



**PRESIDENTIAL DIRECTION NO 3 OF 2007
REPLACING PRESIDENTIAL DIRECTION NO 2 OF 2005
INTERIM ORDERS (S.129 GUARDIANSHIP AND ADMINISTRATION ACT 2000)**

1. Introduction

The Guardianship & Administration Tribunal is required to follow principles of natural justice and procedural fairness in exercising its powers when making an order in a proceeding. In limited circumstances, the Tribunal may displace these principles by issuing an interim order; however these orders are only issued in accordance with stringent guidelines and a strict set of criteria.

2. Interim Order: *Protecting and Maintaining the Best Interests of the Adult*

Section 129 (1) of the *Guardianship and Administration Act 2000* (Act) provides if the Tribunal is satisfied on reasonable grounds there is an immediate risk of harm to the health, welfare or property of the adult concerned (including because of the risk of abuse, exploitation or neglect of or self neglect by the adult), it may make an interim order. This section also allows the Tribunal to hear and decide the proceeding without otherwise complying with the requirements of the Act, including s.118 (advising persons concerned of hearing). This is a measure for the protection of adult, and the period for an interim order may initially be up to 3 months. The interim order may only be renewed if the Tribunal is satisfied that there are exceptional circumstances justifying the renewal. An interim order may not include consent to special health care.

3. Interim Order: *Risk and Dispensing with the Need for Hearing in the Best Interests of the Adult*

Only the President, Deputy President, legal member or the Registrar may make an interim order. Prior to making an interim order, the Tribunal has to be satisfied that on reasonable grounds, there is some evidence of incapacity and the adult appears to be at imminent risk. This notion of risk is grounded on the particular factual circumstances of a case. The risk needs to be immediate, and the Tribunal must be satisfied on the balance of probabilities that harm would result.

Examples of cases where action may be required include:

- The adult has been physically injured or harmed or the likelihood of injury or harm is imminent or inevitable. Harm may include physical or emotional abuse; and/or mental harm;
- Allegations of abuse to the adult have been made;
- The adult is at risk from neglect or self neglect;
- The adult's property is at immediate risk;
- The provision of services for the adult is at immediate risk.

4. The Scope of an Interim Order

In cases where there is an immediate and acute need to protect the adult, the Tribunal will make only those orders which are necessary. These orders will remain in operation until the actual hearing.

5. Evidence Required in Support of an Application

Evidence from health professionals about the adult's incapacity.

Evidence by applicant setting out:

- Nature of the immediate risk;
- Whether other options/strategies have been tried;
- Parties who have been consulted; or
- Why parties have not been or should not be consulted.

Upon further inquiries a statutory declaration may be requested from the applicant.

Susan Gardiner
President

8 October 2007

STATUTORY DECLARATION

(Interim Order, Section 129 *Guardianship and Administration Act 2000*)

NOTE: an interim order request will not be considered on the basis of this statutory declaration alone; it must accompany or follow submission of a full Application for Administration/Guardianship Appointment

I of sincerely declare:

1. Urgent action is required for the appointment of a Guardian for
and/or;

Urgent action is required for the appointment of an Administrator for

2. Urgent action is required because there is no other option and/or other options are not effective. The options that have been attempted are:

.....
.....

3. I have attached the following list of documents as evidence of serious risk in support of this appointment:

.....
.....

or;

I am unable to attach evidence of serious risk in support of this appointment because:

.....
.....

4. I have consulted the following parties who have a sufficient interest in the adult:

.....
.....

or;

I have made inquiries and am unable to contact other parties with a sufficient interest in the adult;

or;

Other parties have not been (should not be) consulted because

.....
.....

or:

the following people would be opposed to this interim application for the following reasons:

.....
.....

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing the same to be true and by virtue of the *Oaths Act 1867* (as amended)

..... (Full name and signature)

SIGNED and DECLARED before me at (address)

This day of (Month) (Year)

Before me,

.....
(Signature of JP/C.Dec/Solicitor), a Justice of the Peace/Commissioner for Declarations/Solicitor