



Australian Capital Territory

# **Guardianship and Management of Property Act 1991**

**A1991-62**

**Republication No 30**

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Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Guardianship and Management of Property Act 1991* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 11 September 2012. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 11 September 2012.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

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Australian Capital Territory

# Guardianship and Management of Property Act 1991

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An Act to provide for guardianship, and management of the property, of certain people, and for related purposes

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## Part 1 Preliminary

### 1 Name of Act

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

### 2 Dictionary

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

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act or in other legislation.

For example, the signpost definition '*trustee company*—see the *Trustee Companies Act 1947*, dictionary.' means that the term 'trustee company' is defined in that dictionary and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 3 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.



## Part 1A                      Important concepts and principles

### 4                      Principles to be followed by decision-makers

- (1) This section applies to the exercise by a person (the *decision-maker*) of a function under this Act in relation to a person with impaired decision-making ability (the *protected person*).
- (2) The *decision-making principles* to be followed by the decision-maker are the following:
  - (a) the protected person's wishes, as far as they can be worked out, must be given effect to, unless making the decision in accordance with the wishes is likely to significantly adversely affect the protected person's interests;
  - (b) if giving effect to the protected person's wishes is likely to significantly adversely affect the person's interests—the decision-maker must give effect to the protected person's wishes as far as possible without significantly adversely affecting the protected person's interests;
  - (c) if the protected person's wishes cannot be given effect to at all—the interests of the protected person must be promoted;
  - (d) the protected person's life (including the person's lifestyle) must be interfered with to the smallest extent necessary;
  - (e) the protected person must be encouraged to look after himself or herself as far as possible;
  - (f) the protected person must be encouraged to live in the general community, and take part in community activities, as far as possible.
- (3) Before making a decision, the decision-maker must consult with each carer of the protected person.

- (4) However, the decision-maker must not consult with a carer if the consultation would, in the decision-maker's opinion, adversely affect the protected person's interests.
- (5) Subsection (3) does not limit the consultation that the decision-maker may carry out.

**5 When does someone have impaired decision-making ability?**

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

**5A What are a person's interests?**

A person's *interests* include the following:

- (a) protection of the person from physical or mental harm;
- (b) prevention of the physical or mental deterioration of the person;
- (c) the ability of the person to—
  - (i) look after himself or herself; and
  - (ii) live in the general community; and
  - (iii) take part in community activities; and
  - (iv) maintain the person's preferred lifestyle (other than any part of the person's preferred lifestyle that is harmful to the person);
- (d) promotion of the person's financial security;
- (e) prevention of the wasting of the person's financial resources or the person becoming destitute.

## 6 Meaning of *carer*

In this Act:

*carer*—a person is a *carer* of someone else (the *dependant*) if—

- (a) the dependant is dependent on the person for ongoing care and assistance; and
- (b) the person cares for the dependant otherwise than because of—
  - (i) a commercial arrangement; or
  - (ii) an arrangement that is substantially commercial.

### Example of a carer

Ms S suffers from a severe brain injury because of a car accident and requires constant care. Her spouse, 2 children aged 18 and 11 and a family friend share her care and would each be a ‘carer’.

*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).

## 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

**Part 1A**            Important concepts and principles

Section 6A

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- (e) takes or has taken drugs, including alcohol (but any effects of a drug may be taken into account).

## **Part 2**                      **Guardians and managers**

### **Division 2.1**              **Appointment and powers**

#### **7**                      **Appointment and powers of guardians**

- (1) This section applies if the ACAT is satisfied that—
- (a) someone has impaired decision-making ability in relation to a matter relating to the person's health or welfare; and
  - (b) while the person has the impaired decision-making ability—
    - (i) there is, or is likely to be, a need for a decision in relation to the matter; or
    - (ii) the person is likely to do something in relation to the matter that involves, or is likely to involve, unreasonable risk to the person's health, welfare or property; and
  - (c) if a guardian is not appointed—
    - (i) the person's needs will not be met; or
    - (ii) the person's interests will be significantly adversely affected.

*Note 1* See s 8C in relation to appointment of a guardian for a child.

*Note 2* A person's needs may be met, or the person's interests protected, under an enduring power of attorney (see *Powers of Attorney Act 2006*).

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

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

- (3) The powers that may be given to a person's guardian include the following powers:
- (a) to decide where, and with whom, the person is to live;

- (b) to decide what education or training the person is to receive;
- (c) to decide whether the person is to be allowed to work;
- (d) if the person is to be allowed to work—to decide the nature of the work, the place of employment and the employer;
- (e) to give, for the person, a consent required for a medical procedure or other treatment (other than a prescribed medical procedure);
- (f) to bring or continue legal proceedings for or in the name of the person.

**7A Appointment of guardians under direction**

If the Supreme Court gives a direction under the *Crimes Act 1900*, section 316 (Special hearing), the ACAT must appoint a guardian as directed.

**7B Restriction on powers of guardians**

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

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

## **8 Appointment and powers of managers**

- (1) This section applies if the ACAT is satisfied that—
- (a) someone has impaired decision-making ability in relation to the person's financial matters or a matter affecting the person's property; and
  - (b) while the person has the impaired decision-making ability—
    - (i) there is, or is likely to be, a need for a decision in relation to the matter; or
    - (ii) the person is likely to do something in relation to the matter that involves, or is likely to involve, unreasonable risk to the person's health, welfare or property; and
  - (c) if a manager is not appointed—
    - (i) the person's needs will not be met; or
    - (ii) the person's interests will be significantly adversely affected.
- (2) The ACAT may, by order, appoint a manager to manage all, or a stated part of, the person's property, with the powers that the ACAT is satisfied are necessary or desirable to allow the manager to make decisions in relation to the property, in accordance with the decision-making principles.

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

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

**8AA Manager for missing person's property**

- (1) This section applies if the ACAT is satisfied, on application, that—
  - (a) someone is a missing person; and
  - (b) the person usually lives in the ACT; and
  - (c) while the person is missing, there is, or is likely to be, a need for a decision in relation to the person's financial matters or property; and
  - (d) the person's interests will be significantly adversely affected if a manager is not appointed.
- (2) However, the ACAT must not consider an application under subsection (1) in relation to a person if—
  - (a) the public trustee has made an application to the Supreme Court to be appointed the manager of the person's property under the *Public Trustee Act 1985*, section 34 (Application for appointment as manager of property) and the application has not been finally dealt with; or
  - (b) the Supreme Court has appointed the public trustee manager of the person's property under that Act, section 34 (2).
- (3) The ACAT may be satisfied that a person is a missing person only if satisfied that—
  - (a) it is not known whether the person is alive; and
  - (b) reasonable efforts have been made to find the person; and
  - (c) for at least 90 days, the person has not contacted—
    - (i) anyone who lives at the person's last-known home address; or



- (ii) any relative or friend of the person with whom the person is likely to communicate.

**Examples of contact**

- 1 telephone call
- 2 physical sighting of the person

*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).

- (4) The ACAT may, by order, appoint a manager to manage all, or a stated part, of the missing person's property, with the powers that the ACAT is satisfied are necessary or desirable to allow the manager to make decisions in relation to the property in accordance with the decision-making principles as if the missing person were a protected person.

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

- (5) An application under subsection (1), or an appointment under subsection (4), does not prevent the public trustee making an application under the *Public Trustee Act 1985*, section 34 in relation to the property to which the application or appointment relates.
- (6) The Legislation Act, part 19.3 (Appointments) does not apply to an appointment under subsection (4).

**8AB Missing people's property—who may apply for appointment of manager?**

An application for the appointment of a manager for a person under section 8AA may be made by any of the following:

- (a) a domestic partner of the person;
- (b) a relative of the person;
- (c) a carer of the person;
- (d) the Attorney-General;

- (e) the public trustee;
- (f) the public advocate;
- (g) anyone else who has an interest in the property of the person.

**8AC Missing people’s property—powers and term of manager**

- (1) The powers that may be given to the manager under section 8AA (4) (Manager for missing person’s property) are the powers the missing person would have if the person were able to exercise them.
- (2) However, an order under section 8AA (4) must state the kind of decisions the manager may make and the property in relation to which the power may be exercised.
- (3) An order under section 8AA (4) must also state the term of the appointment.
- (4) An appointment under section 8AA (4) must be for not longer than 2 years, but the ACAT may, on application by the manager or a person mentioned in section 8AB, extend the term for up to 2 more years.

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

- (1) The ACAT may appoint a manager for property in the ACT of someone (the *protected person*) who lives outside the ACT only if—
  - (a) the ACAT is satisfied that it is impracticable for a manager for the property to be appointed in the jurisdiction (the *other jurisdiction*) where the protected person lives; or
  - (b) an order appointing a manager for the property under the law of the other jurisdiction cannot be registered under section 12 (Recognition of interstate etc guardians and managers).

- (2) For this section:

*jurisdiction* means a State, another Territory or a foreign country.

**8B Effect on guardian or manager of enduring power of attorney in relation to health care**

- (1) This section applies if—
- (a) a person (the *principal*) has made an enduring power of attorney giving power in relation to health care matters; and
  - (b) the principal has become a person with impaired decision-making capacity; and
  - (c) the ACAT appoints a guardian for the principal after the making of the power of attorney; and
  - (d) the ACAT revokes the enduring power of attorney, or part of it.

*Note* The ACAT may revoke the enduring power of attorney, or part of it, under s 62 (2) (c).

- (2) If the guardian has power to consent to medical treatment for the person, the guardian must consider the terms of the enduring power of attorney before the enduring power of attorney, or part of it, was revoked.

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

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

**9 Who may be appointed**

- (1) The public advocate or an individual may be appointed as a guardian.
- (2) The public advocate, the public trustee, a trustee company or an individual may be appointed as a manager.

- (3) A person may be appointed both guardian and manager, and people may be appointed jointly as guardians or managers, or both.
- (4) The public advocate must not be appointed as a person's guardian if an individual who is otherwise suitable has consented to be appointed.
- (5) The public advocate, the public trustee or a trustee company must not be appointed as a manager of a person's property if an individual who is otherwise suitable has consented to be appointed.

## 10 Considerations affecting appointment

- (1) A person must not be appointed as a guardian or manager unless the person consents in writing to the appointment.
- (2) A person (except the public advocate, the public trustee or a trustee company) must not be appointed as a guardian or manager unless the person is an adult and has informed the ACAT on oath whether the person—
  - (a) has been convicted or found guilty of an offence involving violence, fraud or dishonesty; or
  - (b) has been, either in the ACT or elsewhere, refused appointment as a guardian or manager, or removed from office as a guardian or manager; or
  - (c) is bankrupt or personally insolvent (and, if so, has given particulars to the ACAT).

*Note* **Bankrupt or personally insolvent**—see the Legislation Act, dictionary, pt 1.
- (3) Someone (other than the public advocate or public trustee) may be appointed as a guardian or manager only if the ACAT is satisfied that the person will follow the decision-making principles and is otherwise suitable for appointment.

- (4) For subsection (3), the matters the ACAT must take into account include—
- (a) the views and wishes of the person (the *protected person*) for whom a guardian or manager is to be appointed; and
  - (b) the desirability of preserving existing relationships with family and any other carers; and
  - (c) whether the proposed guardian or manager is compatible with the protected person; and
  - (d) whether the proposed guardian or manager lives in the ACT; and
  - (e) whether the proposed guardian or manager will be available and accessible to the protected person; and
  - (f) the nature of the functions to be exercised under the order and whether the proposed guardian or manager is competent to exercise them; and
  - (g) whether the interests and duties of the proposed guardian or manager are likely to conflict with the protected person's interests to the detriment of the protected person's interests.
- (5) The interests and duties of the domestic partner or a relative of a person must not be taken to be likely to conflict with the interests of the person only because of the fact of being the domestic partner or relative.

## **11 Powers to be least restrictive**

The powers given to a person's guardian or on a manager of a person's property are to be no more restrictive of the person's freedom of decision and action than is necessary to achieve the purpose of the order.

*Note* Also, the guardian or manager should exercise the powers in accordance with the decision-making principles (see s 4).

## 12 Recognition of interstate etc guardians and managers

- (1) The ACAT must, on application, register the appointment of a person who is, under a corresponding law—
  - (a) a guardian for another person who lives outside the ACT; or
  - (b) a manager of property of another person who lives outside the ACT.
- (2) On registration, the person is taken to be a guardian, or manager of the property, of the other person, as the case requires, as if the appointment had been made by the ACAT.
- (3) The ACAT must not register an appointment unless the instrument of appointment, or a copy of it, has been lodged with the ACAT.
- (4) In this section:

*corresponding law* means a law of a State or of another Territory, or a law of a prescribed country, that corresponds, or substantially corresponds, to this Act.

## 13 Authority of guardian or manager

An act or omission of a guardian or manager under this Act has effect as if it were an act or omission of the represented person and that person had the legal capacity for the act or omission.

## 14 Restrictions on manager about property

- (1) Unless the ACAT, on application, orders otherwise—
  - (a) a manager of a person's property must not enter into a transaction in relation to the property if the interests of the manager are in conflict, or may conflict, with the interests of the person; and
  - (b) a manager of a person's property must keep the manager's property separate from the person's property.

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

## **15 Fees and expenses**

- (1) A person who acts as a guardian or manager—
- (a) is entitled to be paid the fees determined under section 75 (Determination of fees); and
  - (b) is entitled to reimbursement of the reasonable expenses incurred in acting as guardian or manager.
- (2) Amounts payable under this section are payable out of, and are a charge on, the relevant person's property or, if the manager concerned is manager of part only of the relevant person's property, that part.

## **Division 2.2 Supervision**

### **16 Directions by ACAT**

- (1) The ACAT may, on application, give a direction to a guardian or manager about the exercise of his or her functions or powers.
- (2) A guardian or manager must not, without reasonable excuse, contravene a direction.

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

### **17 Restrictions on ACAT's power to give directions**

- (1) This section applies to an order that affects a person—
- (a) who has a guardian; or
  - (b) for whom a manager is appointed.
- (2) The ACAT must not give a direction that is inconsistent with the order.

**18 Advice by ACAT**

- (1) The ACAT may, on application by a guardian or manager, give an opinion or advice about the exercise of functions or powers by the guardian or manager.
- (2) A guardian or manager who acts in accordance with such an opinion or advice is taken to have acted properly and in accordance with this Act unless, in obtaining the opinion or advice, the guardian or manager acted fraudulently or wilfully misrepresented or concealed a material fact.

**19 Regular review of guardians and managers**

- (1) The ACAT may at any time, on application or on its own initiative, hold a hearing to consider—
  - (a) whether an order appointing a guardian or manager should be—
    - (i) varied; or
    - (ii) revoked on the ground that the need for guardianship or management no longer exists; or
  - (b) whether a guardian or manager should be removed under section 31.
- (2) The ACAT must consider an order appointing a guardian or manager at least once every 3 years.
- (3) The ACAT must consider the suitability of a person as a replacement guardian or manager as soon as practicable after the person becomes a replacement guardian or manager.
- (4) For this section:
  - (a) *order* includes an order registered under section 12 (Recognition of interstate etc guardians and managers); and



- (b) an order registered under section 12 is taken to have been made when the order is registered.
- (5) In this section:
- replacement guardian or manager* means a person who becomes a guardian or manager when—
- (a) a previous guardian or manager dies; and
  - (b) the previous guardian or manager's appointment provides for the person to become the guardian or manager.

## **Division 2.3                    Matters relating to management**

### **20                    Access to records**

Unless the ACAT otherwise orders, a manager of a person's property is entitled to inspect a will or other testamentary instrument made by the person and to inspect any other document relating to the property.

### **21                    Payments for maintenance etc**

- (1) The manager of a person's property may, out of the property, pay reasonable amounts for the maintenance, advancement or education, or otherwise for the benefit, of the person and of the person's dependants (if any).
- (2) The payments may be made to or on behalf of the person and, if the person has a guardian, to the guardian.
- (3) The payments may be made out of income or capital.
- (4) In deciding whether to make a payment, the matters that the manager must take into account include—
  - (a) the person's views and wishes; and
  - (b) the amount and nature of the property; and

- (c) the amount and nature of any other of the person's property;  
and
- (d) the present and likely future needs of the person and any dependants.

## **22 Receipt of amounts**

- (1) Unless the ACAT otherwise orders, the manager of a person's property becomes the manager of the following amounts received by the manager:
  - (a) interest or income in relation to the property;
  - (b) the proceeds of the realisation of the property.
- (2) Unless the ACAT otherwise orders, if there is an accretion to property in relation to which a manager has been appointed, the manager becomes manager of the extra property.

## **23 Execution of instruments**

An instrument executed by a manager of a person's property acting as manager has the same effect as if it had been executed by the person.

## **24 Investments**

- (1) A manager must not invest amounts held in the capacity as manager except—
  - (a) in investments in which trust money may, in accordance with the *Trustee Act 1925*, be invested; or
  - (b) as the ACAT, by order, allows.
- (2) Subsection (1) has effect despite the *Public Trustee Act 1985*.

**25 Real estate**

If the property for which a manager is appointed includes land held under the *Land Titles Act 1925*, the manager must—

- (a) within 14 days after being appointed, lodge a copy of the order of appointment; or
- (b) within 14 days after being registered as manager under section 12, lodge a copy of the relevant order of appointment together with evidence of the registration;

with the registrar-general.

**26 Accounts**

- (1) A manager other than the public trustee must, in accordance with the regulations, file with the public trustee the accounts and other documents relating to the management of the relevant property that are prescribed.
- (2) A person must not, without reasonable excuse, contravene subsection (1).

Maximum penalty: 20 penalty units.

- (3) The ACAT may, on application, by order—
  - (a) give a manager directions in relation to the filing of the prescribed accounts and documents; and
  - (b) direct a manager to have the accounts and documents audited by a specified auditor.
- (4) A manager must not, without reasonable excuse, contravene a direction.

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

**27 Examination of accounts**

- (1) The public trustee must examine the accounts and documents mentioned in section 26 (1) and may apply to the ACAT for the disallowance of any item in the accounts.
- (2) The ACAT must not make an order disallowing an item if the ACAT is satisfied that the manager acted in good faith and with reasonable care in the exercise of powers given to the manager.
- (3) If an item is disallowed by the ACAT, the manager concerned—
  - (a) is not entitled to payment under section 15 of the amount of the item disallowed; and
  - (b) must pay to the Territory the amount of the costs reasonably incurred by the public trustee in making the application to the ACAT.
- (4) If the public trustee examines the accounts and other documents in relation to the management of property by the manager, the manager must pay to the Territory the fee determined under section 75 (Determination of fees) for the examination.
- (5) An amount payable to the Territory under subsection (3) (b) or (4) is payable on the 28th day after written notice specifying the amount of the debt is given to the debtor by the public trustee.
- (6) The public trustee may waive payment of all or part of an amount payable to the Territory under subsection (3) (b) or (4) if the public trustee is satisfied that payment of the amount would impose hardship on a person or that other circumstances justify waiving payment of the amount.

**27A Missing people's property—liability of manager and third party dealings**

- (1) A manager does not incur any liability, either to a missing person or anyone else, because of conduct done honestly during the manager's appointment under section 8AA (4) (Manager for missing person's property) in relation to a missing person's property if the conduct was for the exercise of a function under the appointment or of a function that the manager believed, on reasonable grounds, was a function under the appointment.
- (2) A person (the *third party*) who deals with a manager in relation to property that is under the manager's control because of the manager's appointment under section 8AA (4), does not incur any liability because of the dealing if it was done in the honest belief that the dealing was for the exercise of a function under the appointment.
- (3) In this section:  
*conduct*—see the Criminal Code, section 13.

**Division 2.4 Cessation of guardianship or management**

**28 Resignation**

A guardian or manager may resign by writing given to the ACAT.

**29 Death of represented person**

Subject to section 30, a person's guardian, or a manager of a person's property, ceases to be guardian or manager when the person dies.

**30 Manager may act until notified of discharge etc**

An order appointing a guardian or manager continues in force, so far as an act or thing done under it in good faith is concerned, until the guardian or manager receives notice of the death of the represented person, notice of the revocation of the order or notice of his or her removal from office under section 31.

**30A Missing people's property—ending of order**

An order appointing a manager to manage a missing person's property under section 8AA (Manager for missing person's property) ends if the Supreme Court appoints the public trustee manager of the property under the *Public Trustee Act 1985*, section 34.

**31 Removal by ACAT**

- (1) The ACAT may, by order, remove a person appointed as a guardian or manager if it is satisfied that—
  - (a) the person is no longer suitable to be a guardian or manager; or
  - (b) the person is no longer competent to exercise the functions or powers of a guardian or manager; or
  - (c) the person has failed to exercise the functions or powers of a guardian or manager; or
  - (d) the person has contravened a provision of this Act.
- (2) The ACAT may, by order, remove a manager of a missing person's property if satisfied, on application by the person or anyone else, that—
  - (a) the person is alive; or
  - (b) the person is dead; or
  - (c) the person may be presumed to be dead.

### **32 Surviving or substitute guardians etc**

- (1) If a person ceases to be a joint guardian (whether by death or otherwise)—
  - (a) the surviving guardian becomes the sole guardian; or
  - (b) if there are 2 or more surviving guardians—the survivors become joint guardians.
- (2) If a person ceases to be a joint manager of property (whether by death or otherwise)—
  - (a) the surviving manager becomes the sole manager of the property; or
  - (b) if there are 2 or more surviving managers—the survivors become joint managers of the property.
- (3) If the public advocate becomes aware that there is no longer a guardian for a person, but not because of—
  - (a) the revocation by the ACAT of the order appointing the person as guardian; or
  - (b) the removal by the ACAT of the person as guardian;the public advocate must give the ACAT written notice of the fact.
- (4) If the notice indicates that the public advocate or a person specified by the public advocate will act as guardian, the notice is taken to be an application for the appointment of the advocate or person as the guardian.
- (5) If the public advocate becomes aware that there is no longer a manager of a person's property, but not because of—
  - (a) the revocation by the ACAT of the order appointing the person as manager; or
  - (b) the removal by the ACAT of the person as manager;the public advocate must give the ACAT written notice of the fact.

- (6) If the notice indicates that the public advocate or a person specified by the public advocate has consented to act as manager, the notice is taken to be an application for the appointment of the advocate or person as the manager.



## 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, civil union partner or civil partner.

*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 ACAT 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 is 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 ACAT 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 ACAT 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.



## Part 3 Powers of attorney and ACAT

### 61 Definitions—pt 3

In this part:

*decision-making capacity*—see the *Powers of Attorney Act 2006*, dictionary.

*interested person*—see the *Powers of Attorney Act 2006*, dictionary.

*power of attorney*—see the *Powers of Attorney Act 2006*, dictionary.

*principal*—see the *Powers of Attorney Act 2006*, dictionary.

### 62 ACAT directions etc for enduring powers of attorney

- (1) This section applies in relation to an enduring power of attorney if the principal has impaired decision-making capacity.
- (2) On application, or on its own initiative on hearing a matter under this Act, the ACAT may, by order—
  - (a) give a direction, not inconsistent with the *Powers of Attorney Act 2006* or the power of attorney, that the attorney do or not do a stated act; or
  - (b) direct the attorney to produce stated books, accounts or other records of transactions carried out by the attorney for the principal; or
  - (c) revoke the enduring power of attorney, or part of it; or
  - (d) make a declaration about the interpretation or effect of the enduring power of attorney.
- (3) An application under subsection (2) may be made by an interested person or, with leave of the ACAT, someone else.

- (4) If the ACAT revokes an enduring power of attorney, the ACAT may appoint a guardian or manager for the person who was the principal for the power.

**63 Reference of power of attorney matters to Supreme Court**

- (1) This section applies in relation to an application to the ACAT under section 62.
- (2) The ACAT may refer the matter, or part of the matter, to the Supreme Court.
- (3) In deciding whether to refer a matter to the Supreme Court, the ACAT—
  - (a) must take into consideration the following matters:
    - (i) whether the matter relates to the effect of the enduring power of attorney on people other than the attorney or principal;
    - (ii) whether the matter is likely to raise for consideration complex or novel legal issues that the Supreme Court is better suited to decide; and
  - (b) may take into consideration anything else the ACAT considers relevant.

**64 Giving accounts to public advocate—enduring powers of attorney**

- (1) This section applies in relation to an enduring power of attorney if the principal has impaired decision-making capacity.

- (2) The public advocate may, by written notice given to a person who is or has been an attorney under the enduring power of attorney, require the person to give the public advocate stated books, accounts or other records of transactions carried out by the person for the principal under the power of attorney.

*Note* The public trustee may be an attorney and, if the public trustee is an attorney, the public advocate may give the public trustee a notice under this section.

## **65 Declaration about decision-making capacity**

- (1) The ACAT may, on application, declare that a person who is the principal for an enduring power of attorney has decision-making capacity or impaired decision-making capacity.
- (2) The declaration may be general or relate only to a property matter, personal care matter or health care matter.

## **66 Removing attorneys**

- (1) This section applies in relation to an enduring power of attorney if the principal has impaired decision-making capacity.
- (2) The ACAT may, by order, remove an attorney under the enduring power of attorney if satisfied that it is in the interests of the principal to remove the attorney.

## Part 5 Miscellaneous

### 67 Temporary appointments

- (1) The ACAT may make an emergency order without holding a hearing if satisfied that there are special circumstances of urgency that make it proper to do so.
- (2) The emergency order has effect for the period, not longer than 10 days, stated in the order.
- (3) In this section:

*emergency order* means an order appointing—

- (a) the public advocate to be the guardian for a person under section 7; or
- (b) the public advocate or public trustee to be a manager of a person's property under section 8 or section 8AA.

### 68 Emergency removal of disabled persons

- (1) If—
  - (a) the general president of the ACAT or a judicial officer is satisfied that—
    - (i) a guardian has been appointed for a person; or
    - (ii) grounds exist for the appointment of a guardian for a person; and
  - (b) the person is—
    - (i) because of a physical, mental, psychological or intellectual condition, likely to suffer serious damage to his or her physical, mental or emotional health if not removed from a particular place; or

(ii) being unlawfully detained in a particular place;

the general president of the ACAT or judicial officer may, on application by the public advocate, issue a warrant authorising the public advocate, with the police officers that may be required, and using the force that is necessary and reasonable, to enter that place and remove that person.

- (2) A warrant must specify—
- (a) the purpose for which it is issued; and
  - (b) the person whose removal it authorises; and
  - (c) the place from which that removal is authorised; and
  - (d) particular hours during which the removal is authorised or that removal is authorised at any time of the day or night; and
  - (e) the date (not later than 14 days after the issue of the warrant) when it ceases to have effect.
- (3) Subject to subsection (5), the application must be in writing accompanied by a statement setting out the information in support of the application.
- (4) All information, whether oral or in writing, given in support of the application must be given on oath.
- (5) If it is impracticable to apply in accordance with subsection (3), an application may be made by telephone or other appropriate means.
- (6) If subsection (5) applies—
- (a) the general president of the ACAT or the judicial officer must prepare and sign the warrant and tell the public advocate its terms; and
  - (b) the public advocate must prepare an instrument in the same terms as the warrant and write on it—
    - (i) the time and date when the warrant was signed; and

- (ii) the name of the person who signed the warrant; and
  - (c) the public advocate must give the person who signed the warrant, not later than 24 hours after it was signed, the statement mentioned in subsection (3) and the instrument mentioned in paragraph (b); and
  - (d) while the warrant remains in force, the instrument may be used instead of the warrant; and
  - (e) a court must not find that the premises were entered in accordance with the warrant unless the warrant signed by the general president of the ACAT or judicial officer is admitted in evidence.
- (7) As soon as practicable after the person is removed, the ACAT must hold a hearing and, if there is no guardian available, the public advocate must apply to be appointed as the person's guardian.

**68A Emergency orders—enduring powers of attorney**

- (1) This section applies if the ACAT is satisfied that there are special circumstances of urgency that make it proper to make an order under this section.
- (2) The ACAT may make an order under section 62 (ACAT directions etc for enduring powers of attorney) in relation to an enduring power of attorney without holding a hearing.

**68B ACAT's power to revoke health direction**

- (1) This section applies if—
  - (a) a person has made a health direction under the *Medical Treatment (Health Directions) Act 2006*; and
  - (b) the person becomes a person with impaired decision-making capacity; and

- (c) the ACAT appoints a guardian for the principal after the making of the health direction.
- (2) The ACAT may revoke the health direction, or part of it, if the ACAT considers appropriate.

## **69 Capacity to consent to medical etc procedures**

- (1) If—
  - (a) the guardian for a person has the power to give for the person a consent required for a medical procedure or other treatment; or
  - (b) a declaration that a person is not competent to give a consent required for a prescribed medical procedure is in force under subsection (2);the person is not competent to give such a consent for the procedure or treatment.
- (2) If a guardian is appointed for a person, the ACAT may, by order, declare that the person is not competent to give a consent required for a prescribed medical procedure.
- (3) If a person, who is not competent to do so, purports to consent to the performance of a medical procedure or the provision of other treatment for the person by a doctor, no action or proceeding, civil or criminal, lies against the doctor only because of the performance of the procedure or the provision of the treatment without the person's consent if—
  - (a) the doctor did not know, or could not reasonably be expected to know, that the person was not competent to give the consent required; and
  - (b) the doctor otherwise acted in good faith in performing the procedure or providing the treatment.

**70 ACAT may consent to prescribed medical procedures**

- (1) If the ACAT has made an order under section 69 (2) in relation to a person, it may, on application, by order, consent to a prescribed medical procedure (other than treatment for mental illness, electroconvulsive therapy or psychiatric surgery) for the person if it is satisfied that—
- (a) the procedure is otherwise lawful; and
  - (b) the person is not competent to give consent and is not likely to become competent in the foreseeable future; and
  - (c) the procedure would be in the person's best interests; and
  - (d) the person, the guardian and any other person whom the ACAT considers should have notice of the proposed procedure are aware of the application for consent.
- Note* Treatment for mental illness, including electroconvulsive therapy and psychiatric surgery, is dealt with in the *Mental Health (Treatment and Care) Act 1994*.
- (2) The ACAT must appoint the person's guardian, or the public advocate or some other independent person, to represent the person in relation to the hearing relating to the consent.
- (3) In deciding whether a particular procedure would be in the person's best interests, the matters that the ACAT must take into account include—
- (a) the wishes of the person, so far as they can be ascertained; and
  - (b) what would happen if it were not carried out; and
  - (c) what alternative treatments are available; and
  - (d) whether it can be postponed because better treatments may become available; and
  - (e) for a transplantation of tissue—the relationship between the 2 people.



- (4) The ACAT must not consent to the removal of non-regenerative tissue for transplantation to the body of another living person unless, in addition to the matters specified in subsection (1) (a) to (d), it is satisfied that—
- (a) the risk to the person from whom the tissue is to be taken is small; and
  - (b) the risk of failure of the transplant is low; and
  - (c) the life of the person to whose body the tissue is to be transplanted would be in danger if the transplant were not made; and
  - (d) it is highly likely that transplanting such tissue from someone else would be unsuccessful.
- (5) In an order by which the ACAT consents to the removal of non-regenerative tissue for transplantation to the body of another living person, the ACAT must specify the time and date the order is made.

## **71 Power to adjust transactions**

- (1) If a person for whose property a manager is appointed purports to enter into a transaction in relation to the property, the transaction is, subject to subsection (2), not void on the ground that the person was not legally competent to enter into the transaction.
- (2) The ACAT, the Supreme Court or the Magistrates Court may, on an application made within 90 days after the date of the transaction by the guardian, the manager or some other person concerned in the transaction, by order—
- (a) confirm the transaction; or
  - (b) declare the transaction void; or
  - (c) adjust the rights of the parties to the transaction;
- as is just.

- (3) The ACAT, the Supreme Court or the Magistrates Court may order an application made to it to be transferred to another of the ACAT, the Supreme Court or the Magistrates Court.
- (4) A transferred application must be dealt with as if it had been started in the ACAT or the relevant court and the ACAT or court may make any proper order for the further steps to be taken before it.
- (5) An order under this section has effect according to its tenor.

## **72 Injunctions to restrain dealings**

- (1) The ACAT may, on application, by order, restrain a person from entering into, completing or registering or otherwise giving effect to a transaction with someone else in relation to the property of the other person if satisfied that there are grounds for the appointment of a manager for the property.
- (2) An order remains in force for the period, not longer than 3 days, that is specified in the order but if, within the period, an application for the appointment of a manager is made to the ACAT, the ACAT may, by order, continue the first order until the application is decided.
- (3) A person who has notice of an order under this section must not act contrary to the order.

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

## **72A Notice of hearing**

- (1) This section applies in relation to the hearing by the ACAT of a matter under this Act.
- (2) Notice of the hearing must, as far as practicable, be given to—
  - (a) the person the subject of the hearing; and
  - (b) the person's domestic partner, parents, brothers and sisters; and

- (c) each child of the person; and
- (d) if the person has a carer who would not otherwise be given notice of the hearing under this section—the carer; and
- (e) if the person has a guardian—the guardian; and
- (f) if there is a manager of the person’s property—the manager; and
- (g) if an application is made under section 8AA (Manager for missing person’s property)—the applicant; and
- (h) the public advocate; and
- (i) if the matter relates to property—the public trustee; and
- (j) if the matter relates to an enduring power of attorney—each attorney under the power of attorney.

**Example—people who must be given notice of hearing**

Mr B has dementia and requires constant care. Mr B’s brother (and guardian), his niece and a close family friend share his care. Each person must be given notice of a hearing in relation to a matter affecting Mr B.

*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).

- (3) Subsection (2) does not limit the people to whom notice of the hearing may be given.

**72B Authority for medical or other examinations**

- (1) The ACAT may, for a hearing, authorise a medical or other examination of the person who is the subject of the hearing.
- (2) The authority has effect as a valid consent for anything done during the examination.

**72C Power to obtain information and documents**

- (1) If the ACAT is satisfied that a person can give information or produce a document relevant to a hearing under this Act, the ACAT may, by written notice given to the person, require the person to—
- (a) give the information to the ACAT in writing signed by the person or, for a body corporate, by an officer of the body corporate; or
  - (b) produce the document to the ACAT; or
  - (c) attend before the ACAT to answer questions relevant to the hearing.

*Note 1* The Legislation Act, s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

*Note 2* Documents may be produced electronically in certain circumstances (see *Electronic Transactions Act 2001*).

- (2) The notice must state—
- (a) for a notice to give written information or produce a document—
    - (i) the place where the information or document is to be given or produced; and
    - (ii) the time when, or the period within which, the information or document is to be given or produced; or
  - (b) for a notice to attend before the ACAT to answer questions—the time when, and the place where, the person is to attend.
- (3) This section does not limit any other power of the ACAT under a territory law to obtain information or a document.

**73 Acts and omissions of representatives**

- (1) In this section:

*person* means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

*representative*, of a person, means an employee or agent of the person.

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

- (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.

- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

#### **74 Criminal liability of officers of corporation**

- (1) If a corporation commits an offence against section 72, an executive officer of the corporation—
- (a) commits the offence; and
  - (b) is liable, on conviction, to a penalty not exceeding the maximum penalty that may be imposed for the commission of the offence by an individual.
- (2) It is a defence to a prosecution for an offence against subsection (1) that—
- (a) the defendant exercised due diligence to prevent the corporation from doing the act or making the omission alleged to constitute the offence or an element of the offence committed by the corporation; or
  - (b) an officer or employee of the corporation occupying the defendant's position could not reasonably have been expected to know of the contravention; or
  - (c) the corporation would not have been found guilty of the offence because of its being able to establish a defence available to it under this Act.
- (3) An executive officer may, under subsection (1), be prosecuted for and convicted of an offence whether or not the corporation has been prosecuted for or convicted of the offence.
- (4) In this section:

*executive officer*, of a corporation, means a person, however called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

**75 Determination of fees**

- (1) The Minister may determine fees for this Act, including—
  - (a) fees payable under section 15 to guardians or managers; and
  - (b) fees payable under section 27 (4) by managers for the examination of accounts and documents by the public trustee.

*Note* The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

**75A Approved forms**

- (1) The director-general may approve forms for this Act.
- (2) If the director-general 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.

**77 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) A regulation may also prescribe offences for contraventions of a regulation and prescribe maximum penalties of not more than 10 penalty units for offences against a regulation.

## Dictionary

(see s 2)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- adult
- appoint
- bankrupt or personally insolvent
- civil union
- domestic partner (see s 169)
- exercise
- function
- Magistrates Court
- oath.

***carer***—

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

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

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

***decision-making capacity***, for part 3 (Powers of Attorney and ACAT)—see the *Powers of Attorney Act 2006*, dictionary.

***decision-making principles***—see section 4.

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

***electroconvulsive therapy***—see the *Mental Health (Treatment and Care) Act 1994*, section 55.

***enduring power of attorney***—see the *Powers of Attorney Act 2006*, section 8.



**general president**, of the ACAT—see the *ACT Civil and Administrative Tribunal Act 2008*, dictionary.

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

- section 7 (Appointment and powers of guardians)
- section 7A (Appointment of guardians under direction)
- section 12 (Recognition of interstate etc guardians and managers)
- section 32 (Surviving or substitute guardians etc).

**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.

**impaired decision-making ability**, for a person—see section 5.

**interested person**, for part 3 (Powers of Attorney and ACAT)—see the *Powers of Attorney Act 2006*, dictionary.

**interests**, of a person—see section 5A.

**judicial officer** means a judge of the Supreme Court or a magistrate.

**manager** means a manager under any of the following sections:

- section 8 (Appointment and powers of managers)
- section 8AA (Manager for missing person's property)
- section 12 (Recognition of interstate etc guardians and managers)
- section 32 (Surviving or substitute guardians etc).

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

**mental illness**—see the *Mental Health (Treatment and Care) Act 1994*, dictionary.

***non-regenerative tissue***—see the *Transplantation and Anatomy Act 1978*, dictionary.

***power of attorney***, for part 3 (Powers of Attorney and ACAT)—see the *Powers of Attorney Act 2006*, dictionary.

***prescribed medical procedure*** means—

- (a) an abortion; or
- (b) reproductive sterilisation; or
- (c) a hysterectomy; or
- (d) a medical procedure concerned with contraception; or
- (e) removal of non-regenerative tissue for transplantation to the body of another living person; or
- (f) treatment for mental illness, electroconvulsive therapy or psychiatric surgery; or
- (g) any other medical or surgical procedure prescribed for this definition.

***principal***, for part 3 (Powers of Attorney and ACAT) —see the *Powers of Attorney Act 2006*, dictionary.

***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.

***psychiatric surgery***—see the *Mental Health (Treatment and Care) Act 1994*, dictionary.

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

***trustee company***—see the *Trustee Companies Act 1947*, dictionary.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

#### **Guardianship and Management of Property Act 1991 No 62**

notified 31 October 1991 (Gaz 1991 No S119)

s 1, s 2 commenced 31 October 1991 (s 2 (1))

remainder commenced 7 January 1992 (s 2 (2) and Gaz 1991 No S147)

as amended by

#### **Registrar-General (Consequential Provisions) Act 1993 No 64 sch 1**

notified 6 September 1993 (Gaz 1993 No S172)

s 1, s 2 commenced 6 September 1993 (s 2 (1))

sch 1 commenced 1 October 1993 (s 2 (2) and Gaz 1993 No S207)

#### **Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38 sch 1**

notified 30 June 1994 (Gaz 1994 No S121)

s 1, s 2 commenced 30 June 1994 (s 2 (1))

sch 1 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

#### **Mental Health (Consequential Provisions) Act 1994 No 45 s 34**

notified 7 September 1994 (Gaz 1994 No S177)

s 1, s 2 commenced 7 September 1994 (s 2 (1))

s 34 commenced 6 February 1995 (s 2 (2) and Gaz 1995 No S33)

#### **Annual Reports (Government Agencies) (Consequential Provisions) Act 1995 No 25 sch**

notified 5 September 1995 (Gaz 1995 No S212)

commenced 5 September 1995 (s 2)

#### **Guardianship and Management of Property (Amendment) Act 1995 No 36**

notified 31 October 1995 (Gaz 1995 No S266)

commenced 31 October 1995 (s 2)

#### **Land Titles (Consequential Amendments) Act 1995 No 54 sch**

notified 20 December 1995 (Gaz 1995 No S313)

commenced 20 June 1996 (s 2)

**Legal Practitioners (Consequential Amendments) Act 1997 No 96 sch 1**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch 1 commenced 1 June 1998 (s 2 (2))

**Statute Law Revision (Penalties) Act 1998 No 54 sch**

notified 27 November 1998 (Gaz 1998 No S207)  
s 1, s 2 commenced 27 November 1998 (s 2 (1))  
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

**Courts and Tribunals (Audio Visual and Audio Linking) Act 1999 No 22 pt 7**

notified 14 April 1999 (Gaz 1999 No S16)  
s 1, s 2 commenced 14 April 1999 (s 2 (1))  
pt 7 commenced 1 September 1999 (s 2 (2) and Gaz 1999 No 35)

**Crimes (Amendment) Act 1999 No 32 s 32**

notified 25 June 1999 (Gaz 1999 No S34)  
ss 1-4 commenced 25 June 1999 (s 2 (1))  
s 32 commenced 1 October 1999 (s 2 (2))

**Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3**

notified 10 November 1999 (Gaz 1999 No 45)  
commenced 10 November 1999 (s 2)

**Justice and Community Safety Legislation Amendment Act 2000 (No 2) No 2 sch**

notified 9 March 2000 (Gaz 2000 No 10)  
commenced 9 March 2000 (s 2)

**Justice and Community Safety Legislation Amendment Act 2000 (No 3) No 17 sch 1**

notified 1 June 2000 (Gaz 2000 No 22)  
commenced 1 June 2000 (s 2)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 171**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 171 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

## Endnotes

3 Legislation history

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### **Guardianship and Management of Property Amendment Act 2001 No 78**

notified LR 24 September 2001  
commenced 24 September 2001 (s 2)

### **Legislation Amendment Act 2002 No 11 pt 2.25**

notified LR 27 May 2002  
s 1, s 2 commenced 27 May 2002 (LA s 75)  
pt 2.25 commenced 28 May 2002 (s 2 (1))

### **Statute Law Amendment Act 2002 No 30 pt 3.35**

notified LR 16 September 2002  
s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))  
pt 3.35 commenced 17 September 2002

### **Criminal Code 2002 No 51 pt 1.11**

notified LR 20 December 2002  
s 1, s 2 commenced 20 December 2002 (LA s 75 (1))  
pt 1.11 commenced 1 January 2003 (s 2 (1))

### **Legislation (Gay, Lesbian and Transgender) Amendment Act 2003 A2003-14 sch1 pt 1.18**

notified LR 27 March 2003  
s 1, s 2 commenced 27 March 2003 (LA s 75)  
sch 1 pt 1.18 commenced 28 March 2003 (s 2)

### **Evidence (Miscellaneous Provisions) Amendment Act 2003 A2003-48 sch 2 pt 2.7**

notified LR 31 October 2003  
s 1, s 2 commenced 31 October 2003 (LA s 75 (1))  
sch 2 pt 2.7 commenced 30 April 2004 (s 2 and LA s 79)

### **Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004 A2004-15 sch 1 pt 1.21**

notified LR 26 March 2004  
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))  
sch 1 pt 1.21 commenced 9 April 2004 (s 2 (1))

**Court Procedures (Consequential Amendments) Act 2004 A2004-60 sch 1 pt 1.28**

notified LR 2 September 2004  
s 1, s 2 commenced 2 September 2004 (LA s 75 (1))  
sch 1 pt 1.28 commenced 10 January 2005 (s 2 and see Court Procedures Act 2004 A2004-59, s 2 and CN2004-29)

**Mental Health (Treatment and Care) Amendment Act 2005 A2005-48 sch 1 pt 1.3**

notified LR 6 September 2005  
s 1, s 2 commenced 6 September 2005 (LA s 75 (1))  
sch 1 pt 1.3 commenced 7 September 2005 (s 2)

**Criminal Code (Administration of Justice Offences) Amendment Act 2005 A2005-53 sch 1 pt 1.11**

notified LR 26 October 2005  
s 1, s 2 commenced 26 October 2005 (LA s 75 (1))  
sch 1 pt 1.11 commenced 23 November 2005 (s 2)

**Justice and Community Safety Legislation Amendment Act 2005 (No 4) A2005-60 sch 1 pt 1.17**

notified LR 1 December 2005  
s 1, s 2 taken to have commenced 23 November 2005 (LA s 75 (2))  
sch 1 pt 1.17 commenced 22 December 2005 (s 2 (4))

**Civil Unions Act 2006 A2006-22 sch 1 pt 1.16**

notified LR 19 May 2006  
s 1, s 2 commenced 19 May 2006 (LA s 75 (1))  
sch 1 pt 1.16 never commenced

*Note* Act repealed by disallowance 14 June 2006 (see Cwltz Gaz 2006 No S93)

**Justice and Community Safety Legislation Amendment Act 2006 A2006-40 sch 2 pt 2.17**

notified LR 28 September 2006  
s 1, s 2 commenced 28 September 2006 (LA s 75 (1))  
sch 2 pt 2.17 commenced 29 September 2006 (s 2 (1))

**Statute Law Amendment Act 2006 A2006-42 sch 3 pt 3.11**

notified LR 26 October 2006  
s 1, s 2 taken to have commenced 12 November 2005 (LA s 75 (2))  
sch 3 pt 3.11 commenced 16 November 2006 (s 2 (1))

## Endnotes

3 Legislation history

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### **Carers Recognition Legislation Amendment Act 2006 A2006-47 pt 3**

notified LR 28 November 2006

s 1, s 2 commenced 28 November 2006 (LA s 75 (1))

pt 3 commenced 28 May 2007 (s 2 and LA s 79)

### **Powers of Attorney Act 2006 A2006-50 sch 2 pt 2.1**

notified LR 30 November 2006

s 1, s 2 commenced 30 November 2006 (LA s 75 (1))

sch 2 pt 2.1 commenced 30 May 2007 (s 2 and LA s 79)

### **Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.53**

notified LR 22 March 2007

s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))

sch 3 pt 3.53 commenced 30 May 2007 (s 2 (2) and see Powers of Attorney Act 2006 A2006-50 s 2)

### **Guardianship and Management of Property Amendment Act 2007 A2007-23**

notified LR 5 September 2007

s 1, s 2 commenced 5 September 2007 (LA s 75 (1))

remainder commenced 6 September 2007 (s 2)

### **Statute Law Amendment Act 2008 A2008-28 sch 3 pt 3.31**

notified LR 12 August 2008

s 1, s 2 commenced 12 August 2008 (LA s 75 (1))

sch 3 pt 3.31 commenced 26 August 2008 (s 2)

### **ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 A2008-36 sch 1 pt 1.26**

notified LR 4 September 2008

s 1, s 2 commenced 4 September 2008 (LA s 75 (1))

sch 1 pt 1.26 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

### **Guardianship and Management of Property Amendment Act 2008 A2008-47**

notified LR 11 September 2008

s 1, s 2 commenced 11 September 2008 (LA s 75 (1))

remainder commenced 2 February 2009 (s 2 and CN2008-19)



**Statute Law Amendment Act 2009 A2009-20 sch 3 pt 3.36**

notified LR 1 September 2009

s 1, s 2 commenced 1 September 2009 (LA s 75 (1))

sch 3 pt 3.36 commenced 22 September 2009 (s 2)

**Justice and Community Safety Legislation Amendment Act 2009  
(No 3) A2009-44 sch 1 pt 1.12**

notified LR 24 November 2009

s 1, s 2 commenced 24 November 2009 (LA s 75 (1))

sch 1 pt 1.12 commenced 22 December 2009 (s 2 (3))

**Statute Law Amendment Act 2009 (No 2) A2009-49 sch 3 pt 3.35**

notified LR 26 November 2009

s 1, s 2 commenced 26 November 2009 (LA s 75 (1))

sch 3 pt 3.35 commenced 17 December 2009 (s 2)

**Justice and Community Safety Legislation Amendment Act 2010  
(No 2) A2010-30 sch 1 pt 1.10**

notified LR 31 August 2010

s 1, s 2 commenced 31 August 2010 (LA s 75 (1))

s 3 commenced 1 September 2010 (s 2 (1))

sch 1 pt 1.10 commenced 28 September 2010 (s 2 (2))

**Justice and Community Safety Legislation Amendment Act 2010  
(No 4) A2010-50 sch 1 pt 1.2**

notified LR 14 December 2010

s 1, s 2 commenced 14 December 2010 (LA s 75 (1))

sch 1 pt 1.2 commenced 21 December 2010 (s 2 (1))

**Administrative (One ACT Public Service Miscellaneous Amendments)  
Act 2011 A2011-22 sch 1 pt 1.74**

notified LR 30 June 2011

s 1, s 2 commenced 30 June 2011 (LA s 75 (1))

sch 1 pt 1.74 commenced 1 July 2011 (s 2 (1))

**Statute Law Amendment Act 2011 (No 2) A2011-28 sch 3 pt 3.17**

notified LR 31 August 2011

s 1, s 2 commenced 31 August 2011 (LA s 75 (1))

sch 3 pt 3.17 commenced 21 September 2011 (s 2 (1))

## Endnotes

3 Legislation history

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### **Civil Unions Act 2012 A2012-40 sch 3 pt 3.16**

notified LR 4 September 2012

s 1, s 2 commenced 4 September 2012 (LA s 75 (1))

sch 3 pt 3.16 commenced 11 September 2012 (s 2)

## 4 Amendment history

### Name of Act

s 1 sub 2001 No 78 amdt 1.1

### Dictionary

s 2 orig s 2 om 2001 No 44 amdt 1.992  
(prev 2A) ins 2001 No 78 amdt 1.2  
sub 2002 No 30 amdt 3.398

### Notes

s 3 orig s 3 am 2000 No 2 sch  
(prev s 6) also renum as s 3 2001 No 78 amdt 1.9  
both s 3 om 2002 No 30 amdt 3.399  
ins 2002 No 30 amdt 3.400

### Important concepts and principles

pt 1A hdg ins 2001 No 78 s 4

### Principles to be followed by decision-maker

s 4 **orig s 4**  
defs reloc to dict 2001 No 78 amdt 1.5  
om 2001 No 78 amdt 1.6  
def **Crimes Act** sub 2000 No 2 sch  
om 2001 No 78 amdt 1.4  
def **doctor** om 2001 No 78 amdt 1.4  
def **guardian** om 2001 No 78 amdt 1.4  
def **lawyer** om 1997 No 96 sch 1  
def **manager** om 2001 No 78 amdt 1.4  
def **member** (1st definition) om 2001 No 78 amdt 1.4  
def **non-regenerative tissue** om 2001 No 78 amdt 1.4  
def **property** om 2001 No 78 amdt 1.4  
def **trustee company** om 2001 No 78 amdt 1.4  
**prev s 4**  
renum and reloc as s 5A  
**pres s 4**  
(prev s 5) ins 2001 No 78 s 4  
am A2006-47 s 8  
renum as s 4 A2006-47 s 9

### When does someone have impaired decision-making ability?

s 5 **orig s 5**  
renum and reloc as s 6A  
**prev s 5**  
renum as s 4  
**pres s 5**  
(prev s 6) ins 2001 No 78 s 4  
renum as s 5 A2006-47 s 10

## Endnotes

4 Amendment history

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### **What are a person's interests?**

s 5A (prev s 4) ins 2001 No 78 s 4  
renum and reloc as s 5A A2006-47 s 7

### **Meaning of carer**

s 6 **orig s 6**  
renum as s 3  
**prev s 6**  
renum as s 5  
**pres s 6**  
ins A2006-47 s 11

### **Limits on finding impaired decision-making ability**

s 6A hdg (prev s 5 hdg) sub 2001 No 78 amdt 1.7  
s 6A (prev s 5) renum and reloc 2001 No 78 amdt 1.8  
sub A2008-47 s 4  
reloc to pt 1A A2008-47 s 5

### **Appointment and powers**

div 2.1 hdg (prev pt 2 div 1 hdg) renum R6 LA

### **Appointment and powers of guardians**

s 7 am 1999 No 32 s 32  
sub 2001 No 78 s 5  
am A2006-50 amdt 2.1; A2008-36 amdt 1.312

### **Appointment of guardians under direction**

s 7A ins 2001 No 78 s 5  
sub A2008-36 amdt 1.279

### **Restriction on powers of guardians**

s 7B ins 2001 No 78 s 5  
am A2006-22 amdt 1.67 (A2006-22 rep before commenced by  
disallowance (see Cwlth Gaz 2006 No S93)); A2012-40 amdt  
3.57

### **Appointment and powers of managers**

s 8 sub 2001 No 78 s 5  
am A2008-36 amdt 1.280, amdt 1.312

### **Manager for missing person's property**

s 8AA ins A2007-23 s 4  
am A2008-36 amdt 1.281, amdt 1.312

### **Missing people's property—who may apply for appointment of manager?**

s 8AB **orig s 8AB**  
renum as s 8B  
**pres s 8AB**  
ins A2007-23 s 4

**Missing people's property—powers and term of manager**

s 8AC ins A2007-23 s 4  
am A2008-36 amdt 1.282

**Restriction on power to appoint manager outside ACT**

s 8A ins 2001 No 78 s 5  
am A2008-36 amdt 1.312

**Effect on guardian or manager of enduring power of attorney in relation to health care**

s 8B **orig s 8B**  
renum as s 8C  
**pres s 8B**  
(prev s 8AB) ins A2006-50 amdt 2.2  
renum as s 8B R20 LA  
am A2008-36 amdt 1.312; A2011-28 amdt 3.124

**May a guardian or manager be appointed for a child?**

s 8C (prev s 8B) ins 2001 No 78 s 5  
renum as s 8C R20 LA  
am A2008-36 amdt 1.283

**Who may be appointed**

s 9 am 2001 No 78 amdt 1.10; A2006-50 amdt 2.11

**Considerations affecting appointment**

s 10 am 2000 No 2 sch; 2001 No 78 s 6, amdt 1.11; A2003-14  
amdt 1.62; A2005-53 amdt 1.58; A2006-42 amdt 3.56;  
A2006-47 s 12; A2006-50 amdt 2.11; A2008-36 amdt 1.312;  
A2010-30 amdt 1.28

**Powers to be least restrictive**

s 11 am 2001 No 78 s 7; A2006-47 s 13

**Recognition of interstate etc guardians and managers**

s 12 am 2001 No 78 amdt 1.11; A2008-36 amdt 1.312; A2009-49  
amdt 3.79

**Restrictions on manager about property**

s 14 sub 2001 No 78 s 8  
am A2008-36 amdt 1.284

**Fees and expenses**

s 15 am 2001 No 44 amdt 1.1993

**Supervision**

div 2.2 hdg (prev pt 2 div 2 hdg) renum R6 LA

**Directions by ACAT**

s 16 hdg am A2008-36 amdt 1.312  
s 16 am 1998 No 54 sch; 2000 No 2 sch; 2001 No 78 amdt 1.12;  
A2008-36 amdt 1.312

## Endnotes

4 Amendment history

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### **Restrictions on ACAT's power to give directions**

s 17 sub A2008-36 amdt 1.285

### **Advice by ACAT**

s 18 hdg am A2008-36 amdt 1.312

s 18 am 2000 No 2 sch; A2008-36 amdt 1.312

### **Regular review of guardians and managers**

s 19 sub A2008-36 amdt 1.286

### **Matters relating to management**

div 2.3 hdg (prev pt 2 div 3 hdg) renum R6 LA

### **Access to records**

s 20 sub A2008-36 amdt 1.287

### **Receipt of amounts**

s 22 sub A2008-36 amdt 1.288

### **Investments**

s 24 am 1995 No 36 s 4; 2000 No 2 sch; 2001 No 78 amdt 1.13

sub A2008-36 amdt 1.289

### **Real estate**

s 25 am 1993 No 64 sch 1; 1995 No 54 sch

### **Accounts**

s 26 am 1998 No 54 sch; 2001 No 78 amdt 1.14, amdt 1.15;

A2008-36 amdt 1.290

### **Examination of accounts**

s 27 am 2001 No 44 amdt 1.1994; A2005-60 amdt 1.102; A2008-36

amdt 1.312

### **Missing people's property—liability of manager and third party dealings**

s 27A ins A2007-23 s 5

### **Cessation of guardianship or management**

div 2.4 hdg (prev pt 2 div 4 hdg) renum R6 LA

### **Resignation**

s 28 sub A2008-36 amdt 1.291

### **Missing people's property—ending of order**

s 30A ins A2007-23 s 6

### **Removal by ACAT**

s 31 hdg am A2008-36 amdt 1.312

s 31 am 2000 No 2 sch; A2007-23 s 7, s 8; A2008-36 amdt 1.312

### **Surviving or substitute guardians etc**

s 32 am A2006-50 amdt 2.11; A2008-36 amdt 1.312

**Consent to medical treatment without formal representation**

pt 2A hdg ins A2008-47 s 6

**Definitions —pt 2A**

s 32A ins A2008-47 s 6  
def **carer** ins A2008-47 s 6  
def **close relative or close friend** ins A2008-47 s 6  
def **domestic partner** ins A2008-47 s 6  
am A2012-40 amdt 3.58  
def **health attorney** ins A2008-47 s 6  
def **health professional** ins A2008-47 s 6  
def **medical treatment** ins A2008-47 s 6  
def **priority order** ins A2008-47 s 6  
def **protected person** ins A2008-47 s 6  
am A2009-20 amdt 3.84  
def **remuneration or reward** ins A2008-47 s 6

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

s 32B ins A2008-47 s 6  
am A2009-49 amdt 3.80

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

s 32C ins A2008-47 s 6

**Health attorney may give consent**

s 32D ins A2008-47 s 6

**Decision-making principles apply**

s 32E ins A2008-47 s 6

**Decision about health attorney**

s 32F ins A2008-47 s 6

**Health professional must give information to health attorney**

s 32G ins A2008-47 s 6

**Referring matters to public advocate—refusal of consent**

s 32H ins A2008-47 s 6  
am A2009-20 amdt 3.85

**Referring matters to public advocate—disagreement between health attorneys**

s 32I ins A2008-47 s 6  
am A2009-20 amdt 3.86

**Notice to public advocate—long term treatment**

s 32J ins A2008-47 s 6

**Protection of health attorney from liability**

s 32K ins A2008-47 s 6

## Endnotes

### 4 Amendment history

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#### **Protection of health professional from liability**

s 32L ins A2008-47 s 6

#### **Preservation of liability**

s 32M ins A2008-47 s 6

#### **Urgent medical treatment**

s 32N ins A2008-47 s 6

#### **Need for inquiry**

s 33 sub A2006-50 amdt 2.3  
om A2008-36 amdt 1.292

#### **Sittings**

s 34 am 2000 No 2 sch  
om A2008-36 amdt 1.292

#### **Notice of inquiry**

s 35 am 1999 No 66 sch 3; A2003-14 amdt 1.62; A2006-47 s 14,  
s 15; pars renum R18 LA; A2006-50 amdt 2.4; A2007-23 s 9;  
pars renum R20 LA (see A2007-23 s 10)  
om A2008-36 amdt 1.292

#### **Appearance and representation**

s 36 am 1997 No 96 sch 1; 2001 No 78 amdt 1.16  
om A2008-36 amdt 1.292

#### **Appearance by audiovisual or audio links**

s 36A ins 1999 No 22 s 14  
am 2000 No 17 sch 1; 2001 No 78 amdt 1.17; A2003-48  
amdt 2.8  
om A2008-36 amdt 1.292

#### **Conduct of inquiry**

s 37 om A2008-36 amdt 1.292

#### **Evidence**

s 38 am 1999 No 66 sch 3; A2005-53 amdt 1.59  
om A2008-36 amdt 1.292

#### **Authority for medical or other examinations**

s 39 am 1999 No 66 sch 3  
om A2008-36 amdt 1.292

#### **Assistance for tribunal**

s 40 am 1997 No 96 sch 1; 2001 No 78 amdt 1.18; A2006-50  
amdt 2.5  
om A2008-36 amdt 1.292

#### **Power to obtain information and documents**

s 41 am 1999 No 66 sch 3  
om A2008-36 amdt 1.292



**Privileges against selfincrimination and exposure to civil penalty**

s 41A ins A2005-53 amdt 1.60  
om A2008-36 amdt 1.292

**Retention of documents**

s 42 am 1999 No 66 sch 3; A2005-53 amdt 1.61  
om A2008-36 amdt 1.292

**Form of orders**

s 43 am 2001 No 78 amdt 1.19  
om A2008-36 amdt 1.292

**Proof of orders**

s 44 om A2008-36 amdt 1.292

**Obtaining reasons for decisions**

s 45 am 1999 No 66 sch 3  
om A2008-36 amdt 1.292

**Withdrawal of applications**

s 46 om A2008-36 amdt 1.292

**Costs**

s 47 om A2008-36 amdt 1.292

**Removal of people disrupting inquiries**

s 48 am 1998 No 54 sch; 1999 No 66 sch 3; 2001 No 78 amdt 1.20  
om A2008-36 amdt 1.292

**Prohibited publications**

s 49 am 1998 No 54 sch; 1999 No 66 sch 3; 2001 No 78 amdt 1.21  
om A2008-36 amdt 1.292

**Failure to answer questions etc**

s 50 am 1998 No 54 sch; 2001 No 78 amdt 1.22; 2002 No 11  
amdt 2.49; 2002 No 51 amdt 1.22  
om A2005-53 amdt 1.62

**Failure to attend before tribunal**

s 51 am 1998 No 54 sch; 1999 No 66 sch 3  
om A2005-53 amdt 1.62

**Refusing to be sworn etc**

s 52 am 1998 No 54 sch  
om A2005-53 amdt 1.62

**False information etc**

s 53 am 1998 No 54 sch; 2001 No 78 amdt 1.23  
om A2005-53 amdt 1.62

**Influencing participants in inquiry**

s 54 am 1998 No 54 sch  
om A2005-53 amdt 1.62

## Endnotes

4 Amendment history

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### **Application of Criminal Code, ch 7**

s 55 am 1998 No 54 sch; 2000 No 2 sch  
sub A2005-53 amdt 1.62  
om A2008-36 amdt 1.292

### **Appeals from tribunal to Supreme Court**

s 56 am A2004-60 amdt 1.153, amdt 1.154  
sub A2006-40 amdt 2.112  
am A2006-50 amdt 2.6  
om A2008-36 amdt 1.292

### **Establishment**

s 57 om A2008-36 amdt 1.292

### **Functions and powers**

s 58 sub 1999 No 66 sch 3; 2000 No 2 sch  
am 2001 No 78 amdts 1.24-1.26  
sub A2006-50 amdt 2.7  
om A2008-36 amdt 1.292

### **Membership of tribunal**

s 59 sub 1999 No 66 sch 3; 2000 No 2 sch  
am A2008-28 amdt 3.96  
om A2008-36 amdt 1.292

### **Presidential members**

s 60 am 1999 No 66 sch 3  
sub 2000 No 2 sch  
om A2008-36 amdt 1.292

### **Powers of attorney and ACAT**

pt 3 hdg sub A2008-36 amdt 1.292

### **Procedure**

div 3.1 hdg (prev pt 3 div 1 hdg) renum R6 LA  
om A2008-36 amdt 1.292

### **Miscellaneous**

div 3.2 hdg (prev pt 3 div 2 hdg) renum R6 LA  
om A2008-36 amdt 1.292

### **Appeals**

div 3.3 hdg (prev pt 3 div 3 hdg) renum R6 LA  
om A2008-36 amdt 1.292

### **Definitions—pt 3**

s 61 sub 2000 No 2 sch; A2008-36 amdt 1.292  
def **decision-making capacity** ins A2008-36 amdt 1.292  
def **interested person** ins A2008-36 amdt 1.292  
def **power of attorney** ins A2008-36 amdt 1.292  
def **principal** ins A2008-36 amdt 1.292

**ACAT directions etc for enduring powers of attorney**

s 62 sub 2000 No 2 sch; A2008-36 amdt 1.292

**Reference of power of attorney matters to Supreme Court**

s 63 am 1999 No 66 sch 3  
sub 2000 No 2 sch; A2008-36 amdt 1.292

**Giving accounts to public advocate—enduring powers of attorney**

s 64 am 1994 No 38 sch 1  
sub 2000 No 2 sch  
am A2006-42 amdt 3.57  
sub A2008-36 amdt 1.292

**Declaration about decision-making capacity**

s 65 sub 2000 No 2 sch; A2008-36 amdt 1.292

**Removing attorneys**

s 66 am 1998 No 54 sch  
sub 2000 No 2 sch; A2008-36 amdt 1.292

**Role of president**

s 66A ins 2000 No 2 sch  
om A2008-36 amdt 1.292

**Deciding questions**

s 66B ins 2000 No 2 sch  
am A2006-50 amdt 2.8  
om A2008-36 amdt 1.292

**Protection of members etc**

s 66C ins 2000 No 2 sch  
om A2008-36 amdt 1.292

**Secrecy**

s 66D ins 2000 No 2 sch  
om A2008-36 amdt 1.292

**Guardianship and management of property tribunal**

pt 4 hdg om A2008-36 amdt 1.292

**Establishment, functions and powers**

div 4.1 hdg (prev pt 4 div 1 hdg) ins 2000 No 2 sch  
renum R6 LA  
om A2008-36 amdt 1.292

**Tribunal members**

div 4.2 hdg (prev pt 4 div 2 hdg) ins 2000 No 2 sch  
renum R6 LA  
om A2008-36 amdt 1.292

## Endnotes

### 4 Amendment history

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#### **Registrar and deputy registrars**

div 4.3 hdg (prev pt 4 div 3 hdg) ins 2000 No 2 sch  
renum R6 LA  
om A2008-36 amdt 1.292

#### **Other provisions**

div 4.4 hdg (prev pt 4 div 4 hdg) ins 2000 No 2 sch  
renum R6 LA  
om A2008-36 amdt 1.292

#### **Temporary appointments**

s 67 hdg sub A2008-47 s 7  
s 67 am A2006-50 amdt 2.11; A2007-23 s 11  
sub A2008-36 amdt 1.293

#### **Emergency removal of disabled persons**

s 68 am 1999 No 66 sch 3; A2005-53 amdt 1.63; A2006-50  
amdt 2.11; A2008-36 amdt 1.294, amdt 1.295

#### **Emergency orders—enduring powers of attorney**

s 68A ins A2006-50 amdt 2.9  
sub A2008-36 amdt 1.296

#### **ACAT's power to revoke health direction**

s 68B ins A2006-50 amdt 2.9  
sub A2008-36 amdt 1.296

#### **Capacity to consent to medical etc procedures**

s 69 am A2008-36 amdt 1.312

#### **ACAT may consent to prescribed medical procedures**

s 70 hdg sub A2008-36 amdt 1.297  
s 70 am 1994 No 45 s 34; A2005-48 amdt 1.6, amdt 1.7; A2006-50  
amdt 2.11; A2008-36 amdt 1.298, amdt 1.312

#### **Power to adjust transactions**

s 71 am A2008-36 amdt 1.312

#### **Injunctions to restrain dealings**

s 72 am 1998 No 54 sch; 2001 No 78 amdt 1.27; A2008-36  
amdt 1.312

#### **Notice of meeting**

s 72A ins A2008-36 amdt 1.299

#### **Authority for medical or other examinations**

s 72B ins A2008-36 amdt 1.299

#### **Power to obtain information and documents**

s 72C ins A2009-44 amdt 1.28

#### **Acts and omissions of representatives**

s 73 sub 2001 No 78 amdt 1.28; A2004-15 amdt 1.25

**Criminal liability of officers of corporation**

s 74 om 1998 No 54 sch  
ins 2001 No 78 amdt 1.28  
am A2010-50 amdt 1.3; A2011-28 amdt 3.125

**Determination of fees**

s 75 sub 2001 No 44 amdt 1.1995  
am A2006-42 amdt 3.58

**Approved forms**

s 75A ins A2008-47 s 8  
am A2011-22 amdt 1.231

**Annual report**

s 76 om 1995 No 25 sch

**Regulation-making power**

s 77 am 1998 No 54 sch  
sub 2000 No 2 sch  
am 2001 No 44 amdt 1.1996, amdt 1.1997; A2008-36  
amdt 1.300; ss renum R22 LA

**Transitional provisions about tribunal members**

s 78 ins 2000 No 2 sch  
exp 9 June 2000 (s 78 (4))

**Dictionary**

dict ins 2001 No 78 amdt 1.29  
am 2002 No 30 amdt 3.401; A2003-14 amdt 1.63; A2005-53  
amdt 1.64; A2008-36 amdt 1.301; A2010-30 amdt 1.29;  
A2012-40 amdt 3.59  
def **carer** ins A2006-47 s 16  
sub A2008-47 s 9  
def **close relative or close friend** ins A2008-47 s 10  
def **convulsive therapy** ins 1994 No 45 s 34  
reloc from s 4 2001 No 78 amdt 1.5  
om A2005-48 amdt 1.8  
def **decision-making capacity** ins A2008-36 amdt 1.302  
def **decision-making principles** ins 2001 No 78 amdt 1.29  
sub A2006-47 s 17  
def **deputy president** ins 1999 No 66 sch 3  
reloc from s 4 2001 No 78 amdt 1.5  
om A2008-36 amdt 1.303  
def **domestic partner** ins A2008-47 s 10  
def **electroconvulsive therapy** ins A2005-48 amdt 1.9  
def **enduring power of attorney** ins A2006-50 amdt 2.10  
def **executive officer** ins 2001 No 78 amdt 1.29  
om A2011-28 amdt 3.126  
def **general president** ins A2008-36 amdt 1.304  
def **guardian** ins 2001 No 78 amdt 1.29

## Endnotes

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- def **health attorney** ins A2008-47 s 10
- def **health professional** ins A2008-47 s 10
- def **impaired decision-making ability** ins 2001 No 78  
amdt 1.29  
sub A2006-47 s 18
- def **inquiry** reloc from s 4 2001 No 78 amdt 1.5  
om A2008-36 amdt 1.305
- def **interested person** ins A2008-36 amdt 1.306
- def **interests** ins A2006-47 s 19
- def **judicial officer** reloc from s 4 2001 No 78 amdt 1.5
- def **manager** ins 2001 No 78 amdt 1.29  
sub A2007-23 s 12
- def **medical treatment** ins A2008-47 s 10
- def **member** ins 2000 No 2 sch  
reloc from s 4 2001 No 78 amdt 1.5  
om A2008-36 amdt 1.307
- def **mental illness** ins A2005-48 amdt 1.9
- def **neurosurgery** ins 1994 No 45 s 34  
reloc from s 4 2001 No 78 amdt 1.5  
om A2011-28 amdt 3.127
- def **non-presidential member** ins 1999 No 66 sch 3  
reloc from s 4 2001 No 78 amdt 1.5  
om A2008-36 amdt 1.307
- def **non-regenerative tissue** ins 2001 No 78 amdt 1.29  
am A2007-3 amdt 3.287
- def **power of attorney** ins A2008-36 amdt 1.308
- def **prescribed medical procedure** am 1994 No 45 s 34; par  
renum R6 LA (see 2001 No 78 amdt 1.3)  
reloc from s 4 2001 No 78 amdt 1.5  
am A2005-48 amdt 1.10
- def **president** reloc from s 4 2001 No 78 amdt 1.5  
om A2008-36 amdt 1.309
- def **presidential member** ins 1999 No 66 sch 3  
reloc from s 4 2001 No 78 amdt 1.5  
om A2008-36 amdt 1.309
- def **primary carer** ins 2001 No 78 amdt 1.29  
om A2006-47 s 20
- def **principal** ins A2008-36 amdt 1.310
- def **priority order** ins A2008-47 s 10
- def **protected person** ins A2008-47 s 10
- def **psychiatric illness** ins 1994 No 45 s 34  
reloc from s 4 2001 No 78 amdt 1.5  
om A2005-48 amdt 1.11
- def **psychiatric surgery** ins 1994 No 45 s 34  
reloc from s 4 2001 No 78 amdt 1.5  
sub A2005-48 amdt 1.12
- def **remuneration or reward** ins A2008-47 s 10

def **spouse** reloc from s 4 2001 No 78 amdt 1.5  
om A2003-14 amdt 1.64  
def **tribunal** reloc from s 4 2001 No 78 amdt 1.5  
om A2008-36 amdt 1.311  
def **trustee company** ins 2001 No 78 amdt 1.29

## Endnotes

### 5 Earlier republications

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#### 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1993 No 64	31 January 1994
2	Act 1994 No 45	28 February 1995
3	Act 1997 No 96	1 June 1998
4	Act 2000 No 2	31 March 2000
5	Act 2001 No 78	24 September 2001
6	Act 2002 No 11	28 May 2002
7	Act 2002 No 30	10 October 2002
8	Act 2002 No 51	1 January 2003
9	A2003-14	28 March 2003
10	A2004-15	9 April 2004
11*	A2004-15	30 April 2004
12	A2004-60	10 January 2005
13	A2005-48	7 September 2005
14	A2005-53	23 November 2005
15	A2005-60	22 December 2005
16	A2006-40	29 September 2006
17	A2006-42	16 November 2006
18	<u>A2007-3</u>	28 May 2007
19*	A2007-3	30 May 2007
20	A2007-23	6 September 2007
21	A2008-28	26 August 2008
22	A2008-47	2 February 2009



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<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
23	A2009-20	22 September 2009
24	A2009-49	17 December 2009
25	A2009-49	22 December 2009
26	A2010-30	28 September 2010
27	A2010-50	21 December 2010
28	A2011-22	1 July 2011
29	A2011-28	21 September 2011

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