

2008

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Attorney-General)

# Guardianship and Management of Property Amendment Bill 2008

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 Section 6A	2
5 Section 6A (as amended)	3
6 New part 2A	3
7 Section 67 heading	11
8 New section 75A	11
9 Dictionary, definition of <i>carer</i>	12
10 Dictionary, new definitions	12



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## **Guardianship and Management of Property Amendment Bill 2008**

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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:

1 **1 Name of Act**

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

4 **2 Commencement**

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

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

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

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

15 **3 Legislation amended**

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

18 **4 Section 6A**

19 *substitute*

20 **6A Limits on finding impaired decision-making ability**

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

26 (a) is eccentric; or

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

8 **5 Section 6A (as amended)**

9 *relocate to part 1A as section 6A*

10 **6 New part 2A**

11 *insert*

12 **Part 2A Consent to medical treatment**  
13 **without formal representation**

14 **32A Definitions—pt 2A**

15 In this part:

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

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

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

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

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

2           **health professional** means a doctor or a dentist.

3           **medical treatment**—

4           (a) includes—

5                   (i) a medical procedure or treatment; and

6                   (ii) dental treatment; and

7                   (iii) a series of procedures or a course of treatments; but

8           (b) does not include a prescribed medical procedure.

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

11          **protected person** means an adult—

12          (a) who has impaired decision-making ability for the giving of  
13 consent to medical treatment; and

14          (b) who has not appointed an attorney with authority to give  
15 consent for medical treatment by an enduring power of  
16 attorney under—

17                   (i) the *Powers of Attorney Act 2006*; or

18                   (ii) a law of a State or of another Territory, or a law of a  
19 prescribed country, that corresponds, or substantially  
20 corresponds, to the *Powers of Attorney Act 2006*; and

21          (c) for whom the tribunal has not appointed a guardian with  
22 authority to give consent for medical treatment under this Act.

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

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1    **32B       Who is a *health attorney* for a protected person?**

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

12    **32C       Who is a *carer* for a protected person?**

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

1     **32D       Health attorney may give consent**

2             (1) This section applies if a health professional believes on reasonable  
3                grounds that—

4                (a) a person is a protected person; and

5                (b) while the person is a protected person, the person needs, or is  
6                likely to need, medical treatment.

7             (2) The health professional may ask the health attorney who the health  
8                professional believes on reasonable grounds is best able to represent  
9                the views of the protected person to give a consent required for the  
10              medical treatment needed, or likely to be needed, by the protected  
11              person.

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

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

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

20     **32E       Decision-making principles apply**

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

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

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

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1    **32F        Decision about health attorney**

2           (1) For section 32D (2), in considering who is best able to represent the  
3           views of the protected person, a health professional—

4                   (a) must consider the health attorneys for the protected person in  
5                   the priority order; and

6                   (b) may take into account any circumstance that the health  
7                   professional believes on reasonable grounds is relevant and in  
8                   particular how readily available is a particular health attorney.

9           *Note*        The health professional must also follow the decision-making principles  
10                   (see s 32E).

11           (2) The health professional need not consider a health attorney if the  
12           health professional believes on reasonable grounds that the health  
13           attorney is not a suitable person to consent to medical treatment for  
14           the protected person.

15           (3) If subsection (2) applies, a health professional must make a record  
16           of the reasons for the belief.

17           **Examples—s (2)**

18           1    Rosa is a protected person and needs a hip replacement operation to ensure  
19           her continued mobility and the ability to live in her garden unit which is  
20           attached to her son's house. The health professional is made aware that  
21           Rosa's son Lorenzo has rented out the garden unit to a friend. As the health  
22           professional is aware of a conflict of interests Lorenzo may reasonably be  
23           seen as not suitable to consent to the medical treatment.

24           2    Craig is seriously injured in a motorcycle accident and receives emergency  
25           medical treatment that saves his life. A week after the accident he has not  
26           regained consciousness. Craig's mother, Clarissa, has been visiting regularly  
27           sometimes accompanied by her partner Joel (who is not Craig's father). Joel  
28           strongly believes that the use of blood products and blood transfusions is  
29           unacceptable because of the risk of transfer of blood infections. Joel has  
30           been heard in the hospital demanding that Clarissa refuse any medical  
31           treatment that involves the use of blood products. The health professional is  
32           made aware of Joel's conversations with Clarissa on the issue. Consent is  
33           required to undertake extensive skin grafts involving the use of blood  
34           products and possibly a blood transfusion. Clarissa may not be a suitable

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

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

6 **32G Health professional must give information to health**  
7 **attorney**

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

- 11 (a) the reasons why the person is a protected person;  
12 (b) the condition of the protected person;  
13 (c) the medical treatment for which consent is sought;  
14 (d) any alternative medical treatment that is available;  
15 (e) the nature and likely effect of the medical treatment for which  
16 consent is sought and any alternative medical treatment;  
17 (f) the nature and degree of any significant risks involved with the  
18 medical treatment for which consent is sought and any  
19 alternative medical treatment;  
20 (g) the likely effect of not providing the medical treatment for  
21 which consent is sought;  
22 (h) the decision-making principles;  
23 (i) any other matter that the health professional believes on  
24 reasonable grounds is relevant to the provision of consent for  
25 the medical treatment.

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

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- 1     **32H       Referring matters to public advocate—refusal of consent**
- 2             (1) This section applies if a health professional has requested a health
- 3                 attorney for a protected person to give consent to medical treatment
- 4                 for the protected person and the health attorney refuses to give the
- 5                 consent.
- 6             (2) The health professional must refer the matter to the public advocate.
- 7             (3) On referral of a matter, the public advocate must—
- 8                 (a) if the public advocate considers the refusal reasonable—take
- 9                 no further action; or
- 10                (b) apply to the tribunal to be appointed as guardian for the
- 11                protected person.
- 12     **32I       Referring matters to public advocate—disagreement**
- 13             **between health attorneys**
- 14             (1) This section applies if, before obtaining the consent to medical
- 15                 treatment for a protected person from the health attorney that the
- 16                 health professional believes is best able to represent the views of the
- 17                 protected person, the health professional becomes aware that 1 or
- 18                 more of the other health attorneys for the protected person objects to
- 19                 the giving of consent.
- 20             (2) The health professional must refer the matter to the public advocate.
- 21             (3) On referral of a matter, the public advocate may do either or both of
- 22                 the following:
- 23                 (a) try to help the available health attorneys reach agreement about
- 24                 consent;
- 25                 (b) apply to the tribunal to be appointed as guardian for the
- 26                 protected person.

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

6           **32J           Notice to public advocate—long term treatment**

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

16           **32K           Protection of health attorney from liability**

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

20           **32L           Protection of health professional from liability**

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

24                   (a) a health attorney for a protected person; or

25                   (b) a person the health professional believes on reasonable grounds  
26                   is a health attorney for a protected person.

1 **32M Preservation of liability**

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

5 (a) had the protected person not had impaired decision-making  
6 ability; and

7 (b) had the treatment been carried out with the protected person's  
8 consent.

9 **32N Urgent medical treatment**

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

12 **7 Section 67 heading**

13 *substitute*

14 **67 Temporary appointments**

15 **8 New section 75A**

16 *insert*

17 **75A Approved forms**

18 (1) The chief executive may approve forms for this Act.

19 (2) If the chief executive approves a form for a particular purpose, the  
20 approved form must be used for that purpose.

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

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

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

1 **9 Dictionary, definition of *carer***

2 *substitute*

3 *carer*—

4 (a) for the Act generally—see section 6; and

5 (b) for part 2A (Consent to medical treatment without formal  
6 representation)—see section 32C.

7 **10 Dictionary, new definitions**

8 *insert*

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

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

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

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

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

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

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

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

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2008.

**2 Notification**

Notified under the Legislation Act on 2008.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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