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AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

GUARDIANSHIP AND MANAGEMENT OF PROPERTY
(CONSEQUENTIAL PROVISIONS) BILL 1991

EXPLANATORY MEMORANDUM

Circulated by Authority of
Terry Connolly MLA
Attorney General

GUARDIANSHIP AND MANAGEMENT OF PROPERTY (CONSEQUENTIAL PROVISIONS) BILL 1991

OUTLINE

1. This Bill provides consequential legislative provisions to amend certain Acts of the Australian Capital Territory in consequence of the coming into effect of the Guardianship and Management of Property Act 1991.
2. Primarily, the purpose of the Bill is to replace the residual provisions of the *Lunacy Act of 1898* of the State of New South Wales in its application in the Territory. The system of guardianship orders available under that Act is replaced by a new system of orders for guardians and managers made by the Guardianship and Management Tribunal. It is necessary to have a saving provision to preserve existing orders already made under the *Lunacy Act 1898*.
3. The Bill also amends the *Powers of Attorney Act 1956* to recognise that the Guardianship and Management Tribunal (the Tribunal) may, when appointing a guardian or manager for an incapacitated person, issue an order which affects the operation of an existing power of attorney already executed by that person. The Tribunal must also approve the contents of an enduring power of attorney should an incapacitated person who is subject to an order of the Tribunal require an enduring power of attorney.
4. The Bill also amends the *Transplantation and Anatomy Act 1978* to recognise that the Guardianship and Management Tribunal may issue orders consenting to the removal of specified non-regenerative tissue for transplantation purposes.

FINANCIAL CONSIDERATIONS

5. This is a consequential provisions Bill and there are no financial considerations of an expenditure or revenue nature involved.

CLAUSES OF THE BILL

Part I - PRELIMINARY

Clause 1: Short title

This clause states that this Act may be cited as the *Guardianship and Management of Property (Consequential Provisions) Act 1991*.

Clause 2: Commencement

This clause provides that the substantive amendments contained in this Bill commence on the same day as the related substantive provisions of the *Guardianship and Management of Property Act 1991* commence.

PART II - AMENDMENT OF LUNACY ACT

Clause 3: Interpretation

This clause identifies the relevant commencement date for these amendments which is the date of commencement for the related *Guardianship and Management of Property Act 1991*. The clause also identifies references to the *Lunacy Act 1898* of New South Wales in its application in the Territory.

Clause 4: Repeal

This clause repeals the residual Parts of the *Lunacy Act 1898* of the State of New South Wales in its application in the Territory.

Clause 5: Transitional arrangements

This clause preserves the operation of existing guardianship orders and management of property orders issued by the Supreme Court under the provisions of the *Lunacy Act*. The clause deems such orders to be appointments, as if they were made under the *Guardianship and Management of Property Act 1991*.

PART III - AMENDMENT OF POWERS OF ATTORNEY ACT

Clause 6: Principal Act

This clause identifies the *Powers of Attorney Act 1956* as the "Principal Act".

Clause 7: Interpretation

This clause identifies the Guardianship and Management of Property Tribunal as the "Tribunal" for the purposes of a definition under the Principal Act.

Clause 8: Insertion

This clause inserts a new section 18 in the Principal Act. The name of the new section is "Relationship between enduring powers of attorney and guardianship and management orders".

The purpose of the new section is to ensure that the Tribunal may, if necessary, make an order which overrides the provisions of an enduring power of attorney executed under the Principal Act.

The purpose of this clause is to avoid inconsistency between the two pieces of legislation and to ensure that the provisions of the *Guardianship and Management of Property Act 1991*, and orders of the Tribunal, are paramount in determining the validity of powers made under an enduring power of attorney.

PART IV - AMENDMENT OF TRANSPLANTATION AND ANATOMY ACT**Clause 9: Principal Act**

This clause identifies the *Transplantation and Anatomy Act 1978* as the "Principal Act".

Clause 10: Insertion

This clause inserts a new section 16A into the Principal Act. The new section is named "Effect of consent by Guardianship and Management Tribunal". The purpose of the new section is to authorise a medical practitioner to recognise the validity of an order made by the Tribunal consenting to the removal of specified non-regenerative tissue from a person for transplantation purposes.

Clause 11: When written consent is not sufficient authority

This clause amends section 19 of the Principal Act by the addition of a new subsection (2). The new subsection 19(2) stipulates that a medical practitioner shall not rely upon an order of the Tribunal consenting to the removal of non-regenerative tissue if he or she has been informed that the order has been revoked.