

CLAUSE NOTES

GUARDIANSHIP AND ADMINISTRATION AMENDMENT BILL 2013

- Clause 1: Short title**
Provides that the short title of the Act is the Guardianship and Administration Amendment Act 2013.
- Clause 2: Commencement**
Provides that the Act commences on the day on which it receives the Royal Assent
- Clause 3: Principal Act**
Provides that where the term “Principal Act” is referred to in this Bill, it is defined to mean the Guardianship and Administration Act 1995
- Clause 4: Section 3 amended (Interpretation)**
Inserts a definition of the term “appointer” as this term is used in the amendments made by this Bill.
- Clause 5: Sections 32AB, 32AC and 32AD inserted**
- Section 32AB. Right of enduring guardian to information**
Subsection (1) provides that an enduring guardian has the right to all the information to which the appointer is, or would be but for mental incapacity, entitled to have provided, if that information is reasonably required for them to exercise a power as enduring guardian. Subsection (2) provides the enduring guardian with a right to obtain a certified copy of the will of the appointer if the appointer has

lost capacity. Subsection (3) places a duty on person with custody or control of the information mentioned in (1) or (2) to disclose that information to the enduring guardian. Subsection (4) provides that subsections (1), (2) and (3) are subject to any contrary intention or express limitation contained in the instrument of appointment of enduring guardian.

Section 32AC. Transactions that may involve conflict of duty

Prohibits an enduring guardian from entering into a “conflict transaction” unless this is specifically authorised in the instrument of appointment. A conflict transaction is a transaction that results in, or may result in, conflict between the duty of the enduring guardian and the appointer and either the interests of the enduring guardian or a relative, business associate or close friend of the enduring guardian or another duty of the enduring guardian. Subsection(3) specifically exempts certain dealings with property held jointly by the donor and the attorney.

Section 32AD. Keeping of records, &c.

Inserts a requirement that the enduring guardian must keep an accurate record of all dealings and transactions made under the power. When a person ceases to be an enduring guardian, they must either retain the records for 7 years or provide the records to the Board. A person with a proper interest in the matter may apply to the Board to request the enduring guardian to provide the records to the Board. If the enduring guardian fails to

comply with this request they are liable to a fine of 20 penalty units.

Clause 6: Section 90B inserted

90B. Transitional provisions consequent on Guardianship and Administration Amendment Act 2013.

Outlines whether provisions of this Bill apply to enduring guardianships created before the commencement of this Bill or not.

Clause 7: Repeal of Act

Is a standard clause in all amending legislation which automatically repeals the amending legislation after the Act commences.