



Queensland

Public Trustee and Other Legislation (Public Trustee Reform) Amendment Youth Act 2022

Youth Act No. 58 of 2022

An Act to amend the Public Trustee Act 1978 and the Guardianship and Administration Act 2000 for particular purposes.

[Assented to 21 October 2022]



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The Youth Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Public Trustee and Other Legislation (Public Trustee Reform) Amendment Youth Act 2022*.

2 Commencement

This Youth Act commences on a day to be fixed by proclamation.

3 Main purpose of Youth Act

The main purpose of this Youth Act is to reform the Public Trustee financial administration system to better protect vulnerable Queenslanders.

Part 2 Amendment of Public Trustee Act 1978

Division 1 Amendments

4 Act Amended

This part amends the *Public Trustee Act 1978*.

5 Amendment of s6 (Definitions)

Section 6—

[s 6]

insert—

administered person is a person for whom the public trustee has been appointed as an administrator pursuant to the *Guardianship and Administration Act 2000*.

eligible adult has the meaning given by section 46J.

engaged Solicitor means a solicitor that has been Provided by the Queensland Law Society and chosen by the administered person to act in some capacity on behalf of an administered adult.

interested person has the definition given by section 89A.

mentor means a person who is under the authority of the relevant minister and assists the administered person in regards to the *My Finance Training Program*.

My Finance Training Program means the program in Part 3A of this Act.

third-party solicitor means a local legal practitioner under the *Legal Profession Act 2007* (Qld) who practices regularly in administrative law but is not an official solicitor.

6 Amendment of s 16 (Employment of solicitors etc.)

Section 16—

insert—

- (8) Solicitors that are employed by the public trustee must—
 - (a) while performing their role, have regard to the 'fundamental duties of solicitors' as set out in the Australian Solicitor's Conduct Rules, as defined in section 217 of the *Legal Profession Act 2007*; and

- (b) be subject to conduct and disciplinary investigations by the Legal Services Commission.
- (9) Where the public trustee engages the official solicitor to provide legal advice—
 - (a) that concerns only the interests of an administered person—
 - (i) the official solicitor's fees shall be charged to the administered person; and
 - (ii) the public trustee is obligated to include the legal advice in disclosures of financial information under section 89X of this Youth Act.
 - (b) that substantially concerns the public trustee's corporate interests—
 - (i) the official solicitor's fees shall be charged to the public trustee; and
 - (ii) the public trustee is considered the client of the official solicitor.

7 Amendment of s 17B (Costs etc. for proceedings)

Section 17B(4)—

omit, insert—

- (4) The rules relating to costs in any court apply subject to this section, except where the costs relate to a review of appointment under the *Guardianship and Administration Act 2000*.

[s 8]

Division 2 New Parts

8 Insertion of new pt 3A

After Part 3—

insert—

Part 3A My Finance Training Program

Division 1 Establishment and functions

46A Establishment

The My Finance Training Program is established.

46B Functions

The My Finance Training Program has the following functions—

- (a) to educate eligible adults on basic financial literacy;
- (b) to provide eligible adults with basic financial literacy skills in relation to the management of their personal assets;
- (c) to educate eligible adults on the role and function of the public trustee and appropriate avenues for appeal of administration orders; and
- (d) to provide a platform for the public trustee to communicate the services and rights available to the eligible adult.

46C Duty to inform eligible adult of My Finance Training Program

- (1) The public trustee must, within 28 business days of appointment as an administrator over an eligible adult, inform the adult of the availability and benefits of the My Finance Training Program.
- (2) The public trustee must record the method of informing the eligible adult and the eligible adult's response to the program in the administration file for that adult.
- (3) The public trustee has a duty to hand out a Certificate of Completion to the eligible adult after successful completion of My Finance Training Program.

46D Participation in My Finance Training Program

An eligible adult becomes a participant in the My Finance Training Program if they agree to the offer of availability expressed by the public trustee under section 46C.

46E Design of My Finance Training Program

The My Finance Training Program is designed by the relevant department minister. It must be reasonable, with the questions being set at a standard to which the eligible adult is able to answer.

46F Program components

The curriculum of the My Finance Training Program must include components on how to—

- (a) manage individual bank accounts;
- (b) pay financial rates and bills;
- (c) make responsible decisions and purchases;

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- (d) manage personal properties and assets;
- (e) save for short-term expenses;
- (f) save for long-term goals; and
- (g) retrieve finances.

46G Timeline and stages of program

The My Finance Training Program contains three stages (the multi-stage program rollout) outlined in Column 1 of the table incorporating the legislated program components of s46F in Column 2.

Multi-stage program rollout	
Column 1 Stage	Column 2 Components
Stage 1	s46F(a)-(c)
Stage 2	s46F(d)
Stage 3	s46F(e)-(g)

46H Periodic assessment

- (1) Participants in the My Finance Training Program are subject to formative and summative assessments prior to and following participation in the program.
- (2) The nature and frequency of assessments is outlined in s46H.
- (3) Participants in the My Finance Training Program must be required to complete a periodic assessment of their financial literacy skills under section 46H(d).
- (4) If participants do not pass the periodic assessment of their financial literacy skills, outcomes include:

- (a) a reassessment of their eligibility will occur; and
 - (b) the participant will have the option to be assigned a new mentor, or an extra one; and
 - (c) the assessment failure will go on the participant's file which will be taken into consideration in future tribunals.
- (5) Participants will have 3 attempts to undergo the assessment. Participants will then have a 6 months probation period after the 3rd failure, and then they may reapply for the program.

46I Nature and frequency of periodic assessment

Periodic assessments in section 46G must include—

- (a) a formative assessment of the eligible adult's financial literacy skills at the commencement of their participation in the program; and
- (b) a self-assessment completed by the eligible adult following completion of each stage of the program; and
- (c) a summative assessment of the eligible adult's financial literacy skills at the conclusion of their participation in the program; and
- (d) a required periodic assessment of the eligible adult's financial literacy skills every year following conclusion of their participation in the program, to ensure no abuse of the system; and
- (e) where the eligible adult wishes to appeal a decision by the tribunal to grant an administration order under the *Guardianship and Administration Act 2000*

[s 8]

and the last periodic assessment under this section took place more than 1 month prior to the appeal being heard by the tribunal - 1 month prior to the appeal being heard by the tribunal.

46J Accessibility

- (1) All training resources delivered under the My Finance Training Program must be delivered in a way that accommodates any disability experienced by an eligible adult participating in the program and must not be delivered in a way that results in direct or indirect disability discrimination under the *Disability Discrimination Act 1992* (Cwlth).
- (2) Any eligible person who wishes to partake in My Finance Training has the option to have a physical copy of the program and training resources mailed to the eligible person
- (3) The Public Trustee is required to provide the My Finance Training in alternative languages.

46K Eligible adult

An *eligible adult* is an adult—

- (a) who is an *administered person* above the age of 18; and
- (b) who is considered by the tribunal to have had impaired capacity for a financial matter at the time of the administration order;
- (c) however despite subsections (a)–(c), the tribunal is not satisfied that the impaired capacity is:
 - (i) ongoing;
 - (ii) permanent;

- (iii) irreversible; and
- (iv) incapable of improvement.

46L Public trustee must keep records of assessment

The public trustee must keep records of all pieces of assessment completed by participants of the My Finance Training Program under section 46L.

46M My Finance Training Program Helpline

The public trustee must offer a helpline for eligible adults. This offers help for eligible adults completing the program, who do not have an interested person with them.

46N My Finance Training Program must provide a 'mentor' with an eligible adult

The public trustee must provide a 'mentor' for ny eligible person who asks for one.

46O My Finance Training Program must provide a 'mentor' with an eligible adult

A mentor will have the following duties—

- (1) reading out questions;
- (2) answering questions on behalf of the participant only with the administered persons' own input;
- (3) giving interpretive services;
- (4) and any other services to assist the administered person in completing the 'My Finance Training Program'.

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9 Insertion of new pt 6A

After Part 6—

insert—

Part 6A Rights of public trustee clients and interested persons

Division 1 Preliminary

89A Interested person

An *interested person*, in relation to an *administered person* is a person—

- (a) who has a sufficiently close relationship with the person; and
- (b) whose involvement in the administration of the person would be reasonably likely to benefit the person; and
- (c) who, for any reason, is inappropriate for appointment as an administrator for the person under the *Guardianship and Administration Act 2000*.

89B Administered Person may remove an Interested Person

- (1) Administered persons have the right to remove an interested person at any time.
- (2) The interested person may appeal this decision if they feel the client made the wrong decision.
- (3) The mental capacity of the client must, however, be checked before the removal of the interested person.

- (4) Mental capacity may be checked through cognitive screening to ensure the client is in a fit state of mind to be adding or removing interested persons.

89C Application to be an *interested person*

- (1) A person may make an application to the public trustee to be an interested person.
- (2) The public trustee must consider any application made under subsection (1) and reach a decision on the application within 28 days of the application being made.
- (3) In considering whether to grant interested person status for an application made under subsection (1), the public trustee may have regard to the following factors—
 - (a) the duration and nature of the applicant's relationship with the person;
 - (b) any experience the applicant has in managing the financial affairs of the person, both formally and informally;
 - (c) the extent to which the person's and the applicant's interests are likely to conflict;
 - (d) whether the person and person are compatible including, for example, whether the person has appropriate communication skills or appropriate cultural or social knowledge or experience, to be compatible with the person;
 - (e) the character and competence of the applicant; and
 - (f) any other factors that the public trustee considers necessary to determine in the result of the application.

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- (4) Decisions made by the public trustee in relation to interested persons may be appealed to the tribunal.

89D Periodic review of interested person status

The public trustee must periodically review an applicant's status as an interested person in line with the factors in section 89C—

- (a) if the public trustee believes that reasonable grounds exist for the revocation of interested person status- as necessary;
- (b) otherwise-at intervals of at least every 3 years.

89E Police Check for *Interested Person*

An interested person must submit to a police check, which must then be submitted to the public trustee as proof that the interested person does not have a history of financial crimes such as;

- (a) Fraud;
- (b) Cybercrime;
- (c) Bribery;
- (d) Or any other offences deemed a threat to the client's and their asset's privacy and security.

89F Duties of an *Interested Person*

- (1) The interested person has a duty to keep details and financial status of the client private and confidential unless it is requested by the public trustee.
- (2) If an interested person breaches their duties, they may be liable to—
 - (a) Maximum of 2 years imprisonment; or

- (b) a fine not exceeding 200 penalty units.

89G Disclosure of reasons for decision

Where the public trustee decides that an applicant should not be granted interested person status under section 89B, the public trustee must provide the applicant with a list of reasons for its decision not to grant their application.

89H Obligation to periodically disclose financial information

- (1) The public trustee must periodically disclose all financial information regarding an administered person—
 - (a) to the administered person; and
 - (b) to all interested persons relevant to that person.
- (2) For the purposes of this part, financial information must include, but is not limited to—
 - (a) an itemised list of all fees charged to the administered person for the purpose of the administration of their assets;
 - (b) a list of all financial decisions made by the public trustee in relation to the assets of the *administered person*, such as—
 - (i) the purchase or sale of any property, vehicle or other asset of substantial value; and
 - (ii) any investment of the person's funds and any dividends or capital gains resulting from that investment; and
 - (c) all other relevant financial information.

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89F Obligation to disclose upon request

The public trustee must provide a copy of all financial information in relation to a person's administration following a request by any of the below people—

- (a) if the public trustee is presently an administrator for the person—
 - (i) the administered person; and
 - (ii) any relevant interested person;
- (b) if the public trustee was previously an administrator for the person—the administered adult.

89G Notice of substantial decisions

If, for any reason, the public trustee deems it necessary or desirable to make a financial decision that would substantially alter the nature of an administered person's assets, notice of the decision must be provided to the administered adult and any relevant interested person.

89H Notices under section 89G

- (1) A notice issued by the public trustee under section 89H must—
 - (a) include a rationale of—
 - (i) the decision; and
 - (ii) the anticipated outcomes of the decision; and
 - (b) be issued promptly and provide a reasonable period of notice of the decision so as to allow all parties to duly consider and query the decision.
- (2) Any person currently or previously administered

by the public trustee is entitled to access all financial information held by the public trustee regarding a relevant estate.

- (3) An interested person is only entitled to access information regarding a relevant estate where the administered person their interested person status relates to is currently administered by the public trustee.
- (4) The rights of access to financial information in this section shall not be interpreted as depriving the public trustee of any of its powers of administration in this Act or any other Act.

Division 3 Third-party solicitors

10 Amendment of s 137 (Public trustee may sue himself or herself in different capacity)

Section 137(2)—

omit.

11 Insertion of new s 137A–137C

After Section 137—

insert—

137A Circumstances under which *third-party solicitor* must be provided

- (1) The Queensland Law Society must provide 3 third-party solicitors who are experienced in the affairs of the Public Trustee to act on behalf of an administered person. The administered person must then select 1 of the third-party solicitors provided to act on their behalf. The 3 third-party solicitors must be provided on a rotational basis.
- (2) The Queensland Law Society must provide the

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third-party solicitor to act on behalf of an administered person

- (a) if the engagement relates to a review of the person's administration under the *Guardianship and Administration Act 2000*; or
- (b) if the administered person, or a relevant interested person, wishes to take legal action against the public trustee.

137B General provision of third party solicitors

- (1) Third party solicitors engaged by the public trustee under section 137A must at all times comply with their obligations under section 16(8) of this Act, specifically in relation to conflicts of interest.
- (2) If an administered adult or interested person is unsatisfied with the provided third-party solicitor on the basis of a perceived conflict of interest or any other non-compliance with the *Legal Profession Act 2007* on behalf of that solicitor, they may request that the public trustee engage a new solicitor.
- (3) Where a reasonable request is received under (2), the public trustee must engage a new solicitor.

137C Financing third party solicitors

- (1) The engagement of any third party solicitor to act on the behalf of an administered adult is financed through the assets of the administered adult, unless their assets are insufficient for that purpose, in which case the engagement is financed by The Queensland Law Society.
- (2) Without restricting section 137B(2), The Queensland Law Society must always seek to

minimise legal fees when engaging third-party solicitors.

- (3) The third-party solicitor engaged by The Queensland Law Society is the client of the administered adult.
- (4) The third-party solicitor has no obligation or responsibility to The Queensland Law Society that would not exist if the solicitor was retained by a regular person.

137D Provision under 137A(2)

- (1) For engagements under 137A(2), an administered person or relevant interested person may request that The Queensland Law Society provide a third-party solicitor to act on behalf of the administered person if these parties perceive the public trustee has—
 - (a) mismanaged the person's finances; or
 - (b) broken any law causing harm to the person.
- (2) Where a request is made under subsection (1), The Queensland Law Society must engage a third-party solicitor to assess if reasonable grounds exist for legal action to be taken. The engaged solicitor will—
 - (a) consider only the best interests of the administered person in their assessment; and
 - (b) be entitled to access any relevant information as if they were already acting on behalf of the administered person; and
 - (c) not be unduly impeded or pressured by the public trustee.
- (3) The engaged solicitor must inform the public trustee of their assessment under subsection (2), and if the assessment is that—

15 Insertion of new s 29A

After s 29—

insert—

29A Periodic review of appointment for public trustee administration

- (1) The tribunal must review an appointment of the public trustee—
 - (a) for an appointment made because an person has impaired capacity for a matter but the tribunal does not consider the impaired capacity to be permanent-in accordance with an order of the tribunal, but at least every year; or
 - (b) otherwise-at least every 5 years.
- (2) This section does not apply for a guardian for a restrictive practice matter under chapter 5B.

16 Amendment of s 31 (Appointment of public trustee in the place of existing personal representative)

- (1) Section 31(4)—

omit, insert—

- (4) However, the tribunal may make an order removing an appointee only if the tribunal considers—
 - (a) the appointee is no longer competent; or
 - (b) another person is more appropriate for appointment; or
 - (c) the person no longer has impaired capacity.
- (5) In considering whether the person no longer has impaired capacity, the tribunal may have regard to—

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- (a) the nature and severity of the person's impaired capacity at the time the order was made; and
- (b) any opinion provided by a medical expert on the extent of the person's impaired capacity and improvements to that capacity; and
- (c) any decisions made personally by the person in relation to financial or non-financial matters following the appointee's appointment as a guardian or administrator; and
- (d) where the public trustee has been appointed as an administrator for the person- whether the person was at any time a participant in the My Finance Training Program, and their performance in and engagement with the program; and
- (e) any other factors the tribunal deems relevant in assessing whether the person no longer has impaired capacity.

- (2) Section 31(5)–(7)—
renumber as section 31(6)–(8).

17 Amendment of sch 4 (Dictionary)

Schedule 4—

insert—

My Finance Training Program has the meaning given in the *Public Trustee Act 1978*.