2015

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Powers of Attorney Amendment Bill 2015

Contents

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(As presented)

(Attorney-General)

Powers of Attorney Amendment Bill 2015

A Bill for

An Act to amend the *Powers of Attorney Act 2006*, and for other purposes

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

1 Name of Act

This Act is the *Powers of Attorney Amendment Act 2015*.

2 Commencement

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

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

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

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

3 Legislation amended

This Act amends the *Powers of Attorney Act 2006*.

Note This Act also amends the following legislation (see sch 1):

- *Guardianship and Management of Property Act 1991*
- *Medical Treatment (Health Directions) Act 2006*.

4 What is an *enduring power of attorney*? Section 8, note

after

general power of attorney

insert

in relation to property matters

5 Meaning of *personal care matter*
Section 11, definition of *personal care matter*

omit

special personal matter or special health care matter

substitute

special personal matter, special health care matter or medical research matter

6 Meaning of *health care matter*
Section 12, definition of *health care matter*

after

special health care matter

insert

or medical research matter

7 New section 12A

in chapter 2, insert

12A Meaning of *medical research matter*

(1) In this Act:

medical research matter, for a principal, means a matter relating to the principal's participation in—

(a) medical research; or

(b) low-risk research.

Note The power given to an attorney under an enduring power of attorney in relation to medical research matters must be exercised in accordance with pt 4.3A (Medical research matters).

(2) In this section:

low-risk research, in relation to a person—see section 41A.

medical research, in relation to a person—see section 41A.

8 Appointment of attorneys Section 13 (2)

omit

personal care matters or health care matters

substitute

personal care matters, health care matters or medical research matters

9 Section 13 (2), note

omit

10 Limit on s 13 power to appoint attorneys—enduring powers of attorney Section 14 (2) and (3)

omit

personal care or health care matter

substitute

personal care matter, health care matter or medical research matter

11 Others acting for attorney Section 33 (2)

omit

decision-making ability

substitute

decision-making capacity

12 Special health care matters Section 37 (1) (d)

omit

13 New part 4.3A

insert

Part 4.3A Medical research matters

41A Definitions—pt 4.3A

(1) In this part:

approved, for medical research or low-risk research, means medical research or low-risk research approved by a human research ethics committee constituted in accordance with, and acting in compliance with, the *National Statement on Ethical Conduct in Human Research* (2007), published by the NHMRC, as in force from time to time.

Note The *National Statement on Ethical Conduct in Human Research* (2007) is accessible at www.nhmrc.gov.au.

low-risk research, in relation to a person—

(a) means research carried out for medical or health purposes that—

(i) poses no foreseeable risk of harm to the person, other than any harm usually associated with the person's condition; and

(ii) does not change the treatment appropriate for the person's condition; but

(b) does not include any activity that is part of a clinical trial.

Examples—par (a)

1 research using personal information or personal health information collected during routine health care

2 a non-intrusive examination for research purposes

3 observing the person's activities for research purposes

4 research comparing the effectiveness of paracetamol and ibuprofen during routine health care

5 collecting information through a survey for research purposes

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).

medical research, in relation to a person—

(a) means research in relation to the diagnosis, maintenance or treatment of a medical condition that the person has or has had or to which the person has a significant risk of being exposed; and

(b) includes—

(i) experimental health care; and

(ii) the administration of medication or the use of equipment or a device as part of a clinical trial; and

(iii) research prescribed by regulation as medical research; but

(c) does not include—

(i) low-risk research; or

(ii) research prescribed by regulation not to be medical research.

Example—par (b) (ii)

a clinical trial involving a drug usually used for a particular medical condition but trialled as a treatment for a different medical condition

medical research power of attorney, for a principal, means—

(a) an enduring power of attorney under which the principal authorises an attorney to exercise power in relation to a medical research matter; or

(b) an enduring power of attorney—

(i) under which the principal authorises an attorney to exercise power in relation to a health care matter; and

(ii) that was made before the commencement of the *Powers of Attorney Amendment Act 2015*.

(2) In this section:

experimental health care means research—

(a) into health care that—

(i) has not yet gained the support of a substantial number of practitioners in that field of health care; and

(ii) may, but need not, be medical in nature; and

(b) delivered as part of a test or trial.

Examples

1 trialling increased physical therapy for patients on ventilation apparatus

2 trialling a new absorbent material after bathing to treat dermatological conditions

NHMRC means the National Health and Medical Research Council established under the *National Health and Medical Research Council Act 1992* (Cwlth), section 5B.

personal health information—see the *Health Records (Privacy and Access) Act 1997*, dictionary.

personal information—see the *Information Privacy Act 2014*, section 8.

41B Attorney must follow decision-making principles

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

(2) An attorney authorised under a medical research power of attorney for a principal who is asked to consent to the principal participating in medical research or low-risk research must exercise the power in accordance with the following principles (the ***decision-making principles***):

(a) the principal'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 principal's interests;

(b) if giving effect to the principal's wishes is likely to significantly adversely affect the principal's interests—the attorney must give effect to the principal's wishes as far as possible without significantly adversely affecting the principal's interests;

(c) if the principal's wishes cannot be given effect to at all—the principal's interests must be promoted;

(d) the principal's life (including the principal's lifestyle) must be interfered with to the smallest extent necessary;

(e) the principal must be encouraged to look after themself as far as possible;

(f) the principal must be encouraged to live in the general community, and take part in community activities, as far as possible.

(3) If the principal was participating in medical research or low-risk research before the principal became a person with impaired decision-making capacity, it is presumed the principal's wishes include to continue participating in the medical research or low-risk research.

(4) Before making a decision, the attorney must consult with each of the principal's carers.

(5) However, the attorney must not consult with a carer if the consultation would, in the attorney's opinion, adversely affect the principal's interests.

(6) Subsection (5) does not limit the consultation that the attorney may carry out.

(7) In this section:

carer—see the *Guardianship and Management of Property Act 1991*, section 6.

41C Attorney may consent to principal's participation in low-risk research

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

(2) An attorney authorised under the medical research power of attorney may consent to the principal participating in low-risk research only if the research is approved.

Note If a principal has made a health direction under the *Medical Treatment (Health Directions) Act 2006*, when making a decision under this section, the attorney must comply with—

(a) if the health direction is consistent with the power of attorney—the health direction; and

(b) if the health direction is inconsistent with the power of attorney—the document that was made most recently (see *Medical Treatment (Health Directions) Act 2006*, s 19).

(3) If an attorney makes an application, the ACAT must give an opinion or advice to assist the attorney to decide whether to give consent under subsection (2).

41D Attorney may consent to principal's participation in medical research

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

(2) An attorney authorised under a medical research power of attorney for a principal may consent to the principal participating in medical research only if—

(a) the research is approved; and

(b) the principal is not likely to regain decision-making capacity before the latest time that the principal may meaningfully participate in the research; and

Note An independent doctor must assess the likelihood of a principal regaining decision–making capacity within the time mentioned (see s 41F).

(c) the attorney is satisfied on reasonable grounds that—

(i) the research relates to the diagnosis, maintenance or treatment of a condition that the principal has or has had or to which the principal has a significant risk of being exposed; and

(ii) the research may result in benefit to the principal or others with the condition; and

(iii) the potential benefit to the principal, or others with the condition, of participating in the research outweighs any potential risk or inconvenience to the principal, or any potential adverse impact on the principal's quality of life; and

(iv) participating in the research will not unduly interfere with the principal's privacy.

Note If a principal has made a health direction under the *Medical Treatment (Health Directions) Act 2006*, when making a decision under this section, the attorney must comply with—

(a) if the health direction is consistent with the power of attorney—the health direction; and

(b) if the health direction is inconsistent with the power of attorney—the document that was made most recently (see *Medical Treatment (Health Directions) Act 2006*, s 19).

(3) If an attorney makes an application, the ACAT must give an opinion or advice to assist the attorney to decide whether to give consent under subsection (2).

41E Attorney must not benefit etc from attorney's decision

(1) An attorney must not—

(a) accept a fee or other benefit for consenting, or refusing to consent, to a principal participating in low-risk research under section 41C or medical research under section 41D; and

(b) be involved in, or connected to, the research.

(2) To remove any doubt, subsection (1) (a) does not apply to any personal benefit to the attorney because of an improvement in the principal's health as a result of participating in the research.

41F Assessment of likelihood of principal regaining decision-making capacity

(1) The likelihood of a principal regaining decision–making capacity within the period mentioned in section 41D (2) (b) must be assessed by an independent doctor, taking into account—

(a) the principal's medical, mental and physical condition; and

(b) the severity of the principal's condition and the prognosis for the principal; and

(c) the current stage of treatment and care required for the principal; and

(d) any other circumstances relevant to the principal; and

(e) the nature of the medical research, including the type of treatment or care provided by the research and the timeframe for the research.

(2) The independent doctor must state, in writing, the doctor's belief whether the principal is likely to regain decision-making capacity within the period mentioned in subsection (1), and the reasons for the belief.

Note 1 An independent doctor must always give a statement under s (2), regardless of whether the ACAT has made a declaration about the decision-making capacity of a principal for an enduring power of attorney under the *Guardianship and Management of Property Act 1991*, s 65.

Note 2 In a proceeding, a certificate by an independent doctor under s (2) stating whether the principal is likely to regain decision-making capacity within the required period is evidence of that fact (see s 87).

(3) In this section:

independent doctor, in relation to medical research, means a doctor who is not involved in, nor connected to, the research, other than a professional interest in the area of the research.

41G Interested person may apply to ACAT for review of attorney's decision

(1) An interested person for a principal may apply to the ACAT for review of the decision of the attorney to consent, or refuse to consent, to the principal participating in low-risk research under section 41C or medical research under section 41D.

(2) In this section:

interested person, for a principal—see section 74.

14 Obligations on health care facilities in relation to powers of attorney
Section 49 (a)

omit

or health care matters

substitute

, health care matters or medical research matters

15 Meaning of *interested person*—ch 7
Section 74, definition of *interested person*, new paragraph (h)

insert

(h) a person prescribed by regulation.

16 Section 85 heading

substitute

85 Attorney's health care, medical research or low-risk research decision not in principal's interest

17 Section 85 (1), new definitions

insert

low-risk research, in relation to a person—see section 41A.

medical research, in relation to a person—see section 41A.

18 Section 85 (2) (a)

substitute

(a) an attorney makes a decision in relation to—

(i) the health care of the principal; or

(ii) the principal participating in medical research or low-risk research; and

19 General principles for enduring powers of attorney Schedule 1, section 1.11

substitute

1.11 Health care and medical research

(1) An individual is entitled to have decisions about a health care matter or a medical research matter made by an attorney—

(a) in the way least restrictive of the individual's rights and freedom of action; and

(b) only if the exercise of power—

(i) is, in the attorney's opinion, necessary and appropriate to maintain or promote the individual's health and wellbeing; or

(ii) is, in all the circumstances, in the individual's best interests.

(2) An individual's wishes in relation to a health care matter or a medical research matter, and any information provided by the individual's health care provider, must be taken into account when an attorney decides what is appropriate in the exercise of power for a health care matter or a medical research matter.

20 Dictionary, new definitions

insert

approved, for medical research or low-risk research, for part 4.3A (Medical research matters)—see section 41A.

decision-making principles—see section 41B.

low-risk research, in relation to a person, for part 4.3A (Medical research matters)—see section 41A.

medical research, in relation to a person, for part 4.3A (Medical research matters)—see section 41A.

medical research matter, for a principal—see section 12A.

medical research power of attorney, for a principal, for part 4.3A (Medical research matters)—see section 41A.

Schedule 1 Other amendments

(see s 3)

Part 1.1 Guardianship and Management of Property Act 1991

[1.1] Section 7 (3) (e)

omit

other than

substitute

including medical research or low-risk research but not including

[1.2] Section 7 (3) (e), new note

insert

Note For when a guardian may consent to a person participating in medical research or low-risk research, see pt 2B (Medical research and low-risk research).

[1.3] Section 8B (1) (a)

after

health care matters

insert

or medical research matters

[1.4] Section 8B (2)

after

medical treatment

insert

, medical research or low-risk research

[1.5] New section 8B (3)

insert

(3) In this section:

health care matter, for a principal—see the *Powers of Attorney Act 2006*, section 12.

medical research matter, for a principal—see the *Powers of Attorney Act 2006*, section 12A.

[1.6] Section 32A, definition of *medical treatment*, paragraph (b)

substitute

(b) does not include—

(i) a prescribed medical procedure; or

(ii) medical research; or

(iii) low-risk research.

[1.7] Section 32D (1) (b)

substitute

(b) while the person is a protected person, the person—

(i) needs, or is likely to need, medical treatment; or

(ii) would, or is likely to, benefit from participating in low-risk research.

[1.8] Section 32D (2)

omit

needed, or likely to be needed, by the protected person

substitute

or low-risk research

[1.9] Section 32D (2), note 2

substitute

Note 2 A health attorney's power to consent to medical treatment for a protected person, or to the protected person participating in low-risk research, must be exercised in a way that is consistent with any existing health direction made by the protected person, unless it is not reasonable to do so (see *Medical Treatment (Health Directions) Act 2006*, s 18).

[1.10] New section 32D (2A)

after the notes, insert

(2A) A health attorney may consent to the protected person participating in low-risk research only if the research is approved.

[1.11] Section 32D (3)

after

medical treatment

insert

or low-risk research

[1.12] Section 32E (2)

after

medical treatment

insert

or low-risk research

[1.13] New section 32E (3)

insert

(3) If the protected person was participating in low-risk research before the protected person became a person with impaired decision-making capacity, it is presumed the protected person's wishes include to continue participating in the research.

Note Under the decision-making principles, the protected person's wishes, as far as they can be worked out, must be given effect to (see s 4 (2)).

[1.14] Section 32F (2)

after

the protected person

insert

or to the protected person participating in low-risk research

[1.15] Section 32G

after

medical treatment for a protected person,

insert

or to the protected person participating in low-risk research,

[1.16] Section 32G (c) to (i)

substitute

(c) the medical treatment or low-risk research for which consent is sought;

(d) any alternative medical treatment or low-risk research 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 or low-risk research for which consent is sought and any alternative medical treatment;

(g) the likely effect of not providing the medical treatment or low-risk research 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 or low-risk research.

[1.17] Section 32H (1)

substitute

(1) This section applies if—

(a) a health professional has requested a health attorney for a protected person to give consent to medical treatment for the protected person or to the protected person participating in low-risk research; and

(b) the health professional believes the refusal is inconsistent with a health direction under the *Medical Treatment (Health Directions) Act 2006*.

[1.18] Section 32I (1)

substitute

(1) This section applies if—

(a) 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; and

(b) the health professional is not aware of any health direction under the *Medical Treatment (Health Directions) Act 2006* that is relevant to the issue of whether consent to the medical treatment should be given or not.

[1.19] Section 32J

substitute

32J Notice to public advocate—long-term treatment

(1) This section applies if—

(a) consent to medical treatment for a protected person, or to the protected person participating in low-risk research, has been given under this part (other than medical treatment involving treatment, care or support under the *Mental Health (Treatment and Care) Act 1994*); and

(b) the protected person continues to be given medical treatment, or continues to participate in the research, in accordance with the consent 6 months after the consent was given.

(2) The health professional who is giving the medical treatment, or carrying out the research, must tell the public advocate of the matters mentioned in subsection (1).

[1.20] New section 32JA

insert

32JA Interested person may apply to ACAT for review of health attorney's decision

(1) An interested person for a protected person may apply to the ACAT for review of the decision of the health attorney to consent, or refuse to consent, to the protected person participating in low-risk research under section 32D.

(2) In this section:

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

[1.21] Section 32M

after

medical treatment

insert

, or the carrying out of low-risk research,

[1.22] Section 32M (b)

after

treatment

insert

been provided or research

[1.23] New sections 32O and 32P

in part 2A, insert

32O Interested person may withdraw health attorney's consent to low-risk research

(1) This section applies if a health attorney consents to a protected person participating in low-risk research under section 32D.

(2) An interested person for the protected person may withdraw the health attorney's consent.

(3) If the interested person withdraws the consent, any data or bodily tissue collected from the protected person while the person was participating in the research must be removed from the research, unless the interested person agrees, in writing, that the data or bodily tissue may be kept.

(4) In this section:

interested person, for a protected person, means each of the following:

(a) if, despite section 32A, definition of ***protected person***, paragraph (b), the protected person has appointed an attorney under an enduring power of attorney—the attorney;

(b) if, despite section 32A, definition of ***protected person***, paragraph (c), the ACAT has appointed a guardian for the person—the guardian;

(c) the protected person.

32P Health attorney must not benefit from health attorney's decision

(1) A health attorney must not—

(a) accept a fee or other benefit for consenting, or refusing to consent, to a protected person participating in low-risk research; or

(b) be involved in, or connected to, the research.

(2) To remove any doubt, subsection (1) does not apply to any personal benefit to the health attorney because of an improvement in the protected person's health as a result of participating in the research.

[1.24] New part 2B

insert

Part 2B Medical research and low-risk research

33 Guardian may consent to protected person's participation in low-risk research

(1) This section applies if—

(a) a guardian is appointed for a person (a ***protected person***); and

(b) the guardian is given the power to give, for the protected person, a consent required for a medical procedure or other treatment under section 7 (3) (e); and

(c) the guardian is considering whether to consent to the protected person participating in low-risk research.

(2) A guardian may consent to the protected person participating in low-risk research only if the research is approved.

Note A guardian's power to consent to a protected person participating in low-risk research must be exercised in a way that is consistent with any existing health direction made by the protected person (see *Medical Treatment (Health Directions) Act 2006*, s 18).

(3) If a guardian makes an application, the ACAT must give an opinion or advice to assist the guardian to decide whether to give consent under subsection (2).

34 Guardian may consent to protected person's participation in medical research

(1) This section applies if—

(a) a guardian is appointed for a person (a ***protected person***); and

(b) the guardian is given the power to give, for the protected person, a consent required for a medical procedure or other treatment under section 7 (3) (e); and

(c) the guardian is considering whether to consent to the protected person participating in medical research.

(2) The guardian may consent to the protected person participating in medical research only if—

(a) the research is approved; and

(b) the protected person is not likely to regain decision-making capacity before the latest time that the protected person may meaningfully participate in the research; and

Note An independent doctor must assess the likelihood of the principal regaining decision-making capacity within the time mentioned (see s 36).

(c) the guardian is satisfied on reasonable grounds that—

(i) the research relates to the diagnosis, maintenance or treatment of a condition that the protected person has or has had or to which the protected person has a significant risk of being exposed; and

(ii) the research may result in benefit to the protected person or others with the condition; and

(iii) the potential benefit to the protected person, or others with the condition, of participating in the research outweighs any potential risk or inconvenience to the protected person, or any potential adverse impact on the protected person's quality of life; and

(iv) participating in the research will not unduly interfere with the protected person's privacy.

Note 1 A guardian's power to consent to a protected person participating in medical research must be exercised in a way that is consistent with any existing health direction made by the protected person (see *Medical Treatment (Health Directions) Act 2006*, s 18).

Note 2 In considering whether to consent to a protected person participating in medical research, a guardian must follow the decision-making principles (see s 4).

(3) If the protected person was participating in medical research before the protected person became a person with impaired decision-making capacity, it is presumed the protected person's wishes include to continue participating in the research.

Note Under the decision-making principles, the protected person's wishes, as far as they can be worked out, must be given effect to (see s 4 (2)).

(4) If a guardian makes an application, the ACAT must give an opinion or advice to assist the guardian to decide whether to give consent under subsection (2).

35 Guardian must not benefit from guardian's decision

(1) A guardian must not—

(a) accept a fee or other benefit for consenting, or refusing to consent, to a protected person participating in low-risk research under section 33 or medical research under section 34; or

(b) be involved in, or connected to, the research.

(2) To remove any doubt, subsection (1) does not apply to any personal benefit to the guardian because of an improvement in the protected person's health as a result of participating in the research.

36 Assessment of likelihood of principal regaining decision-making capacity

(1) The likelihood of a principal regaining decision-making capacity within the period mentioned in section 34 (2) (b) must be assessed by an independent doctor, taking into account—

(a) the protected person's medical, mental and physical condition; and

(b) the severity of the protected person's condition and the prognosis for the protected person; and

(c) the current stage of treatment and care required for the protected person; and

(d) any other circumstances relevant to the protected person; and

(e) the nature of the medical research, including the type of treatment or care provided by the research and the timeframe for the research.

(2) The independent doctor must state, in writing, the doctor's belief whether the protected person is likely to regain decision-making capacity within the period mentioned in subsection (1), and the reasons for the belief.

Note 1 An independent doctor must always give a statement under s (2), regardless of whether the ACAT has made a declaration about the decision-making capacity of a principal for an enduring power of attorney under s 65.

Note 2 In a proceeding, a certificate by an independent doctor under s (2) stating whether a protected person is likely to regain decision-making capacity within the required period is evidence of that fact (see s 72D).

(3) In this section:

independent doctor, in relation to medical research, means a doctor who is not involved in, nor connected to, the research, other than a professional interest in the area of the research.

37 Interested person may apply to ACAT for review of guardian's decision

(1) An interested person for a protected person may apply to the ACAT for review of the decision of the guardian to consent, or refuse to consent, to the protected person participating in low-risk research under section 33 or medical research under section 34.

(2) In this section:

interested person—see the *Powers of Attorney Act 2006*, section 74.

[1.25] Section 65 (2)

omit

personal care matter or health care matter

substitute

personal care matter, health care matter or medical research matter

[1.26] New section 65 (3)

insert

(3) In this section:

health care matter, for a principal—see the *Powers of Attorney Act 2006*, section 12.

medical research matter, for a principal—see the *Powers of Attorney Act 2006*, section 12A.

personal care matter, for a principal—see the *Powers of Attorney Act 2006*, section 11.

property matter, for a principal—see the *Powers of Attorney Act 2006*, section 10.

[1.27] Section 69 (1) (a)

after

other treatment

insert

under section 7 (3) (e)

[1.28] New section 72D

insert

72D Medical certificate about impaired decision-making capacity

(1) This section applies if, in a proceeding, a question arises about whether, on a particular day or during a particular period, a person had impaired decision-making capacity, whether generally or in relation to a particular matter.

(2) A certificate by a doctor stating that the person had, or did not have, impaired decision-making capacity either generally or in relation to a particular matter on the day or during the period is evidence of that fact.

[1.29] Dictionary, new definitions

insert

approved, for medical research or low-risk research—see the *Powers of Attorney Act 2006*, section 41A.

low-risk research, in relation to a person—see the *Powers of Attorney Act 2006*, section 41A.

medical research, in relation to a person—see the *Powers of Attorney Act 2006*, section 41A.

Part 1.2 Medical Treatment (Health Directions) Act 2006

[1.30] Sections 18 and 19

substitute

18 Effect of health directions on later guardian or health attorney

(1) This section applies if—

(a) a person has made a health direction; and

(b) a doctor declares that the person has become a person with impaired decision-making capacity; and

(c) after the direction was made—

(i) a guardian is appointed for the person under the *Guardianship and Management of Property Act 1991*; or

(ii) a health attorney is asked to give a consent under the *Guardianship and Management of Property Act 1991*, section 32D.

(2) Any power of the guardian or health attorney to consent to medical treatment for the person, or to the person participating in medical research or low-risk research, must be exercised in a way that is consistent with the health direction.

(3) However, a health attorney need not act consistently with a health direction if it is not reasonable to do so.

Examples

1 a health attorney is asked to make an urgent medical decision and the health attorney does not have time to look at the health direction

2 a health attorney is unaware, after making reasonable enquiries, that a health direction exists

Note 1 A health attorney is protected from civil and criminal actions and proceedings in relation to consent given, or not given, in good faith as a health attorney (see *Guardianship and Management of Property Act 1991*, s 32K).

Note 2 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) In this section:

low-risk research, in relation to a person—see the *Powers of Attorney Act 2006*, section 41A.

medical research, in relation to a person—see the *Powers of Attorney Act 2006*, section 41A.

19 Relationship between health directions and enduring powers of attorney

(1) This section applies if—

(a) a person makes—

(i) a health direction; and

(ii) an enduring power of attorney under the *Powers of Attorney Act 2006*; and

(b) the enduring power of attorney deals with a health care matter or a medical research matter.

(2) If the health direction is consistent with the enduring power of attorney, an attorney authorised under the enduring power of attorney must comply with the health direction when making a decision about a health care matter or medical research matter.

(3) However, if the health direction is inconsistent with the enduring power of attorney, when making a decision about a health care matter or medical research matter, the attorney must comply with—

(a) if the health direction was made before the power of attorney—the power of attorney; or

(b) if the health direction was made after the power of attorney—the health direction.

(4) The ACAT may, on application by an attorney, declare that a health direction is consistent or inconsistent with an enduring power of attorney.

(5) In this section:

attorney—see the *Powers of Attorney Act 2006*, section 6.

health care matter, for a principal—see the *Powers of Attorney Act 2006*, section 12.

medical research matter, for a principal—see the *Powers of Attorney Act 2006*, section 12A.

principal—see the *Powers of Attorney Act 2006*, section 6.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 19 November 2015.

2 Notification

Notified under the Legislation Act on 2015.

3 Republications of amended laws

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