



Queensland

# **Guardianship and Administration and Other Legislation Amendment Act 2012**

**Act No. 37 of 2012**





Queensland

# Guardianship and Administration and Other Legislation Amendment Act 2012

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	6
2	Commencement . . . . .	6
<b>Part 2</b>	<b>Amendment of Guardianship and Administration Act 2000</b>	
3	Act amended . . . . .	6
4	Insertion of new s 207A . . . . .	6
	207A Definitions for pt 1. . . . .	7
5	Amendment of s 209 (Functions—systemic advocacy) . . . . .	7
6	Insertion of new s 209A . . . . .	7
	209A Report about systemic matter . . . . .	7
7	Insertion of new ss 210A and 210B . . . . .	8
	210A Right to information . . . . .	8
	210B Offence to publish confidential information. . . . .	9
8	Insertion of new s 248B . . . . .	9
	248B Protection from liability for giving information . . . . .	9
9	Amendment of s 249 (Protected use of confidential information). . . . .	10
10	Amendment of sch 4 (Dictionary) . . . . .	11
<b>Part 3</b>	<b>Amendment of Electoral Act 1992</b>	
11	Act amended . . . . .	11
12	Amendment of s 2 (Definitions) . . . . .	11
13	Amendment of s 17 (Delegation by commission) . . . . .	11
14	Amendment of s 197 (Definitions) . . . . .	11
15	Omission of pt 11, div 5 (Administrative expenditure funding) . . . . .	12
16	Insertion of pt 13, div 6 . . . . .	12

Contents

---

	Division 6	Transitional provisions for Guardianship and Administration and Other Legislation Amendment Act 2012	
	415	Definitions for div 6 . . . . .	12
	416	Entitlement of registered political party to administrative funding ends . . . . .	12
	417	Entitlement of independent member to administrative funding ends. . . . .	13
<b>Part 4</b>		<b>Amendment of Electrical Safety Act 2002</b>	
17		Act amended . . . . .	13
18		Amendment of s 5 (How purpose of Act is to be achieved) . . . . .	13
19		Omission of pt 6 (Commissioner for electrical safety) . . . . .	14
20		Amendment of s 77 (Composition of board). . . . .	14
21		Amendment of s 85 (Annual report). . . . .	14
22		Amendment of s 86 (Establishment of board committees). . . . .	14
23		Amendment of s 89 (Composition of licensing committee) . . . . .	15
24		Omission of pt 8, divs 3 and 4 . . . . .	15
25		Renumbering of pt 8, div 5 . . . . .	15
26		Amendment of s 98 (Composition of advisory committee). . . . .	15
27		Renumbering of pt 8, div 6 . . . . .	16
28		Amendment of s 99 (Conditions of appointment to board committee) . . . . .	16
29		Amendment of s 184 (Certificate about action on electrical licence) . . . . .	16
30		Amendment of s 205 (Protecting officials from liability) . . . . .	16
31		Insertion of new pt 18A. . . . .	16
	Part 18A	Transitional provisions for the Guardianship and Administration and Other Legislation Amendment Act 2012	
	246A	Vacation of office of members of certain committees. . . . .	17
	246B	Commencement provision . . . . .	17
32		Amendment of sch 2 (Dictionary). . . . .	17
<b>Part 5</b>		<b>Amendment of Legal Profession Act 2007</b>	
33		Act amended . . . . .	18
34		Amendment of s 598 (Constitution of tribunal). . . . .	18
<b>Part 6</b>		<b>Amendment of Motor Accident Insurance Act 1994</b>	
35		Act amended . . . . .	18
36		Amendment of s 68 (Review of the commission's decisions by QCAT) . . . . .	19

<b>Part 7</b>	<b>Amendment of Penalties and Sentences Act 1992</b>	
37	Act amended . . . . .	19
38	Amendment of s 179C (Imposition of offender levy) . . . . .	19
<b>Part 8</b>	<b>Amendment of Queensland Civil and Administrative Tribunal Act 2009</b>	
39	Act amended . . . . .	20
40	Amendment of s 52 (Transfer to more appropriate forum) . . . . .	20
41	Amendment of s 59 (Injunctions) . . . . .	20
42	Amendment of s 60 (Declarations) . . . . .	20
43	Amendment of s 61 (Relief from procedural requirements) . . . . .	20
44	Amendment of s 62 (Directions) . . . . .	21
45	Amendment of s 63 (Obtaining a document or thing from third parties) . . . . .	21
46	Amendment of sch 3 (Dictionary) . . . . .	21
<b>Part 9</b>	<b>Amendment of Trustee Companies Act 1968</b>	
47	Act amended . . . . .	21
48	Amendment of s 68C (Compulsory transfer determinations) . . . . .	21
<b>Part 10</b>	<b>Amendment of Work Health and Safety Act 2011</b>	
49	Act amended . . . . .	23
50	Omission of s 374 (Amendment of s 94 (Functions of equipment committee)) . . . . .	23
<b>Part 11</b>	<b>Minor and consequential amendments</b>	
51	Acts amended . . . . .	23
<b>Schedule</b>	<b>Minor and consequential amendments</b> . . . . .	24
	Guardianship and Administration Act 2000 . . . . .	24
	Powers of Attorney Act 1998 . . . . .	28





Queensland

## **Guardianship and Administration and Other Legislation Amendment Act 2012**

**Act No. 37 of 2012**

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**An Act to amend the Guardianship and Administration Act 2000, the Electoral Act 1992, the Electrical Safety Act 2002, the Legal Profession Act 2007, the Motor Accident Insurance Act 1994, the Penalties and Sentences Act 1992, the Queensland Civil and Administrative Tribunal Act 2009, the Trustee Companies Act 1968 and the Work Health and Safety Act 2011 for particular purposes, and to make minor and consequential amendments of the Acts mentioned in the schedule**

**[Assented to 22 November 2012]**

[s 1]

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Guardianship and Administration and Other Legislation Amendment Act 2012*.

### **2 Commencement**

- (1) Parts 4 and 10 commence—
  - (a) if this Act is assented to on or before 4 November 2012—on 5 November 2012; or
  - (b) otherwise—on assent.
- (2) Part 7 is taken to have commenced on 21 August 2012.

## **Part 2 Amendment of Guardianship and Administration Act 2000**

### **3 Act amended**

This part amends the *Guardianship and Administration Act 2000*.

*Note—*

See also the amendments in the schedule.

### **4 Insertion of new s 207A**

Chapter 9, part 1—



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*insert—*

**‘207A Definitions for pt 1**

‘In this part—

*confidential information* see section 246.

*information* includes confidential information.’.

**5 Amendment of s 209 (Functions—systemic advocacy)**

Section 209—

*insert—*

- ‘(2) However, it is not the function of the public advocate to investigate a complaint or allegation that concerns a particular adult with impaired capacity for a matter.’.

**6 Insertion of new s 209A**

After section 209—

*insert—*

**‘209A Report about systemic matter**

- ‘(1) The public advocate may—
- (a) prepare a report about a matter arising from the performance of the public advocate’s functions under this Act; and
  - (b) give a copy of the report to the Minister.
- ‘(2) The report must not contain confidential information that is likely to result in the identification, by a member of the public, of an adult with impaired capacity to whom the information relates.
- ‘(3) If the public advocate proposes to include information adverse to a person in the report—
- (a) the public advocate must not include the information in the report unless, before the report is prepared, the

[s 7]

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public advocate gives the person an opportunity to make submissions about the information; and

- (b) if the person makes submissions and the public advocate still proposes to include the information in the report, the public advocate must ensure the person's submissions are fairly stated in the report.

'(4) The Minister must table a copy of the report in the Legislative Assembly within 5 sitting days after receiving the report.'

## **7 Insertion of new ss 210A and 210B**

After section 210—

*insert—*

### **'210A Right to information**

'(1) For performing the public advocate's functions, the public advocate has a right to all information—

- (a) necessary to monitor and review the delivery of services and facilities to adults with impaired capacity for a matter; and
- (b) about the arrangements for the provision of services and facilities to a class of the adults; and
- (c) about the policies and procedures of a service or facility that relate to the provision of services and facilities to the adults.

'(2) The public advocate may, by written notice given to a person who has custody or control of the information, require the person, within a stated reasonable time—

- (a) to give the information to the public advocate; and
- (b) if the information is contained in a document—to allow the public advocate to inspect the document and take a copy of it.

'(3) The notice must state the purpose for making the requirement.

'(4) The person must comply with the notice, unless the person has a reasonable excuse.

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Maximum penalty—100 penalty units.

- ‘(5) It is a reasonable excuse for a person to fail to comply with the notice because, for example, complying with the notice—
  - (a) might tend to incriminate the person; or
  - (b) would require the person to disclose information that is the subject of legal professional privilege.
- ‘(6) Despite subsection (2), the public advocate must not give a notice to any of the following people—
  - (a) an adult with impaired capacity for a matter;
  - (b) a family member or close friend of the adult who is a member of the adult’s support network.

### **‘210B Offence to publish confidential information**

- ‘(1) This section applies to information given to, or inspected or copied by, the public advocate under section 210A to the extent the information comprises confidential information.
- ‘(2) The public advocate or a member of the public advocate’s staff must not, without reasonable excuse, publish the information to the public if the publication is likely to result in the identification, by a member of the public, of a person to whom the information relates.

Maximum penalty—200 penalty units.’.

## **8 Insertion of new s 248B**

After section 248A—

*insert—*

### **‘248B Protection from liability for giving information**

- ‘(1) This section applies to the giving of information—
  - (a) to the adult guardian under section 183 or 184; or
  - (b) to the public advocate under section 210A.

[s 9]

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- ‘(2) A person may give the information despite any other law that would otherwise prohibit or restrict the giving of the information.
- ‘(3) If a person, acting honestly, gives the information to the adult guardian or the public advocate, the person is not liable, civilly, criminally or under an administrative process, for giving the information.
- ‘(4) Also, merely because the person gives the information, the person can not be held to have—
  - (a) breached any code of professional etiquette or ethics; or
  - (b) departed from accepted standards of professional conduct.
- ‘(5) Without limiting subsections (3) and (4)—
  - (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and
  - (b) if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person—
    - (i) does not contravene the Act, oath or rule of law or practice by giving the information; and
    - (ii) is not liable to disciplinary action for giving the information.
- ‘(6) In this section—  
*giving*, of information contained in a document, includes allowing the document to be inspected and a copy to be taken of it.’.

## 9 Amendment of s 249 (Protected use of confidential information)

Section 249—

*insert*—

- ‘(4) This section applies subject to section 210B.’.

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**10 Amendment of sch 4 (Dictionary)**

Schedule 4—

*insert—*

*‘confidential information—*

(a) for chapter 9, part 1, see section 207A; or

(b) for chapter 11, part 4, see section 246.

*information, for chapter 9, part 1, see section 207A.’.*

**Part 3 Amendment of Electoral Act  
1992**

**11 Act amended**

This part amends the *Electoral Act 1992*.

**12 Amendment of s 2 (Definitions)**

Section 2, definition *independent member—*

*omit.*

**13 Amendment of s 17 (Delegation by commission)**

Section 17(3) and (4), ‘or 249(1)’—

*omit.*

**14 Amendment of s 197 (Definitions)**

Section 197, definition *independent member—*

*omit.*

[s 15]

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**15 Omission of pt 11, div 5 (Administrative expenditure funding)**

Part 11, division 5—

*omit.*

**16 Insertion of pt 13, div 6**

After section 414—

*insert—*

**‘Division 6 Transitional provisions for  
Guardianship and Administration  
and Other Legislation Amendment  
Act 2012**

**‘415 Definitions for div 6**

‘In this division—

*amending Act* means the *Guardianship and Administration and Other Legislation Amendment Act 2012*.

*final funding period* means the period starting on 1 July 2012 and ending on 31 December 2012.

*independent member* means an independent member as defined under section 242 as in force immediately before the commencement of the amending Act, section 15.

*repealed administrative funding provisions* means part 11, division 5 as in force immediately before the commencement of the amending Act, section 15.

**‘416 Entitlement of registered political party to administrative funding ends**

‘The last period for which a registered political party is entitled to be paid administrative funding under the repealed administrative funding provisions is the final funding period.

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**417 Entitlement of independent member to administrative funding ends**

- ‘(1) The last period for which an independent member is entitled to be paid administrative funding under the repealed administrative funding provisions is the final funding period.
- ‘(2) The repealed administrative funding provisions continue to apply in relation to an independent member until, for each funding period for which the member is entitled to be paid administrative funding, the member has been paid all of the administrative funding payable to the member.’.

## **Part 4    Amendment of Electrical Safety Act 2002**

**17 Act amended**

This part amends the *Electrical Safety Act 2002*.

**18 Amendment of s 5 (How purpose of Act is to be achieved)**

Section 5(e) and (f)—

*omit, insert—*

- ‘(e) establishing the Electrical Safety Board and its committees to—
- (i) advise the Minister on electrical safety matters; and
  - (ii) allow industry and the community to participate in developing strategies for improving electrical safety; and
  - (iii) participate in developing requirements for the licensing and discipline of persons who perform electrical work.’.

[s 19]

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**19 Omission of pt 6 (Commissioner for electrical safety)**

Part 6—

*omit.*

**20 Amendment of s 77 (Composition of board)**

(1) Section 77(1)(a)—

*omit, insert—*

‘(a) 1 member appointed by the Minister as chairperson of the board;’.

(2) Section 77—

*insert—*

‘(1A) To be appointed chairperson a person must have professional experience in the electrical industry.’.

(3) Section 77(2), after ‘of the board’—

*insert—*

‘under subsection (1)(c)’.

(4) Section 77(1A) and (2)—

*renumber* as section 77(2) and (3).

**21 Amendment of s 85 (Annual report)**

Section 85(1), ‘commissioner, as chairperson of the board,’—

*omit, insert—*

‘chairperson of the board’.

**22 Amendment of s 86 (Establishment of board committees)**

Section 86(1), ‘3 named committees’—

*omit, insert—*

‘the Electrical Licensing Committee’.



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**23 Amendment of s 89 (Composition of licensing committee)**

(1) Section 89(1)(a)—

*omit, insert—*

‘(a) 1 member appointed by the Minister as chairperson of the committee;’.

(2) Section 89—

*insert—*

‘(1A) To be appointed chairperson a person must have—

(a) an electrical trade or qualification; and

(b) professional experience in electrical safety.

‘(1B) Subject to subsection (2), the chairperson of the board may be appointed as chairperson of the committee.’.

(3) Section 89(2), after ‘of the committee’—

*insert—*

‘under subsection (1)(b)’.

(4) Section 89(1A) to (2)—

*renumber* as section 89(2) to (4).

**24 Omission of pt 8, divs 3 and 4**

Part 8, divisions 3 and 4—

*omit.*

**25 Renumbering of pt 8, div 5**

Part 8, division 5—

*renumber* as part 8, division 3.

**26 Amendment of s 98 (Composition of advisory committee)**

Section 98(3), ‘the commissioner is not’—

*omit, insert—*

[s 27]

---

‘neither the chairperson of the board nor the chairperson of the licensing committee is’.

**27 Renumbering of pt 8, div 6**

Part 8, division 6—

*renumber* as part 8, division 4.

**28 Amendment of s 99 (Conditions of appointment to board committee)**

Section 99(4)—

*omit*.

**29 Amendment of s 184 (Certificate about action on electrical licence)**

Section 184, ‘commissioner’—

*omit, insert*—

‘chairperson of the licensing committee’.

**30 Amendment of s 205 (Protecting officials from liability)**

(1) Section 205(3), definition *official*, paragraph (c)—

*omit*.

(2) Section 205(3), definition *official*, paragraphs (d) and (e)—

*renumber* as paragraphs (c) and (d).

**31 Insertion of new pt 18A**

After section 246—

*insert*—

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**‘Part 18A**                      **Transitional provisions for the  
Guardianship and  
Administration and Other  
Legislation Amendment Act  
2012**

**‘246A Vacation of office of members of certain committees**

- ‘(1) This section applies to the members of the Electrical Safety Education Committee and the members of the Electrical Equipment Committee holding office immediately before the commencement of this section.
- ‘(2) On the commencement of this section the members’ appointments as members of either committee ends.

**‘246B Commencement provision**

- ‘(1) This section applies if section 387 of the *Work Health and Safety Act 2011*, to the extent it replaces section 205 of this Act, commences before section 30 of the *Guardianship and Administration and Other Legislation Amendment Act 2012* (the *amending section*) commences.
- ‘(2) The amending section is taken not to have commenced and is repealed.’.

**32 Amendment of sch 2 (Dictionary)**

- (1) Schedule 2, definitions *equipment committee* and *safety education committee*—  
*omit.*
- (2) Schedule 2, definition *advisory committee*, ‘division 5’—  
*omit, insert*—  
‘division 3’.



**36 Amendment of s 68 (Review of the commission's decisions by QCAT)**

- (1) Section 68(2), from 'judicial member'—  
*omit, insert—*  
'judicial member who is a Supreme Court judge.'
- (2) Section 68—  
*insert—*
- '(4) In this section—  
*judicial member* see the QCAT Act, schedule 3.'

**Part 7 Amendment of Penalties and Sentences Act 1992**

**37 Act amended**

This part amends the *Penalties and Sentences Act 1992*.

**38 Amendment of s 179C (Imposition of offender levy)**

Section 179C(6), after '29'—  
*insert—*  
'or 33'.



**44 Amendment of s 62 (Directions)**

Section 62(7)(b), from ‘if’ to ‘proceeding—’—  
*omit.*

**45 Amendment of s 63 (Obtaining a document or thing from third parties)**

Section 63(6)(b), from ‘if’ to ‘proceeding—’—  
*omit.*

**46 Amendment of sch 3 (Dictionary)**

Schedule 3, definition *judicial member*—  
*insert—*

‘(c) includes a senior member or ordinary member who is a former judge and is nominated by the president to constitute the tribunal for a matter or class of matters.’.

## **Part 9 Amendment of Trustee Companies Act 1968**

**47 Act amended**

This part amends the *Trustee Companies Act 1968*.

**48 Amendment of s 68C (Compulsory transfer determinations)**

(1) Section 68C, heading, ‘Compulsory transfer’—  
*omit, insert—*

**‘Transfer’.**

(2) Section 68C(1)(a)—

[s 48]

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*omit, insert—*

‘(a) ASIC makes a determination under the Corporations Act, section 601WBA that there is to be a transfer of estate assets and liabilities from a trustee company (the ***transferring company***) to another trustee company (the ***receiving company***); and’.

(3) Section 68C—

*insert—*

- ‘(5) The registrar of titles or other person required or authorised by law to register or record transactions affecting assets or liabilities—
- (a) may, without formal application, register or record in the appropriate way the transfer of an asset or liability under the certificate to the receiving company; and
  - (b) must, on written application by the receiving company, register or record in the appropriate way the transfer of an asset or liability under the certificate to the receiving company.
- ‘(6) A transaction related to an asset or liability transferred to a receiving company entered into by the receiving company in the transferring company’s name or the name of a predecessor in title to the transferring company, if effected by an instrument otherwise in registrable form, must be registered even though the receiving company has not been registered as proprietor of the asset or liability.
- ‘(7) If an asset or liability is registered in the name of a receiving company, the registrar of titles or other registering authority may register a dealing for a transaction about the asset or liability without being concerned to enquire whether it is, or is not, an asset or liability transferred under a certificate.
- ‘(8) For the purposes of this section, the public trustee is taken to be a trustee company.’.



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## **Part 10**                      **Amendment of Work Health and Safety Act 2011**

### **49**      **Act amended**

This part amends the *Work Health and Safety Act 2011*.

### **50**      **Omission of s 374 (Amendment of s 94 (Functions of equipment committee))**

Section 374—

*omit.*

*Editor's note—*

Legislation ultimately amended—

- *Electrical Safety Act 2002*

## **Part 11**                      **Minor and consequential amendments**

### **51**      **Acts amended**

The schedule amends the Acts it mentions.

## **Schedule                      Minor and consequential amendments**

section 51

### **Guardianship and Administration Act 2000**

#### **1            Amendment of particular provisions to replace ‘Editor’s note—’ with ‘Note—’**

The editor’s note in each of the following provisions is amended by omitting ‘Editor’s note—’ and inserting ‘Note—’—

- section 22(3)
- section 34(1)
- section 61
- section 79(1)(a)
- section 80H(2)(b)
- section 80I(2)(a) and (d)
- section 80L(2)
- section 126(1)
- section 146(3)
- section 173
- section 185(2)
- section 186(3)
- section 197(2)
- section 198A
- section 240
- schedule 1, section 12(2)(b).

- 
- 2 Section 26(3), '(aa), (b) or (d)'—**  
*omit, insert—*  
'(b), (c), (d) or (f)'.
- 3 Section 65, note, before 'section 68(1)'—**  
*insert—*  
'see'.
- 4 Section 80U, definitions *mechanical restraint* and *physical restraint*—**  
*omit.*
- 5 Section 80W(ba) to (d)—**  
*renumber* as section 80W(c) to (e).
- 6 Section 80ZE(5)(aa) to (e)—**  
*renumber* as section 80ZE(5)(b) to (f).
- 7 Section 80ZQ(ea) to (h)—**  
*renumber* as section 80ZQ(f) to (i).
- 8 Section 80ZS(2)(b)(v), 'plan;'—**  
*omit, insert—*  
'plan; and'.
- 9 Section 118(1)(fa)(iii), 'health;'—**  
*omit, insert—*  
'health; and'.

Schedule

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- 10 Section 118(1)(fa) and (g)—**  
*renumber* as section 118(1)(g) and (h).
- 11 Section 227(3), penalty, ‘for subsection (3)’—**  
*omit.*
- 12 Section 246, definitions *commission* and *substituted decision-making review*—**  
*omit.*
- 13 Section 246, definition *relevant person*, paragraph (g)—**  
*omit.*
- 14 Section 248A(3), definition *authorised forensic examination*, ‘of an adult’—**  
*omit, insert—*  
‘, of an adult.’.
- 15 Section 249(3)(j)—**  
*omit.*
- 16 Section 253, heading, ‘Definitions’—**  
*omit, insert—*  
‘**Definition**’.
- 17 Section 258, heading, ‘Definitions’—**  
*omit, insert—*  
‘**Definition**’.

- 
- 18 Chapter 12, part 6, heading, ‘provision’—**  
*omit, insert—*  
**‘provisions’.**
- 19 Schedule 1, section 9(2), editor’s notes, ‘Editor’s notes—’—**  
*omit, insert—*  
*‘Notes—’.*
- 20 Schedule 2, section 1(l) to (q)—**  
*renumber* as schedule 2, section 1(k) to (p).
- 21 Schedule 4, definitions *mechanical restraint* and *physical restraint*—**  
*omit.*
- 22 Schedule 4—**  
*insert—*  
*‘adult guardian’s delegate for an investigation*, for chapter 11, part 4, see section 246.  
*consultant*, for chapter 11, part 4, see section 246.  
*relevant person*, for chapter 11, part 4, see section 246.  
*relevant tribunal person*, for chapter 11, part 4, see section 246.  
*tribunal expert*, for chapter 11, part 4, see section 246.  
*use*, for chapter 11, part 4, see section 246.’.

## **Powers of Attorney Act 1998**

**1 Section 74(3)(j)—**

*omit.*

**2 Section 74(4), definitions *commission* and *substituted decision-making review*—**

*omit.*

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