

# Queensland Government initial response to the Queensland Law Reform Commission's Report: A Review of Queensland's Guardianship Laws

October 2011

# **Queensland Government initial response to the Queensland Law Reform Commission's Report: A Review of Queensland's Guardianship Laws**

## **Statement**

The Queensland Government is committed to improving the lives of vulnerable persons and safeguarding their rights. An important aspect of this is Queensland's guardianship laws – the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998*. These laws apply to adults who lack capacity to make decisions for themselves.

## **The Queensland Law Reform Commission's Report**

In 2005, the Queensland Government asked the Queensland Law Reform Commission to review Queensland's guardianship laws to ensure they were contemporary, practical and continued to meet the needs of adults with impaired capacity.

The Queensland Law Reform Commission undertook the review in two stages over five years. In late 2010, the Commission completed this review by releasing its four volume report: *A Review of Queensland's Guardianship Laws*.

The report contains 317 recommendations for legislative and administrative improvements across a broad range of areas in guardianship, including:

- refining the General Principles and the Health Care Principle which underpin the guardianship laws
- determining a person's capacity such as how to apply the presumption of capacity and the test for capacity
- the appointment, powers and functions of guardians, administrators and attorneys
- improving enduring powers of attorney and advance health directives
- the role, functions and powers of the Queensland Civil and Administrative Tribunal in guardianship proceedings
- the role of the Adult Guardian, Public Advocate, Public Trustee and community visitors
- health care matters including withdrawing or withholding life-sustaining measures
- miscellaneous issues (for example - the protection of whistleblowers where a complaint is made about the treatment of an adult with impaired capacity, legal proceedings involving adults with impaired capacity and remuneration).

A full copy of the report can be accessed at the Queensland Law Reform Commission's website: [www.qlrc.qld.gov.au](http://www qlrc.qld.gov.au)

## **Government response to the report**

Given the length and complexity of the report, the Government has carefully considered the report and will implement the report in two phases.

### **Phase 1 will occur from October 2011 to mid 2012.**

Phase 1 will focus on changes that improve existing systems and technical amendments to help clarify the law in this area. Most changes are legislative, with some administrative improvements. These will achieve immediate practical improvements in the guardianship system. During this period further consultation on the proposed legislative amendments will occur.

The Government will also seek the Parliament's approval to refer certain matters to an appropriate Parliamentary Committee for consideration and report. These matters mostly relate to significant health care matters such as end of life decisions.

The Queensland Law Reform Commission did consult and make recommendations about these matters. However, given the nature of these decisions, it is important to make sure these matters are fully considered and debated before Government considers them. For more information about Parliamentary Committees visit: [www.parliament.qld.gov.au](http://www.parliament.qld.gov.au).

### **Phase 2 will occur from late 2011 to late 2012.**

Phase 2 will look at the remaining recommendations. Government will further consider and discuss these recommendations with relevant stakeholders before developing a final response.

## **Government response – phase 1**

This response focuses on phase 1, looking at over 150 recommendations out of the 317 recommendations.

The Government supports or supports in principle most of these recommendations.

### **Phase 1 will:**

#### **1. Provide a strong human rights focus**

*This focus will (amongst other things) promote the adult's autonomy, wishes and ensure the minimum restriction on their rights.*

Examples of key recommendations include:

- updating the General Principles and Health Care Principle (which underpin the guardianship laws) to provide a strong human rights focus reflecting the United Nations *Convention on Rights of Persons with Disabilities*
- applying the General Principles to informal substitute decision-makers.

## **2. Maximise individual choice and participation**

*This is a critical part of human rights. Where possible, the adult is assisted to make their own decisions or at least be involved in decisions that affect them.*

Examples of key recommendations include:

- developing guidelines to provide practical steps for determining whether a person lacks capacity
- clarifying how to apply the presumption of capacity (that is, the principle that a person is presumed to have capacity)
- limiting the number of attorneys appointed for a matter under an enduring power of attorney to four (there is no limit at the moment)

## **3. Improve safeguards for adults with impaired capacity**

*Safeguards are important to ensure the adult's rights are promoted, and they are protected from any abuse.*

Examples of key recommendations include:

- exploring changes to the criminal code to specifically recognise fraud in guardianship situations (such as where the offender is the victim's attorney under an enduring power of attorney)
- legislative changes to ensure the function of systems advocacy is maintained once this function is transferred to the Office of the Adult Guardian \*
- legislative changes dealing with former paid carers of the adult and decisions on their appointment as a guardian or administrator
- widening protection for persons who disclose information to an official about a possible breach of guardianship legislation
- clarifying that if an adult with impaired capacity is charged with a criminal offence, a substitute decision maker (such as a guardian) cannot enter into a plea on the adult's behalf
- specifying who can and cannot be a statutory health attorney for an adult (for example improving the definition of who is a relative)
- expanding the categories of persons who can request a community visitor to inspect a visitable site.

## **4. Promote a simple and accessible guardianship system**

*The guardianship system should be practical, easily accessed and understood by users.*

Examples of key recommendations include:

- simplifying and improving the forms for enduring powers of attorney and advance health directives

- simplifying certification requirements for enduring powers of attorney and advance health directives
- recognising enduring powers of attorney made in New Zealand
- various legislative changes clarifying the law.

### **Other recommendations**

Phase 1 also includes recommendations which keep the status quo, as the Commission believes aspects of the guardianship system are working well. These recommendations are supported.

Examples include keeping the current:

- general test for determining whether or not a person has capacity
- provisions around recognising enduring documents made in another State or Territory
- general grounds for appointing a guardian or administrator
- appeal mechanisms for review of guardianship matters.

There are recommendations which the Government does not support, and considers not necessary, as current mechanisms are adequate and appropriate.

The main recommendations which are *not* supported are:

- requiring that every decision made by the Adult Guardian about personal matters for the adult, or made by the Public Trustee about financial matters, be reviewed by the Queensland Civil and Administrative Tribunal (recommendations 23.11-23.17 and 25.6-25.13)
- mandating legal representation where adults have impaired capacity (recommendation 21.7)
- requiring every initial appointment of a guardian or administrator to be reviewed at least every two years (recommendation 22.4)
- changing when the Public Trustee can be appointed as administrator for the adult (recommendations 14.13 and 14.15)
- changing the common law concerning contracts entered into by adults with impaired capacity (recommendations 30.1-30.5).

**\* Note on systems advocacy**

The decision to transfer the function of systems advocacy to the Adult Guardian was part of Government's response in 2009 to the report '*Broking Balance: A Public Interest Map for Queensland Government Bodies – An Independent Review of Queensland Government Boards, Committees and Statutory Authorities*'. This report recommended: 'Pending analysis of a different finding (in favour) of the structural capability of the Public Advocate to perform its essential role in the current guardianship laws review by the Queensland Law Reform Commission due by 31 December 2009, the Public Advocate should be abolished and its functions transferred to the Adult Guardian'.

In response to this, the Government acknowledged that the recommendation is consistent with how the role of the Public Advocate operates in some other Australian jurisdictions; and that the functions of systems advocacy will continue but will be carried out by the Adult Guardian.

Implementation of this decision was deferred until the Queensland Law Reform Commission finalised its report on guardianship, and the Government had a chance to consider this report. This has now happened and the Government will commence the process of transferring the systems advocacy function to the Adult Guardian.

Legislative amendments will be needed to enable the transfer of the function of systems advocacy to the Adult Guardian. There will be appropriate opportunities for views to be taken into account in the development of these provisions, including through the Parliamentary Committee process.

**QUEENSLAND LAW REFORM COMMISSION'S REPORT: A REVIEW OF QUEENSLAND'S GUARDIANSHIP LAWS**  
**QUEENSLAND GOVERNMENT'S INITIAL RESPONSE**

| Report Recommendation                     |   | Government Response  |   |
|---|---|----------------------|---|
| <b>CHAPTER 4 – THE GENERAL PRINCIPLES</b> |   |                      |   |
| 4.1                                       | The General Principles should be redrafted to reflect more closely the relevant articles of the United Nations <i>Convention on the Rights of Persons with Disabilities</i> , to provide a more logical structure, and to avoid duplication within the General Principles.  | Support              | <ul style="list-style-type: none"> <li>• To redraft the General Principles to more closely reflect the United Nations <i>Convention on the Rights of Persons with Disabilities</i>, and to provide a strong human rights focus.</li> <li>• This recommendation relates to recommendations 4.3, 4.5 and 4.6</li> </ul> |
| 4.2                                       | Section 11 of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended by:<br>(a) including a new subsection (3) to the effect that a person making a decision for an adult on an informal basis must apply the General Principles; and<br>(b) renumbering the current subsection (3) as subsection (4). | Support in principle | <ul style="list-style-type: none"> <li>• To encourage or require informal decision-makers to apply the General Principles.</li> <li>• The exact nature of the obligation is to be determined and subject to further consultation.</li> </ul>  |
| 4.3                                       | General Principles 1 to 6 should be expressed in the following terms:<br><br><u><b>1 Presumption of capacity</b></u><br>An adult is presumed to have capacity for a matter.   | Support in principle | <ul style="list-style-type: none"> <li>• To redraft the General Principles to more closely reflect the United Nations <i>Convention on the Rights of Persons with Disabilities</i>, and to provide a strong human rights focus.</li> <li>• The exact wording to be determined.</li> </ul>                             |

| Report Recommendation   | Government Response  |
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| <p><b><u>2 Same human rights and fundamental freedoms</u></b></p> <p>(1) The rights of all adults to the same human rights and fundamental freedoms, regardless of a particular adult’s capacity, must be recognised and taken into account.</p> <p>(2) The principles on which an adult’s human rights and fundamental freedoms are based, and which should inform the way in which they are taken into account, include—</p> <p>(a) respect for inherent dignity, individual autonomy (including the freedom to make one’s own choices) and independence of persons;</p> <p>(b) non-discrimination;</p> <p>(c) full and effective participation and inclusion in society;</p> <p>(d) respect for difference and acceptance of persons with impaired capacity as part of human diversity and humanity;</p> <p>(e) equality of opportunity;</p> <p>(f) accessibility; and</p> <p>(g) equality between men and women.</p> <p><b><u>3 Empowering adult to exercise human rights and fundamental freedoms</u></b></p> <p>The importance of the following matters must be taken into account—</p> <p>(a) empowering the adult to exercise the adult’s human rights and fundamental freedoms;</p> <p>(b) encouraging and supporting the adult—</p> <p>(i) to perform social roles valued in society;</p> <p>(ii) to live a life in the general community, and to take part in activities enjoyed by the general community; and</p> | <ul style="list-style-type: none"> <li>• This recommendation relates to recommendations 4.1, 4.5 and 4.6, which are also about redrafting the General Principles.</li> </ul> |

| Report Recommendation |  | Government Response |  |
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|                       | <p>(iii) to achieve the adult’s maximum physical, social, emotional and intellectual potential, and to become as self-reliant as practicable; and</p> <p>(c) the adult’s right to participate, to the greatest extent practicable, in the development of policies, programs and services for people with impaired capacity for a matter.</p> <p><b><u>4 Maintenance of adult’s existing supportive relationships</u></b></p> <p>(1) The importance of maintaining an adult’s existing supportive relationships must be taken into account.</p> <p>(2) So, for example, maintaining an adult’s existing supportive relationships may involve consultation with either or both of the following—</p> <p>(a) persons who have an existing supportive relationship with the adult;</p> <p>(b) members of the adult’s support network who are making decisions for the adult on an informal basis.</p> <p><b><u>5 Maintenance of adult’s cultural and linguistic environment and values</u></b></p> <p>(1) The importance of maintaining an adult’s cultural and linguistic environment, and set of values (including any religious beliefs), must be taken into account.</p> <p>(2) For an adult who is a member of an Aboriginal community or a Torres Strait Islander, this means the importance of maintaining the adult’s Aboriginal or Torres</p> |                     |  |

| Report Recommendation |  | Government Response |   |
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|                       | <p>Strait Islander cultural and linguistic environment, and set of values (including Aboriginal tradition or Island custom), must be taken into account.</p> <p><b><u>6 Respect for privacy</u></b><br/>An adult's privacy must be respected and taken into account.</p>   |                     |   |
| 4.4 (majority)        | <p>A majority of the Commission recommends that General Principles 7 and 8 should be expressed in the following terms:</p> <p><b><u>7 Performance of functions or powers</u></b><br/>A person or other entity in performing a function or exercising a power under this Act, or a person in making a decision for an adult on an informal basis, [or an enduring document,] must do so—<br/>(a) in a way that promotes and safeguards the adult's rights, interests and opportunities; and<br/>(b) in the way least restrictive of the adult's rights, interests and opportunities.</p> <p><b><u>8 Structured decision-making</u></b><br/>(1) In applying General Principle 7, a person or other entity in performing a function or exercising a power under this Act, or a person in making a decision for an adult on an informal basis, [or an enduring document,] must adopt the following approach.</p> | Not supported       | Minority view is preferred (see recommendation 4.5) |

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|                       | <p>(2) First, the person or other entity must recognise and take into account the importance of preserving, to the greatest extent practicable, an adult’s right to make his or her own decisions.</p> <p>(3) Second, the person or other entity must use the principle of substituted judgment, so that if, from the adult’s views and wishes expressed when the adult had capacity, it is reasonably practicable to work out what the adult’s views and wishes would be, the person or other entity must recognise and take into account what the person or other entity considers the adult’s views and wishes would be.</p> <p>(4) Third, the person or other entity must recognise and take into account any other views and wishes expressed by the adult.</p> <p>(5) Fourth, the person or other entity must recognise and take into account any other consideration that the General Principles require the person or other entity to recognise and take into account.</p> <p>(6) Fifth, once the person or other entity has recognised and taken into account the matters mentioned in subsections (2) to (5), the person or other entity may perform the function, exercise the power, or make the decision.</p> |                     |  |

| Report Recommendation |   | Government Response  |   |
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| 4.5<br>(minority)     | <p>A minority of the Commission recommends that General Principles 7 and 8 should be expressed in the following terms:</p> <p><b><u>7 Performance of functions or powers</u></b></p> <p>(1) A person or other entity in exercising a power for a matter for an adult under this Act, or a person in making a decision for an adult on an informal basis, [or an enduring document] must do so—</p> <p>(a) in a way that promotes and safeguards the adult’s rights, interests and opportunities; and</p> <p>(b) in the way least restrictive of the adult’s rights, interests and opportunities.</p> <p>(2) In applying General Principle 7(1) in exercising a power for a matter for an adult under this Act, or in making a decision for an adult on an informal basis, [or an enduring document,] a person or other entity must recognise an adult’s right to make his or her own decision if the adult is able to exercise, or be supported to exercise, his or her capacity in relation to the decision.</p> <p>(3) When an adult is not able to make his or her own decision in relation to the matter, in applying General Principle 7(1) in exercising a power for a matter for an adult under this Act, or in making a decision for an adult on an informal basis, [or an enduring document,] a person or other entity must—</p> | Support in principle | <ul style="list-style-type: none"> <li>• To redraft the General Principles to more closely reflect the United Nations <i>Convention on the Rights of Persons with Disabilities</i>, and to provide a strong human rights focus.</li> <li>• The minority view is preferred as it gives greater focus and weight to the principle of substituted judgment (that is, taking into account the views and wishes of an adult when they had capacity). It also clearly separates how the powers and functions should be performed by different persons of entities.</li> <li>• The exact wording is to be determined.</li> <li>• This recommendation relates to recommendations 4.1, 4.3 and 4.6, which are also about redrafting the General Principles.</li> </ul> |

| Report Recommendation |  | Government Response |  |
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|                       | <p>(a) take as the basis of its consideration the importance of using the principle of substituted judgment, which requires that if, from the adult's views and wishes expressed when the adult had capacity, it is reasonably practicable to work out what the adult's views and wishes would be, the person or other entity must give effect to what the person or other entity considers the adult's views and wishes would be; and</p> <p>(b) recognise and take into account any other views and wishes expressed by the adult.</p> <p><b><u>8 Performance of functions or other powers</u></b></p> <p>(1) A person or other entity in performing a function or exercising a power under this Act other than a power mentioned in General Principle 7 must do so—</p> <p>(a) in a way that promotes and safeguards the adult's rights, interests and opportunities; and</p> <p>(b) in the way least restrictive of the adult's rights, interests and opportunities.</p> <p>(2) In applying General Principle 8(1) in performing a function or exercising a power under this Act other than a power mentioned in General Principle 7, a person or other entity must—</p> <p>(a) use the principle of substituted judgment, so that if, from the adult's views and wishes expressed when the adult had capacity, it is reasonably practicable to work out what he adult's views and wishes would be, the person or other entity must recognise and take into account what the</p> |                     |  |

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|                       | <p>person or other entity considers the adult's views and wishes would be; and</p> <p>(b) recognise and take into account any other views and wishes expressed by the adult.</p>   |                      |  |
| 4.6                   | <p>General Principle 9 should be expressed in the following terms:</p> <p><b><u>9 Maximising an adult's participation in decision-making</u></b></p> <p>(1) An adult's right to participate, to the greatest extent practicable, in decisions affecting the adult's life must be recognised and taken into account.</p> <p>(2) An adult must be given any necessary support, and access to information, to enable the adult to make or participate in decisions affecting the adult's life.</p> <p>(3) To the greatest extent practicable, a person or other entity, in exercising power for a matter for an adult, or in making a decision for an adult on an informal basis, must seek the adult's views and wishes.</p> <p>(4) An adult's views and wishes may be expressed orally, in writing or in another way, including, for example, by conduct.</p> | Support in principle | <ul style="list-style-type: none"> <li>• To redraft the General Principles to more closely reflect the United Nations <i>Convention on the Rights of Persons with Disabilities</i>, and to provide a strong human rights focus.</li> <li>• The exact wording is to be determined.</li> <li>• This recommendation relates to recommendations 4.1, 4.3 and 4.5, which are also about redrafting the General Principles.</li> </ul> |
| 4.7                   | <p>Section 76 of the <i>Powers of Attorney Act 1998</i> (Qld) should be amended to provide that the General Principles must be applied, rather than complied with, by a person or other entity who performs a function or exercises a power under that Act or under an enduring document.</p>  | Support              | <ul style="list-style-type: none"> <li>• To change the wording in the <i>Powers of Attorney 1998</i> to require the General Principles to be <i>applied</i> rather than complied.</li> </ul>   |

| Report Recommendation                        |  | Government Response  |  |
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|  |  |                      | <ul style="list-style-type: none"> <li>This wording is more consistent with the nature of the principles and the wording already in the <i>Guardianship and Administration Act 2000</i>.</li> </ul>  |
| 4.8  | Neither the <i>Guardianship and Administration Act 2000</i> (Qld) nor the <i>Powers of Attorney Act 1998</i> (Qld) should be amended to create an offence of failing to apply the General Principles.  | Support              | <ul style="list-style-type: none"> <li>To keep the status quo and not create a specific offence provision for not complying with the General Principles.</li> </ul>  |
| 4.9  | The General Principles should continue to be located in schedule 1 of the <i>Guardianship and Administration Act 2000</i> (Qld) and schedule 1 of the <i>Powers of Attorney Act 1998</i> (Qld).  | Support in principle | <ul style="list-style-type: none"> <li>To explore options to relocate the General Principles to a more prominent place.</li> <li>Relocation would help to provide greater awareness of the principles, and emphasise their importance.</li> </ul>                    |
| <b>CHAPTER 5 – THE HEALTH CARE PRINCIPLE</b> |  |                      |  |
| 5.1  | The Health Care Principle should be redrafted to reflect more closely the relevant articles of the United Nations Convention on the <i>Rights of Persons with Disabilities</i> , to avoid duplicating matters dealt with by the General Principles, and to provide guidance about the application of the General Principles in the context of health care. | Support              | <ul style="list-style-type: none"> <li>To redraft the Health Care Principle to more closely reflect the United Nations <i>Convention on Rights of Persons with Disabilities</i>.</li> <li>The exact wording to be determined and subject to consultation.</li> </ul> |
| 5.4  | Section 12(5) of the Health Care Principle in the <i>Guardianship and Administration Act 2000</i> (Qld) should be omitted from the Health Care Principle and relocated in Part 3 of Chapter 5 of the Act, which deals with consent to special health care.   | Support              | <ul style="list-style-type: none"> <li>To make a technical change to separate and relocate the requirements about 'special health care' from the health care principle.</li> </ul>   |

| Report Recommendation                   |  | Government Response  |  |
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| 5.5                                     | Section 76 of the <i>Powers of Attorney Act 1998</i> (Qld) should be amended to provide that the Health Care Principle must be applied, rather than complied with, by a person or other entity who performs a function or exercises a power under that Act or under an enduring document.  | Support              | <ul style="list-style-type: none"> <li>To change the wording in the <i>Powers of Attorney 1998</i> to require the Health Care Principle to be <i>applied</i> rather than complied.</li> <li>This wording is more consistent with the nature of the principles and the wording already in the <i>Guardianship and Administration Act 2000</i>.</li> </ul> |
| 5.6                                     | Neither the <i>Guardianship and Administration Act 2000</i> (Qld) nor the <i>Powers of Attorney Act 1998</i> (Qld) should be amended to create an offence of failing to apply the Health Care Principle.   | Support              | <ul style="list-style-type: none"> <li>To keep the status quo and not create a specific offence provision for not complying with the Health Care Principle.</li> </ul>   |
| 5.7                                     | The Health Care Principle should continue to be located in schedule 1 of the <i>Guardianship and Administration Act 2000</i> (Qld) and schedule 1 of the <i>Powers of Attorney Act 1998</i> (Qld) immediately following the General Principles.  | Support in principle | <ul style="list-style-type: none"> <li>To explore options to relocate the General Principles to a more prominent place.</li> </ul>   |
| <b>CHAPTER 6 – THE SCOPE OF MATTERS</b> |  |                      |  |
| 6.1                                     | Subject to recommendations 6-2 and 6-3 below, the definitions of ‘financial matter’, ‘personal matter’, ‘health matter’, ‘special health matter’, ‘special personal matter’ and ‘legal matter’ in the <i>Guardianship and Administration Act 2000</i> (Qld) and the <i>Powers of Attorney Act 1998</i> (Qld) are appropriate and should be retained without amendment. | Support in principle | <ul style="list-style-type: none"> <li>To maintain the same types of matters and definitions of matters a substitute decision-maker can and cannot make decisions about, subject to further consultation about whether the term ‘legal matter’ needs to be further clarified.</li> </ul>   |

| Report Recommendation                       |   | Government Response  |   |
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| 6.2   | The definition of 'personal matter' in the <i>Guardianship and Administration Act 2000</i> (Qld) and the <i>Powers of Attorney Act 1998</i> (Qld) should be amended to add the following to the examples of personal matters specifically listed in the definition:<br>(a) contact with, or access visits to, the adult; and<br>(b) advocacy relating to the care and welfare of the adult. | Support in principle | <ul style="list-style-type: none"> <li>To include additional examples to clarify what is meant by a 'personal matter'.</li> <li>The exact examples are to be determined and subject to further consultation.</li> </ul>   |
| 6.3   | The definition of 'special personal matter' in the <i>Guardianship and Administration Act 2000</i> (Qld) and the <i>Powers of Attorney Act 1998</i> (Qld) should be amended to include 'entering a plea on a criminal charge'.  | Support              | <ul style="list-style-type: none"> <li>To amend the definition of 'special personal matter' to make it clear that if an adult is charged with a criminal offence and does not have capacity to enter a plea, a substitute decision-maker for the adult (for example, a guardian) cannot enter a plea on the adult's behalf.</li> </ul>                            |
| <b>CHAPTER 7 - DECISION-MAKING CAPACITY</b> |   |                      |   |
| 7.1   | The <i>Guardianship and Administration Act 2000</i> (Qld) and the <i>Powers of Attorney Act 1998</i> (Qld) should be amended to provide that, whenever the Tribunal or the Supreme Court makes a determination about an adult's capacity for a matter, the Tribunal or the Court must apply the presumption of capacity.  | Support              | <ul style="list-style-type: none"> <li>This recommendation relates to recommendations 7.2-7.4.</li> <li>To make legislative changes to clarify how to apply the statutory presumption of capacity. This particularly follows the Queensland Supreme Court case of <i>Bucknall v Guardianship and Administration Tribunal</i> (No.1) [2009] 2 Qd R 402.</li> </ul> |

| Report Recommendation |  | Government Response |   |
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|                       |  |                     | <ul style="list-style-type: none"> <li>This recommendation makes it clear that the <u>Supreme Court or the Queensland Civil and Administrative Tribunal</u> must apply the presumption of capacity every time they consider a guardianship application.</li> </ul>  |
| 7.2                   | The <i>Guardianship and Administration Act 2000</i> (Qld) and the <i>Powers of Attorney Act 1998</i> (Qld) should be amended to provide that, if the Tribunal or the Supreme Court has appointed a guardian or an administrator for an adult for a matter, the guardian or administrator is not required to apply the presumption that the adult has capacity for that matter.   | Support             | <ul style="list-style-type: none"> <li>To make it clear that a <u>guardian or administrator</u> appointed for an adult for a particular matter is not required to apply the presumption of capacity for that matter.</li> <li>This change relates to recommendations 7.1, 7.3-7.4.</li> </ul>   |
| 7.3                   | The <i>Guardianship and Administration Act 2000</i> (Qld) and the <i>Powers of Attorney Act 1998</i> (Qld) should be amended to provide that, if the Tribunal or the Supreme Court has made a declaration that the adult has impaired capacity for a matter and no further declaration about the adult's capacity for that matter has been made, another person or entity who performs a function or exercises a power under the guardianship legislation is entitled to rely on the finding that the presumption that the adult has capacity for that matter has been rebutted. | Support             | <ul style="list-style-type: none"> <li>To make it clear that if the court or the Queensland Civil and Administrative Tribunal makes a <u>declaration</u> that the adult has impaired capacity for a matter – a person performing a power or function under the guardianship legislation can rely on that finding that the adult has impaired capacity for that matter.</li> <li>This change relates to recommendations 7.1- 7.2 and 7.4.</li> </ul> |

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| 7.4                   | The <i>Guardianship and Administration Act 2000</i> (Qld) and the <i>Powers of Attorney Act 1998</i> (Qld) should continue to require that, if the Tribunal or the Supreme Court has not made a formal determination that the adult has impaired capacity for a matter, the person or entity must apply the presumption that the adult has capacity for that matter. | Support              | <ul style="list-style-type: none"> <li>To make it clear that if the court or the Queensland Civil and Administrative Tribunal have <u>not</u> made a <u>formal determination</u> that the adult has impaired capacity – the presumption of capacity continues to apply.</li> <li>This change relates to recommendations 7.1-7.3.</li> </ul> |
| 7.5                   | Section 11 of the <i>Guardianship and Administration Act 2000</i> (Qld) and section 76 of the <i>Powers of Attorney Act 1998</i> (Qld) should be amended by deleting the words ‘for a matter in relation to an adult with impaired capacity for the matter’.   | Support              | <ul style="list-style-type: none"> <li>To make it clear that the application of the General Principles applies to any adult not just an adult with impaired capacity.</li> </ul>  |
| 7.6                   | The presumption of capacity, which is stated in General Principle 1, should continue to be located, along with the other General Principles, in schedule 1 of the <i>Guardianship and Administration Act 2000</i> (Qld) and the <i>Powers of Attorney Act 1998</i> (Qld).  | Support in principle | <ul style="list-style-type: none"> <li>To explore options to relocate the principle to a more prominent place.</li> <li>This recommendation relates to recommendation 4.9.</li> </ul>   |
| 7.7                   | The guardianship legislation should continue to apply the functional approach to defining ‘capacity’.  | Support              | <ul style="list-style-type: none"> <li>To keep the current functional approach for determining whether or not a person has capacity.</li> </ul>   |
| 7.8                   | Paragraphs (a)–(c) of the definition of ‘capacity’ in schedule 4 of the <i>Guardianship and Administration Act 2000</i> (Qld) and schedule 3 of the <i>Powers of Attorney Act 1998</i> (Qld) should be retained without amendment, subject to Recommendation 7-9.  | Support              | <ul style="list-style-type: none"> <li>To keep the same general definition of ‘capacity’ with one technical amendment in recommendation 7.9.</li> </ul>   |

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| 7.9                   | Paragraph (c) of the definition of 'capacity' should be amended only to the extent that it should contain a cross-reference (by way of a note or an example) to section 146(3) of the <i>Guardianship and Administration Act 2000</i> (Qld), which lists some of the different ways in which a person may be able to communicate (for example, talking, using sign language or any other means). | Support              | <ul style="list-style-type: none"> <li>To make a technical change to the general definition of 'capacity'.</li> <li>To make it clear that a person should not be treated as unable to communicate until all practicable steps have been taken to allow the person to communicate.</li> </ul>   |
| 7.10                  | The <i>Guardianship and Administration Act 2000</i> (Qld) should not be amended to expressly exclude certain factors from being taken into account in the assessment of capacity.  | Support              | <ul style="list-style-type: none"> <li>Not to include in legislation specific matters which should not be considered when determining capacity.</li> </ul>   |
| 7.11                  | The <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to require the Minister responsible for administering the <i>Guardianship and Administration Act 2000</i> (Qld) and the <i>Powers of Attorney Act 1998</i> (Qld) to prepare and issue guidelines for assessing 'capacity' under the legislation. These guidelines should be made in subordinate legislation.         | Support in principle | <ul style="list-style-type: none"> <li>This recommendation relates to recommendations 7.12-7.17.</li> <li>To develop administrative guidelines to provide information and advice on assessing a person's capacity under guardianship legislation.</li> <li>The guidelines will provide practical guidance to a range of persons who may be required to assess an adult's capacity and be supported by examples of best practice. The exact detail of the guidelines is to be determined subject to consultation, using a multi-disciplinary approach.</li> </ul> |

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|                       |  |                      | <ul style="list-style-type: none"> <li>• The guidelines will be: <ul style="list-style-type: none"> <li>- informed by the relevant General Principles in the guardianship legislation;</li> <li>- explain what is meant by the term ‘capacity’, as defined in the guardianship legislation;</li> <li>- include information about when a professional assessment of capacity may be required; and</li> <li>- regularly reviewed to ensure they are current and reflect best practice.</li> </ul> </li> </ul> |
| 7.12                  | The <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to require that the preparation of the guidelines be informed by wide and inclusive consultation with individuals and organisations with qualifications and experience in making capacity assessments.   | Support in principle | <ul style="list-style-type: none"> <li>• As above – see recommendation 7.11.</li> </ul>   |
| 7.13                  | The <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to require that the guidelines be reviewed at regular intervals by the Minister responsible to ensure that the information contained in the guidelines continues to satisfy a best practice standard for capacity assessments under the legislation. | Support in principle | <ul style="list-style-type: none"> <li>• As above – see recommendation 7.11.</li> </ul>   |

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| 7.14                  | <p>The development and application of the guidelines should be informed by a set of principles for making capacity assessments, including:</p> <ul style="list-style-type: none"> <li>(a) the presumption that an adult has capacity for a matter;</li> <li>(b) the principle that in performing a capacity assessment, the assessment must be done in a way that promotes and safeguards the adult's rights, interests and opportunities and in the way least restrictive of the adult's rights, interests and opportunities;</li> <li>(c) the importance of preserving, to the greatest extent practicable, the adult's right to make his or her decisions; and</li> <li>(d) the adult's right to be given any necessary support and access to information to enable the adult to make or participate in decisions affecting the adult's life.</li> </ul> | Support in principle | <ul style="list-style-type: none"> <li>• As above – see recommendation 7.11.</li> </ul> |
| 7.15                  | <p>The guidelines should provide practical guidance, in the form of information and advice about assessing capacity under the guardianship legislation, to the range of persons who may be required to assess an adult's capacity and be supported by examples of best practice.</p>  | Support              | <ul style="list-style-type: none"> <li>• As above – see recommendation 7.11.</li> </ul> |
| 7.16                  | <p>The guidelines should contain the following information and advice in relation the assessment of an adult's ability to understand the nature and effect of his or her decision:</p> <ul style="list-style-type: none"> <li>(a) the process of understanding covers the abilities to</li> </ul>   | Support              | <ul style="list-style-type: none"> <li>• As above – see recommendation 7.11.</li> </ul> |

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|  | <p>understand and retain the information relevant to the decision (including its likely consequences) and to use or weigh that information in the process of making the decision;</p> <p>(b) the information relevant to a decision includes information about the reasonably foreseeable consequences of deciding one way or another, or of failing to make the decision;</p> <p>(c) a person is not to be regarded as unable to understand the information relevant to a decision if he or she is able to understand an explanation of it given to the person in a way that is appropriate to his or her circumstances (using simple language, visual aids or any other means); and</p> <p>(d) the fact that a person is able to retain the information relevant to a decision for a short period only does not, of itself, prevent the person from being regarded as able to make the decision.</p> |                     |  |
| 7.17   | The guidelines should include information and advice about the situation in which professional involvement in making a capacity assessment may be necessary.   | Support             | <ul style="list-style-type: none"> <li>As above – see recommendation 7.11.</li> </ul>  |
| <b>CHAPTER 8 – CAPACITY TO MAKE AN ENDURING DOCUMENT</b> |  |                     |  |
| 8.1  | Subject to Recommendations 8-3 and 8-4 below, the current list of the matters in sections 41(2) and 42(2) of the <i>Powers of Attorney Act 1998</i> (Qld) that the principal must understand to make an enduring document are appropriate and do not require amendment.  | Support             | <ul style="list-style-type: none"> <li>This recommendation relates to recommendations 8.2, 8.3 and 8.4.</li> <li>To generally maintain the current list of matters that a person must understand to make an enduring power of attorney or advance health directive.</li> </ul> |

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| 8.2                   | The current list of the matters in section 41(2) of the <i>Powers of Attorney Act 1998</i> (Qld) that the principal must understand to make an enduring power of attorney should continue to be expressed as an inclusive list.  | Support              | <ul style="list-style-type: none"> <li>To maintain, as an inclusive list, the current list of matters, which a person must understand to make an enduring power of attorney.</li> </ul>  |
| 8.3                   | Section 42(1) of the <i>Powers of Attorney Act 1998</i> (Qld) should be amended to provide, amongst other things, that a principal has the capacity necessary to make an advance health directive, to the extent it does not give power to an attorney, only if the principal understands the nature and effect of the advance health directive. | Support in principle | <ul style="list-style-type: none"> <li>To clarify that, amongst other things, a person has the capacity necessary to make an advance health directive if they understand the nature and effect of the advance health directive. That is, they do not need to understand each direction made under the advance health directive.</li> <li>The exact wording will be determined following consultation.</li> </ul> |
| 8.4                   | Section 42(1) of the <i>Powers of Attorney Act 1998</i> (Qld) should be amended so that the current list of matters that a principal must understand to make an advance health directive is inclusive rather than exhaustive.  | Support              | <ul style="list-style-type: none"> <li>To make the current list of matters that a principal must understand to make an advance health directive inclusive rather than exhaustive.</li> </ul>   |
| 8.5                   | Section 41 of the <i>Powers of Attorney Act 1998</i> (Qld) should be amended to provide that a principal has capacity to make an enduring power of attorney only if, in addition to understanding the nature and effect of the enduring document, the principal is capable of making the enduring document freely and voluntarily.               | Support              | <ul style="list-style-type: none"> <li>This recommendation, along with recommendation 8.6, makes the test for making an enduring power of attorney or advance health directive the same as the general definition of 'capacity' for deciding whether to appoint a guardian or administrator.</li> </ul>  |

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| 8.6  | Section 42 of the <i>Powers of Attorney Act 1998</i> (Qld) should be amended to provide that a principal has capacity to make an advance health directive only if, in addition to understanding the nature and effect of the enduring document, the principal is capable of making the enduring document freely and voluntarily.                                   | Support              | <ul style="list-style-type: none"> <li>As above – see recommendation 8.5.</li> </ul>   |
| 8.7  | The <i>Powers of Attorney Act 1998</i> (Qld) should be amended to provide that the general definition of capacity in the third schedule to the Act does not apply either to section 41 or 42 of the Act.   | Support              | <ul style="list-style-type: none"> <li>To make a technical amendment made as a consequence of recommendations 8.5 and 8.6.</li> </ul>  |
| 8.12   | If Recommendations 8-5 and 8-6 above are implemented, the approved forms and the guidelines developed by the Adult Guardian, the Queensland Law Society and the Justices of the Peace Branch of the Department of Justice and Attorney-General should be amended to refer to these additional requirements.  | Support in principle | <ul style="list-style-type: none"> <li>To update any relevant forms and guidelines to reflect changes made in recommendations 8.5 and 8.6.</li> </ul>  |
| <b>CHAPTER 9 – ADVANCE HEALTH DIRECTIVES</b> |  |                      |  |
| 9.1  | Section 29(2)(a) of the <i>Powers of Attorney Act 1998</i> (Qld) should be amended to provide that an eligible attorney for a matter under an advance health directive means, in addition to the categories of person currently mentioned in section 29(2)(a), a person who is not a service provider for a residential service where the principal is a resident. | Support              | <ul style="list-style-type: none"> <li>To include an additional category as to who cannot be an eligible attorney to be appointed as an advance health directive – an adult (the principal) cannot appoint a person to be an attorney, if the person is a service provider for a residential service where the adult is resident.</li> </ul> |

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| 9.3                   | <p>Section 36 of the <i>Powers of Attorney Act 1998</i> (Qld) should be amended in the following respects:</p> <p>(a) section 36(1)(b) should be amended so that it provides that a direction in an advance health directive is as effective as, but no more effective than, if:</p> <p>(i) the principal gave the direction when decisions about the matter needed to be made; and</p> <p>(ii) the principal then had capacity for the matter;</p> <p>(b) new subsections should be inserted in section 36 to provide that:</p> <p>(i) a direction in an advance health directive does not operate if:</p> <p>(A) the direction is uncertain; or</p> <p>(B) circumstances, including advances in medical science, have changed to the extent that the adult, if he or she had known of the change in circumstances, would have considered that the terms of the direction are inappropriate;</p> <p>(ii) a direction in an advance health directive is not uncertain if its meaning can be ascertained by consultation with:</p> <p>(A) an attorney appointed under the advance health directive; or</p> <p>(B) if an attorney is not appointed under the advance health directive, but the advance health directive names an attorney for health matters appointed under the adult's enduring power of attorney — the named attorney.</p> | Support – first part ((a)) of the recommendation only | <ul style="list-style-type: none"> <li>• To support the first part of this recommendation to make it clear that an adult's direction about health care under an advance health directive is effective <u>but no more effective</u> than if the principal gave the direction when they had capacity.</li> <li>• The second part, which relates to specifying when an advance health directive is no longer operative, is being further considered.</li> </ul> |

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| 9.4                   | Section 113 of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to provide that the court may decide whether a direction in an advance health directive is operative (whether in relation to a particular situation or generally) and may make a declaration to that effect.  | Support              | <ul style="list-style-type: none"> <li>To amend the <i>Powers of Attorneys Act 1998</i> to expressly provide that the Queensland Civil and Administrative Tribunal or the Supreme Court can determine whether a direction in an advance health directive is operative and may make a declaration to this effect.</li> </ul>   |
| 9.7                   | The approved form for an advance health directive should be redrafted  | Support              | <ul style="list-style-type: none"> <li>This recommendation relates to recommendation 9.8.</li> <li>To redraft the approved form for an advance health directive, including explanatory information in the form, to clarify the law this area.</li> <li>The exact detail to be determined and subject to further consultation. The form will be updated in consultation with relevant professionals, experts, and users of the forms.</li> </ul> |
| 9.8                   | The redrafting of the approved form for an advance health directive should: <ul style="list-style-type: none"> <li>(a) ensure that the provisions in the form dealing with the appointment of an attorney refer to the appointment of an attorney for ‘health matters’ and not to an attorney for ‘personal/health matters’;</li> <li>(b) take account of the fact that, as a result of the</li> </ul> | Support in principle | <ul style="list-style-type: none"> <li>As above – see recommendation 9.7.</li> </ul>  |

| Report Recommendation |   | Government Response |  |
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|                       | <p>Commission's recommendation in Chapter 11 to omit section 36(2)(a) of the <i>Powers of Attorney Act 1998</i> (Qld) (Recommendation 11-3), a direction to withhold or withdraw a life-sustaining measure will be able to operate outside the specific situations currently mentioned in section 36(2)(a) of the Act and listed in section 3 of the approved form;</p> <p>(c) include questions that draw the principal's attention to whether a direction refusing particular health care is intended to operate in unforeseen circumstances, where the need for the health care does not arise as a result of an existing condition of the adult or the natural progression of such a condition;</p> <p>(d) as well as making continued provision for a principal to give specific directions about specific health care, give consideration to incorporating the 'outcomes-based' approach recommended by the South Australian Advance Directives Review Committee;</p> <p>(e) make provision for the principal to sign or initial each page that includes a statement or direction of the principal;</p> <p>(f) continue to encourage the principal to review the advance health directive periodically; and</p> <p>(g) continue to include information about the various ways in which the principal may bring the existence of the advance health directive to the attention of relevant people.</p> |                     |  |

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| 9.9                   | Section 45(2) and (3) of the <i>Powers of Attorney Act 1998</i> (Qld) should be omitted and replaced by a new subsection to the effect that the copy of the enduring document must be certified to the effect that it is a true and complete copy of the original.  | Support             | <ul style="list-style-type: none"> <li>• This recommendation relates to recommendation 9.10.</li> <li>• To change the law to simplify the certification requirements for making copies of an advance health directive or enduring power of attorney.</li> </ul>                            |
| 9.10                  | The explanatory notes for the approved form for an advance health directive should: <ul style="list-style-type: none"> <li>(a) encourage the principal to give a certified copy of the form to the principal's doctor, attorney, family member or friend, and solicitor; and</li> <li>(b) explain how a copy of the advance health directive should be certified in order to comply with section 45 of the <i>Powers of Attorney Act 1998</i> (Qld).</li> </ul> | Support             | <ul style="list-style-type: none"> <li>• To update the approved forms to explain the certification requirements for making copies of an advance health directive or enduring powers of attorney, and encourage the principal to give certified copies to certain third parties.</li> </ul> |
| 9.12                  | Section 40 of the <i>Powers of Attorney Act 1998</i> (Qld) should be retained in its present terms.   | Support             | <ul style="list-style-type: none"> <li>• To keep the same provisions around recognising an enduring health care document made in another State or Territory.</li> </ul>  |
| 9.13                  | If New Zealand develops a scheme for statutory advance health directives, consideration should be given to whether section 40 of the <i>Powers of Attorney Act 1998</i> (Qld) should be amended to make provision for New Zealand instruments or those made in other countries to be prescribed by regulation.  | Support             | <ul style="list-style-type: none"> <li>• To consider legislative changes to recognise statutory advance health directives made in New Zealand, if New Zealand develops a statutory scheme.</li> </ul>  |

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| 9.14                  | In addition to retaining section 40 of the <i>Powers of Attorney Act 1998</i> (Qld), the <i>Powers of Attorney Act 1998</i> (Qld) should be amended to provide that it does not matter whether an advance health directive made under that Act is made in or outside Queensland.  | Support   | <ul style="list-style-type: none"> <li>To make legislative changes to clarify that if a person validly makes an advance health directive under the Queensland legislation (<i>Powers of Attorney Act 1998</i>) – it does not matter whether they make it in or outside Queensland.</li> </ul>  |
| 9.15                  | <p>The <i>Powers of Attorney Act 1998</i> (Qld) should be amended (in either section 96 or 100) to define ‘invalidity, of an advance health directive’ and ‘know, of an advance health directive’s invalidity’ in the following terms:</p> <p>invalidity, of an advance health directive, means invalidity because—</p> <p>(a) the document was made in another State and does not comply with the other State’s requirements; or</p> <p>(b) the document has been revoked.</p> <p>know, of an advance health directive’s invalidity, includes—</p> <p>(a) know of the happening of an event that invalidates the document; or</p> <p>(b) have reason to believe the document is invalid.</p> | Support   | <ul style="list-style-type: none"> <li>To make legislative changes to ensure that the protection given by section 100 of the <i>Powers of Attorney Act 1998</i> extends to a situation where a person acts in reliance on an advance health directive that is revoked (as well as where they act in reliance on an invalid advance health directive).</li> </ul> |
| 9.16                  | Section 100 of the <i>Powers of Attorney Act 1998</i> (Qld) should be amended so that it applies if a person other than an attorney in good faith and without knowing that: <ul style="list-style-type: none"> <li>(a) an advance health directive or a power for a health</li> </ul>   | Support – the first part of the recommendation only | <ul style="list-style-type: none"> <li>This recommendation relates to recommendation 9.17.</li> </ul>  |

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|                       | <p>matter under an enduring document is invalid; or<br/>           (b) a direction in an advance health directive does not operate;<br/>           acts in reliance on the advance health directive, the purported exercise of power or the inoperative directive.</p> |                     | <ul style="list-style-type: none"> <li>To make legislative changes to the protections given in sections 100 and 102 of the <i>Powers of Attorney Act 1998</i> to only protect a person who in <u>good faith</u> acts on an invalid or revoked advance health directive, or in <u>good faith</u> did not act on a valid advance health directive.</li> <li>The second part is being further considered.</li> </ul>  |
| 9.17                  | <p>Section 102 of the <i>Powers of Attorney Act 1998</i> (Qld) should be amended so that it applies to a health provider who ‘acting in good faith, does not know the adult has an advance health directive’.</p>  | Support             | <ul style="list-style-type: none"> <li>As above – see recommendation 9.16.</li> </ul>  |
| 9.19                  | <p>Section 65 of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to provide that section 65(2) is subject to section 36 of the <i>Powers of Attorney Act 1998</i> (Qld).</p>   | Support             | <ul style="list-style-type: none"> <li>This recommendation relates to recommendation 9.20.</li> <li>To make a technical change to sections 65 and 66 of the <i>Guardianship and Administration Act 2000</i>, which deal with priority for decision-making for special health or health matters. The change will make it clear that a direction in an advance health directive cannot be more effective than if the decision were made by the adult if they had capacity for the matter.</li> </ul> |

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| 9.20   | Section 66 of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to provide that section 66(2) is subject to section 36 of the <i>Powers of Attorney Act 1998</i> (Qld).  | Support             | <ul style="list-style-type: none"> <li>As above – see recommendation 9.19.</li> </ul>  |
| <b>CHAPTER 10 – STATUTORY HEALTH ATTORNEYS</b> |  |                     |  |
| 10.1   | Section 63(1)(a) of the <i>Powers of Attorney Act 1998</i> (Qld) should include a footnote reference to the definition of ‘spouse’ in section 36 of the <i>Acts Interpretation Act 1954</i> (Qld). | Support             | <ul style="list-style-type: none"> <li>To make a technical change to make it clear what is meant by the term ‘spouse’ for the purpose of who can be a statutory health attorney for the adult. The term is defined in the <i>Acts Interpretation Act 1954</i>.</li> </ul>  |
| 10.3   | The definition of ‘relation’ in schedule 3 of the <i>Powers of Attorney Act 1998</i> (Qld) should not apply to the reference to a ‘close friend or relation’ in section 63 of the Act.             | Support             | <ul style="list-style-type: none"> <li>This recommendation relates to recommendation 10.4.</li> <li>To include a new definition of ‘relation’ for the purpose of who can be a statutory health attorney. To ensure only those who have a close family or other close personal relationship can be a statutory health attorney, and the term is culturally appropriate.</li> <li>The exact definition is to be determined and subject to further consultation.</li> </ul> |

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| 10.4                  | <p>For the purposes of section 63 of the <i>Powers of Attorney Act 1998</i> (Qld), the definition of 'relation' should be reformulated for the purpose of section 63 of the Act to include the following categories of person:</p> <p>(a) a person who is related to the first person by blood, marriage or adoption or because of a de facto relationship or a foster relationship;</p> <p>(b) for an Aboriginal person — includes a person who, under Aboriginal tradition, is regarded as a relative mentioned in the first paragraph;</p> <p>(c) for a Torres Strait Islander — includes a person who, under Island custom, is regarded as a relative mentioned in the first paragraph.</p> | Support in principle | <ul style="list-style-type: none"> <li>As above – see recommendation 10.3.</li> </ul>  |
| 10.5                  | <p>Section 63 of the <i>Powers of Attorney Act 1998</i> (Qld) should be amended to clarify that:</p> <p>(a) the adult's spouse will be recognised as the statutory health attorney only if he or she is at least 18 years old;</p> <p>(b) a person will not be recognised as the statutory health attorney if he or she is a health provider for the adult; and</p> <p>(c) a person will not be recognised as the statutory health attorney if he or she is a service provider for a residential service where the adult resides.</p>   | Support              | <ul style="list-style-type: none"> <li>To include additional exclusions as to who cannot be a statutory health attorney for the adult. These additional exclusions would make it consistent with the current restrictions for who cannot be an eligible attorney under an enduring power of attorney or advance health directive.</li> </ul> |
| 10.6                  | <p>Section 62 of the <i>Powers of Attorney Act 1998</i> (Qld) should be amended by inserting a new subsection to the effect that:</p>   | Support              | <ul style="list-style-type: none"> <li>This recommendation relates to recommendation 10.7.</li> </ul>  |

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|   | A statutory health attorney's decision about a health matter for the adult is as effective as, but no more effective than, if:<br>(a) the adult made the decision when decisions about the matter needed to be made; and<br>(b) the adult then had capacity for the matter. |                     | <ul style="list-style-type: none"> <li>To make amendments to clarify that a decision by a statutory health attorney is effective but no more effective than a decision made the adult if they had capacity.</li> </ul>  |
| 10.7  | Section 66 of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to provide that section 66(5) is subject to section 62 of the <i>Powers of Attorney Act 1998</i> (Qld).   | Support             | <ul style="list-style-type: none"> <li>To make a technical change as a consequence of recommendation 10.6.</li> </ul>   |
| <b>CHAPTER 11 – THE WITHHOLDING OR WITHDRAWAL OF LIFE-SUSTAINING MEASURES</b> |   |                     |   |
| 11.11   | To support the Tribunal's function under section 81(1)(f) of the <i>Guardianship and Administration Act 2000</i> (Qld), the Act should be amended to confer on the Tribunal the express power to consent to the withholding or withdrawal of a life-sustaining measure.     | Support             | <ul style="list-style-type: none"> <li>This recommendation relates to recommendations 11.12-11.14.</li> <li>To make technical changes to clarify that the Queensland Civil and Administrative Tribunal has the power to consent to the withholding or withdrawal of life-sustaining measures. The changes will also clarify how any order made by the Tribunal affects priority of decision-making for health matters.</li> </ul> |
| 11.12   | Section 66 of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to ensure that subsections (1) and (3) to (5) of that section do not limit the operation of the provision that gives effect to Recommendation 11-11.                              | Support             | <ul style="list-style-type: none"> <li>As above – see recommendation 11.11.</li> </ul>  |

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| 11.13   | Section 42 of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended by inserting a new subsection to the effect that section 42 does not limit the operation of the provision that gives effect to Recommendation 11-11. | Support             | <ul style="list-style-type: none"> <li>As above – see recommendation 11.11.</li> </ul>  |
| 11.14   | Section 43 of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended by inserting a new subsection to the effect that section 43 does not limit the operation of the provision that gives effect to Recommendation 11-11. | Support             | <ul style="list-style-type: none"> <li>As above – see recommendation 11.11.</li> </ul>  |
| <b>CHAPTER 13 – CONSENT TO PARTICIPATION IN MEDICAL RESEARCH</b>    |  |                     |   |
| 13.1  | Section 72 of the <i>Guardianship and Administration Act 2000</i> (Qld) should be retained.  | Support             | <ul style="list-style-type: none"> <li>To keep the status quo and continue to allow the Queensland Civil and Administrative Tribunal to decide whether to consent to an adult's participation in special medical research or experimental health care.</li> </ul> |
| 13.4  | Section 13(3)–(5) of schedule 2 of the <i>Guardianship and Administration Act 2000</i> (Qld) should be omitted from the schedule and relocated to the body of the <i>Guardianship and Administration Act 2000</i> (Qld).                       | Support             | <ul style="list-style-type: none"> <li>To make a technical change to relocate the provisions setting out the circumstances when the Queensland Civil and Administrative Tribunal may approve clinical research.</li> </ul>  |
| <b>CHAPTER 14 – THE APPOINTMENT OF GUARDIANS AND ADMINISTRATORS</b> |  |                     |   |
| 14.1  | Section 12(1) of the <i>Guardianship and Administration Act 2000</i> (Qld), which sets out the grounds for making an appointment order, is appropriate and should not be amended.  | Support             | <ul style="list-style-type: none"> <li>To maintain the same grounds for the appointment of a guardian or administrator.</li> </ul>  |

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| 14.2                  | The principles in the <i>Disability Services Act 2006</i> (Qld) should be revised to take account of the principles in the United Nations Convention on the Rights of Persons with Disabilities and the relevant General Principles under the guardianship legislation, and to specify that supporting the person to achieve quality of life by supporting the person's family unit and the person's full participation in society (under Human Rights Principle 19(3)(a)) may involve consultation with either or both of the following:<br>(a) persons who have an existing supportive relationship with the person;<br>(b) members of the person's support network who are making decisions for the adult on an informal basis. | Support – consider part of a separate process | <ul style="list-style-type: none"> <li>To review the human rights principle and the service delivery principles in the <i>Disability Services Act 2006</i> to take into account the principles in the United Nations <i>Convention on the Rights of Persons with Disabilities</i>.</li> <li>This will be done as part of a separate process, led by the Department of Communities, when the whole of the <i>Disability Services Act 2006</i> is reviewed.</li> </ul> |
| 14.3                  | Section 16 of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to provide that a person who has agreed to a proposed appointment for an adult must advise the Tribunal, before it makes an appointment order, whether the person was previously a paid carer for the adult.   | Support                                       | <ul style="list-style-type: none"> <li>To amend the law to require a person who has agreed to be appointed as a guardian or administrator to advise the Queensland Civil and Administrative Tribunal, before the appointment, whether the person was previously a paid carer for the adult.</li> <li>This recommendation also relates to recommendation 14.4.</li> </ul>   |
| 14.4                  | Section 15 of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to provide that the Tribunal must, in considering the person's appropriateness and competence have regard to whether the person previously was a paid carer for the adult.   | Support                                       | <ul style="list-style-type: none"> <li>To amend the law to require the Queensland Civil and Administrative Tribunal (among other things) to consider whether a person was previously a paid carer when determining whether the person is appropriate and competent for</li> </ul>  |

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|                       |  |                      | <p>appointment as guardian or administrator.</p> <ul style="list-style-type: none"> <li>• This recommendation also relates to recommendation 14.3.</li> </ul>   |
| 14.5                  | The general requirement that a person cannot be appointed as a guardian or an administrator unless he or she consents to the appointment is a substantive one and should be contained in the <i>Guardianship and Administration Act 2000</i> (Qld) rather than in the QCAT Rules.  | Support in principle | <ul style="list-style-type: none"> <li>• To look at making a technical change and relocating the requirement that a person cannot be appointed as a guardian or administrator unless they consent. This requirement is currently in the <i>Queensland Civil and Administrative Tribunal Rules 2009</i>.</li> </ul>  |
| 14.12                 | Section 14(2) of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to provide that the Tribunal may appoint the Adult Guardian as guardian for a matter only if there is no person mentioned in subparagraph (1)(a)(i) who is appropriate and available for appointment as guardian for the matter.        | Support in principle | <ul style="list-style-type: none"> <li>• To look at making a technical change to the wording in section 14(2) of the <i>Guardianship and Administration Act 2000</i> around the appointment of the Adult Guardian as guardian. The effect will remain the same – that is, the Adult Guardian can only be appointed as guardian for the adult where there is no one else appropriate and available for appointment.</li> </ul> |
| 14.13                 | Section 14 of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to provide that the Tribunal may appoint the Public Trustee as administrator for a matter only if there is no person mentioned in subparagraph (1)(b)(i) who is appropriate and available for appointment as administrator for the matter. | Not support          | <ul style="list-style-type: none"> <li>• This recommendation relates to recommendation 14.15.</li> <li>• The status quo will be maintained. The Queensland Civil and Administrative Tribunal (or the court) will decide in each</li> </ul>  |

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|   |  |                     | case the appropriate person or agency to be appointed as an adult's administrator for a matter.  |
| 14.14   | Section 31 of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to provide that, if the Adult Guardian is the existing appointee for a matter, the Tribunal may continue the appointment of the Adult Guardian for the matter only if there is no person mentioned in subparagraph (1)(a)(i) who is appropriate and available for appointment as guardian for the matter.                                | Support             | <ul style="list-style-type: none"> <li>To amend the law to make it clear that where the Adult Guardian is the existing guardian for the adult, on review of their appointment, the Queensland Civil and Administrative Tribunal may continue their appointment <u>only if there is no-one else appropriate and available for appointment.</u></li> </ul> |
| 14.15   | Section 31 of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to provide that, if the Public Trustee is the existing appointee for a matter, the Tribunal may continue the appointment of the Public Trustee for the matter only if there is no person mentioned in subparagraph (1)(b)(i) who is appropriate and available for appointment as administrator for the matter.                           | Not support         | <ul style="list-style-type: none"> <li>See recommendation 14.13.</li> </ul>  |
| <b>CHAPTER 15 – THE POWERS AND DUTIES OF GUARDIANS AND ADMINISTRATORS</b> |  |                     |  |
| 15.5  | Section 33 of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended by inserting a new subsection to the effect that:<br>A guardian's exercise of power for a health matter for the adult is as effective as, but no more effective than, if:<br>(a) the adult exercised the power for the matter when a decision about the matter needed to be made; and<br>(b) the adult then had capacity for the matter. | Support             | <ul style="list-style-type: none"> <li>This recommendation relates to recommendation 15.6.</li> <li>To make legislative changes to clarify that an adult's guardian's exercise power for a health matter is effective but <u>no more effective</u> than if the adult had capacity for the matter.</li> </ul>   |

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| 15.6  | Section 66 of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to provide that section 66(3) is subject to section 33 of the <i>Guardianship and Administration Act 2000</i> (Qld).  | Support             | <ul style="list-style-type: none"> <li>As above – see recommendation 15.5.</li> </ul>  |
| <b>CHAPTER 16 – ENDURING POWERS OF ATTORNEY</b> |   |                     |  |
| 16.1  | Section 29(1)(b) of the <i>Powers of Attorney Act 1998</i> (Qld) should be amended to provide that an eligible attorney should have capacity for the matter.  | Support             | <ul style="list-style-type: none"> <li>To make a technical change to clarify that to be an eligible attorney for an enduring power of attorney, the person must have capacity (among other things).</li> </ul>                               |
| 16.3  | Section 29(1)(c) of the <i>Powers of Attorney Act 1998</i> (Qld) should be amended to provide that, for a matter under an enduring power of attorney, a trustee company is an eligible attorney for a financial matter only.                                    | Support             | <ul style="list-style-type: none"> <li>To amend the law to confirm that trustee companies can be attorneys for financial matters only. This reflects current practice.</li> </ul>  |
| 16.7  | Section 43 of the <i>Powers of Attorney Act 1998</i> (Qld) should be amended to provide that a principal may appoint a maximum of four joint attorneys for a matter under an enduring power of attorney.  | Support             | <ul style="list-style-type: none"> <li>To prescribe a maximum limit of four for the number of people who can be appointed for a matter under an enduring power of attorney. There is currently no limit.</li> </ul>                          |
| 16.8  | Section 88 of the <i>Powers of Attorney Act 1998</i> (Qld) should be amended. The amended provision should be modelled on section 54 of the <i>Guardianship and Administration Act 2000</i> (Qld).  | Support             | <ul style="list-style-type: none"> <li>To make the gifting requirements for attorneys the same as the gifting requirements for administrators.</li> </ul>  |
| 16.9  | Section 32 of the <i>Powers of Attorney Act 1998</i> (Qld) should be amended by inserting a new subsection to the effect that:<br><br>An attorney's exercise of power for a health matter for the principal is as effective as, but no more effective than, if: | Support             | <ul style="list-style-type: none"> <li>This recommendation relates to recommendation 16.10.</li> <li>To amend the law to clarify that an attorney's exercise for a health matter for the adult is as effective <u>but no more</u></li> </ul> |

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|                       | (a) the principal exercised the power for the matter when a decision about the matter needed to be made; and<br>(b) the principal then had capacity for the matter.                               |                     | <ul style="list-style-type: none"> <li>• <u>effective</u> than if the adult had capacity for the matter.</li> </ul>   |
| 16.10                 | Section 66 of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to provide that section 66(4) is subject to section 32 of the <i>Powers of Attorney Act 1998</i> (Qld). | Support             | <ul style="list-style-type: none"> <li>• As above – see recommendation 16.9.</li> </ul>   |
| 16.11                 | The approved forms for an enduring power of attorney should be redrafted.   | Support             | <ul style="list-style-type: none"> <li>• This recommendation relates to recommendations 16.12-16.14 and 16.16.</li> <li>• To redraft the approved forms for enduring powers of attorney.</li> <li>• In redrafting these forms, Government will: <ul style="list-style-type: none"> <li>- continue to include key information in the forms (for example, features of the enduring power of attorney document; and functions and duties of the attorney, principal and the witness);</li> <li>- include examples of standard words for the commencement of a power for a financial matters; and</li> <li>- explain how to certify and give a certified copy of the form to certain people.</li> </ul> </li> </ul> |

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|                       |  |                      | <ul style="list-style-type: none"> <li>The exact detail is to be determined and subject to further consultation. The form will be updated in consultation with relevant professionals, experts, and users of the forms.</li> </ul> |
| 16.12                 | The explanatory information and notes about the key features of the enduring power of attorney document and the roles, functions and duties of the principal, attorney and the witness should continue to be included in the approved forms. It should also be included in a separate booklet.   | Support in principle | <ul style="list-style-type: none"> <li>As above – see recommendation 16.11.</li> </ul>   |
| 16.13                 | The clause in the approved forms that deals with the commencement of the attorney’s power should include various examples of standard words for the commencement of power for a financial matter on the principal’s loss of capacity. These examples should particularly draw the principal’s attention to the type of evidence that will be required to establish his or her incapacity (for example, a report by the adult’s general practitioner, by the adult’s treating psychiatrist or geriatrician or by two independent health professionals). | Support              | <ul style="list-style-type: none"> <li>As above – see recommendation 16.11.</li> </ul>   |
| 16.14                 | The explanatory notes for the approved forms for an enduring power of attorney should:<br>(a) encourage the principal to give a certified copy of the form to the principal’s attorney, doctor, solicitor, accountant and stockbroker; and   | Support              | <ul style="list-style-type: none"> <li>As above – see recommendation 16.11.</li> </ul>   |

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|                       | (b) explain how a copy of the enduring power of attorney should be certified in order to comply with section 45 of the <i>Powers of Attorney Act 1998 (Qld)</i> .  |                     |   |
| 16.16                 | The approved forms for an enduring power of attorney should explain that the principal may give a specific instruction in his or her enduring power of attorney which expresses the principal's wishes about notification. For example, the principal may express the wish that the attorney notify one or more persons, nominated by the principal, of all decisions made or transactions undertaken as the principal's attorney in relation to the matters for which they have been appointed. | Support             | <ul style="list-style-type: none"> <li>As above – see recommendation 16.11.</li> </ul>  |
| 16.17                 | The approved forms for making an enduring power of attorney should explain that a person's ability to seek a medical certificate as to the principal's capacity or a declaration from the Tribunal or the Supreme Court if there is some doubt about whether an attorney's authority has commenced.  | Support             | <ul style="list-style-type: none"> <li>To amend the approved forms for enduring powers of attorney to explain that a person can ask for a medical certificate or seek a declaration from the Queensland Civil and Administrative Tribunal or the Supreme Court if there is some doubt about whether an attorney's authority has commenced.</li> </ul> |
| 16.22                 | Section 34 of the <i>Powers of Attorney Act 1998 (Qld)</i> should generally be retained in its present terms, except that it should be amended so that it also applies to an enduring power of attorney made under the New Zealand legislation.  | Support             | <ul style="list-style-type: none"> <li>To keep the same provisions around recognising an enduring power of attorney made in another State or Territory.</li> </ul>  |
| 16.23                 | In addition to retaining section 34 of the <i>Powers of Attorney Act 1998 (Qld)</i> , the <i>Powers of Attorney Act 1998</i>   | Support             | <ul style="list-style-type: none"> <li>To make legislative changes to clarify that if a person validly makes an enduring power</li> </ul>   |

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|   | (Qld) should be amended to provide that it does not matter whether an enduring power of attorney made under that Act is made in or outside Queensland.   |                     | of attorney under the Queensland legislation ( <i>Powers of Attorney Act 1998</i> ) – it does not matter whether they make it in or outside Queensland.   |
| 16.24                                     | The <i>Powers of Attorney Act 1998</i> (Qld) should be amended to provide for the recognition of enduring powers of attorney made under the New Zealand legislation.   | Support             | <ul style="list-style-type: none"> <li>To recognise enduring powers of attorney made under New Zealand legislation.</li> </ul>  |
| <b>CHAPTER 17 – CONFLICT TRANSACTIONS</b> |  |                     |   |
| 17.16                                     | Section 58 of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended so that it is modelled on the wording of section 105 of the <i>Powers of Attorney Act 1998</i> (Qld).  | Support             | <ul style="list-style-type: none"> <li>To change the wording in section 58 of the <i>Guardianship and Administration Act 2000</i>, which deals with when the Supreme Court may excuse an administrator from personal liability for contravention of their duties.</li> <li>The change would make the wording consistent with a similar provision, in the <i>Powers of Attorneys Act 1998</i>, applying to attorneys.</li> </ul> |
| 17.17                                     | Chapter 6 of the <i>Powers of Attorney Act 1998</i> (Qld) should be amended to provide that the Supreme Court (or the Tribunal) may order an attorney, who has made a profit as a result of his or her failure to comply with the Act in the exercise of a power for a financial matter for an adult, to disgorge that profit in favour of the adult. A similar provision, which applies in relation to administrators, should be inserted in the <i>Guardianship and Administration Act 2000</i> (Qld). | Support             | <ul style="list-style-type: none"> <li>To give the Supreme Court or the Queensland Civil and Administrative Tribunal the power to order that an attorney or administrator, who has made a profit because they failed to comply with their duties, to account for that profit.</li> </ul>  |

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| 17.18   | Section 408C of the Criminal Code (Qld) should be amended by adding the following to the list of aggravating circumstances in section 408C(2):<br>(a) if the offender is an attorney under an enduring power of attorney and the victim is the principal; and<br>(b) if the offender is an administrator appointed under the <i>Guardianship and Administration Act 2000</i> (Qld) and the victim is the adult. | Support in principle | <ul style="list-style-type: none"> <li>To explore whether it is necessary to amend section 408C (fraud) of the <i>Criminal Code Act 1899</i> (QLD) to specifically add to the list of aggravating circumstances - if the offender is an attorney or administrator of the adult.</li> </ul>  |
| <b>CHAPTER 18 – BINDING DIRECTION BY A PARENT FOR THE APPOINTMENT OF A GUARDIAN OR AN ADMINISTRATOR</b> |   |                      |   |
| 18.2  | If a parent applies for appointment as the guardian or administrator for his or her adult child, the Tribunal should inform the parent of the Tribunal's power under section 14(4)(e) of the <i>Guardianship and Administration Act 2000</i> (Qld) to appoint successive appointees for a matter.   | Support              | <ul style="list-style-type: none"> <li>If a parent applies for appointment as the guardian or administrator for their adult child, the Queensland Civil and Administrative Tribunal will inform them of the Tribunal's power to appoint another person to be adult's child guardian or administrator if the parent's appointment ends.</li> </ul>                         |
| <b>CHAPTER 20 – THE TRIBUNAL'S FUNCTIONS AND POWERS</b>   |   |                      |   |
| 20.3  | Section 129(1) of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to clarify that, in addition to the other matters listed in section 129(1), the Tribunal must be satisfied that there is evidence capable of showing that the adult has impaired capacity.  | Support              | <ul style="list-style-type: none"> <li>To make a technical change to clarify that when the Queensland Civil and Administrative Tribunal is considering whether or not to make an interim order, they must (among other things) be satisfied the adult, who is the subject of the order, has impaired capacity.</li> <li>This change reflects current practice.</li> </ul> |

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| <b>CHAPTER 21 – TRIBUNAL PROCEEDINGS</b> |   |                     |   |
| 21.1                                     | The approved form for making an application for the appointment of a guardian or an administrator or the review of an appointment should be reworded to reflect more clearly the legislative requirement that the applicant must provide information about the members of the adult's family and any primary carer of the adult, regardless of whether or not the applicant perceives for himself or herself that the person may have an interest in the application. The form should also require the applicant to state, if relevant, that he or she does not have actual knowledge of any other persons who may have an interest in the application. | Support             | <ul style="list-style-type: none"> <li>To amend the form for making an application for the appointment of a guardian or administrator, or reviewing their appointment.</li> <li>To more clearly reflect the requirement that the applicant should detail all information about members of the adult's family, any primary carer for the adult, and state whether or not they know of any one else who may have an interest in the application.</li> </ul> |
| 21.4                                     | Information about how the adult concerned in an application may request further information about the application from the Tribunal should be given to the adult in conjunction with a copy of the application.   | Support             | <ul style="list-style-type: none"> <li>The Queensland Civil and Administrative Tribunal will continue to give information to the adult about how they can request further information about the guardianship application, as well as a copy of the application.</li> </ul>  |
| 21.7                                     | Section 124 of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to provide expressly that, in a guardianship proceeding, the adult concerned in the proceeding is entitled to be represented without the need to be given leave by the Tribunal.   | Not support         | <ul style="list-style-type: none"> <li>The status quo will be maintained. The adult concerned in guardianship proceedings can have legal representation with leave of the Queensland Civil and Administrative Tribunal.</li> </ul>  |

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| 21.15   | The <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to provide that the special witness provisions under section 99 of the QCAT Act should apply to proceedings under the <i>Guardianship and Administration Act 2000</i> (Qld), subject to the operation of the provisions for making a closure order or an adult evidence order under the <i>Guardianship and Administration Act 2000</i> (Qld).   | Support              | <ul style="list-style-type: none"> <li>To amend the law to apply the provisions dealing with special witness provisions, in the <i>Queensland Civil and Administrative Act 2009</i>, to guardianship proceedings.</li> </ul>  |
| <b>CHAPTER 22 – APPEALS, REOPENING AND REVIEW</b> |  |                      |   |
| 22.1  | The QCAT Act provides an appropriate mechanism for appealing against a Tribunal decision made in a proceeding under the <i>Guardianship and Administration Act 2000</i> (Qld).   | Support              | <ul style="list-style-type: none"> <li>To maintain the current appeal mechanisms for appealing against a guardianship decision made by the Queensland Civil and Administrative Tribunal.</li> </ul>   |
| 22.2  | The definition of ‘reopening ground’ in section 137 of the QCAT Act should be amended to include, for a proceeding under the <i>Guardianship and Administration Act 2000</i> (Qld), that because significant new evidence has arisen that was not reasonably available when the proceeding was first heard and decided: <ul style="list-style-type: none"> <li>(a) the adult concerned would suffer substantial injustice if the proceeding was not reopened; or</li> <li>(b) the needs of the adult would not be adequately met, or the adult’s interests would not be adequately protected, if the proceeding was not reopened.</li> </ul> | Support in principle | <ul style="list-style-type: none"> <li>To amend the law to allow a party to a guardianship proceeding to apply to the Queensland Civil and Administrative Tribunal to reopen a proceeding where there is new evidence that the needs of the adult would not be adequately met or protected.</li> <li>The exact location of this provision is to be determined.</li> </ul> |

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| 22.3                                   | The QCAT Act should be amended so that, for the hearing of a proceeding under the <i>Guardianship and Administration Act 2000</i> (Qld), a member of the adult's family or any primary carer of the adult may apply for a reopening of the proceeding if the Tribunal did not give the person notice of the hearing under section 118(1) of the <i>Guardianship and Administration Act 2000</i> (Qld).         | Support             | <ul style="list-style-type: none"> <li>To amend the law to allow a member of the adult's family or primary carer of the adult to apply to the Queensland Civil and Administrative Tribunal to reopen the guardianship proceeding if they did not receive notice of the hearing, as required under the <i>Guardianship and Administration Act 2000</i>.</li> </ul>                                |
| 22.4                                   | Section 28(1) of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to provide that:<br>(a) an initial appointment of a guardian or an administrator must be reviewed within two years of the order making the appointment; and<br>(b) any other appointment of a guardian or an administrator must be reviewed within five years of the order renewing or extending the appointment. | Not support         | <ul style="list-style-type: none"> <li>The status quo will be maintained. The Queensland Civil and Administrative Tribunal can appoint a guardian or administrator for up to five years and will decide the term of appointment depending on the individual case. Certain interested persons can also apply for review of the appointment of a guardian or administrator at any time.</li> </ul> |
| <b>CHAPTER 23 – THE ADULT GUARDIAN</b> |  |                     |  |
| 23.1                                   | Subject to Recommendations 23-2 and 28-3(a), the Adult Guardian's functions in section 174 of the <i>Guardianship and Administration Act 2000</i> (Qld) are appropriate and do not require amendment.  | Support             | <ul style="list-style-type: none"> <li>This recommendation relates to recommendation 23.2.</li> <li>To generally maintain the current functions of the Adult Guardian set out in the <i>Guardianship and Administration Act 2000</i>, with one technical change to clarify when the Adult Guardian must apply the Health Care Principle (see recommendation 23.2).</li> </ul>                    |

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| 23.2                  | Section 174(3) of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to provide that, in performing a function or exercising a power, the Adult Guardian must apply the General Principles <i>and, for a health matter</i> , the Health Care Principle.  | Support             | <ul style="list-style-type: none"> <li>To clarify that the Adult Guardian must apply the Health Care Principle (as well as the General Principles) only if they are exercising a power in relation to a health matter.</li> </ul>  |
| 23.4                  | Section 43(1) of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to refer:<br>(a) in paragraph (a) to a refusal that is contrary to the General Principles or the Health Care Principle; and<br>(b) in paragraph (b) to a decision that is contrary to the General Principles or the Health Care Principle. | Support             | <ul style="list-style-type: none"> <li>To amend the law to clarify that the Adult Guardian can exercise their decision-making powers for health care where a guardian, attorney or statutory health attorney makes or refuses to make a decision, and it is contrary to the Health Care Principle <u>or the General Principles.</u></li> </ul> |
| 23.6                  | Section 183 of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to clarify that the Adult Guardian's right to information includes the power to require an agency to disclose personal information about an individual.  | Support             | <ul style="list-style-type: none"> <li>To amend the law to make it clear that the Adult Guardian's right to information, to investigate a complaint or allegation in relation to an adult with impaired capacity, includes the power to require a person/agency to disclose personal information.</li> </ul>                                   |
| 23.11                 | The <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to provide that each of the following decisions by the Adult Guardian is a reviewable decision for the purposes of the QCAT Act:  | Not support         | <ul style="list-style-type: none"> <li>This recommendation, relates to recommendations 23.12-23.17.</li> </ul>   |

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|                       | <p>(a) a decision made under the Act about a personal matter for an adult (including a decision made under section 42 or 43); and</p> <p>(b) a decision made under section 177(4) of the Act to delegate the power to make day-to-day decisions about a personal matter for an adult.</p>   |                     | <ul style="list-style-type: none"> <li>To maintain the status quo, and look at improving the current review and accountability mechanisms such as the ability of the Queensland Civil and Administrative Tribunal to give directions or advice to substitute decision-makers; and the ability to review appointments.</li> <li>Also, a person may make a complaint to the Ombudsman and/or seek an internal review within the Office of the Adult Guardian.</li> </ul> |
| 23.12                 | <p>The <i>Powers of Attorney Act 1998</i> (Qld) should be amended to provide that each of the following decisions by the Adult Guardian is a reviewable decision for the purposes of the QCAT Act:</p> <p>(a) a decision made under the Act about a personal matter for an adult; and</p> <p>(b) a decision made under an enduring document about a personal matter for an adult.</p> | Not support         | <ul style="list-style-type: none"> <li>As above - see recommendation 23.11.</li> </ul>   |
| 23.13                 | <p>The <i>Guardianship and Administration Act 2000</i> (Qld) and the <i>Powers of Attorney Act 1998</i> (Qld) should each be amended to provide that the following persons may apply to the Tribunal, as provided under the QCAT Act, for the</p>   | Not support         | <ul style="list-style-type: none"> <li>As above - see recommendation 23.11.</li> </ul>   |

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|                       | <p>review of a reviewable decision made by the Adult Guardian:</p> <p>(a) the adult who is the subject of the decision; and</p> <p>(b) an interested person.</p>   |                     |  |
| 23.14                 | <p>The <i>Guardianship and Administration Act 2000</i> (Qld) and the <i>Powers of Attorney Act 1998</i> (Qld) should each be amended to provide that section 157 of the QCAT Act does not apply to a reviewable decision of the Adult Guardian.</p>  | Not support         | <ul style="list-style-type: none"> <li>As above - see recommendation 23.11.</li> </ul> |
| 23.15                 | <p>The <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to include a provision, modelled on section 99E of the <i>Child Protection Act 1999</i> (Qld), requiring:</p> <p>(a) the principal registrar to give notice of the review application to the Adult Guardian; and</p> <p>(b) the Adult Guardian to give the principal registrar notice of the names and addresses of all persons, apart from the applicant, who would be entitled to receive notice of an application under rule 21 of the QCAT Rules or notice of a hearing under section 118 of the <i>Guardianship and Administration Act 2000</i> (Qld).</p> | Not support         | <ul style="list-style-type: none"> <li>As above - see recommendation 23.11.</li> </ul> |

| Report Recommendation                                 |  | Government Response |  |
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| 23.16   | <i>The Guardianship and Administration Act 2000</i> (Qld) should be amended to provide that the Tribunal must give notice of the application and of the hearing to those people to whom the Tribunal would be required to give notice if the hearing of the application were a guardianship proceeding under the <i>Guardianship and Administration Act 2000</i> (Qld).  | Not support         | <ul style="list-style-type: none"> <li>As above - see recommendation 23.11.</li> </ul>   |
| 23.17   | Either the <i>Guardianship and Administration Act 2000</i> (Qld) or the QCAT Act should be amended so that sections 103 to 113 (including the new section 103A that has been recommended in Chapter 21 of this Report) and section 114A of the <i>Guardianship and Administration Act 2000</i> (Qld), or provisions in those terms, apply to an application for the review of a reviewable decision of the Adult Guardian and the hearing of that application.       | Not support         | <ul style="list-style-type: none"> <li>As above - see recommendation 23.11.</li> </ul>   |
| <b>CHAPTER 24 – THE FUNCTION OF SYSTEMIC ADVOCACY</b> |  |                     |  |
| 24.1  | The <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to provide that the Adult Guardian’s Annual Report must include information about: <ul style="list-style-type: none"> <li>(a) the systemic advocacy that has been undertaken during the year;</li> <li>(b) the expenditure on systemic advocacy; and</li> <li>(c) the number of staff (expressed as full-time equivalents) who were engaged in undertaking systemic advocacy.</li> </ul> | Support             | <ul style="list-style-type: none"> <li>To amend the law to require the Adult Guardian to include in their annual report certain information about systems advocacy, once this function is transferred from the Office to the Public Advocate to the Office of the Adult Guardian.</li> </ul> |

| Report Recommendation |   | Government Response  |  |
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| 24.2                  | The <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to provide that:<br>(a) the Adult Guardian may, at any time, prepare a report to the Minister on a systemic issue and give a copy of the report to the Minister; and<br>(b) the Minister must table a copy of the report in the Legislative Assembly within five sitting days after receiving the report.   | Support in principle | <ul style="list-style-type: none"> <li>To allow the Adult Guardian to report on systematic issues, once the systems advocacy function is transferred to the Office of the Adult Guardian.</li> <li>The exact detail of this obligation is to be determined and subject to consultation.</li> </ul>   |
| 24.3                  | The <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to provide that:<br>(a) within five years of the commencement of the provisions transferring the Public Advocate's functions and powers to the Adult Guardian, the Minister must review the systemic advocacy function of the Adult Guardian to ascertain whether an independent systemic advocacy role has been maintained; and<br>(b) as soon as practicable, but within one year after the end of the five year period, the Minister must table a report about the review in the Legislative Assembly. | Support in principle | <ul style="list-style-type: none"> <li>To review and report on the transfer of the systematic advocacy function of the Adult Guardian to ascertain whether an independent systemic advocacy function is maintained, once this function is transferred to the Adult Guardian.</li> <li>The exact detail and process of the review is to be determined and subject to consultation.</li> </ul> |
| 24.4                  | Section 210(2) of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to include a note that refers to the Tribunal's power under section 41(2) of the QCAT Act to give leave for a person to intervene in a proceeding.  | Support              | <ul style="list-style-type: none"> <li>To make a technical change to include a note in the guardianship legislation that an independent person can apply to the Queensland Civil and Administrative Tribunal, under the <i>Queensland Civil and Administrative Act 2009</i>, to intervene in guardianship proceedings.</li> </ul>  |

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| 24.5                  | The <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to give the Adult Guardian, as systems advocate, the power to require from an agency, or a person who has the custody or control of information or documents, information and access to documents about: <ul style="list-style-type: none"> <li>(a) a system being monitored or reviewed by the Adult Guardian;</li> <li>(b) arrangements for a class of individuals; and</li> <li>(c) policies and procedures that apply within an agency, service or facility.</li> </ul>   | Support in principle | <ul style="list-style-type: none"> <li>• This recommendation relates to recommendation 24.6.</li> <li>• To look at whether legislative changes are necessary to allow the Adult Guardian, for the purpose of systematic advocacy, to require information or access to documents from agencies.</li> </ul> |
| 24.6                  | The provision that gives effect to Recommendation 24-5 should: <ul style="list-style-type: none"> <li>(a) generally be modelled on section 183(1), (2)(a), (c), (3)–(5) of the <i>Guardianship and Administration Act 2000</i> (Qld); and</li> <li>(b) provide that the Adult Guardian’s power to require information or access to documents includes the power to require: <ul style="list-style-type: none"> <li>(i) personal information about an adult if the provision of that information is necessary to comply with the Adult Guardian’s notice; and</li> <li>(ii) statistical information that is in the custody or control of an agency or person.</li> </ul> </li> </ul> | Support in principle | <ul style="list-style-type: none"> <li>• As above – see recommendation 24.5.</li> </ul>   |
| 24.7                  | The provisions that give effect to Recommendations 24.5 and 24.6 should provide that the maximum penalty for non-compliance with the requirements of those provisions is 100 penalty units  | Not support          | <ul style="list-style-type: none"> <li>• A penalty provision for non-compliance is not considered necessary, as usually data is collected using a collaborative approach.</li> </ul>  |

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| <b>CHAPTER 25 – THE PUBLIC TRUSTEE</b> |  |                     |   |
| 25.1                                   | Subject to Recommendations 25-2 to 25-5, the Public Trustee's powers under the <i>Guardianship and Administration Act 2000</i> (Qld) and the <i>Powers of Attorney Act 1998</i> (Qld) are appropriate and do not require amendment.  | Support             | <ul style="list-style-type: none"> <li>To generally keep the same powers for the Public Trustee under the <i>Guardianship and Administration Act 2000</i> and the <i>Powers of Attorney Act 1998</i>, with some changes (see recommendations 25.2-25.5).</li> </ul> |
| 25.2                                   | The <i>Guardianship and Administration Act 2000</i> (Qld) and the <i>Powers of Attorney Act 1998</i> (Qld) should each be amended to provide that, if the Public Trustee has power under the Act for a financial matter for an adult, the Public Trustee may delegate the power to an appropriately qualified member of the Public Trust Office's staff.   | Support             | <ul style="list-style-type: none"> <li>To clarify that the Public Trustee can delegate their powers, as an administrator or attorney, to an appropriately qualified staff member of the Office of the Public Trustee.</li> </ul>                                    |
| 25.3                                   | The <i>Guardianship and Administration Act 2000</i> (Qld) and the <i>Powers of Attorney Act 1998</i> (Qld) should each be amended to provide that, if the Public Trustee has power under the Act for a financial matter for an adult that includes the power to make day-to-day decisions about the matter, the Public Trustee may delegate the power to make day-to-day decisions about the matter to one of the following:<br>(a) an appropriately qualified carer of the adult;<br>(b) an attorney under an enduring document;<br>(c) one of the persons who could be eligible to be the adult's statutory health attorney; or<br>(d) any other person the Public Trustee, in the Public Trustee's discretion, considers appropriate. | Support             | <ul style="list-style-type: none"> <li>To allow the Public Trustee to delegate their powers, to make day to day decisions about financial matters, to an appropriately qualified specified persons outside the Public Trustee's office.</li> </ul>                  |

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| 25.4                  | The <i>Guardianship and Administration Act 2000</i> (Qld) and the <i>Powers of Attorney Act 1998</i> (Qld) should each be amended to provide that the Public Trustee may not, in exercising power under the provision that gives effect to Recommendation 25-3, delegate to the Adult Guardian the power to make day-to-day decisions about a financial matter.  | Support             | <ul style="list-style-type: none"> <li>To amend the law to provide that the Public Trustee cannot delegate the power to make day to day decisions about financial matters to the Adult Guardian.</li> </ul>                          |
| 25.5                  | For the purposes of the provisions that give effect to Recommendations 25-2 to 25-4, the <i>Guardianship and Administration Act 2000</i> (Qld) and the <i>Powers of Attorney Act 1998</i> (Qld) should each be amended to include the following definitions, based on the similar definitions in section 177(5) of the <i>Guardianship and Administration Act 2000</i> (Qld):<br>(a) <i>appropriately qualified</i> , for a person to whom a power may be delegated, includes having the qualifications, experience or standing appropriate to exercise the power;<br>(b) <i>day-to-day decision</i> means a minor, uncontroversial decision about day-to-day issues that involves no more than a low risk to the adult. | Support             | <ul style="list-style-type: none"> <li>To include definitions of what is meant by appropriately qualified persons and day to day decisions for the purpose giving effect to recommendations 25.2-25.4.</li> </ul>                    |
| 25.6                  | The <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to provide that each of the following decisions by the Public Trustee is a reviewable decision for the purposes of the QCAT Act:<br>(a) a decision made under the Act about a financial matter for an adult; and   | Not support         | <ul style="list-style-type: none"> <li>This recommendation, relates to recommendations 25.7-25.13.</li> <li>To maintain the status quo and look at improving the current review and accountability mechanisms such as the</li> </ul> |

| Report Recommendation |   | Government Response |   |
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|                       | (b) a decision to delegate the power to make day-to-day decisions about a financial matter for an adult.  |                     | ability of the Queensland Civil and Administrative Tribunal to give directions or advice to substitute decision-makers; and ability to review appointments. Also, a person may make a complaint to the Ombudsman. |
| 25.7                  | The <i>Powers of Attorney Act 1998</i> (Qld) should be amended to provide that each of the following decisions by the Public Trustee is a reviewable decision for the purposes of the QCAT Act:<br>(a) a decision made under the Act about a financial matter for an adult;<br>(b) a decision made under an enduring power of attorney about a financial matter for an adult; and<br>(c) a decision to delegate the power to make day-to-day decisions about a financial matter for an adult. | Not support         | <ul style="list-style-type: none"> <li>As above – see recommendation 25.6.</li> </ul>   |
| 25.8                  | The <i>Guardianship and Administration Act 2000</i> (Qld) and the <i>Powers of Attorney Act 1998</i> (Qld) should each be amended to provide that the charging of fees and costs by the Public Trustee is not a ‘reviewable decision’ of the Public Trustee.  | Not support         | <ul style="list-style-type: none"> <li>As above – see recommendation 25.6.</li> </ul>   |
| 25.9                  | The <i>Guardianship and Administration Act 2000</i> (Qld) and the <i>Powers of Attorney Act 1998</i> (Qld) should each be amended to provide that the following persons may apply to the Tribunal, as provided under the QCAT Act, for the  | Not support         | <ul style="list-style-type: none"> <li>As above – see recommendation 25.6.</li> </ul>   |

| Report Recommendation |   | Government Response |   |
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|                       | review of a reviewable decision of the Public Trustee:<br>(a) the adult who is the subject of the decision; and<br>(b) an interested person.  |                     |   |
| 25.10                 | The <i>Guardianship and Administration Act 2000</i> (Qld) and the <i>Powers of Attorney Act 1998</i> (Qld) should each be amended to provide that section 157 of the QCAT Act does not apply to a reviewable decision of the Public Trustee.  | Not support         | <ul style="list-style-type: none"> <li>As above – see recommendation 25.6.</li> </ul> |
| 25.11                 | The <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to include a provision, modelled on section 99E of the <i>Child Protection Act 1999</i> (Qld), requiring:<br>(a) the principal registrar to give notice of the review application to the Public Trustee; and<br>(b) the Public Trustee to give the principal registrar notice of the names and addresses of all persons, apart from the applicant, who would be entitled to receive notice of an application under rule 21 of the QCAT Rules or notice of a hearing under section 118 of the <i>Guardianship and Administration Act 2000</i> (Qld). | Not support         | <ul style="list-style-type: none"> <li>As above – see recommendation 25.6.</li> </ul> |
| 25.12                 | The <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to provide that the Tribunal must give notice of the application and of the hearing to those people to whom the Tribunal would be required to give notice if  | Not support         | <ul style="list-style-type: none"> <li>As above – see recommendation 25.6.</li> </ul> |

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|  | the hearing of the application were a guardianship proceeding under the <i>Guardianship and Administration Act 2000</i> (Qld).   |                      |  |
| 25.13                                  | Either the <i>Guardianship and Administration Act 2000</i> (Qld) or the QCAT Act should be amended so that sections 103 to 113 (including the new section 103A that has been recommended in Chapter 21 of this Report) and section 114A of the <i>Guardianship and Administration Act 2000</i> (Qld), or provisions in those terms, apply to an application for the review of a reviewable decision of the Public Trustee and the hearing of that application.   | Not support          | <ul style="list-style-type: none"> <li>As above – see recommendation 25.6.</li> </ul>  |
| <b>CHAPTER 26 – COMMUNITY VISITORS</b> |  |                      |  |
| 26.4                                   | Section 226(1) of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to clarify that, in addition to a consumer at a visitable site and ‘a person for the consumer’, each of the following may ask the chief executive, or a person employed at the visitable site, to arrange for a community visitor to visit the visitable site: <ul style="list-style-type: none"> <li>(a) a consumer’s guardian, administrator, attorney or statutory health attorney;</li> <li>(b) an interested person for a consumer;</li> <li>(c) the Adult Guardian;</li> <li>(d) an advocacy organisation</li> </ul> | Support in principle | <ul style="list-style-type: none"> <li>To amend the law to allow persons who have an obvious interest in the adult (for example, a consumer’s guardian, administrator or attorney) to request a community visitor to visit a ‘visitable site’.</li> <li>The exact detail of who can ask for a report is to be determined and subject to further consultation.</li> </ul> |

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| 26.9   | The Community Visitor Program is appropriately located within the Office of the Adult Guardian, and the Commission does not make any recommendation to change its place in the organisational structure of the Department of Justice and Attorney-General.  | Support             | <ul style="list-style-type: none"> <li>To maintain the current location of the community visitor program within the Office of the Adult Guardian.</li> </ul>  |
| <b>CHAPTER 27 - WHISTLEBLOWER PROTECTION</b> |   |                     |   |
| 27.1   | <p>Section 247(1) of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended in the following general terms:</p> <p>Whistleblowers' protection</p> <p>(1) A person is not liable, civilly, criminally or under administrative process, for disclosing information to an official if:</p> <p>(a) the person honestly believes on reasonable grounds that the person has information that tends to show that—</p> <p>(i) another person has breached the <i>Guardianship and Administration Act 2000</i> or the <i>Powers of Attorney Act 1998</i>; or</p> <p>(ii) an adult is, or has been, the subject of neglect (including self-neglect), exploitation or abuse;</p> <p>(b) the information would help in the assessment or investigation of a complaint that—</p> <p>(i) another person has breached the <i>Guardianship and Administration Act 2000</i> or the <i>Powers of Attorney Act 1998</i>; or</p> | Support             | <ul style="list-style-type: none"> <li>To widen the circumstances when a person may be protected from disclosing information to an official about a breach of guardianship legislation: <ul style="list-style-type: none"> <li>where the person honestly believes on reasonable grounds that they have information that tends to show a <u>suspected</u> breach of guardianship legislation; and</li> <li>where the person discloses information that would help in the assessment or investigation of a complaint about a breach of guardianship legislation.</li> </ul> </li> </ul> |

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|                       | (ii) an adult is, or has been, the subject of neglect (including self-neglect), exploitation or abuse; or<br>(c) without limiting paragraph (a) or (b), the disclosure is made in accordance with [the section that gives effect to Recommendation 11-5 ].  |                     |  |
| 27.2                  | The definition of 'official' in section 247(4) of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to include a reference to 'a public service officer involved in the administration of a program called the community visitor program'.  | Support             | <ul style="list-style-type: none"> <li>To amend the definition of 'official' to make it clear that the provisions protecting a person from disclosing information about an official includes disclosure to a <u>public service officer</u> involved in the community visitor program.</li> </ul> |
| 27.3                  | <p>The <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to include a provision, based on section 41 of the <i>Whistleblowers Protection Act 1994</i> (Qld), to the following effect:</p> <p>Reprisal and grounds for reprisal</p> <p>(1) A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that, anybody has disclosed, or may disclose, to an official information mentioned in section 247(1).</p> <p>(2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.</p> <p>(3) A contravention of subsection (1) is a reprisal or the taking of a reprisal.</p> <p>(4) A ground mentioned in subsection (1) as the ground for</p> | Support             | <ul style="list-style-type: none"> <li>To extend the law to protect a person, who discloses information to an official about a breach or suspected breach of legislation, from being subject to reprisal.</li> </ul>   |

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|   | a reprisal is the unlawful ground for the reprisal.<br>(5) For the contravention to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.               |                     |   |
| 27.4  | The <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to include a provision to the effect of section 42 of the <i>Whistleblowers Protection Act 1994</i> (Qld), so that it is an indictable offence for a person to take a reprisal.                      | Support             | <ul style="list-style-type: none"> <li>• This recommendation relates to recommendations 27.3 and 27.5.</li> <li>• Subject to further consultation, to make it a criminal and civil offence for a person to take reprisal against a person who discloses information to an official about a breach or suspected breach of guardianship legislation.</li> </ul> |
| 27.5  | The <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to include a provision to the effect of section 43 of the <i>Whistleblowers Protection Act 1994</i> (Qld), so that the taking of a reprisal is a tort for which the person may be liable in damages. | Support             | <ul style="list-style-type: none"> <li>• As above – see recommendation 27.4.</li> </ul>   |
| <b>CHAPTER 28 – LEGAL PROCEEDINGS INVOLVING ADULTS WITH IMPAIRED CAPACITY</b> |  |                     |   |
| 28.4  | The <i>Uniform Civil Procedure Rules 1999</i> (Qld) should be amended:<br>(a) to include a rule, based on rule 277(3) of the <i>Court Procedures Rules 2006</i> (ACT), to the effect that a litigation guardian for a defendant or respondent is not liable for any              | Support             | <ul style="list-style-type: none"> <li>• To amend the <i>Uniform Civil Procedure Rules 1999</i> to make it clear that a litigation guardian for the adult (where the adult is a defendant or respondent in a civil proceeding) will not normally be liable for</li> </ul>   |

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|                       | <p>costs in a proceeding unless the costs are incurred because of the litigation guardian's negligence or misconduct; and</p> <p>(b) to include a rule, to the following general effect, dealing with the court's power to make an order in relation to the costs of a party who has a litigation guardian:</p> <p>(1) This rule applies if a party to a proceeding has a litigation guardian for the proceeding.</p> <p>(2) If the court considers it in the interests of justice, the court may order that all or part of the party's costs of the proceeding be borne by another party to the proceeding.</p> <p>(3) The court may make an order under this rule at any stage of the proceeding or after the proceeding ends.</p> |                     | <p>costs of the other party to the proceeding unless the costs are incurred because of the litigation guardian's negligence or misconduct.</p>  |
| 28.10                 | <p>Section 245(1) of <i>the Guardianship and Administration Act 2000</i> (Qld) should be amended to provide as follows:</p> <p>(1) This section applies if—</p> <p>(a) in a civil proceeding—</p> <p>(i) the court sanctions a settlement between another person and an adult or orders an amount to be paid by another person to an adult; or</p> <p>(ii) an amount is to be paid by another person to an adult under the terms of a settlement of the proceeding; and</p> <p>(b) the court considers the adult is a person with impaired capacity to receive and manage the amount payable under the settlement or order mentioned in subparagraph (a)(i) or the settlement mentioned in subparagraph (ii).</p>                    | Support             | <ul style="list-style-type: none"> <li>• To address a legislative gap to allow the Supreme or District Court to appoint an administrator for the adult where: <ul style="list-style-type: none"> <li>- in settlement of a civil proceeding, an amount is to be paid by another person to an adult; and</li> <li>- the court considers that the adult is a person with impaired capacity to receive and manage that amount.</li> </ul> </li> </ul> |

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| <b>CHAPTER 29 – REMUNERATION</b> |  |                     |  |
| 29.2                             | The Public Trustee should continue to be entitled to charge for administration services provided when:<br>(a) acting as an administrator under the <i>Guardianship and Administration Act 2000</i> (Qld) or an attorney under an enduring power of attorney made under the <i>Powers of Attorney Act 1998</i> (Qld); or<br>(b) taken to be an adult’s attorney under section 196 of the <i>Guardianship and Administration Act 2000</i> (Qld) during the suspension of an enduring power of attorney for financial matters.  | Support             | <ul style="list-style-type: none"> <li>To continue to allow the Public Trustee to charge for administration services when they act as an administrator or attorney under an enduring power of attorney.</li> </ul>       |
| 29.3                             | The Commission makes Recommendations 29-4 to 29-6 below if, despite the amendments made to the <i>Corporations Act 2001</i> (Cth) by the <i>Corporations Legislation Amendment (Financial Services Modernisation) Act 2009</i> (Cth), it becomes possible in the future for State legislation to regulate the remuneration of a trustee company that is acting as:<br>(a) an adult’s administrator under the <i>Guardianship and Administration Act 2000</i> (Qld); or<br>(b) an adult’s attorney for financial matters under an enduring power of attorney made under the <i>Powers of Attorney Act 1998</i> (Qld). | Support             | <ul style="list-style-type: none"> <li>This recommendation relates to recommendations 29.4 and 29.5.</li> <li>To look at the remuneration of trustee companies if State regulation in the future is possible.</li> </ul> |

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| 29.4                  | <p>Section 48 of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended:</p> <p>(a) to enable the Tribunal, subject to section 48(2), to order that a trustee company that is appointed as an administrator is entitled to such remuneration from the adult as the Tribunal orders;</p> <p>(b) to enable the Tribunal to order that, in respect of future services provided to an adult, a trustee company that was appointed as the adult's administrator before the commencement of the provision amending section 48 is entitled, subject to section 48(2), to such remuneration from the adult as the Tribunal orders; and</p> <p>(c) by replacing section 48(3) with a provision to the following effect:</p> <p>Nothing in this section affects the right of the public trustee, or a trustee company that is acting as an attorney for financial matters under an enduring power of attorney, to remuneration under another Act.</p> | Support             | <ul style="list-style-type: none"> <li>As above - see recommendation 29.3.</li> </ul> |
| 29.5                  | <p>Section 245 of the <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to provide that, in addition to exercising all the powers of the Tribunal under Chapter 3, the court may exercise the power of the Tribunal under section 48 to authorise the remuneration of a trustee company that the court appoints as an adult's administrator.</p>   | Support             | <ul style="list-style-type: none"> <li>As above - see recommendation 29.3.</li> </ul> |

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| <b>CHAPTER 30 – MISCELLANEOUS ISSUES</b> |   |                     |   |
| 30.1                                     | The <i>Guardianship and Administration Act 2000</i> (Qld) should be amended to include a new provision, modelled on former section 83(1)–(4) of the <i>Public Trustee Act 1978</i> (Qld), to deal with the power of an adult who has impaired capacity to deal with his or her property and the consequences of the entry into a transaction by the adult.  | Not support         | <ul style="list-style-type: none"> <li>• This recommendation relates to recommendations 30.2-30.5.</li> <li>• Not to change the law and to keep the current common law requirements around entering into contracts with an adult with impaired capacity.</li> </ul>                               |
| 30.2                                     | The proposed new contractual capacity provision should apply to all adults who have impaired capacity and not be limited to adults for whom an administrator has been appointed.  | Not support         | <ul style="list-style-type: none"> <li>• To maintain the status quo – that is, incapacitated adults (unless an administrator is appointed) are bound in contract unless they prove the other party knew or ought to have known that the person they were dealing with lacked capacity.</li> </ul> |
| 30.3                                     | The proposed new contractual capacity provision should provide that if an adult with impaired capacity enters into a contract or makes a disposition with, or in favour of another person, without the leave of the Tribunal or the Court, the contract or disposition is avoidable by: <ul style="list-style-type: none"> <li>(a) the adult; or</li> <li>(b) an administrator appointed for the adult; or</li> <li>(c) an attorney appointed by the adult under an enduring power of attorney to exercise power for the adult for a financial matter to which the transaction relates during a period when the adult has impaired capacity.</li> </ul> | Not support         | <ul style="list-style-type: none"> <li>• This recommendation is ancillary to recommendations 30.1 and 30.2, if they were adopted.</li> </ul>  |

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| 30.4                  | The proposed new contractual capacity provision should provide that nothing in that section will affect any contract or disposition entered into or made by an adult with impaired capacity if the other party to the contract or disposition proves that he or she acted in good faith and for adequate consideration and was not aware or could not have reasonably been aware that the adult had impaired capacity for the transaction. | Not support         | <ul style="list-style-type: none"> <li>This recommendation is ancillary to recommendations 30.1 and 30.2, if they were adopted.</li> </ul> |
| 30.5                  | The proposed new contractual capacity provision should provide that nothing in that section affects any contract for necessities entered into by the adult.  | Not support         | <ul style="list-style-type: none"> <li>This recommendation is ancillary to recommendations 30.1 and 30.2, if they were adopted.</li> </ul> |