



**PRESIDENTIAL DIRECTION NO 1 OF 2009
REPLACING PRACTICE DIRECTION 1 OF 2005
ARRANGEMENTS FOR FILE INSPECTION**

1. Introduction

The provisions about access to information in the *Guardianship and Administration Act 2000* (the Act) seek to achieve an appropriate balance between the principles of protecting the privacy of persons affected by the guardianship system and the promotion of accountability and transparency in decision-making within the guardianship system. The Act contains a legislative presumption of openness permitting publication of information about Tribunal proceedings, provided the publication does not lead to identification of the adult.

The aim of this Direction is to provide information to parties and other persons with a sufficient interest in the proceedings as to the general procedures the Tribunal has adopted in satisfying the competing principles of protection for individuals and of openness and accountability for parties and the public.

2. Right to access documents and information on the Tribunal files

The public does not have the right to access the Tribunal files.

Active parties in a proceeding have the right to access documents and information in the Tribunal files before, during and after a hearing – section 108(2) and (3) of the Act.

In addition a person who the Tribunal considers has a sufficient interest in the proceeding can access the Tribunal files after a hearing – section 108(3) of the Act

3. Preservation of Privacy by section 112 and General Principle 11

Generally, information about a guardianship proceeding may be published. However, it is an offence under subsection 112(2) of the Act for anyone to publish information about a guardianship proceeding if the information is likely to lead to the identification of the relevant adult by a member of the public, or by a member of the section of the public to whom the information is published.

The General Principles apply to anyone performing a function or exercising a power under the Act. General Principle 11 states that an adult's right to confidentiality of information about themselves must be recognised and taken into account.

4. Procedural Fairness required by section 108

The right of active parties to access documents and information applies to a document or information before the Tribunal that the Tribunal considers is credible, directly relevant and significant. The Tribunal may displace the right to inspect the document only by a confidentiality order.

5. Confidentiality Order made under section 109E

The Tribunal on its own initiative, or by request from an active party or entity providing information, may make a confidentiality order withholding from an active party or another person a document or part of a document or information before the Tribunal.

The Tribunal will not make a confidentiality order prohibiting or restricting access to documents or information unless it is satisfied a confidentiality order is necessary to avoid serious harm to a person, or necessary to avoid injustice to a person. The Tribunal will only make a confidentiality order to the extent necessary to avoid serious harm or injustice.

6. Access to File Information and Document Inspection—*Active Parties Only*

The principles in section 108 of the Act contain the guidelines for the inspection of documents which have been lodged with the Tribunal Registry.

7. Prior to Hearing — *Active Parties Only*

Documents that are directly relevant to an issue in the proceedings can be inspected by an active party or their representative unless a confidentiality order has been made prohibiting or restricting inspection.

The registrar or a member of the Tribunal may permit an active party or their representative, after they have inspected the file, to obtain copies of documents available for inspection where this is necessary for an active party to adequately prepare for the hearing.

When an active party or their representative is not able to inspect the file in person prior to the hearing, due to distance, ill health, a medical disability or other practical reasons copies of documents will be provided on request to the Registrar.

8. Practical Arrangements Relating to Inspection and Access

Pre-hearing - Active parties only

- (a) *Time of inspection:* An active party or their representative can inspect the file after receipt of the Notice of Hearing as at this stage all material information will have been received by the tribunal and inspection of the file at this stage reduces the need for repeated inspections. Additional inspection of the file can occur when material documents have been received by the Tribunal after the sending out of the Notice of Hearing.
- (b) *Place of Inspection:* File inspections will generally occur in two locations:
 - (i) at the registry for Brisbane hearings; or
 - (ii) at the venue of the hearing for regional matters.

For hearings in Brisbane, a time will be made for the file to be inspected at the registry of the Tribunal. For regional matters, a time will be made for the file to be inspected on the day of the hearing but before the hearing commences. However, alternate arrangements for earlier inspection of the file can be made having regard to the individual circumstances of each matter.

At the Hearing - Active parties only

An active party has the right to inspect at the hearing a document or other information before the Tribunal that the Tribunal considers is credible, directly relevant and significant to an issue in the proceeding unless a confidentiality order prohibiting or restricting access to the document or information has been made.

In cases where a confidentiality order has been made prior to the hearing, the confidentiality order is automatically vacated at the start of the hearing. If the prohibition or restriction about access is sought to be continued after the hearing commences, the party or entity who had requested the confidentiality order will be required to re-apply at the hearing and all active parties and any entity affected by the proposed order will be heard on the application.

After the Hearing

Section 108(3) of the Act provides that each active party in a proceeding, or a person the Tribunal considers has a sufficient interest in the proceeding, must be given a reasonable opportunity to access within a reasonable time after the hearing, a document that the Tribunal considers credible, relevant and significant to an issue in the proceeding.

Written requests for access to documents, after a hearing, should be made to the Registrar.

Susan Gardiner
President

Effective: 1 January 2009