

Terms of Reference

A review of the law in relation to the General Principles, the scope of substituted-decision-making, the role of the support network, adequacy of investigative powers, health and special health matters, and other miscellaneous matters, under the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998*.

The terms of reference require the Queensland Law Reform Commission to have regard to—

- the need to ensure that the General Principles continue to provide an appropriate balance of relevant factors to protect the interests of an adult with impaired capacity;
- the need to ensure that the powers of guardians, administrators and other officers or bodies established by the legislation are sufficiently extensive to protect the interests of an adult with impaired capacity;
- the need to ensure that there are adequate and accessible procedures for review of decisions made under the Acts;
- the need to ensure that adults are not deprived of necessary health care because they have impaired capacity;
- the need to ensure that adults with impaired capacity receive only treatment that is necessary and appropriate to maintain or promote their health or wellbeing, or that is in their best interests;
- the need to ensure that the confidentiality provisions that apply to the proceedings and decisions of the Guardianship and Administration Tribunal and other decisions under the Guardianship and Administration Act strike the appropriate balance between protecting the privacy of persons affected by the Tribunal's proceedings and decisions and promoting accountability of the Tribunal;
- the fact that some parents of a person with impaired capacity (whether or not an adult), may wish to make a binding direction, appointing a guardian or administrator for a matter for the adult, that applies if the parents are no longer alive or are no longer capable of exercising a power for a relevant matter for the adult;

and refer to the Commission for review pursuant to section 10 of the *Law Reform Commission Act 1968*—

- (a) the law relating to decisions about personal, financial, health matters and special health matters under the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998* including but not limited to:
- the General Principles;
 - the scope of personal matters and financial matters and of the powers of guardians and administrators;
 - the scope of investigative and protective powers of bodies involved in the administration of the legislation in relation to allegations of abuse, neglect and exploitation;
 - the extent to which the current powers and functions of bodies established under the legislation provide a comprehensive investigative and regulatory framework; **but not including consideration of who should exercise the systemic advocacy function and powers contained in Chapter 9 of the *Guardianship and Administration Act 2000*, these being matters already dealt with in the Government Response to recommendation 133 of the Part B Report of the Queensland Government Boards, Committees and Statutory Authorities tabled in the Legislative Assembly on 22 April 2009;**¹
 - the processes for review of decisions;
 - consent to special medical research or experimental health care; and
 - the law relating to advance health directives and enduring powers of attorney; and
 - the scope of the decision-making power of statutory health attorneys; and
 - the ability of an adult with impaired capacity to object to receiving medical treatment; and
 - the law relating to the withholding and withdrawal of life-sustaining measures;
- (b) the confidentiality provisions of the *Guardianship and Administration Act 2000*;

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The terms of reference were amended on 20 January 2010 to add the words in bold.

- (c) whether there is a need to provide protection for people who make complaints about the treatment of an adult with impaired capacity;
- (d) whether there are circumstances in which the *Guardianship and Administration Act 2000* should enable a parent of a person with impaired capacity to make a binding direction appointing a person as a guardian for a personal matter for the adult or as an administrator for a financial matter for the adult.

The Commission is to provide a report to the Attorney-General and Minister for Justice on the confidentiality provisions by June 2007, and a report on all other matters by the 31 December 2009.

On 16 November 2009, the terms of reference were amended as follows:

- The requirement to report upon the adequacy of the Public Advocate's current role and functions in the guardianship system is removed.
- The requirement to report on issues to be taken into account to ensure that an independent systemic advocacy role will be maintained when the functions of the Public Advocate are transferred to the Adult Guardian is added.