



Australian Capital Territory

Guardianship and Management of Property Amendment Act 2008

A2008-47

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Australian Capital Territory

Guardianship and Management of Property Amendment Act 2008

A2008-47

An Act to amend the *Guardianship and Management of Property Act 1991*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Guardianship and Management of Property Amendment Act 2008*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Legislation amended

This Act amends the *Guardianship and Management of Property Act 1991*.

4 Section 6A

substitute

6A Limits on finding impaired decision-making ability

A person must not be taken to have a physical, mental, psychological or intellectual condition relevant to section 7 (Appointment and powers of guardians), section 8 (Appointment and powers of managers) or section 32A (Definitions—pt 2A), definition of *protected person* only because the person—

- (a) is eccentric; or

- (b) does or does not express a particular political or religious opinion; or
- (c) is of a particular sexual orientation or expresses a particular sexual preference; or
- (d) engages or has engaged in illegal or immoral conduct; or
- (e) takes or has taken drugs, including alcohol (but any effects of a drug may be taken into account).

5 Section 6A (as amended)

relocate to part 1A as section 6A

6 New part 2A

insert

Part 2A Consent to medical treatment without formal representation

32A Definitions—pt 2A

In this part:

carer, for a protected person—see section 32C.

close relative or close friend, of a person, means a relative or someone else in a close personal relationship with the person who has frequent contact with the person and a personal interest in the person's welfare but does not receive remuneration or reward for the contact.

domestic partner, of a person, means a domestic partner who is in a close and continuing relationship with the person.

Note For the meaning of *domestic partner*, see the Legislation Act, s 169. Domestic partner includes a spouse.

health attorney, for a protected person—see section 32B (1).

health professional means a doctor or a dentist.

medical treatment—

- (a) includes—
 - (i) a medical procedure or treatment; and
 - (ii) dental treatment; and
 - (iii) a series of procedures or a course of treatments; but
- (b) does not include a prescribed medical procedure.

priority order, for health attorneys for a protected person—see section 32B (3).

protected person means an adult—

- (a) who has impaired decision-making ability for the giving of consent to medical treatment; and
- (b) who has not appointed an attorney with authority to give consent for medical treatment by an enduring power of attorney under—
 - (i) the *Powers of Attorney Act 2006*; or
 - (ii) a law of a State or of another Territory, or a law of a prescribed country, that corresponds, or substantially corresponds, to the *Powers of Attorney Act 2006*; and
- (c) for whom the tribunal has not appointed a guardian with authority to give consent for medical treatment under this Act.

remuneration or reward does not include a carer's pension.

32B Who is a *health attorney* for a protected person?

- (1) Each of the following people are a *health attorney* for a protected person:
 - (a) the protected person's domestic partner;
 - (b) a carer for the protected person;
 - (c) a close relative or close friend of the protected person.
- (2) However, a person is not a health attorney if the person—
 - (a) is a child; or
 - (b) has impaired decision-making ability.
- (3) The order of health attorneys in subsection (1) is the *priority order* for the health attorneys.

32C Who is a *carer* for a protected person?

- (1) A person is a *carer* for a protected person if he or she—
 - (a) is a carer of the person for this Act generally; and
 - (b) gives, or arranges for the giving of, care and support to the person in a domestic context but does not receive remuneration or reward for giving, or arranging for the giving of, the care and support.
- (2) If the protected person lives in a hospital, nursing home, group home, boarding-house, hostel or similar place, a person giving, or arranging for the giving of, care and assistance to the protected person at that place is not, only because of that fact, a carer for the protected person.

32D Health attorney may give consent

- (1) This section applies if a health professional believes on reasonable grounds that—
 - (a) a person is a protected person; and
 - (b) while the person is a protected person, the person needs, or is likely to need, medical treatment.
- (2) The health professional may ask the health attorney who the health professional believes on reasonable grounds is best able to represent the views of the protected person to give a consent required for the medical treatment needed, or likely to be needed, by the protected person.

Note 1 If a form is approved under s 75A for a consent, the form must be used.

Note 2 If the health attorney refuses consent to the medical treatment for the protected person a health professional must refer the matter to the public advocate (see s 32H).

- (3) If, after receiving the information mentioned in section 32G, the health attorney gives consent for the medical treatment, the health professional need not obtain any other consent for the medical treatment.

32E Decision-making principles apply

- (1) In making a decision under this part a health professional must follow the decision-making principles.

Note **Decision-making principles**—see s 4 (2).

- (2) In considering whether to consent to medical treatment a health attorney must follow the decision-making principles.

32F Decision about health attorney

- (1) For section 32D (2), in considering who is best able to represent the views of the protected person, a health professional—
 - (a) must consider the health attorneys for the protected person in the priority order; and
 - (b) may take into account any circumstance that the health professional believes on reasonable grounds is relevant and in particular how readily available is a particular health attorney.
- Note* The health professional must also follow the decision-making principles (see s 32E).
- (2) The health professional need not consider a health attorney if the health professional believes on reasonable grounds that the health attorney is not a suitable person to consent to medical treatment for the protected person.
- (3) If subsection (2) applies, a health professional must make a record of the reasons for the belief.

Examples—s (2)

- 1 Rosa is a protected person and needs a hip replacement operation to ensure her continued mobility and the ability to live in her garden unit which is attached to her son's house. The health professional is made aware that Rosa's son Lorenzo has rented out the garden unit to a friend. As the health professional is aware of a conflict of interests Lorenzo may reasonably be seen as not suitable to consent to the medical treatment.
- 2 Craig is seriously injured in a motorcycle accident and receives emergency medical treatment that saves his life. A week after the accident he has not regained consciousness. Craig's mother, Clarissa, has been visiting regularly sometimes accompanied by her partner Joel (who is not Craig's father). Joel strongly believes that the use of blood products and blood transfusions is unacceptable because of the risk of transfer of blood infections. Joel has been heard in the hospital demanding that Clarissa refuse any medical treatment that involves the use of blood products. The health professional is made aware of Joel's conversations with Clarissa on the issue. Consent is required to undertake extensive skin grafts involving the use of blood products and possibly a blood transfusion. Clarissa may not be a suitable

person to consent to the medical treatment given what may be undue influence exerted by Joel on this issue.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

32G Health professional must give information to health attorney

If a health professional asks a health attorney to consent to medical treatment for a protected person, the health professional must give the health attorney information about the following:

- (a) the reasons why the person is a protected person;
- (b) the condition of the protected person;
- (c) the medical treatment for which consent is sought;
- (d) any alternative medical treatment that is available;
- (e) the nature and likely effect of the medical treatment for which consent is sought and any alternative medical treatment;
- (f) the nature and degree of any significant risks involved with the medical treatment for which consent is sought and any alternative medical treatment;
- (g) the likely effect of not providing the medical treatment for which consent is sought;
- (h) the decision-making principles;
- (i) any other matter that the health professional believes on reasonable grounds is relevant to the provision of consent for the medical treatment.

Note If a form is approved under s 75A for this provision, the form must be used.

32H Referring matters to public advocate—refusal of consent

- (1) This section applies if a health professional has requested a health attorney for a protected person to give consent to medical treatment for the protected person and the health attorney refuses to give the consent.
- (2) The health professional must refer the matter to the public advocate.
- (3) On referral of a matter, the public advocate must—
 - (a) if the public advocate considers the refusal reasonable—take no further action; or
 - (b) apply to the tribunal to be appointed as guardian for the protected person.

32I Referring matters to public advocate—disagreement between health attorneys

- (1) This section applies if, before obtaining the consent to medical treatment for a protected person from the health attorney that the health professional believes is best able to represent the views of the protected person, the health professional becomes aware that 1 or more of the other health attorneys for the protected person objects to the giving of consent.
- (2) The health professional must refer the matter to the public advocate.
- (3) On referral of a matter, the public advocate may do either or both of the following:
 - (a) try to help the available health attorneys reach agreement about consent;
 - (b) apply to the tribunal to be appointed as guardian for the protected person.

- (4) To remove any doubt, a health professional is not required to seek the views of other health attorneys for a protected person before obtaining the consent of the health attorney that the health professional believes on reasonable grounds is best able to represent the views of the protected person.

32J Notice to public advocate—long term treatment

- (1) This section applies if—
 - (a) consent has been given under this part for medical treatment for a protected person; and
 - (b) the protected person continues to be given medical treatment in accordance with the consent 6 months after the consent was given.
- (2) The health professional who is giving the medical treatment must tell the public advocate that medical treatment is continuing to be given to the protected person in accordance with the consent.

32K Protection of health attorney from liability

No action or proceeding, civil or criminal, lies against a health attorney for a protected person in relation to consent given, or not given, in good faith as a health attorney for the protected person.

32L Protection of health professional from liability

No action or proceeding, civil or criminal, lies against a health professional in relation to reliance by the health professional, in good faith, on consent given by—

- (a) a health attorney for a protected person; or
- (b) a person the health professional believes on reasonable grounds is a health attorney for a protected person.

32M Preservation of liability

Nothing in this part relieves a health professional from liability in relation to the provision of medical treatment if the health professional would have been subject to the liability—

- (a) had the protected person not had impaired decision-making ability; and
- (b) had the treatment been carried out with the protected person's consent.

32N Urgent medical treatment

This part does not affect any common law right of a health professional to provide urgent medical treatment without consent.

7 Section 67 heading

substitute

67 Temporary appointments**8 New section 75A**

insert

75A Approved forms

- (1) The chief executive may approve forms for this Act.
- (2) If the chief executive approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

9 Dictionary, definition of *carer*

substitute

carer—

- (a) for the Act generally—see section 6; and
- (b) for part 2A (Consent to medical treatment without formal representation)—see section 32C.

10 Dictionary, new definitions

insert

close relative or close friend, for part 2A (Consent to medical treatment without formal representation)—see section 32A.

domestic partner, for part 2A (Consent to medical treatment without formal representation)—see section 32A.

health attorney, for part 2A (Consent to medical treatment without formal representation)—see section 32B (1).

health professional, for part 2A (Consent to medical treatment without formal representation)—see section 32A.

medical treatment, for part 2A (Consent to medical treatment without formal representation)—see section 32A.

priority order, for health attorneys for a protected person, for part 2A—see section 32B (3).

protected person, for part 2A (Consent to medical treatment without formal representation)—see section 32A.

remuneration or reward, for part 2A (Consent to medical treatment without formal representation)—see section 32A.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 7 August 2008.

2 Notification

Notified under the Legislation Act on 11 September 2008.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Guardianship and Management of Property Amendment Bill 2008, which was passed by the Legislative Assembly on 26 August 2008.

Clerk of the Legislative Assembly

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