

2001

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Attorney-General)

## **Guardianship and Management of Property Amendment Bill 2001**

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2001 019B



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(Attorney-General)

## **Guardianship and Management of Property Amendment Bill 2001**

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### **A Bill for**

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

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

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2001 019B

Section 1

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1

2 **1 Name of Act**

3 This Act is the *Guardianship and Management of Property*  
4 *Amendment Act 2001*.

5 **2 Commencement**

6 This Act commences on the day it is notified in the Gazette.

7 **3 Act amended**

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

10 *Note* The Act is amended in the body of the Act and in schedule 1.

11 **4 New part 1A**

12 *after section renumbered as 3, insert*

13 **Part 1A Important concepts and**  
14 **principles**

15 **4 What are a person's interests?**

16 A person's *interests* include the following:

- 17 (a) protection of the person from physical or mental harm;
- 18 (b) prevention of the physical or mental deterioration of the  
19 person;
- 20 (c) the ability of the person to—
- 21 (i) look after himself or herself; and
- 22 (ii) live in the general community; and
- 23 (iii) take part in community activities; and

- 1 (iv) maintain the person's preferred lifestyle (other than any  
2 part of the person's preferred lifestyle that is harmful to  
3 the person);
- 4 (d) promotion of the person's financial security;
- 5 (e) prevention of the wasting of the person's financial resources or  
6 the person becoming destitute.

7 **5 Principles to be followed by decision-makers**

- 8 (1) This section applies to the exercise by a person (the *decision-*  
9 *maker*) of a function under this Act in relation to a person with  
10 impaired decision-making ability (the *protected person*).
- 11 (2) The *decision-making principles* to be followed by the decision-  
12 maker are the following:
- 13 (a) the protected person's wishes, as far as they can be worked out,  
14 must be given effect to, unless making the decision in  
15 accordance with the wishes is likely to significantly adversely  
16 affect the protected person's interests;
- 17 (b) if giving effect to the protected person's wishes is likely to  
18 significantly adversely affect the person's interests—the  
19 decision-maker must give effect to the protected person's  
20 wishes as far as possible without significantly adversely  
21 affecting the protected person's interests;
- 22 (c) if the protected person's wishes cannot be given effect to at  
23 all—the interests of the protected person must be promoted;
- 24 (d) the protected person's life (including the person's lifestyle)  
25 must be interfered with to the smallest extent necessary;
- 26 (e) the protected person must be encouraged to look after himself  
27 or herself as far as possible;
- 28 (f) the protected person must be encouraged to live in the general  
29 community, and take part in community activities, as far as  
30 possible.

1 **6 When does someone have impaired decision-making**  
2 **ability?**

3 For this Act, a person has *impaired decision-making ability* if the  
4 person's decision-making ability is impaired because of a physical,  
5 mental, psychological or intellectual condition or state, whether or  
6 not the condition or state is a diagnosable illness.

7 **5 Sections 7 and 8**

8 *substitute*

9 **7 Appointment and powers of guardians**

10 (1) This section applies if the tribunal is satisfied that—

11 (a) someone has impaired decision-making ability in relation to a  
12 matter relating to the person's health or welfare; and

13 (b) while the person has the impaired decision-making ability—

14 (i) there is, or is likely to be, a need for a decision in relation  
15 to the matter; or

16 (ii) the person is likely to do something in relation to the  
17 matter that involves, or is likely to involve, unreasonable  
18 risk to the person's health, welfare or property; and

19 (c) if a guardian is not appointed—

20 (i) the person's needs will not be met; or

21 (ii) the person's interests will be significantly adversely  
22 affected.

23 *Note* See s 8B in relation to appointment of a guardian for a child.

24 (2) The tribunal may, by order, appoint a guardian for the person, with  
25 the powers that the tribunal is satisfied are necessary or desirable to  
26 make decisions for the person in accordance with the decision-  
27 making principles.

28 *Note* The powers that may be given to a guardian are restricted under s 7B.

- 1 (3) The powers that may be given to a person's guardian include the  
2 following powers:
- 3 (a) to decide where, and with whom, the person is to live;
  - 4 (b) to decide what education or training the person is to receive;
  - 5 (c) to decide whether the person is to be allowed to work;
  - 6 (d) if the person is to be allowed to work—to decide the nature of  
7 the work, the place of employment and the employer;
  - 8 (e) to give, for the person, a consent required for a medical  
9 procedure or other treatment (other than a prescribed medical  
10 procedure);
  - 11 (f) to bring or continue legal proceedings for or in the name of the  
12 person.

13 **7A Appointment of guardians under direction**

14 If the Supreme Court gives a direction under the *Crimes Act 1900*,  
15 section 428J (Nature and conduct of a special hearing), the tribunal  
16 must appoint a guardian for the accused with power to make an  
17 election mentioned in that section.

18 **7B Restriction on powers of guardians**

19 The powers that may be given to a person's guardian do not include  
20 the power to discipline the person or the power to do any of the  
21 following things for the person:

- 22 (a) vote in an election;
- 23 (b) make a will or other testamentary instrument;
- 24 (c) consent to the adoption of a child;
- 25 (d) give a consent to a marriage;
- 26 (e) give a consent required for a prescribed medical procedure for  
27 the person.

1 **8 Appointment and powers of managers**

2 (1) This section applies if the tribunal is satisfied that—

3 (a) someone has impaired decision-making ability in relation to  
4 the person's financial matters or a matter affecting the person's  
5 property; and

6 (b) while the person has the impaired decision-making ability—

7 (i) there is, or is likely to be, a need for a decision in relation  
8 to the matter; or

9 (ii) the person is likely to do something in relation to the  
10 matter that involves, or is likely to involve, unreasonable  
11 risk to the person's health, welfare or property; and

12 (c) if a manager is not appointed—

13 (i) the person's needs will not be met; or

14 (ii) the person's interests will be significantly adversely  
15 affected.

16 (2) The tribunal may, by order, appoint a manager to manage all, or a  
17 stated part of, the person's property, with the powers that the  
18 tribunal is satisfied are necessary or desirable to allow the manager  
19 to make decisions in relation to the property, in accordance with the  
20 decision-making principles.

21 *Note* The tribunal's power to appoint a manager is restricted under s 8A.

22 (3) The powers that may be given to a person's manager are the powers  
23 that the person would have if the person were legally competent to  
24 exercise powers in relation to the person's property.

25 **8A Restriction on power to appoint manager outside ACT**

26 (1) The tribunal may appoint a manager for property in the ACT of  
27 someone (the *protected person*) who lives outside the ACT only  
28 if—



- 1 (a) the tribunal is satisfied that it is impracticable for a manager  
2 for the property to be appointed in the jurisdiction (the *other*  
3 *jurisdiction*) where the protected person lives; or  
4 (b) an order appointing a manager for the property under the law  
5 of the other jurisdiction cannot be registered under section 12  
6 (Recognition of interstate etc guardians and managers).  
7 (2) For this section:  
8 *jurisdiction* means a State, another Territory or a foreign country.

9 **8B May a guardian or manager be appointed for a child?**

- 10 (1) The tribunal may appoint a guardian or manager for a person who is  
11 a child.  
12 (2) However, the order appointing the guardian or manager does not  
13 take effect until the person becomes an adult.

14 **6 Section 10 (3)**

15 *substitute*

- 16 (3) Someone (other than the community advocate or public trustee) may  
17 be appointed as a guardian or manager only if the tribunal is  
18 satisfied that the person will follow the decision-making principles  
19 and is otherwise suitable for appointment.

20 **7 Powers to be least restrictive**  
21 **Section 11, new note**

22 *insert*

- 23 *Note* Also, the guardian or manager should exercise the powers in accordance  
24 with the decision-making principles (see s 5).

1 **8 Section 14**

2 *substitute*

3 **14 Restrictions on manager about property**

4 (1) Unless the tribunal, on application, orders otherwise—

5 (a) a manager of a person's property must not enter into a  
6 transaction in relation to the property if the interests of the  
7 manager are in conflict, or may conflict, with the interests of  
8 the person; and

9 (b) a manager of a person's property must keep the manager's  
10 property separate from the person's property.

11 (2) Subsection (1) (b) does not apply to property owned jointly by the  
12 manager and person.

1

## 2 **Schedule 1**      **Minor amendments**

3 (see s 3)

### 4 **[1.1] Section 1**

5 *substitute*

#### 6 **1 Name of Act**

7 This Act is the *Guardianship and Management of Property*  
8 *Act 1991*.

### 9 **[1.2] New section 2A**

10 *insert*

#### 11 **2A Dictionary**

12 The dictionary at the end of this Act is part of this Act.

13 *Note 1* The dictionary at the end of this Act defines certain words and  
14 expressions used in this Act, and includes references (*signpost*  
15 *definitions*) to other words and expressions defined elsewhere in this  
16 Act or in other legislation.17 For example, the signpost definition '*trustee company*—see the *Trustee*  
18 *Companies Act 1947*, section 3 (Interpretation).' means that the  
19 expression 'trustee company' is defined in that section and the  
20 definition applies to this Act.21 *Note 2* A definition in the dictionary (including a signpost definition) applies to  
22 the entire Act unless the definition, or another provision of the Act,  
23 provides otherwise or the contrary intention otherwise appears (see  
24 *Interpretation Act 1967*, s 11F and s 11G).

### 25 **[1.3] Section 4, definition of prescribed medical procedure**

26 *renumber paragraphs when Act next republished under Legislation*  
27 *Act 2001*

Amendment [1.4]

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- 1 **[1.4] Section 4, definitions of *Crimes Act*, *doctor*, *guardian*,**  
2 ***manager*, *member* (1<sup>st</sup> definition), *non-regenerative***  
3 ***tissue*, *property* and *trustee company***  
4 *omit*
- 5 **[1.5] Section 4, remaining definitions**  
6 *relocate to dictionary*
- 7 **[1.6] Section 4, remainder**  
8 *omit*
- 9 **[1.7] Section 5, heading**  
10 *substitute*
- 11 **5 Limits on finding impaired decision-making ability**
- 12 **[1.8] Section 5**  
13 *relocate to division 2.1 and renumber as section 6A*
- 14 **[1.9] Section 6**  
15 *renumber as section 3*
- 16 **[1.10] Section 9**  
17 *omit*  
18 a natural person  
19 *substitute*  
20 an individual

---

1 **[1.11] Section 10 (4) (d) and 12 (1)**

2 *omit*

3 resides

4 *substitute*

5 lives

6 **[1.12] Section 16 (2)**

7 *substitute*

8 (2) A guardian or manager must not, without reasonable excuse,  
9 contravene a direction.

10 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
11 both.

12 **[1.13] Section 24 (1A)**

13 *renumber as section 24 (2)*

14 **[1.14] Section 26 (2)**

15 *substitute*

16 (2) A person must not, without reasonable excuse, contravene  
17 subsection (1).

18 Maximum penalty: 20 penalty units.

19 **[1.15] Section 26 (4)**

20 *substitute*

21 (4) A manager must not, without reasonable excuse, contravene a  
22 direction.

23 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
24 both.

**Schedule 1**      **Minor amendments**

Amendment [1.16]

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1    **[1.16] Section 36 (3)**

2            *omit*

3            legal practitioner

4            *substitute*

5            lawyer

6    **[1.17] Section 36A (1)**

7            *omit*

8            an inquiry (the

9            *substitute*

10          an inquiry (a

11   **[1.18] Section 40**

12          *omit*

13          legal practitioner

14          *substitute*

15          lawyer

16   **[1.19] Section 43 (2) (b)**

17          *omit*

18          therein

19          *substitute*

20          in the order

21   **[1.20] Section 48 (2)**

22          *substitute*

23          (2) A person must not, without reasonable excuse, contravene an order.

1 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
2 both.

3 **[1.21] Section 49 (4)**

4 *substitute*

5 (4) A person must not contravene subsection (1) or (2).

6 Maximum penalty (subsection (4)): 50 penalty units, imprisonment  
7 for 6 months or both.

8 **[1.22] Section 50 (2) (e)**

9 *omit*

10 Part 8 of the Crimes Act

11 *substitute*

12 the *Crimes Act 1900*, part 8 (Aiding and abetting, accessories,  
13 attempts, incitement and conspiracy),

14 **[1.23] Section 53 (2)**

15 *substitute*

16 (2) A person must not knowingly give false evidence to the tribunal in  
17 an inquiry.

18 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
19 both.

20 **[1.24] Section 58 (1)**

21 *omit*

22 (1)

23 **[1.25] Section 58 (2)**

24 *omit*

1 **[1.26] Section 58, new note**

2 *insert*

3 *Note* The power to exercise a function also includes the powers necessary and  
4 convenient to exercise the function (see *Interpretation Act 1967*, s 25B).

5 **[1.27] Section 72 (3)**

6 *substitute*

7 (3) A person who has notice of an order under this section must not act  
8 contrary to the order.

9 Maximum penalty (subsection (3)): 50 penalty units, imprisonment  
10 for 6 months or both.

11 **[1.28] Section 73**

12 *substitute*

13 **73 Acts and omissions of representatives**

14 (1) For this section:

15 *representative* means—

16 (a) for a corporation—an executive officer, employee or agent of  
17 the corporation; or

18 (b) for an individual—an employee or agent of the individual.

19 *state of mind*, of a person, includes—

20 (a) the person's knowledge, intention, opinion, belief or purpose;  
21 and

22 (b) the person's reasons for the intention, opinion, belief or  
23 purpose.

24 (2) This section applies to a prosecution for any offence against this  
25 Act.

26 (3) If it is relevant to prove a person's state of mind about an act or  
27 omission, it is enough to show—



- 1 (a) the act was done or omission made by a representative of the  
2 person within the scope of the representative's actual or  
3 apparent authority; and
- 4 (b) the representative had the state of mind.
- 5 (4) An act done or omitted to be done on behalf of a person by a  
6 representative of the person within the scope of the representative's  
7 actual or apparent authority is taken to have been done or omitted to  
8 be done also by the person, unless the person proves the person  
9 could not, by the exercise of reasonable diligence, have prevented  
10 the act or omission.
- 11 (5) An individual who is convicted of an offence cannot be punished by  
12 imprisonment for the offence if the individual would not have been  
13 convicted of the offence without subsection (3) or (4).

14 **74 Criminal liability of officers of corporation**

- 15 (1) If a corporation commits an offence against this Act, an executive  
16 officer of the corporation—
- 17 (a) commits the offence; and
- 18 (b) is liable, on conviction, to a penalty not exceeding the  
19 maximum penalty that may be imposed for the commission of  
20 the offence by an individual.
- 21 (2) It is a defence to a prosecution for an offence against subsection (1)  
22 that—
- 23 (a) the defendant exercised due diligence to prevent the  
24 corporation from doing the act or making the omission alleged  
25 to constitute the offence or an element of the offence  
26 committed by the corporation; or
- 27 (b) an officer or employee of the corporation occupying the  
28 defendant's position could not reasonably have been expected  
29 to know of the contravention; or

- 1 (c) the corporation would not have been found guilty of the  
2 offence because of its being able to establish a defence  
3 available to it under this Act.
- 4 (3) An executive officer may, under subsection (1), be prosecuted for  
5 and convicted of an offence whether or not the corporation has been  
6 prosecuted for or convicted of the offence.

7 **[1.29] Dictionary**

8 *insert*

9 **Dictionary**

10 (see s 2A)

11 *decision-making principles*—see section 5 (Principles to be  
12 followed by decision-makers).

13 *executive officer*, of a corporation, means a person, by whatever  
14 name called and whether or not the person is a director of the  
15 corporation, who is concerned with, or takes part in, the  
16 corporation's management.

17 *guardian* means someone who is a guardian under any of the  
18 following sections:

- 19 • section 7 (Appointment and powers of guardians);  
20 • section 7A (Appointment of guardians under direction);  
21 • section 12 (Recognition of interstate etc guardians and  
22 managers);  
23 • section 32 (Surviving or substitute guardians etc).

24 *impaired decision-making ability*, for a person—see section 6.

25 *manager* means a person who is a manager under any of the  
26 following sections:

- 27 • section 8 (Appointment and powers of managers);  
28 • section 12 (Recognition of interstate etc guardians and  
29 managers);

- 
- 1           •    section 32 (Surviving or substitute guardians etc).
- 2           *non-regenerative tissue*—see the *Transplantation and Anatomy Act*
- 3           1978, section 4 (1) (Interpretation).
- 4           *Note*    Property is defined in the *Interpretation Act 1967*.
- 5           *trustee company*—see the *Trustee Companies Act 1947*, section 3
- 6           (Interpretation).
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## Endnote

### Act amended

- 1           Republished as in force on 31 March 2000 (Republication No 4). See also Act  
2000 No 17.