

## QCAT Practice Direction No. 8 of 2021

### Accessing and obtaining copies of documents in guardianship proceedings

1. The purpose of this Practice Direction is to provide a procedure for accessing documents in relation to applications made under the *Guardianship and Administration Act 2000* ('GAA').
2. This Practice Direction is to be read in conjunction with Practice Direction No. 7 of 2021, however in the event of any inconsistency, this Practice Direction prevails.

#### Who is an 'active party'?

An 'active party' for a proceeding in relation to an adult is:

- the adult;
- the applicant (if the adult is not the applicant);
- the person proposed for appointment or reappointment of a guardian, administrator or attorney for the adult;
- any current guardian, administrator or attorney for the adult;
- the public guardian;
- the public trustee; and
- a person joined as a party to the proceeding by the tribunal.

An 'active party' for a restrictive practices proceeding is:

- the chief executive (disability services);
- the applicant;
- the adult concerned in the proceeding;
- the current guardian or administrator for the adult;
- the chief psychiatrist (if the adult is subject to a forensic order, treatment support order or treatment authority);
- the director of forensic disability (if the adult is a forensic disability client);
- a relevant service provider providing to the adult;
- the public guardian;
- a person joined as a party to the proceeding by the tribunal.

### ACCESSING DOCUMENTS

3. The GAA provides for the access to documents by active parties and non-parties.<sup>1</sup>
4. Pursuant to s 103 of the GAA:
  - (1) Each active party in a proceeding must be given a reasonable opportunity to present the active party's case and, in particular—
    - (a) to access, before the start of a hearing, a document before the tribunal that the tribunal considers is relevant to an issue in the proceeding; and

<sup>1</sup> Guardianship and Administration Act 2000 s 103.

- (b) *to access, during a hearing, a document or other information before the tribunal that the tribunal considers is credible, relevant and significant to an issue in the proceeding; and*

...

5. A non-party cannot access documents before or during a hearing. A non-party's entitlement to access documents after a hearing is governed by s 103(2) of the GAA which provides:

- (2) *Each active party in a proceeding, or person the tribunal considers has a sufficient interest in the proceeding, must be given a reasonable opportunity to access, within a reasonable time after a hearing, a document before the tribunal that the tribunal considered credible, relevant and significant to an issue in the proceeding.*

6. The right to access a document(s) may be displaced by a confidentiality order under s 109 of the GAA, however, is not affected by an adult evidence order, a closure order, or a non-publication order.<sup>2</sup>

## HOW TO INSPECT AND/OR OBTAIN COPIES OF A DOCUMENT IN GUARDIANSHIP PROCEEDINGS

7. A request to inspect and/or obtain copies of a document in guardianship proceedings must be made in writing or by using the online services available (see for example QCAT's website at [qcat.qld.gov.au/resources/forms/our-online-services/search-and-copy-documents](http://qcat.qld.gov.au/resources/forms/our-online-services/search-and-copy-documents)).
8. The request must include the contact details of the person requesting the documents, as well as the documents sought to be inspected or copied. If the person making the request is not an active party to the proceeding, the request must also include the reasons for making the request and why they have a sufficient interest in the proceedings.



Hon Justice Martin Daubney AM  
President

6 September 2021

<sup>2</sup> Guardianship and Administration Act 2000 s 103(5)-(6).