<sup>69</sup> See section 155(2).



(2) The tribunal is not bound by the rules of evidence and may inform itself on a matter in any way it considers appropriate. 1  
2

**Open** 3

**163.(1)** A hearing by the tribunal of a proceeding must be in public. 4

(2) However, if the tribunal is satisfied it is desirable to do so because of the confidential nature of any information or matter or for another reason, the tribunal may, by order (“**confidentiality order**”)— 5  
6  
7

(a) direct that a hearing or part of a hearing take place in private and give directions about the persons who may be present; and 8  
9

(b) give directions prohibiting or restricting the publication of information given before the tribunal (whether in public or in private), or of matters contained in documents filed with, or received by, the tribunal; and 10  
11  
12  
13

(c) give directions prohibiting or restricting the disclosure to some or all of the participants in a proceeding of information given before the tribunal or of matters contained in documents filed with, or received by, the tribunal. 14  
15  
16  
17

(3) The tribunal may make the order on its own initiative or on the application of a participant. 18  
19

(4) A person must not contravene an order under this section unless the person has a reasonable excuse. 20  
21

Maximum penalty— 22

**Anonymity** 23

**164.(1)** If the tribunal is satisfied that the preservation of anonymity of a person involved in a proceeding is necessary to protect the work security, privacy or human rights of the person, the tribunal may make an order prohibiting the disclosure of the person’s identity. 24  
25  
26  
27

(2) A person must not contravene an order under this section unless the person has a reasonable excuse. 28  
29

Maximum penalty— 30

(3) In this section, a reference to involvement in a proceeding includes—	1
(a) making an application to the tribunal; and	2
(b) being a person about whom an application is made; and	3
(c) being a participant in the hearing of a proceeding; and	4
(d) giving information or documents to a person who is performing a function under this Act; and	5 6
(e) appearing as a witness at the hearing of a proceeding; and	7
(f) involvement in a prosecution for an offence against this Act.	8
<b>Procedural fairness</b>	9
165.(1) The tribunal must observe the rules of procedural fairness.	10
(2) Each participant in a proceeding must be given a reasonable opportunity to present the participant's case, and in particular, to inspect a document to which the tribunal proposes to have regard in reaching a decision in the proceeding and to make submissions about the document.	11 12 13 14
(3) However, the tribunal may displace the right to inspect in a confidentiality order. <sup>70</sup>	15 16
<b>Directions</b>	17
166.(1) Directions about the procedure to be followed for a proceeding before the tribunal may be given—	18 19
(a) if the directions are of general application or apply to a class of proceeding—by the president; or	20 21
(b) if the directions apply to a particular proceeding that has started—by the president or presiding member.	22 23
(2) Without limiting subsection (1), a direction may—	24
(a) join a person as a party to a proceeding before the tribunal; or	25

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<sup>70</sup> Section 163(2) allows the tribunal to impose a prohibition or restriction on inspection of a document if this is desirable because of its confidential nature or for another reason.

(b)	appoint assessors to assist the tribunal in a proceeding; or	1
(c)	require a person to undergo a medical examination; or	2
(d)	require the person the subject of the proceeding to be brought before the tribunal.	3 4
(3)	A direction may be changed or revoked by a person who has power to give the direction.	5 6
<b>Use of technology</b>		7
167.(1)	The tribunal may allow a person to take part in a proceeding by using technology (“ <b>participation using technology</b> ”), including—	8 9
(a)	telephone conferencing; or	10
(b)	video conferencing; or	11
(c)	another form of telecommunication, including, for example, fax or computer .	12 13
(2)	A person who takes part in a proceeding under subsection (1) is taken to have attended in person at the proceeding.	14 15
<b>Tribunal may change procedure</b>		16
168.	If the tribunal considers it in the interests of justice for a proceeding, the tribunal may, by order, change a procedure under this Act.	17 18
(2)	The tribunal may act on its own initiative or on the application of a participant in a proceeding.	19 20
<i>Example—</i>		21
Despite the requirement in section 184(1) that an application be written, the tribunal may accept an oral application if it considers it in the interests of justice.		22 23
<b>Location</b>		24
169.	A proceeding before the tribunal or a part of the proceeding may be conducted at any place in Queensland.	25 26

<b>No fee payable</b>	1
<b>170.</b> A fee is not payable to the tribunal for anything under this Act.	2
<b>PART 2—APPLICATIONS</b>	
3	
<b>Tribunal's jurisdiction</b>	4
<b>171.</b> The tribunal may make—	5
(a) a declaration about decision-making capacity; or	6
(b) an order, direction or recommendation about an enduring power of attorney or related matter; or	7 8
(c) an order, direction or recommendation about an advance health care directive or related matter; or	9 10
(d) an order, direction or recommendation about the appointment of an appointed assistant, appointed decision maker or related matter; or	11 12 13
(e) an order, direction or recommendation about a health care decision, a special consent health care decision or related matter; or	14 15 16
(f) an order, direction or recommendation otherwise provided for by this Act.	17 18
<b>Scope of applications</b>	19
<b>172.</b> An application may be made to the tribunal for a declaration, order, direction or recommendation.	20 21
<b>Persons entitled to apply—enduring power of attorney</b>	22
<b>173.(1)</b> A chosen decision maker under an enduring power of attorney or another interested person may apply to the tribunal for—	23 24

(a) an impaired capacity declaration; <sup>71</sup> or	1
(b) a commencement declaration; <sup>72</sup> or	2
(c) advice or directions about the exercise of a power under the enduring power of attorney or the interpretation of its terms. <sup>73</sup>	3 4
(2) An interested person may apply to the tribunal about—	5
(a) removing a chosen decision maker and appointing a replacement; <sup>74</sup> or	6 7
(b) removing power from a chosen decision maker and giving it to a replacement; <sup>75</sup> or	8 9
(c) changing or revoking an enduring power of attorney. <sup>76</sup>	10
(3) The following persons may apply to the tribunal about another matter related to an adult's enduring power of attorney—	11 12
(a) the adult;	13
(b) a member of the adult's family;	14
(c) a chosen decision maker under the enduring power of attorney;	15
(d) if the matter also concerns a health care decision of an adult—the Adult Guardian, a health care provider of the adult or a statutorily authorised health care decision maker;	16 17 18
(e) if the matter also concerns a personal decision of an adult—the Adult Guardian;	19 20
(f) if the matter also concerns a financial or litigation related decision of an adult—the Public Trustee;	21 22
(g) another interested person.	23

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<sup>71</sup> See section 50(1)(a).

<sup>72</sup> See section 50(1)(b).

<sup>73</sup> See section 51(1).

<sup>74</sup> Section 52(1)(a)

<sup>75</sup> Section 52(1)(b)

<sup>76</sup> Section 53

<b>Persons entitled to apply—advance health care directive</b>	1
<b>174.(1)</b> A chosen decision maker under an adult’s advance health care directive, a health care provider of the adult or another interested person may apply to the tribunal for—	2 3 4
(a) an impaired capacity declaration; <sup>77</sup> or	5
(b) advice or directions about a decision, information or something else included in the directive or the interpretation of its terms. <sup>78</sup>	6 7
<b>(2)</b> An interested person may apply to the tribunal about—	8
(a) removing a chosen decision maker and appointing a replacement; <sup>79</sup> or	9 10
(b) removing power from a chosen decision maker and giving it to a replacement; <sup>80</sup> or	11 12
(c) changing or revoking an advance health care directive. <sup>81</sup>	13
<b>(3)</b> The following persons may apply to the tribunal about another matter related to an adult’s advance health care directive—	14 15
(a) the adult;	16
(b) a member of the adult’s family;	17
(c) a chosen decision maker under the advance health care directive;	18
(d) the Adult Guardian;	19
(e) a health care provider of the adult;	20
(f) a statutorily authorised health care decision maker;	21
(g) if the matter also concerns a financial or litigation related decision of an adult—the Public Trustee;	22 23
(h) another interested person.	24

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<sup>77</sup> See section 72.

<sup>78</sup> See section 73.

<sup>79</sup> See section 52(1)(a) which applies because of section 63.

<sup>80</sup> See section 52(1)(b) which applies because of section 63.

<sup>81</sup> See section 77.

<b>Persons entitled to apply—appointed assistant or appointed decision maker</b>	1 2
175.(1) An adult or anyone else may apply for the appointment of an appointed assistant or appointed decision maker for the adult.	3 4
(2) The adult or an interested person may apply for review of an appointment.	5 6
<b>Persons entitled to apply—appeals</b>	7
176. The following persons may appeal against a tribunal order, direction or decision—	8 9
(a) the adult concerned in the tribunal’s proceeding;	10
(b) a participant in the tribunal’s proceeding;	11
(c) a person given leave to appeal by the Supreme Court.	12
<b>Persons entitled to apply—registration of foreign order</b>	13
177. Anyone may apply for registration of an order made in another State or a foreign country prescribed under the regulations.	14 15
<b>Persons entitled to apply—entry and removal order</b>	16
178. The Adult Guardian or an interested person may apply for an entry and removal order.	17 18
<b>Persons entitled to apply—other cases about personal decision</b>	19
179. If the matter otherwise concerns a personal decision of an adult or a related matter, the Adult Guardian may apply to the tribunal.	20 21
<b>Persons entitled to apply—other cases about health care decision</b>	22
180. If the matter otherwise concerns a health care decision of an adult or a related matter, the following persons may apply to the tribunal—	23 24
(a) the Adult Guardian;	25

(b) a health care provider of the adult;	1
(c) a statutorily authorised health care decision maker for the adult.	2
<b>Persons entitled to apply—other cases about special consent health care decision</b>	3
	4
181. If the matter otherwise concerns a special consent health care decision of an adult or a related matter, a health care provider of the adult or the Adult Guardian may apply to the tribunal.	5
	6
	7
<b>Persons entitled to apply—other cases about financial or litigation related decision</b>	8
	9
182. If the matter otherwise concerns a financial decision or litigation related decision of an adult or a related matter, the Public Trustee may apply to the tribunal.	10
	11
	12
<b>Persons entitled to apply—other cases</b>	13
183. An interested person may apply to the tribunal in other cases.	14
<b>How to apply</b>	15
184.(1) An application must be written <sup>82</sup> and filed with the tribunal.	16
(2) The application must include the following—	17
(a) the reasons for the application;	18
(b) to the best of the applicant’s knowledge, information about the following people—	19
	20
(i) the applicant;	21
(ii) the adult concerned in the application;	22
(iii) the members of the adult’s family;	23

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<sup>82</sup> However, the tribunal may change a procedure (including, for example, by accepting an oral application) if it considers it in the interests of justice—section 168.



(iv) any primary carer of the adult (other than a family member);	1
(v) all current appointed assistants and substitute decision makers for the adult;	2 3
(c) other information prescribed under the regulations.	4
(3) The information required under subsection (2) is to enable the tribunal to give notice of the hearing and must consist of—	5 6
(a) each person's name; and	7
(b) either—	8
(i) details the applicant knows of the person's address and telephone and facsimile number; or	9 10
(ii) if the applicant does not know the details—a way known to the applicant of contacting the person.	11 12
<b>Tribunal advises people concerned of hearing</b>	13
<b>185.(1)</b> At least 7 days before the hearing of an application about a matter, the tribunal must give notice of the hearing to the adult concerned in the matter and, as far as practicable, to the following—	14 15 16
(a) the applicant;	17
(b) the members of the adult's family;	18
(c) any primary carer of the adult (other than a family member);	19
(d) all current appointed assistants and substitute decision makers for the adult;	20 21
(e) anyone else the tribunal considers should be notified.	22
(2) Notice to the adult must be given in the way the tribunal considers most appropriate having regard to the person's needs.	23 24
<i>Example—</i>	25
If the tribunal is aware the adult is not literate in English but is literate in another language, the notice must be given in the other language.	26 27
(3) However, the adult's failure to understand the notice does not affect its validity.	28 29
(4) The tribunal may—	30

(a) dispense with the requirement to give notice to all or any of the people listed in subsection (1), other than the adult; and	1 2
(b) reduce the time stated in subsection (1).	3
(5) Failure to comply with the requirement to give notice to all or any of the people listed in subsection (1), other than the adult, does not affect the validity of a hearing or the tribunal's decision about an application.	4 5 6
<b>Withdrawal of application</b>	7
<b>186.(1)</b> An applicant may withdraw the application at any time by written notice filed with the tribunal.	8 9
<b>(2)</b> On the notice being filed, the tribunal is taken to have dismissed the application.	10 11
<b>PART 3—PARTICIPANTS</b>	12
<b>Participants</b>	13
<b>187.(1)</b> The following persons have the right to take part in a proceeding before the tribunal about an adult's enduring power of attorney—	14 15
(a) the adult;	16
(b) the applicant;	17
(c) a chosen decision maker under the enduring power of attorney;	18
(d) the Adult Guardian (to the extent the proceeding concerns power to make a personal decision or health care decision);	19 20
(e) the Public Trustee (to the extent the proceeding concerns—	21
(i) power to make a financial decision or litigation related decision; or	22 23
(ii) the adult's property);	24
(f) a person joined as a party to the proceeding;	25
(g) an interested person.	26

(2) The following persons have the right to take part in a proceeding about an adult's advance health care directive—	1 2
(a) the adult;	3
(b) the applicant;	4
(c) a chosen decision maker under the directive;	5
(d) the Adult Guardian;	6
(e) an interested person.	7
(3) The following persons have the right to take part in a proceeding about the appointment of an appointed assistant or a substitute decision maker for an adult—	8 9 10
(a) the adult;	11
(b) the applicant;	12
(c) the appointee proposed by the applicant;	13
(d) the members of the adult's family;	14
(e) any primary carer of the adult (other than a family member);	15
(f) all current appointed assistants and substitute decision makers for the adult;	16 17
(g) the Adult Guardian (to the extent the proceeding concerns power to make a personal decision, health care decision or special consent health care decision);	18 19 20
(h) the Public Trustee (to the extent the proceeding concerns—	21
(i) power to make a financial decision or litigation related decision; or	22 23
(ii) the adult's property);	24
(i) an interested person;	25
(j) another person the tribunal considers should be notified.	26

**Tribunal to decide who are interested persons** 27

**188.(1)** If it is necessary to decide whether a person is an interested person under this Act, the tribunal may decide whether the person has a 28  
29

relevant appropriate interest.	1
(2) If the tribunal decides a person does not have a relevant appropriate interest, the tribunal must give the person written reasons for its decision.	2 3

<b>PART 4—APPEARANCE AND REPRESENTATION OF PARTICIPANT</b>	4 5
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<b>Right of participant to appear</b>	6
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189.(1) A participant in a proceeding before the tribunal may appear in person.	7 8
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(2) If the participant is a corporation, the corporation may appear through an officer of the corporation.	9 10
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<b>Representative may be used with tribunal's leave</b>	11
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190.(1) A participant may, with the tribunal's leave, be represented by a lawyer <sup>83</sup> or agent.	12 13
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(2) A person summoned to appear at a hearing may, with the tribunal's leave, be represented by a lawyer or agent.	14 15
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<b>Representative may be appointed</b>	16
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191.(1) If in a proceeding before the tribunal about an adult—	17
--	----

(a) the adult is not represented in the proceeding; or	18
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(b) the adult is represented in the proceeding by a representative whom the president or presiding member considers to be unsuitable to represent the adult's interests;	19 20 21
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<sup>83</sup> “[L]awyer” means a barrister, solicitor, barrister and solicitor or legal practitioner of the High Court of the Supreme Court of a State (including the Australian Capital Territory and the Northern Territory)—*Acts Interpretation Act 1954*, sections 33A and 36.

the president or the presiding member may appoint a representative to represent the adult's views, wishes and interests. 1  
2

(2) A proceeding may be adjourned to allow the appointment to be made. 3

## **PART 5—TRIBUNAL'S GENERAL POWERS** 4

### **Interim order** 5

192.(1) If the tribunal is satisfied that urgent action is required, it may make an interim order in a proceeding without hearing and deciding the proceeding or otherwise complying with the requirements of this Act. 6  
7  
8

(2) An interim order may be renewed only once. 9

(3) An interim order has effect for the period stated in the order. 10

### **Tribunal to ensure it has all relevant material** 11

193. To hear and decide a matter in a proceeding, the tribunal must ensure, as far as it considers it practicable, that it has all the relevant material. 12  
13  
14

### **Proceed without further information** 15

194.(1) If the tribunal considers urgent or special circumstances justify it doing so, the tribunal may proceed to decide a matter on the information before it without receiving further information. 16  
17  
18

(2) If all the participants in a proceeding agree, the tribunal may also proceed to decide a matter to which the proceeding relates on the information before it when the agreement was reached without receiving further information. 19  
20  
21  
22

(3) Before the participants agree, the tribunal must ensure they are aware of the material on which the matter will be decided. 23  
24

<b>Tribunal may proceed in absence of participant</b>	1
<b>195.</b> The tribunal may proceed in the absence of a participant who has had reasonable notice of a proceeding.	2 3
<b>Tribunal may adjourn proceeding</b>	4
<b>196.</b> The tribunal may adjourn a proceeding.	5
<b>Report by tribunal staff</b>	6
<b>197.(1)</b> The tribunal may—	7
(a) receive in evidence in a proceeding a written report by tribunal staff on a matter in the proceeding; and	8 9
(b) have regard to the matter contained in the report.	10
<b>(2)</b> If the tribunal receives the report in evidence in a proceeding, the adult concerned in the proceeding and each participant in the proceeding must be given a copy of the report.	11 12 13
<b>(3)</b> However, the tribunal may displace the right to be given a copy in a confidentiality order. <sup>84</sup>	14 15
<b>Witnesses</b>	16
<b>198.(1)</b> To hear and decide an application, the tribunal may receive information on oath or affirmation.	17 18
<b>(2)</b> In a proceeding, the president or the member who is to preside, or presides, at the hearing, may summon a person to appear at the hearing to give information and to produce the documents (if any) stated in the summons.	19 20 21 22
<b>(3)</b> The member presiding at a hearing—	23
(a) may require a person appearing at the hearing to give information either to take an oath or make an affirmation; and	24 25

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<sup>84</sup> Section 163(2) allows the tribunal to impose a prohibition or restriction on access to a report if this is desirable because of the report's confidential nature or for another reason.

- (b) may administer an oath or affirmation to a person appearing at the hearing; and 1  
2
- (c) in the case of participation by technology<sup>85</sup>—may make arrangements that appear to the member to be appropriate in the circumstances for administering an oath or affirmation to the person. 3  
4  
5  
6
- (4) The presiding member may allow a person appearing as a witness at the hearing to give information by tendering a written statement, verified, if the member directs, by oath or affirmation. 7  
8  
9

**Failure of witness to attend** 10

199. A person served under the regulations with a summons to appear as a witness at a proceeding under this Act must not, without reasonable excuse— 11  
12  
13

- (a) fail<sup>86</sup> to attend as required by the summons; or 14
- (b) fail to appear from time to time in the course of the proceeding as required by the presiding member. 15  
16

Maximum penalty— 17

**Failure of witness to be sworn or answer questions etc.** 18

200.(1) A person appearing as a witness at a proceeding under this Act must not, without reasonable excuse— 19  
20

- (a) fail<sup>87</sup> to be sworn or to make an affirmation; or 21
- (b) fail to answer a question that the person is required to answer by the presiding member; or 22  
23
- (c) fail to produce a document the person was required to produce by a summons served under the regulations on the person. 24  
25

Maximum penalty— 26

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<sup>85</sup> See section 167.

<sup>86</sup> “[F]ail” includes refuse—*Acts Interpretation Act 1954*, section 36.

<sup>87</sup> See footnote 86.

(2) It is not a reasonable excuse for a person to fail to answer a question because answering the question might tend to incriminate the person. 1  
2

(3) It is not a reasonable excuse for a person to fail to produce a document because producing the document might tend to incriminate the person. 3  
4  
5

(4) However, a person's answer that might tend to incriminate the person, or a person's production of a document that might tend to incriminate the person, is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding— 6  
7  
8  
9

(a) for an offence against section 202 or 203;<sup>88</sup> or 10

(b) for another offence about the falsity of the answer or document; or 11  
12

(c) brought by or for the person against the person's employer. 13

#### **Fabricating evidence** 14

201. The tribunal is a tribunal for the purposes of section 126 of the Criminal Code.<sup>89</sup> 15  
16

#### **False or misleading information** 17

202.(1) A person appearing as a witness at a proceeding under this Act must not knowingly give false or misleading information. 18  
19

Maximum penalty— 20

(2) A person giving information to the tribunal, including, by filing<sup>90</sup> a 21

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<sup>88</sup> Section 202 deals with false or misleading information. Section 203 deals with influencing participants.

<sup>89</sup> **'Fabricating evidence'**  
126.(1) Any person who, with intent to mislead any tribunal in any judicial proceeding—  
(a) fabricates evidence by any means other than perjury or counselling or procuring the commission of perjury; or  
(b) knowingly makes use of such fabricated evidence; is guilty of a crime.' (Criminal Code, section 126)

<sup>90</sup> "[F]ile" includes lodge—*Acts Interpretation Act 1954*, section 36.



document or giving information to the tribunal staff, must not knowingly give false or misleading information.	1 2
Maximum penalty—	3
<b>Influencing participants</b>	4
203. A person must not improperly influence a person in relation to the person's participation in a proceeding (whether as a member of the tribunal or as a witness) to act other than in the course of the person's duty in relation to the proceeding.	5 6 7 8
Maximum penalty—	9
<b>Contempt of tribunal</b>	10
204. A person must not, without reasonable excuse—	11
(a) insult a member in relation to the performance of the member's functions as a member; or	12 13
(b) interrupt a tribunal proceeding; or	14
(c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where the tribunal is sitting; or	15 16
(d) do anything that would, if the tribunal were a court of record, be a contempt of court.	17 18
Maximum penalty—	19
<b>Obstructing tribunal</b>	20
205. A person must not obstruct or improperly influence the conduct of a tribunal proceeding or attempt to do so.	21 22
Maximum penalty—	23
<b>Tribunal may dismiss frivolous etc. applications</b>	24
206.(1) The tribunal may dismiss an application if the tribunal is satisfied the application is—	25 26

(a) frivolous or vexatious; or	1
(b) misconceived or lacking in substance.	2
(2) If the tribunal considers it appropriate, the tribunal may also direct that the applicant must not, without the tribunal's leave, make a subsequent application to the tribunal of a type stated in the direction.	3 4 5
(3) The tribunal may discharge or change a direction under subsection (2).	6 7
 <b>Advice, directions and recommendations</b>	 8
207.(1) Once an application about a matter has been made to the tribunal, the tribunal may—	9 10
(a) give advice or directions about the matter it considers appropriate; or	11 12
(b) make recommendations it considers appropriate about action that should be taken by a participant.	13 14
(2) If the tribunal gives advice or a direction or makes a recommendation, it may do any of the following—	15 16
(a) continue with the application;	17
(b) adjourn the application;	18
(c) dismiss the application;	19
(d) reserve leave for a participant to apply to the tribunal for directions about implementing the recommendation.	20 21
(3) A substitute decision maker who acts under the tribunal's advice, directions or recommendations is taken to have complied with this Act unless the substitute decision maker knowingly gave the tribunal false or misleading information relevant to the tribunal's advice, directions or recommendations.	22 23 24 25 26
(4) If the tribunal gives directions to a substitute decision maker, the substitute decision maker must not contravene them unless the substitute decision maker has a reasonable excuse.	27 28 29

<b>Ratification of decision of informal decision maker</b>	1
<b>208.(1)</b> An informal decision maker may apply to the tribunal for approval or ratification of a decision made by the informal decision maker for an adult with impaired decision-making capacity for the decision.	2 3 4
<b>(2)</b> The tribunal may approve or ratify the decision if it considers the informal decision maker proposes to act, or has acted, in good faith.	5 6
<b>(3)</b> If the tribunal approves or ratifies the decision, the informal decision maker is protected from personal liability for the decision.	7 8
<b>(4)</b> In this section—	9
<b>“informal decision maker”</b> , for an adult’s decision, means a person who makes the decision for the adult and is—	10 11
<b>(a)</b> a member of the adult’s support network (including, for example, a relation or close friend); and	12 13
<b>(b)</b> not a substitute decision maker for the decision.	14
<b>Records and audit</b>	15
<b>209.(1)</b> If a substitute decision maker has power to make a financial decision or litigation related decision for an adult, an interested person may apply to the tribunal for an order that—	16 17 18
<b>(a)</b> the substitute decision maker file in the tribunal and serve on the applicant a summary of receipts and expenditure under the power; or	19 20 21
<b>(b)</b> the substitute decision maker file in the tribunal, and serve on the applicant, more detailed accounts of dealings and transactions under the power; or	22 23 24
<b>(c)</b> the accounts be audited by an auditor appointed by the tribunal and that a copy of the auditor’s report be given to the tribunal and the applicant.	25 26 27
<b>(2)</b> The tribunal may make an order stated in subsection (1) on its own initiative.	28 29
<b>(3)</b> The tribunal may make an order under subsection (1) only if the tribunal suspects on reasonable grounds that a relevant interest of the adult has not been, or is not being, adequately protected.	30 31 32

- (4) The tribunal may make an order about payment of the auditor's costs. 1
- Entry and removal order** 2
- 210.(1)** If the Adult Guardian or an interested person considers that an adult without decision-making capacity is at risk of neglect, exploitation or abuse, the Adult Guardian or interested person may apply to the tribunal for an entry and removal order. 3  
4  
5  
6
- (2) The tribunal may make an entry and removal order if the tribunal considers that there is cogent evidence that— 7  
8
- (a) the adult does not have decision-making capacity; and 9
  - (b) there is an immediate danger to the adult because of neglect, exploitation or abuse. 10  
11
- (3) An entry and removal order authorises the Adult Guardian to take the action stated in it. 12  
13
- (4) An entry and removal order must state— 14
- (a) the purpose for which it is issued; and 15
  - (b) the place, and hours during which, it authorises the Adult Guardian to enter; and 16  
17
  - (c) the adult whose removal it authorises; and 18
  - (d) whether the Adult Guardian is authorised to be accompanied by police officers who may use necessary and reasonable force; and 19  
20
  - (e) the day when it ceases to have effect. 21
- (5) An entry and removal order has effect for a maximum of 7 days from the day it is made. 22  
23
- (6) A person must not obstruct the Adult Guardian or a police officer acting under an entry and removal order. 24  
25
- Maximum penalty— 26
- (7) As soon as practicable after an adult has been removed under an entry and removal order, the applicant for the order must apply to the tribunal— 27  
28
- (a) if there is no appointed assistant or substitute decision maker for the adult—to decide whether an appointed assistant or appointed 29  
30

decision maker should be appointed; and	1
(b) if there is an appointed assistant or substitute decision maker for the adult—to decide whether another order, direction, advice or recommendation should be made or given.	2 3 4
<b>PART 6—DECISION</b>	
<b>Decision within reasonable time</b>	5 6
211. The tribunal must give its decision on a matter involved in a proceeding within a reasonable time after the matter is heard.	7 8
<b>Written reasons for decision</b>	9
212. The tribunal must give written reasons for its decision within a reasonable time after giving its decision. <sup>91</sup>	10 11
<b>Decision and reasons to each participant etc.</b>	12
213.(1) The tribunal must give a copy of its decision on an application about a matter to—	13 14
(a) the adult concerned in the matter; and	15
(b) each participant in the proceeding; and	16
(c) each person given notice of the hearing of the application.	17
(2) The tribunal must give a copy of its reasons for its decision on an application about a matter to—	18 19

<sup>91</sup> *Acts Interpretation Act 1954*, section 27B provides as follows—

**‘Content of statement of reasons for decision**

27B. 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.

- (a) the adult concerned in the matter; and 1
- (b) each participant in the proceeding. 2
- (3) However, the tribunal may displace the requirement to give copies of its decision or reasons in a confidentiality order.<sup>92</sup> 3  
4
- (4) The tribunal may also give a copy of its decision or its reasons to anyone else in accordance with a tribunal order. 5  
6

## **PART 7—OTHER MATTERS**

- Annual report** 8
- 214.(1) As soon as practicable after each financial year, the tribunal must— 9  
10
- (a) prepare a report on its operations during the year; and 11
- (b) give a copy of the report to the Minister. 12
- (2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after the Minister receives the report. 13  
14
- Nonapplication of Supreme Court of Queensland Act 1991, s 75** 15
215. Section 75 of the *Supreme Court of Queensland Act 1991*<sup>93</sup> does not apply to the tribunal. 16  
17
- Proof of orders and decisions** 18
216. A document purporting to be certified by the registrar and to be a 19

<sup>92</sup> Section 163(2) allows the tribunal to impose a prohibition or restriction on access to its decision or reasons if this is desirable because of their confidential nature or for another reason.

<sup>93</sup> Section 75 of the *Supreme Court of Queensland Act 1991* allows the Litigation Reform Commission to make reports and recommendations about courts and certain tribunals.

copy of an order or decision of the tribunal, is, in a proceeding (whether or not before the tribunal), prima facie evidence of the order or decision.	1 2
<b>Protection of members, representatives and witnesses</b>	3
217.(1) A member has, in the honest performance of the member's duties as a member, the same protection and immunity as a Supreme Court Judge.	4 5 6
(2) A person representing a participant in a proceeding under this Act has the same protection and immunity as a barrister has in appearing for a party in a proceeding in the Supreme Court.	7 8 9
(3) A person summoned to attend or appearing at a proceeding under this Act has the same protection and immunity as a witness in a proceeding in the Supreme Court.	10 11 12
<b>Costs</b>	13
218.(1) Each participant in a proceeding is to bear the participant's own costs of the proceeding.	14 15
(2) However, the tribunal may order an applicant to pay a participant's costs in exceptional circumstances, including, for example, if the tribunal considers the application is frivolous or vexatious.	16 17 18
(3) A costs order may be registered in a court having jurisdiction for the recovery of debts up to the amount ordered to be paid.	19 20
(4) Proceedings for the enforcement of a costs order may be taken as if the order were a judgement of the court in which the order is registered.	21 22
<b>Assistance</b>	23
219.(1) A person who—	24
(a) has made, or proposes to make, an application to the tribunal; or	25
(b) is a participant in a proceeding before the tribunal;	26
may apply to the Minister for legal, financial or other assistance for the proceeding.	27 28
(2) The Minister may grant assistance for the proceeding if the Minister	29

- is satisfied that— 1
- (a) it would involve hardship to the applicant for assistance if the application were refused; and 2  
3
  - (b) it is reasonable that the application for assistance be granted. 4
- (3) The grant of assistance may be conditional or unconditional. 5

## PART 8—APPEALS 6

### **Tribunal may suspend decision pending appeal 7**

220.(1) If the tribunal considers it appropriate, it may suspend the operation of a decision made by it pending the starting or deciding of an appeal against the decision. 8  
9  
10

(2) If the tribunal considers it appropriate, it may stay the operation of a decision made by anyone under this Act pending the starting or deciding of a proceeding about the decision. 11  
12  
13

### **Appeal against tribunal decision 14**

221.(1) An eligible person dissatisfied with a tribunal order, direction or decision may appeal to the Supreme Court. 15  
16

(2) The Supreme Court's leave is not required for an appeal only on a question of law. 17  
18

(3) However, the Supreme Court's leave is required for an appeal on another question. 19  
20

(4) An appeal must be begun— 21

- (a) within 28 days after the day on which the appellant becomes aware of the tribunal's order, direction or decision; or 22  
23

- (b) within the further time allowed by the Supreme Court. 24

(5) In this section— 25

**“day on which the appellant becomes aware of the tribunal's order, 26**



<b>direction or decision</b> ", for an appellant who is given a copy of the tribunal's decision under section 213, means the day on which the appellant is given the copy.	1 2 3
<b>"eligible person"</b> means—	4
(a) the adult concerned in the tribunal's proceeding; or	5
(b) a participant in the tribunal's proceeding; or	6
(c) a person given leave to appeal by the Supreme Court.	7
<b>Nature of appeal</b>	8
<b>222.</b> The Supreme Court may decide the appeal on—	9
(a) the material before the tribunal; and	10
(b) further evidence (if any) the Court considers appropriate to receive.	11 12
<b>Appeal powers</b>	13
<b>223.</b> In deciding an appeal against a tribunal order, direction or decision, the Supreme Court may—	14 15
(a) confirm or change the order, direction or decision; or	16
(b) set aside the order, direction or decision and, if the Court considers it appropriate—	17 18
(i) substitute its own order, direction or decision (being one the tribunal could have made); or	19 20
(ii) remit the subject matter of the appeal to the tribunal for further consideration or for reconsideration in accordance with directions or recommendations of the Court.	21 22 23
<b>Appeal costs</b>	24
<b>224.(1)</b> Each party to an appeal is to bear the party's own costs of the appeal.	25 26
<b>(2)</b> However, the Supreme Court may order a party to an appeal to pay costs to another party if the Supreme Court considers—	27 28

- |   |        |
|---|--------|
| (a) the appeal was frivolous or vexatious; or   | 1      |
| (b) the participant has not been given reasonable prior notice of intention to apply for an adjournment; or | 2<br>3 |
| (c) the participant has incurred costs because the appellant defaulted in the procedural requirements.      | 4<br>5 |

## **PART 9—RECOGNITION OF ORDER MADE UNDER ANOTHER LAW**

6  
7

### **Application**

8

225. A person may apply to the tribunal to register an order made in another State or a foreign country prescribed under the regulations. 9  
10

### **Registration**

11

226. The tribunal must register the order only if— 12

- |   |                |
|---|----------------|
| (a) the order was made under a provision of a law of another State or a prescribed country that substantially corresponds to a provision of this Act; and | 13<br>14<br>15 |
| (b) the original order or a certified copy of the order has been filed with it.   | 16<br>17       |

### **Effect of registration**

18

227. On registration of an order, the order becomes a recognised order and is treated as if it were made by the tribunal. 19  
20

### **Notice of registration etc. to original maker**

21

228.(1) As soon as reasonably practicable after registering an order, the tribunal must advise the entity that originally made the order of the registration. 22  
23  
24

(2) As soon as reasonably practicable after the tribunal takes any subsequent action about the order (including, for example, making a further order or changing or revoking the order), the tribunal must advise the entity that originally made the order of the action.

## **CHAPTER 13—ADULT GUARDIAN** 5

### **PART 1—ESTABLISHMENT, FUNCTIONS AND POWERS** 6 7

#### **Adult Guardian** 8

**229.** There is to be an Adult Guardian. 9

#### **Functions** 10

**230.** The Adult Guardian has the functions given to the Adult Guardian by this Act, including the following functions— 11  
12

- (a) protecting from neglect, exploitation or abuse— 13
  - (i) adults with decision-making capacity only with assistance; 14  
or 15
  - (ii) adults with impaired decision-making capacity; 16
- (b) acting as an appointed assistant or appointed decision maker for personal and health care decisions if appointed by the tribunal; 17  
18
- (c) establishing and administering a community appointees scheme that involves— 19  
20
  - (i) recruiting and training people suitable for appointment as an appointed assistant or appointed decision maker; and 21  
22
  - (ii) supporting and monitoring people recruited under the scheme who are appointed; 23  
24
- (d) establishing and administering a community visitors scheme that 25

involves—	1
(i) recruiting and training people suitable for allocation as a community visitor for a hospital or care facility in which an adult with a mental or intellectual impairment lives; and	2 3 4
(ii) supporting and monitoring people recruited under the scheme who are allocated for a hospital or care facility;	5 6
(e) educating and advising people about, and conducting research into, the operation of this Act;	7 8
(f) seeking assistance for an adult with a mental or intellectual impairment from a government department, institution, welfare organisation or the provider of a service or facility;	9 10 11
(g) other functions given to the Adult Guardian by another Act;	12
(h) taking action incidental or conducive to discharging the functions.	13
<b>Powers</b>	14
231.(1) The Adult Guardian has the powers given under this Act.	15
(2) The Adult Guardian also may do all things necessary or convenient to be done for performing the Adult Guardian's functions.	16 17
<b>Not under Ministerial control</b>	18
232. In performing the Adult Guardian's functions and exercising the Adult Guardian's powers, the Adult Guardian is not under the control or direction of the Minister.	19 20 21
<b>Delegation</b>	22
233. The Adult Guardian may delegate the Adult Guardian's powers to a member of the Adult Guardian's staff.	23 24
<b>Delegation as appointed assistant or appointed decision maker</b>	25
234. If the Adult Guardian is appointed as an appointed assistant or	26

appointed decision maker for an adult, the Adult Guardian may delegate <sup>94</sup> the powers given to the Adult Guardian by the appointment.	1 2
<b>Community visitor</b>	3
<b>235.(1)</b> To safeguard the interests of adults with a mental or intellectual impairment living in a hospital or care facility, the Adult Guardian may allocate a community visitor for the hospital or care facility.	4 5 6
<b>(2)</b> A community visitor for a hospital or care facility must—	7
(a) act in a way that preserves, as far as possible, the privacy of each adult with a mental or intellectual impairment living there (a “resident”); and	8 9 10
(b) regularly visit the adult residents; and	11
(c) investigate complaints about the care or treatment of a resident; and	12 13
(d) must give the Adult Guardian the results of an investigation.	14
<b>(3)</b> A community visitor for a hospital or care facility may do all things necessary or convenient to be done for performing the community visitor’s functions mentioned in subsection (2), including, for example—	15 16 17
(a) entering the hospital or care facility at a reasonable time or at the time necessary to investigate a complaint; and	18 19
(b) conferring alone with a resident; and	20
(c) requiring a staff member of the hospital or care facility to answer questions and produce documents about the care or treatment of a resident; and	21 22 23
(d) examining, taking extracts from, or making copies of, a document about the care or treatment of a resident.	24 25
<b>(4)</b> To the greatest extent practicable, a community visitor for a hospital or care facility must seek and take into account the views and wishes of a resident before—	26 27 28
(a) asking a staff member of the hospital or care facility a question	29

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<sup>94</sup> Section 27A of the *Acts Interpretation Act 1954* applies to the delegation.

about the care or treatment of the resident; or	1
(b) examining a document about the care or treatment of the resident.	2
(5) Views and wishes may be expressed orally, in writing or in another way, including, for example, by conduct.	3 4
(6) However, regardless of the resident's views and wishes, the community visitor must act in a way consistent with the resident's proper care and protection.	5 6 7
(7) Community visitors may be paid by the Adult Guardian the fees and allowances decided by the Governor in Council.	8 9
<b>Investigate complaints</b>	10
236. The Adult Guardian may investigate a complaint or allegation that an adult with impaired decision-making capacity or decision-making capacity only with assistance—	11 12 13
(a) is being neglected, exploited or abused; or	14
(b) has inappropriate decision-making arrangements; or	15
(c) needs decision-making arrangements to be made under this Act.	16
<b>Annual report</b>	17
237.(1) The Adult Guardian must, as soon as practicable after each financial year—	18 19
(a) prepare a report on the exercise of the Adult Guardian's functions during the year; and	20 21
(b) give a copy of the report to the Minister.	22
(2) The Minister must table a copy of the report in the Legislative Assembly within 14 days after receiving the report.	23 24

**PART 2—ADMINISTRATIVE PROVISIONS****Appointment**

**238.(1)** The Adult Guardian is to be appointed on a full-time basis by the Governor in Council.

(2) A person is eligible for appointment as Adult Guardian only if the person has demonstrated commitment to the rights and welfare of people with a mental or intellectual impairment.

(3) The Public Advocate is not eligible for appointment as Adult Guardian.

**Selection**

**239.(1)** For selecting a person for recommendation for appointment as Adult Guardian, the Minister must advertise for applications from suitably qualified persons to be considered for selection.

(2) The Governor in Council may appoint a person as Adult Guardian only if subsection (1) has been complied with for the appointment.

**Duration of appointment**

**240.(1)** The Adult Guardian holds office for a term of not longer than 5 years.<sup>95</sup>

(2) The office of Adult Guardian becomes vacant if the Adult Guardian resigns by signed notice of resignation given to the Minister.

(3) The Governor in Council may remove the Adult Guardian from office for—

- (a) physical or mental incapacity to perform official duties satisfactorily; or
- (b) neglect of duty; or
- (c) dishonourable conduct; or

<sup>95</sup> The Adult Guardian may be reappointed—*Acts Interpretation Act 1954*, section 25(1)(c).

(d) being found guilty of an offence that, in the Governor in Council's opinion, makes the person unsuitable to perform official duties.	1 2 3
<b>Terms of appointment</b>	4
241.(1) The Governor in Council may decide the remuneration and allowances payable to the Adult Guardian.	5 6
(2) The Adult Guardian is to be paid the remuneration and allowances decided by the Governor in Council.	7 8
(3) To the extent this Act does not state the terms on which the Adult Guardian holds office, the Adult Guardian holds office on the terms decided by the Governor in Council.	9 10 11
<b>Leave of absence</b>	12
242. The Minister may give the Adult Guardian leave of absence on the terms the Minister considers appropriate.	13 14
<b>Acting Adult Guardian</b>	15
243. The Governor in Council may appoint a person to act as the Adult Guardian—	16 17
(a) for any period the office is vacant; or	18
(b) for any period, or all periods, when the Adult Guardian is absent from duty or Australia or cannot, for another reason, perform the duties of the office.	19 20 21
<b>Staff</b>	22
244. Staff necessary to enable the Adult Guardian to perform the Adult Guardian's functions are to be appointed under the <i>Public Service Management and Employment Act 1988</i> .	23 24 25



<b>CHAPTER 14—PUBLIC ADVOCATE</b>	1
<b>PART 1—ESTABLISHMENT, FUNCTIONS AND POWERS</b>	2 3
<b>Public advocate</b>	4
245. There is to be a Public Advocate.	5
<b>Functions—systemic advocacy</b>	6
246. The Public Advocate has the following functions—	7
(a) protecting the rights of adults with a mental or intellectual impairment;	8 9
(b) promoting the protection of the adults and their rights from neglect, exploitation or abuse;	10 11
(c) encouraging the development of programs to assist the adults to reach the greatest practicable degree of autonomy;	12 13
(d) promoting the provision of services and facilities for the adults;	14
(e) monitoring and reviewing the delivery of services and facilities to the adults.	15 16
<b>Powers</b>	17
247. The Public Advocate may do all things necessary or convenient to be done for performing the Public Advocate's functions.	18 19
<b>Not under Ministerial control</b>	20
248. In performing the Public Advocate's functions and exercising the Public Advocate's powers, the Public Advocate is not under the control or direction of the Minister.	21 22 23

<b>Delegation</b>	1
249. The Public Advocate may delegate the Public Advocate's powers to a member of the Public Advocate's staff.	2 3
<b>Annual report</b>	4
250. The Public Advocate must, as soon as practicable after each financial year—	5 6
(a) prepare a report on the exercise of the Public Advocate's functions during the year; and	7 8
(b) give a copy of the report to the Minister.	9
(2) The Minister must table a copy of the report in the Legislative Assembly within 14 days after receiving the report.	10 11
<b>PART 2—ADMINISTRATIVE PROVISIONS</b>	12
<b>Appointment</b>	13
251.(1) The Public Advocate is to be appointed on a full-time basis by the Governor in Council.	14 15
(2) A person is eligible for appointment as Public Advocate only if the person has demonstrated commitment to advocacy for people with a mental or intellectual impairment.	16 17 18
(3) The Adult Guardian is not eligible for appointment as Public Advocate.	19 20
<b>Selection</b>	21
252.(1) For selecting a person for recommendation for appointment as Public Advocate, the Minister must advertise for applications from suitably qualified persons to be considered for selection.	22 23 24
(2) The Governor in Council may appoint a person as Public Advocate only if subsection (1) has been complied with for the appointment.	25 26

<b>Duration of appointment</b>	1
<b>253.(1)</b> The Public Advocate holds office for a term of not longer than 5 years. <sup>96</sup>	2 3
<b>(2)</b> The office of Public Advocate becomes vacant if the Public Advocate resigns by signed notice of resignation given to the Minister.	4 5
<b>(3)</b> The Governor in Council may remove the Public Advocate from office for—	6 7
<b>(a)</b> physical or mental incapacity to perform official duties satisfactorily; or	8 9
<b>(b)</b> neglect of duty; or	10
<b>(c)</b> dishonourable conduct; or	11
<b>(d)</b> being found guilty of an offence that, in the Governor in Council's opinion, makes the person unsuitable to perform official duties.	12 13 14
<b>Terms of appointment</b>	15
<b>254.(1)</b> The Governor in Council may decide the remuneration and allowances payable to the Public Advocate.	16 17
<b>(2)</b> The Public Advocate is to be paid the remuneration and allowances decided by the Governor in Council.	18 19
<b>(3)</b> To the extent this Act does not state the terms on which the Public Advocate holds office, the Public Advocate holds office on the terms decided by the Governor in Council.	20 21 22
<b>Leave of absence</b>	23
<b>255.</b> The Minister may give the Public Advocate leave of absence on the terms the Minister considers appropriate.	24 25

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<sup>96</sup> The Public Advocate may be reappointed—*Acts Interpretation Act 1954*, section 25(1)(c).

<b>Acting Public Advocate</b>	1
<b>256.</b> The Governor in Council may appoint a person to act as the Public Advocate—	2 3
(a) for any period the office is vacant; or	4
(b) for any period, or all periods, when the Public Advocate is absent from duty or Australia or cannot, for another reason, perform the duties of the office.	5 6 7
 <b>Staff</b>	 8
<b>257.</b> Staff necessary to enable the Public Advocate to perform the Public Advocate's functions may be appointed under the <i>Public Service Management and Employment Act 1988</i> .	9 10 11
 <b>CHAPTER 15—MISCELLANEOUS</b>	 12
 <b>Interrelationship between tribunal order and document</b>	 13
<b>258.(1)</b> In this section—	14
“document” means an enduring power of attorney or advance health care directive.	15 16
(2) A document prevails over a later tribunal order (other than an order about the document).	17 18
(3) A tribunal order about power to make a decision prevails over a later document about power to make the decision.	19 20
 <b>Interrelationship between documents</b>	 21
<b>259.(1)</b> In this section—	22
“document” means an enduring power of attorney or advance health care directive.	23 24

(2) A later document of an adult prevails over an earlier document of the adult to the extent of an inconsistency. 1  
2

**Preservation of confidentiality** 3

**260.(1)** If a person gains confidential information because of the person's involvement in this Act's administration, the person must not make a record of the information or intentionally or recklessly disclose the information to anyone other than under subsection (3). 4  
5  
6  
7

Maximum penalty— 8

(2) A person gains information through involvement in the administration of this Act if the person gains the information because of being, or an opportunity given by being— 9  
10  
11

(a) the president, deputy president or another member of the tribunal; 12  
or 13

(b) the registrar or a member of the tribunal staff; or 14

(c) the Adult Guardian or a member of the Adult Guardian's staff; or 15

(d) the Public Advocate or a member of the Public Advocate's staff; 16  
or 17

(e) an appointed assistant or substitute decision maker; or 18

(f) a community visitor. 19

(3) A person may make a record of confidential information, or disclose it to someone else— 20  
21

(a) under this Act; or 22

(b) to discharge a function under another law; or 23

(c) if the record is made for disclosure to a court or relevant tribunal; 24  
or 25

(d) if the disclosure is to a court or relevant tribunal; or 26

(e) if authorised under a regulation or another law; or 27

(f) if authorised by the person to whom the information relates; or 28

(g) if authorised by the tribunal in the public interest because a person's life or physical safety could otherwise reasonably be 29  
30

expected to be endangered.	1
(4) In this section—	2
“ <b>confidential information</b> ” includes information about a person’s affairs but does not include—	3 4
(a) information already publicly disclosed unless further disclosure of the information is prohibited under a law; or	5 6
(b) statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates.	7 8 9
<b>Disclosure of information about investigations</b>	10
261.(1) Section 260 <sup>97</sup> does not prevent the Adult Guardian from disclosing information to a person or to members of the public about an issue the subject of an investigation by the Adult Guardian if the Adult Guardian is satisfied the disclosure is necessary and reasonable in the public interest.	11 12 13 14 15
(2) However, the Adult Guardian must not make the disclosure if it is likely to prejudice the investigation.	16 17
(3) In a disclosure under subsection (1), the Adult Guardian—	18
(a) may express an opinion expressly or impliedly critical of an entity only if the Adult Guardian has given the entity an opportunity to answer the criticism; and	19 20 21
(b) may identify the complainant, directly or indirectly, only if it is necessary and reasonable.	22 23
<b>Chief executive may approve forms</b>	24
262. The chief executive may approve forms for use under this Act.	25

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<sup>97</sup> Section 260 prohibits the improper recording or disclosure of confidential information.

**Regulation making power**

1

**263.** The Governor in Council may make regulations under this Act.

2

Draft

<b>SCHEDULE</b>	1
<b>DICTIONARY</b>	2
section 9 of this Act	3
<b>“appointed assistant”</b> see section 25.	4
<b>“appointed decision maker”</b> see section 29.	5
<b>“appointment order”</b> means an order of the tribunal appointing an appointed assistant or appointed decision maker.	6 7
<b>“approved form”</b> means a form approved by the chief executive.	8
<b>“authorised investment”</b> has the same meaning as in the <i>Trusts Act 1973</i> .	9
<b>“bankruptcy”</b> includes taking advantage of the laws of bankruptcy as a debtor.	10 11
<b>“chosen decision maker”</b> see section 27.	12
<b>“close friend”</b> of an adult means a person who has a close personal relationship with the adult and a personal interest in the adult’s welfare.	13 14
<b>“commencement declaration”</b> see section 50(1)(b).	15
<b>“commissioner for declarations”</b> has the same meaning as in the <i>Justices of the Peace and Commissioners for Declarations Act 1991</i> .	16 17
<b>“confidentiality order”</b> see section 163(2).	18
<b>“decision-making capacity”</b> see section 11.	19
<b>“de facto partner”</b> means a person who lives in a de facto relationship.	20
<b>“de facto relationship”</b> means a relationship between 2 persons (whether of a different or the same gender) who, although they are not legally married to each other, live in a relationship like the relationship between a married couple.	21 22 23 24
<b>“deputy president”</b> means the deputy president of the tribunal.	25
<b>“excluded personal decision”</b> see section 15.	26



## SCHEDULE (continued)

<b>“family”</b> of an adult consists of the following members—	1
(a) the adult’s spouse;	2
(b) each of the adult’s children who is 18 or more;	3
(c) each of the adult’s parents.	4
<b>“financial decision”</b> see section 23.	5
<b>“health care”</b> see section 17.	6
<b>“health care decision”</b> see section 16(1).	7
<b>“health care principle”</b> see section 112.	8
<b>“health care provider”</b> means a person who provides health care in the ordinary course of business or the practice of a profession.	9 10
<b>“impaired capacity declaration”</b> , for an enduring power of attorney, see section 50(1)(a).	11 12
<b>“impaired capacity declaration”</b> , for an advance health care directive, see section 72.	13 14
<b>“impaired decision-making capacity”</b> see section 12.	15
<b>“interested person”</b> means—	16
(a) for an application or proceeding about an enduring power of attorney or related matter—a person who, in the tribunal’s opinion, has an appropriate interest in the application; or	17 18 19
(b) for another type of application or proceeding—a person who, in the tribunal’s opinion, has an appropriate interest in the adult who is the subject of the application.	20 21 22
<b>“insolvent”</b> includes—	23
(a) having a provisional liquidator, liquidator, administrator or controller appointed; and	24 25
(b) being ordered to be wound up.	26
<b>“litigation related decision”</b> see section 24(1).	27
<b>“matters necessary to make an advance health care directive”</b> means	28

## SCHEDULE (continued)

the matters in section 65.	1
<b>“matters necessary to make an enduring power of attorney”</b> means the matters in section 42.	2 3
<b>“member”</b> means a member of the tribunal.	4
<b>“object”</b> to health care, see section 22.	5
<b>“paid carer”</b> , for an adult, means someone who—	6
(a) performs services for the adult’s care; and	7
(b) receives remuneration from any source for the services, other than—	8 9
(i) a carer’s pension; or	10
(ii) remuneration attributable to the principle <sup>98</sup> that damages may be awarded by a court for voluntary services performed for the adult’s care.	11 12 13
<b>“participation using technology”</b> see section 167.	14
<b>“person eligible for appointment because of a legal background”</b> see section 145(3)(a).	15 16
<b>“person eligible for appointment because of a professional background”</b> see section 145(3)(b).	17 18
<b>“person eligible for appointment because of contact”</b> see section 145(3)(c).	19 20
<b>“personal decision”</b> see section 14.	21
<b>“president”</b> means the president of the tribunal.	22
<b>“presidential directions”</b> see section 155(2).	23
<b>“primary carer”</b> of an adult who lives in a hospital or care facility is the person in charge of the hospital or care facility.	24 25

<sup>98</sup> This principle was established in *Griffiths v Kerkemeyer* (1977) 139 CLR 161—see Queensland Law Reform Commission Report No. 45, *The assessment of damages in personal injury and wrongful death litigation*, *Griffiths v Kerkemeyer*, Section 15C Common Law Practice Act 1867, October 1993.

## SCHEDULE (continued)

<b>“relation”</b> of a person means—	1
(a) a spouse of the first person; or	2
(b) a person who is related to the first person by blood, marriage, affinity or adoption; or	3 4
(c) a person on whom the first person is completely or mainly dependent; or	5 6
(d) a person who is completely or mainly dependent on the first person; or	7 8
(e) a person who is a member of the first person’s household.	9
<b>“removal of tissue for donation”</b> see section 20(1).	10
<b>“special consent health care decision”</b> see section 18.	11
<b>“spouse”</b> includes a de facto partner.	12
<b>“statutorily authorised health care decision maker”</b> see section 28.	13
<b>“sterilisation”</b> see section 21.	14
<b>“substitute decision maker”</b> see section 26(1).	15
<b>“term”</b> includes condition, limitation and instruction.	16
<b>“tissue”</b> see section 20(2).	17
<b>“tribunal”</b> means the Assisted and Substituted Decisions Tribunal.	18
<b>“tribunal rules”</b> see section 152.	19
	20

## APPENDIX A

# ENDURING POWER OF ATTORNEY

<p style="text-align: center;"><b>IMPORTANT NOTICE TO ADULT MAKING THIS ENDURING POWER OF ATTORNEY</b></p>
--

This document will allow your chosen decision maker or chosen decision makers to make decisions and do things for you.

## **Type of decision, limits and instructions**

You may give a chosen decision maker power to make a personal decision, health care decision, financial decision or litigation related decision. You may limit the power given to a chosen decision maker and state instructions for a chosen decision maker to apply when making a decision.

## **When power begins**

Power to make a personal decision or health care decision will only begin when (if ever) even with assistance you are not capable of understanding the nature and foreseeing the effects of the decision and communicating the decision. You may nominate when power to make a financial decision or litigation related decision will begin. If you do not nominate when power to make a financial decision or litigation related decision will begin, it will begin immediately.

## **Effect of power**

Once the power of a chosen decision maker to make a decision begins, your chosen decision maker will make, and have full control over, that decision unless limitations or instructions are included in this document.

## **Continuation of power**

A chosen decision maker's power to make a decision continues if you become incapable, even with assistance, of understanding the nature and foreseeing the effects of the decision and communicating the decision.

## **Formal revocation and overseeing power**

You may revoke your enduring power of attorney at any time you have capacity to make the same enduring power of attorney. However, at any time you do not have the capacity to make the same enduring power of attorney, you will not be able to oversee the use of the power or to revoke it.

<p>ADDITIONAL NOTICE TO ADULT MAKING THIS ENDURING POWER OF ATTORNEY</p>
--

*Formal revocation*

If you change or revoke your enduring power of attorney, you must advise your chosen decision maker(s) of this.

*Assistance from Tribunal*

While (if ever) you lack capacity to oversee the use of your enduring power of attorney, the Assisted and Substituted Decisions Tribunal has power to protect your interests. It may order a chosen decision maker to produce a summary of receipts and expenditure or more detailed accounts. These may be audited. It may also remove a chosen decision maker or change or revoke your enduring power of attorney if your interests are not adequately protected.

*Other actions by you that revoke your enduring power of attorney*

Apart from formal revocation of your enduring power of attorney, certain things you may do after signing this document may also revoke it. If you make another enduring power of attorney giving power to a chosen decision maker, your earlier enduring power of attorney is revoked to the extent it gives the same power to a different chosen decision maker. If you marry, your enduring power of attorney is revoked unless it was made in express contemplation of the marriage. If you divorce, your enduring power of attorney is revoked to the extent it gives power to your former spouse. If you die, your enduring power of attorney is revoked in its entirety.

*Chosen decision maker's actions that revoke your enduring power of attorney*

Certain things a chosen decision maker may do after you sign this document may also revoke your enduring power of attorney. While you are capable of using the power you have given to a chosen decision maker, the chosen decision maker may withdraw by giving you a signed notice. Alternatively, a chosen decision maker may get the Tribunal's leave to withdraw. If a chosen decision maker is your paid carer or health care provider, your enduring power of attorney is revoked to the extent it gives the chosen decision maker power. Also, if a chosen decision maker becomes incapable, even with assistance, of understanding the nature and foreseeing the effects of a decision and communicating the decision, your enduring power of attorney is revoked to the extent it gives the chosen decision maker power. Finally, if a chosen decision maker dies, your enduring power of attorney is also revoked to the extent it gives the chosen decision maker power.

<b>IMPORTANT NOTICE TO PEOPLE EXECUTING THIS ENDURING POWER OF ATTORNEY</b>
---

**Advice**

The Adult Guardian or a solicitor can advise about this enduring power of attorney, including its contents, a chosen decision maker's responsibilities under it and how to execute it.

**Adult**

The adult making this enduring power of attorney must sign this document after clause 7 or instruct another person to sign for the adult and in the adult's presence. If another person signs for the adult, the person must be 18 or more and may not also be the witness or a chosen decision maker for the adult.

**Witness**

The witness must be a justice, commissioner for declarations or lawyer. The witness must not be a chosen decision maker for the adult; relation of the adult or a chosen decision maker. If this enduring power of attorney gives power to make a health care decision, the witness must not be a current health care provider of the adult.

The witness must sign and date this document after clause 7.

The witness must also sign the certificate in clause 8.

**Chosen decision maker**

The chosen decision maker must be at least 18 and not a paid carer or current health care provider for the adult. Alternatively, for a financial or litigation related decision, the Public Trustee or a trustee company may be the chosen decision maker.

The chosen decision maker, or each chosen decision maker if more than one is given power, must sign the acceptance in clause 9.

## PART 1—CHOOSING CHOSEN DECISION MAKER

### Nature of power of attorney

1. This is an enduring power of attorney.

### Chosen decision maker and decision

2. I, <print your full name here> (the “adult”)
  - of <print your address here>
  - choose <print your chosen decision maker’s full name here>
  - of <print your chosen decision maker’s address here>
  - as my chosen decision maker for—
    - <print description of decision>
    - <print description of type of decision>
    - personal decisions
    - health care decisions
    - financial decisions
    - litigation related decisions
    - all decisions

#### [Notes—

1. • Cross out what does not apply.
2. You may choose 1 or more chosen decision makers—see Assisted and Substituted Decision-making Act 1994, section 46. This clause may be modified or repeated as appropriate.]

### Limits

3. The power given to the chosen decision maker in clause 2 is subject to the following limits—

<print any limits>

#### [Notes—

1. For example “The chosen decision maker must not sell my shares in ABC Pty Ltd” or “The chosen decision maker must not consent to a blood transfusion”.
2. If you do not wish to specify any limits, cross out clause 3.]



### Instructions

4. The power given to the chosen decision maker in clause 2 is subject to the following instructions—

<print any instructions>

[Notes—

1. For example “The chosen decision maker may use the following assets of mine for his/her own personal use—<list the assets>.”

2. If you do not wish to specify any instructions, cross out clause 4.]

### When power begins

5. The power given to the chosen decision maker in clause 2 begins—

- immediately
- from <print date>
- if <print occasion>
- when (if ever) I become an adult with impaired decision making capacity for the decision

[Notes—

1. • Cross out what does not apply.

2. Completion of this clause is unnecessary for a power to make personal decision or health care decision. Such a power begins when (if ever) you become an adult with impaired decision making capacity for the decision. It cannot begin before that time regardless of what clause 5 says.

3. If you do not complete clause 5, power to make a financial decision or litigation related decision begins immediately. If you complete clause 5 by inserting a date or occasion, but you become an adult with impaired decision making capacity for the decision before that date or occasion happens, the power begins when you become an adult with impaired decision making capacity.]

### Payment

6. The chosen decision maker in clause 2 may draw from my money or income payment for services as chosen decision maker on the following terms—

<print terms>

[Notes—

1. You do not need to pay a chosen decision maker for the power to be effective. If you do not wish to pay a chosen decision maker, cross out clause 6.

2. *If you wish to pay a chosen decision maker, set out the exact terms of payment including the method of payment, for example, a particular amount from a particular bank account.]*

**Statement of understanding**

7.(1) I fully understand that by signing this document, I give power to make the decision mentioned in clause 2 to the chosen decision maker mentioned in clause 2.

(2) I also fully understand this gives the chosen decision maker power to do, for me, anything I could lawfully authorise another person to do in relation to the decision subject to the limitations mentioned in clause 3 and instructions mentioned in clause 4.

.....

- Signature of adult giving the power
- or
- Signature of person directed by adult to sign for adult

.....

Signature of witness

.....

Date\*

[Notes—

1. • Cross out what does not apply.
2. \* To be completed by witness.]

**PART 2—WITNESS’ CERTIFICATE**

**Witness’ certificate**

8. I, <print your full name here>

state that—

(a) I am a—

- justice of the peace
- commissioner for declarations
- lawyer

(b) I am not—

- a chosen decision maker of the adult
- a relation of the adult or a chosen decision maker of the adult
- a current health care provider of the adult

(c)\* the adult signed this enduring power of attorney in my presence

(c)\* in my presence, the adult instructed a person to sign this enduring power of attorney for the adult and the person signed it in my presence and the presence of the adult

and

(d) at the time the adult, or person for the adult, signed this enduring power of attorney, the adult appeared to me to understand the matters mentioned in the ‘Important notice to adult making this enduring power of attorney’.

.....

Signature of witness

.....

Date\*\*

[Notes—

1. • Cross out what does not apply.
2. Being a current health care provider of the adult only disqualifies a witness if the power of attorney gives power to make a health care decision.

3. *\* Cross out the paragraph (c) that does not apply.*
4. *\*\* To be completed by witness.]*

IMPORTANT NOTICE TO CHOSEN DECISION MAKER(S)
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**Responsibilities**

If you accept this power of attorney, you will be taking on serious responsibilities. Failure to observe these responsibilities could result in you being convicted of an offence, required to pay compensation or removed as chosen decision maker.

You should take particular note of the responsibilities imposed by the *Assisted and Substituted Decision-making Act 1994*, Chapter 9. Here is a summary of some of the chapter—

*General duty*

You must exercise the given power honestly and with reasonable care. It is an offence not to do so and you may also be required to compensate the adult.

You must comply with the terms of the enduring power of attorney, any other tribunal requirement and the Act's general principles, including—

- maintenance of the adult's existing supportive relationships
- maintenance of the adult's ethnic and cultural environment and the adult's values
- decisions being appropriate to the adult's characteristics and needs.

You must also make a health care decision only if it is the most appropriate decision to promote and maintain the adult's health and well-being.

If the adult has other substitute decision makers, you must consult with them on a regular basis. If you are a joint decision maker, you may only exercise your power unanimously.

*Duty to keep records*

You must keep sufficient records of all dealings and transactions made under the power. It is an offence not to do so and the Tribunal may require you to produce them.

*Duty to keep property separate*

You must keep your property separate from the adult's property unless you and the adult jointly own the property.

*Duty to present management plan and get approval for unauthorised investments*

If you may make a financial or litigation related decision, you must present a plan of management to the tribunal if required by the tribunal. You must also get approval for unauthorised investments.

*Duty to avoid conflict transaction*

You must not enter into transactions in which the adult's interests and your interests (or those of your relation, business associate or close friend) could conflict. For example, if it is necessary to sell some of the adult's property, it may be a breach of your duty to sell it to your business associate.

However, you may enter a conflict transaction authorised by this power of attorney or by the Tribunal or a conflict transaction that provides for the needs of a person the adult might reasonably be expected to provide for.

*Duty about gifts*

You must not give away the adult's property except where the adult would have been likely to do so, for example, giving a marriage gift to a relation of the adult or a donation to the adult's favourite charity.

*Power to maintain adult's dependants*

You may give reasonable maintenance to the adult's dependants.

**When power begins**

Power to make a personal or health care decision will only begin when (if ever) the adult is not capable, even with assistance, of understanding the nature and foreseeing the effects of the decision and communicating the decision. The adult may nominate when power to make a financial or litigation related decision will begin (see clause 5). If the adult does not nominate when power to make a financial or litigation related decision will begin, it begins immediately.

**When power ends**

*Your actions*

Certain things you may do after the adult signs this document may also revoke the enduring power of attorney. While the adult is capable of using the power given to you, you may withdraw by giving the adult a signed notice. Alternatively, you may get the Tribunal's leave to withdraw. If you are the adult's paid carer or health care provider, the adult's enduring power of attorney is revoked to the extent it gives you power. Also, if you become incapable, even with assistance, of understanding the nature and foreseeing the effects of a decision or of communicating the decision, the enduring power of attorney is revoked to the extent it gives you power. Finally, if

you die, the adult's enduring power of attorney is also revoked to the extent it gives you power.

*Adult's actions*

The adult may change or revoke the enduring power of attorney and is required to advise you of any change or revocation.

Apart from formal revocation of the enduring power of attorney, certain other things the adult may do after signing this document may also revoke it. If the adult makes another enduring power of attorney giving your power to another chosen decision maker, this enduring power of attorney is revoked to that extent. If the adult marries, the enduring power of attorney is revoked unless it was made in express contemplation of the marriage. If the adult divorces, the enduring power of attorney is revoked to the extent it gives power to the adult's former spouse. If the adult dies, the enduring power of attorney is revoked in its entirety.

You may become personally liable if you use the enduring power of attorney knowing it has been changed or revoked or knowing of an event that effectively changes or revokes it. Personal liability may also happen if you use the enduring power of attorney having reason to believe change or revocation has happened.

*Assisted and Substituted Decisions Tribunal*

The Assisted and Substituted Decisions Tribunal has power to protect the adult's interests. It may order you to produce a summary of receipts and expenditure or more detailed accounts. These may be audited. It may also remove you or change or revoke the enduring power of attorney if the adult's interests are not adequately protected.

**PART 3—CHOSEN DECISION MAKER'S  
ACCEPTANCE**

**Chosen decision maker's acceptance**

**9. I, <print your full name here>**

state that—

- (a) I am at least 18
- (b) I am not—
  - a paid carer of the adult
  - a current health care provider of the adult
- (c) I have read this enduring power of attorney
- (d) I understand that by signing this document, I take on the responsibility of exercising the power that I have been given by the document
- (e) I also understand that I must exercise the power in accordance with the *Assisted and Substituted Decision-making Act 1994*.

.....  
Signature of chosen decision maker

[Note—

*1. Clause 9 must be repeated for each chosen decision maker.]*



## APPENDIX B



# ENDURING POWER OF ATTORNEY

<p style="text-align: center;"><b>IMPORTANT NOTICE TO ADULT MAKING THIS ENDURING POWER OF ATTORNEY</b></p>
--

This document will allow your chosen decision maker or chosen decision makers to make decisions and do things for you.

## **Type of decision, limits and instructions**

You may give a chosen decision maker power to make a personal decision, health care decision, financial decision or litigation related decision. You may limit the power given to a chosen decision maker and state instructions for a chosen decision maker to apply when making a decision.

## **When power begins**

Power to make a personal decision or health care decision will only begin when (if ever) you are not capable even with assistance of understanding the nature and foreseeing the effects of the decision or of communicating the decision. You may nominate when power to make a financial decision or litigation related decision will begin. If you do not nominate when power to make a financial decision or litigation related decision will begin, it will begin immediately.

## **Effect of power**

Once the power of a chosen decision maker to make a decision begins, your chosen decision maker will make, and have full control over, that decision unless limitations or instructions are included in this document.

## **Continuation of power**

A chosen decision maker's power to make a decision continues if you become incapable, even with assistance, of understanding the nature and foreseeing the effects of the decision or of communicating the decision.

## **Formal revocation and overseeing power**

You may revoke your enduring power of attorney at any time you have capacity to make the same enduring power of attorney. However, at any time you do not have the capacity to make the same enduring power of attorney, you will not be able to oversee the use of the power or to revoke it.

<p style="text-align: center;"><b>ADDITIONAL NOTICE TO ADULT MAKING THIS ENDURING POWER OF ATTORNEY</b></p>
---

**Advice of formal revocation**

If you change or revoke your enduring power of attorney, you must advise your chosen decision maker(s) of this.

**Assistance from Tribunal**

While (if ever) you lack capacity to oversee the use of your enduring power of attorney, the Assisted and Substituted Decisions Tribunal has power to protect your interests. It may order a chosen decision maker to produce a summary of receipts and expenditure or more detailed accounts. These may be audited. It may also remove a chosen decision maker or change or revoke your enduring power of attorney if your interests are not adequately protected.

**Other actions by you that revoke your enduring power of attorney**

Apart from formal revocation of your enduring power of attorney, certain things you may do after signing this document may also revoke it. If you make another enduring power of attorney giving power to a chosen decision maker, your earlier enduring power of attorney is revoked to the extent it gives the same power to a different chosen decision maker. If you marry, your enduring power of attorney is revoked unless it was made in express contemplation of the marriage. If you divorce, your enduring power of attorney is revoked to the extent it gives power to your former spouse. If you die, your enduring power of attorney is revoked in its entirety.

**Chosen decision maker's actions that revoke your enduring power of attorney**

Certain things a chosen decision maker may do after you sign this document may also revoke your enduring power of attorney. While you are capable of using the power you have given to a chosen decision maker, the chosen decision maker may withdraw by giving you a signed notice. Alternatively, a chosen decision maker may get the Tribunal's leave to withdraw. If a chosen decision maker is your paid carer or health care provider, your enduring power of attorney is revoked to the extent it gives the chosen decision maker power. Also, if a chosen decision maker becomes incapable, even with assistance, of understanding the nature and foreseeing the effects of a decision and communicating the decision, your enduring power of attorney is revoked to the extent it gives the chosen decision maker power. Finally, if a chosen decision maker dies, your enduring power of attorney is also revoked to the extent it gives the chosen decision maker power.

<p style="text-align: center;"><b>IMPORTANT NOTICE TO PEOPLE EXECUTING THIS ENDURING POWER OF ATTORNEY</b></p>
--

**Advice**

The Adult Guardian or a solicitor can advise about this enduring power of attorney, including its contents, a chosen decision maker's responsibilities under it and how to execute it.

**Adult**

If you wish to give power to make a personal decision, Part 2 must be completed and you must sign after clause 7.

If you wish to give power to make a health care decision, Part 3 must be completed and you must sign after clause 14.

If you wish to give power to make a financial decision, Part 4 must be completed and you must sign after clause 21.

If you wish to give power to make a litigation related decision, Part 5 must be completed and you must sign after clause 28.

**Person signing for adult**

The adult may instruct another person to sign for the adult and in the adult's presence. If another person signs for the adult, the person must be 18 or more and may not also be the witness or a chosen decision maker for the adult.

**Witness**

The witness must be a justice, commissioner for declarations or lawyer. The witness must not be a chosen decision maker for the adult; relation of the adult or a chosen decision maker. If witnessing the adult's signature in Part 3 dealing with health care decisions, the witness must not be a current health care provider of the adult.

The person witnessing the adult's signature in a Part must sign and date this document where indicated after the adult's signature. The witness must also sign the certificate at the end of the Part.

**Chosen decision maker**

The chosen decision maker must be at least 18 and not a paid carer or current health care provider for the adult. Alternatively, for a financial or

litigation related decision, the Public Trustee or a trustee company may be the chosen decision maker.

The chosen decision maker, or each chosen decision maker if more than one is given power, must sign the acceptance in clause 30.

## PART 1—PRELIMINARY

### Adult making enduring power of attorney

1. I, <print your full name here> (the “adult”)  
of <print your address here>  
make this enduring power of attorney.

## PART 2—CHOSEN DECISION MAKER FOR PERSONAL DECISIONS

### Chosen decision maker for personal decisions

2. I choose <print full name of your chosen decision maker for personal decisions here>

of <print the chosen decision maker’s address here>  
as my chosen decision maker for—

- personal decisions
- <print description of personal decision>
- <print description of type of personal decision>

#### [Notes—

1. This Part will allow your chosen decision maker to make a personal decision for you. You need not sign this if you do not want to. If you do not want a chosen decision maker to make a personal decision for you, cross out Part 2 entirely.

2. A personal decision could be a decision about where and with whom you will live, whether you will work or undertake education or training, whether you will apply for a licence or permit, and day-to-day issues like diet and dress. A personal decision cannot be a decision about your will or enduring power of attorney, voting at elections, or consenting to adoption or marriage.

3. • Cross out what does not apply.

4. You may choose 1 or more chosen decision makers—see Assisted and Substituted Decision-making Act 1994, section 46. This clause may be modified or repeated as appropriate.]

**Limits**

3. The power given to the chosen decision maker in clause 2 is subject to the following limits—

<print any limits>

[Notes—

1. For example "The chosen decision maker must not require me to move away from my home."
2. If you do not wish to specify any limits, cross out clause 3.]

**Instructions**

4. The power given to the chosen decision maker in clause 2 is subject to the following instructions—

<print any instructions>

[Notes—

1. For example "<If I need frail aged care, I want you to try the XYZ Nursing Home first.>."
2. If you do not wish to specify any instructions, cross out clause 4.]

**When power begins**

5. I understand that because of the Act the power given to the chosen decision maker in clause 2 begins when (if ever) I become an adult with impaired decision making capacity for the decision.

[Note—

1. Power to make personal decisions cannot begin before you become an adult with impaired decision making capacity for the decision regardless of what you say in this document.]

**Payment**

6. The chosen decision maker in clause 2 may draw from my money or income payment for services as chosen decision maker on the following terms—

<print terms>

[Notes—

1. You do not need to pay a chosen decision maker for the power to be effective. If you do not wish to pay a chosen decision make, cross out clause 6.



2. If you wish to pay a chosen decision maker, set out the exact terms of payment including the method of payment, for example, a particular amount from a particular bank account.]

**Statement of understanding**

7.(1) I fully understand that by signing this Part, I give power to make the decision mentioned in clause 2 to the chosen decision maker mentioned in clause 2.

(2) I also fully understand this gives the chosen decision maker power to do, for me, anything I could lawfully authorise another person to do in relation to the decision subject to the limitations mentioned in clause 3 and instructions mentioned in clause 4.

.....

• Signature of adult giving the power

or

• Signature of person directed by adult to sign for adult

.....

Signature of witness

.....

Date\*

[Notes—

1. • Cross out what does not apply.

2. \* To be completed by witness.]

**Witness' certificate**

8. I, <print your full name here>

state that—

(a) I am a—

- justice of the peace
- commissioner for declarations
- lawyer

(b) I am not—

- a chosen decision maker for the adult
- a relation of the adult or a chosen decision maker

(c)\* the adult signed this part of the enduring power of attorney in my presence

(c)\* in my presence, the adult instructed a person to sign this part of the enduring power of attorney for the adult and the person signed it in my presence and the presence of the adult

and

(d) at the time the adult, or person for the adult, signed this part of the enduring power of attorney, the adult appeared to me to understand the matters mentioned in the 'Important notice to adult making this enduring power of attorney'.

.....

Signature of witness

.....

Date\*\*

[Notes—

1. • Cross out what does not apply.
2. \* Cross out the paragraph (c) that does not apply.
3. \*\* To be completed by witness.]

## PART 3—CHOSEN DECISION MAKER FOR HEALTH CARE DECISIONS

### Chosen decision maker for health care decisions

9. I choose <print full name of your chosen decision maker for health care decisions here>

of <print the chosen decision maker's address here>

as my chosen decision maker for—

- health care decisions
- <print description of health care decision>
- <print description of type of health care decision>

*[Notes—*

*1. This Part will allow your chosen decision maker to make a health care decision for you. You need not sign this if you do not want to. If you do not want a chosen decision maker to make a health care decision for you, cross out Part 4 entirely.*

*2. A health care decision could be a decision consenting, refusing to consent or withdrawing consent to health care for you. However, health care does not cover donation of tissue, sterilisation, pregnancy termination, research or experimental health care or certain psychiatric or other health care prescribed by the regulations. Also a health care decision about an adult who is terminally ill or in a persistent vegetative state cannot be a decision to withhold or withdraw life-sustaining health care.*

*3. • Cross out what does not apply.*

*4. You may choose 1 or more chosen decision makers—see Assisted and Substituted Decision-making Act 1994, section 46. This clause may be modified or repeated as appropriate.]*

### Limits

10. The power given to the chosen decision maker in clause 9 is subject to the following limits—

<print any limits>

*[Notes—*

*1. For example "The chosen decision maker must not consent to a blood transfusion."*

*2. If you do not wish to specify any limits, cross out clause 10.]*

**Instructions**

11. The power given to the chosen decision maker in clause 9 is subject to the following instructions—

<print any instructions>

[Notes—

1. For example "If I need hospitalisation , I wish to be admitted to the XYZ Hospital."
2. If you do not wish to specify any instructions, cross out clause 11.]

**When power begins**

12. I understand that because of the Act the power given to the chosen decision maker in clause 9 begins when (if ever) I become an adult with impaired decision making capacity for the decision.

[Note—

1. Power to make health care decisions cannot begin before you become an adult with impaired decision making capacity for the decision regardless of what you say in this document.]

**Payment**

13. The chosen decision maker in clause 9 may draw from my money or income payment for services as chosen decision maker on the following terms—

<print terms>

[Notes—

1. You do not need to pay a chosen decision maker for the power to be effective. If you do not wish to pay a chosen decision maker, cross out clause 13.
2. If you wish to pay a chosen decision maker, set out the exact terms of payment including the method of payment, for example, a particular amount from a particular bank account.]

**Statement of understanding**

14.(1) I fully understand that by signing this Part, I give power to make the decision mentioned in clause 9 to the chosen decision maker mentioned in clause 9.

(2) I also fully understand this gives the chosen decision maker power to do, for me, anything I could lawfully authorise another person to do in

relation to the decision subject to the limitations mentioned in clause 10 and instructions mentioned in clause 11.

.....

- Signature of adult giving the power

or

- Signature of person directed by adult to sign for adult

.....

Signature of witness

.....

Date\*

*[Notes—*

- 1. • Cross out what does not apply.*
- 2. \* To be completed by witness.]*

**Witness' certificate**

15. I, <print your full name here>

state that—

(a) I am a—

- justice of the peace
- commissioner for declarations
- lawyer

(b) I am not—

- a chosen decision maker for the adult
- a relation of the adult or a chosen decision maker
- a current health care provider of the adult

(c)\* the adult signed this part of the enduring power of attorney in my presence

(c)\* in my presence, the adult instructed a person to sign this part of the enduring power of attorney for the adult and the person signed it in my presence and the presence of the adult

and

(d) at the time the adult, or person for the adult, signed this part of the enduring power of attorney, the adult appeared to me to understand the matters mentioned in the 'Important notice to adult making this enduring power of attorney'.

.....

Signature of witness

.....

Date\*\*

[Notes—

1. • Cross out what does not apply.
2. \* Cross out the paragraph (c) that does not apply.
3. \*\* To be completed by witness.]

## PART 4—CHOSEN DECISION MAKER FOR FINANCIAL DECISIONS

### Chosen decision maker for financial decisions

16. I choose <print full name of your chosen decision maker for financial decisions here>

of <print the chosen decision maker's address here>

as my chosen decision maker for—

- financial decisions
- <print description of financial decision>
- <print description of type of financial decision>

[Notes—

1. *This Part will allow your chosen decision maker to make a financial decision for you. You need not sign this if you do not want to. If you do not want a chosen decision maker to make a financial decision for you, cross out Part 4 entirely.*

2. *A financial decision could be a decision about the possession, custody, control or management of your property, for example, a decision to sell your home.*

3. • *Cross out what does not apply.*

4. *You may choose 1 or more chosen decision makers—see Assisted and Substituted Decision-making Act 1994, section 46. This clause may be modified or repeated as appropriate.]*

### Limits

17. The power given to the chosen decision maker in clause 16 is subject to the following limits—

<print any limits>

[Notes—

1. *For example "The chosen decision maker must not sell my shares in ABC Pty Ltd."*

2. *If you do not wish to specify any limits, cross out clause 17.]*

### Instructions

18. The power given to the chosen decision maker in clause 16 is subject to the following instructions—

<print any instructions>

[Notes—

1. For example “The chosen decision maker may buy my house at a fair market valuation.”
2. If you do not wish to specify any instructions, cross out clause 18.]

### **When power begins**

19. The power given to the chosen decision maker in clause 16 begins—

- immediately
- from <print date>
- if <print occasion>
- when (if ever) I become an adult with impaired decision making capacity for the decision

[Notes—

1. • Cross out what does not apply.
2. If you do not complete clause 19, power to make a financial decision begins immediately. If you complete clause 19 by inserting a date or occasion, but you become an adult with impaired decision making capacity for the decision before that date or occasion happens, the power begins when you become an adult with impaired decision making capacity.]

### **Payment**

20. The chosen decision maker in clause 16 may draw from my money or income payment for services as chosen decision maker on the following terms—

<print terms>

[Notes—

1. You do not need to pay a chosen decision maker for the power to be effective. If you do not wish to pay a chosen decision maker, cross out clause 20.
2. If you wish to pay a chosen decision maker, set out the exact terms of payment including the method of payment, for example, a particular amount from a particular bank account.]

### **Statement of understanding**

21.(1) I fully understand that by signing this Part, I give power to make the decision mentioned in clause 16 to the chosen decision maker mentioned in clause 16.



(2) I also fully understand this gives the chosen decision maker power to do, for me, anything I could lawfully authorise another person to do in relation to the decision subject to the limitations mentioned in clause 17 and instructions mentioned in clause 18.

.....

- Signature of adult giving the power
- or
- Signature of person directed by adult to sign for adult

.....

Signature of witness

.....

Date\*

[Notes—

1. • Cross out what does not apply.
2. \* To be completed by witness.]

**Witness' certificate**

22. I, <print your full name here>

state that—

(a) I am a—

- justice of the peace
- commissioner for declarations
- lawyer

(b) I am not—

- a chosen decision maker for the adult
- a relation of the adult or a chosen decision maker

(c)\* the adult signed this part of the enduring power of attorney in my presence

(c)\* in my presence, the adult instructed a person to sign this part of the enduring power of attorney for the adult and the person signed it in my presence and the presence of the adult

and

(d) at the time the adult, or person for the adult, signed this part of the enduring power of attorney, the adult appeared to me to understand the matters mentioned in the 'Important notice to adult making this enduring power of attorney'.

.....

Signature of witness

.....

Date\*\*

[Notes—

1. • Cross out what does not apply.
2. \* Cross out the paragraph (c) that does not apply.
3. \*\* To be completed by witness.]

## PART 5—CHOSEN DECISION MAKER FOR LITIGATION RELATED DECISIONS

### Chosen decision maker for litigation related decisions

23. I choose <print full name of your chosen decision maker for litigation related decisions here>

of <print the chosen decision maker's address here>

as my chosen decision maker for—

- litigation related decisions
- <print description of litigation related decision>
- <print description of type of litigation related decision>

[Notes—

1. *This Part will allow your chosen decision maker to make a litigation related decision for you. You need not sign this if you do not want to. If you do not want a chosen decision maker to make a litigation related decision for you, cross out Part 5 entirely.*

2. *A litigation related decision is a decision about a legal dispute of a civil or criminal nature involving you or your property. It does not matter whether proceedings have been started.*

3. • *Cross out what does not apply.*

4. *You may choose 1 or more chosen decision makers—see Assisted and Substituted Decision-making Act 1994, section 46. This clause may be modified or repeated as appropriate.]*

### Limits

24. The power given to the chosen decision maker in clause 23 is subject to the following limits—

<print any limits>

[Note—

1. *If you do not wish to specify any limits, cross out clause 24.]*

### Instructions

25. The power given to the chosen decision maker in clause 23 is subject to the following instructions—

<print any instructions>

[Notes—

1. For example "I want Ms ABC to act as my solicitor."
2. If you do not wish to specify any instructions, cross out clause 25.]

### **When power begins**

26. The power given to the chosen decision maker in clause 23 begins—

- immediately
- from <print date>
- if <print occasion>
- when (if ever) I become an adult with impaired decision making capacity for the decision

[Notes—

1. Cross out what does not apply.
2. If you do not complete clause 26, power to make a financial decision begins immediately. If you complete clause 26 by inserting a date or occasion, but you become an adult with impaired decision making capacity for the decision before that date or occasion happens, the power begins when you become an adult with impaired decision making capacity.]

### **Payment**

27. The chosen decision maker in clause 23 may draw from my money or income payment for services as chosen decision maker on the following terms—

<print terms>

[Notes—

1. You do not need to pay a chosen decision maker for the power to be effective. If you do not wish to pay a chosen decision maker, cross out clause 27.
2. If you wish to pay a chosen decision maker, set out the exact terms of payment including the method of payment, for example, a particular amount from a particular bank account.]

### **Statement of understanding**

28.(1) I fully understand that by signing this Part, I give power to make the decision mentioned in clause 23 to the chosen decision maker

mentioned in clause 23.

(2) I also fully understand this gives the chosen decision maker power to do, for me, anything I could lawfully authorise another person to do in relation to the decision subject to the limitations mentioned in clause 24 and instructions mentioned in clause 25.

.....

- Signature of adult giving the power

or

- Signature of person directed by adult to sign for adult

.....

Signature of witness

.....

Date\*

[Notes—

1. • Cross out what does not apply.
2. \* To be completed by witness.]

**Witness' certificate**

**29. I, <print your full name here>**

state that—

(a) I am a—

- justice of the peace
- commissioner for declarations
- lawyer

(b) I am not—

- a chosen decision maker for the adult
- a relation of the adult or a chosen decision maker

(c)\* the adult signed this part of the enduring power of attorney in my presence

(c)\* in my presence, the adult instructed a person to sign this part of the enduring power of attorney for the adult and the person signed it in my presence and the presence of the adult

and

(d) at the time the adult, or person for the adult, signed this part of the enduring power of attorney, the adult appeared to me to understand the matters mentioned in the 'Important notice to adult making this enduring power of attorney'.

.....

Signature of witness

.....

Date\*\*

[Notes—

1. • Cross out what does not apply.
2. \* Cross out the paragraph (c) that does not apply.
3. \*\* To be completed by witness.]

<b>IMPORTANT NOTICE TO CHOSEN DECISION MAKER(S)</b>
---

**Responsibilities**

If you accept this power of attorney, you will be taking on serious responsibilities. Failure to observe these responsibilities could result in you being convicted of an offence, required to pay compensation or removed as chosen decision maker.

You should take particular note of the responsibilities imposed by the *Assisted and Substituted Decision-making Act 1994*, Chapter 9. Here is a summary of some of the chapter—

*General duty*

You must exercise the given power honestly and with reasonable care. It is an offence not to do so and you may also be required to compensate the adult.

You must comply with the terms of the enduring power of attorney, any other tribunal requirement and the Act's general principles, including—

- maintenance of the adult's existing supportive relationships
- maintenance of the adult's ethnic and cultural environment and the adult's values
- decisions being appropriate to the adult's characteristics and needs.

You must also make a health care decision only if it is the most appropriate decision to promote and maintain the adult's health and well-being.

If the adult has other substitute decision makers, you must consult with them on a regular basis. If you are a joint decision maker, you may only exercise your power unanimously.

*Duty to keep records*

You must keep sufficient records of all dealings and transactions made under the power. It is an offence not to do so and the Tribunal may require you to produce them.

*Duty to keep property separate*

You must keep your property separate from the adult's property unless you and the adult jointly own the property.

*Duty to present management plan and get approval for unauthorised investments*

If you may make a financial or litigation related decision, you must present a plan of management to the tribunal if required by the tribunal. You must also get approval for unauthorised investments.

*Duty to avoid conflict transaction*

You must not enter into transactions in which the adult's interests and your interests (or those of your relation, business associate or close friend) could conflict. For example, if it is necessary to sell some of the adult's property, it may be a breach of your duty to sell it to your business associate.

However, you may enter a conflict transaction authorised by this power of attorney or by the Tribunal or a conflict transaction that provides for the needs of a person the adult might reasonably be expected to provide for.

*Duty about gifts*

You must not give away the adult's property except where the adult would have been likely to do so, for example, giving a marriage gift to a relation of the adult or a donation to the adult's favourite charity.

*Power to maintain adult's dependants*

You may give reasonable maintenance to the adult's dependants.

**When power begins**

Power to make a personal or health care decision will only begin when (if ever) the adult is not capable, even with assistance, of understanding the nature and foreseeing the effects of the decision or of communicating the decision. The adult may nominate when power to make a financial or litigation related decision will begin (see clauses 19 and 26). If the adult does not nominate when power to make a financial or litigation related decision will begin, it begins immediately.

**When power ends***Your actions*

Certain things you may do after the adult signs this document may also revoke the enduring power of attorney. While the adult is capable of using the power given to you, you may withdraw by giving the adult a signed notice. Alternatively, you may get the Tribunal's leave to withdraw. If you are the adult's paid carer or health care provider, the adult's enduring power of attorney is revoked to the extent it gives you power. Also, if you become incapable, even with assistance, of understanding the nature and foreseeing the effects of a decision or of communicating the decision, the enduring power of attorney is revoked to the extent it gives you power. Finally, if



you die, the adult's enduring power of attorney is also revoked to the extent it gives you power.

*Adult's actions*

The adult may change or revoke the enduring power of attorney and is required to advise you of any change or revocation.

Apart from formal revocation of the enduring power of attorney, certain other things the adult may do after signing this document may also revoke it. If the adult makes another enduring power of attorney giving your power to another chosen decision maker, this enduring power of attorney is revoked to that extent. If the adult marries, the enduring power of attorney is revoked unless it was made in express contemplation of the marriage. If the adult divorces, the enduring power of attorney is revoked to the extent it gives power to the adult's former spouse. If the adult dies, the enduring power of attorney is revoked in its entirety.

You may become personally liable if you use the enduring power of attorney knowing it has been changed or revoked or knowing of an event that effectively changes or revokes it. Personal liability may also happen if you use the enduring power of attorney having reason to believe change or revocation has happened.

*Assisted and Substituted Decisions Tribunal*

The Assisted and Substituted Decisions Tribunal has power to protect the adult's interests. It may order you to produce a summary of receipts and expenditure or more detailed accounts. These may be audited. It may also remove you or change or revoke the enduring power of attorney if the adult's interests are not adequately protected.

**PART 6—CHOSEN DECISION MAKER'S  
ACCEPTANCE**

**Chosen decision maker's acceptance**

**30. I, <print your full name here>**

state that—

- (a) I am 18 or more
- (b) I am not—
  - a paid carer for the adult
  - a current health care provider of the adult
- (c) I have read this enduring power of attorney
- (d) I understand that by signing this document, I take on the responsibility of exercising the power that I have been given by the document
- (e) I also understand that I must exercise the power in accordance with the *Assisted and Substituted Decision-making Act 1994*.

.....

Signature of chosen decision maker

[Note—

*1. Clause 30 must be repeated for each chosen decision maker.]*