

CLAUSE NOTES

Guardianship and Administration Amendment Bill 2015

- Clause 1:** **Short title**
The Clause provides that the Act may be cited as the *Guardianship and Administration Amendment Act 2015*.
- Clause 2:** **Commencement**
The Act will commence on the day on which it receives the Royal Assent.
- Clause 3:** **Principal Act**
A reference in this Act to the Principal Act is a reference to the *Guardianship and Administration Act 1995*.
- Clause 4:** **Section 3 amended (Interpretation)**
Definitions of the terms “intimate forensic procedure” and “non-intimate forensic procedure” are inserted into the Principal Act. These definitions duplicate those in the *Forensic Procedures Act 2000*. The definition of “medical or dental treatment” in the Principal Act is also amended so that the term “medical or dental treatment” now includes an “intimate forensic procedure” or a “non-intimate forensic procedure”.
- Clause 5:** **Section 4 amended (Meaning of “person responsible”)**
Amends section 4, subsection (1) of the Principal Act so that, in the case of an intimate forensic procedure or a non-intimate forensic procedure the Public Guardian can be deemed to be the person responsible for the incapacitated person.
- New subsection (1A) is inserted to provide a framework for how and when the Public Guardian is to become the person responsible for the incapacitated person. A police officer or registered practitioner may request the Public Guardian to become the person responsible for an incapacitated person if the police officer or registered medical practitioner reasonably believes that the carrying out of the procedure on the person would be in the person’s best interests having regard to certain matters. These matters are outlined at new subsection (1B).
- New subsection (1B) provides that the matters to be taken into account are that a person responsible, who is not the public guardian, has refused to provide consent to the carrying out of the procedure or is unavailable, inaccessible or consent cannot be sought within a reasonable time; or that there is no person responsible who is not the Public Guardian; or that it is not in the best interests of the person for the consent of a person responsible who is not the Public Guardian to be sought.

- Clause 6:** **Section 43 amended (Consent by persons responsible)**
Inserts additional criteria for a person responsible to consider when consenting to a forensic procedure.
- Clause 7:** **Section 45 amended (Consent of Board)**
The Guardianship and Administration Board may provide consent to the carrying out of an intimate forensic procedure or a non-intimate forensic procedure if the Board is satisfied that it is in the best interests of an incapacitated person. The Board must take into account that a police officer or registered medical practitioner: suspects that that person is the victim of a crime; and reasonably believes that the person responsible for that person may have committed the crime of which that person is suspected of being a victim; or that that person's interests would not be protected if the consent of a person responsible is sought.
- Clause 8:** **Repeal of Act**
Is a standard clause in all amending legislation which automatically repeals the amending legislation after the amendments commence. The provisions that the amending legislation inserts into the Principle Act still remain in force after the repeal of the Amending Act.