



OPEN JUSTICE AND CONFIDENTIALITY IN THE TRIBUNAL

INTRODUCTION

From 1 January 2009 amendments to the *Guardianship and Administration Act 2000*, (the Act) take effect to enhance the focus on open justice and procedural fairness for active parties in the Tribunal and at the same time continue to provide protection for the privacy of adults with impaired decision-making capacity.

The amendments require that serious harm or injustice be demonstrated before the Tribunal can make a **limitation order** that restricts access to a relevant document or information, prevents publication of proceedings or limits who may attend a hearing. It is an offence for a person to contravene any type of limitation order without a reasonable excuse. The maximum penalty for a contravention is 200 penalty units.

SOME FREQUENTLY USED EXPRESSIONS EXPLAINED

Active Party or Active Parties In most proceedings in the Tribunal the following are active parties: the adult, the applicant (if the adult is not the applicant), the person proposed for appointment as guardian, administrator or attorney for the adult, any current guardian, administrator or attorney for the adult, the Adult Guardian, the Public Trustee, a person joined as a party to the proceeding by the Tribunal, for example a member of the adult's family. In applications involving restrictive practices the active parties will also include: the chief executive of Disability Services Queensland, the Director of Mental Health (if the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*) and the relevant service provider providing disability services to the adult. Fact Sheet 8 has more information about restrictive practices.

Guardianship Proceedings means **all** types of applications to the Tribunal including applications for the appointment of an administrator. 'Proceeding' refers to the whole of the matter, not just the hearing.

Limitation order is the collective name for four new types of orders called adult evidence orders, closure orders, non-publication orders and confidentiality orders. These orders are explained below.

WHO CAN ACCESS A DOCUMENT THAT THE TRIBUNAL HAS IN ITS FILE AND THAT IS RELEVANT TO THE GUARDIANSHIP PROCEEDINGS?

It depends upon the stage of the proceedings. Before and during the hearing only active parties can access a document in the Tribunal's file that is relevant to an issue in the proceedings. Active parties need access to relevant documents to allow them to prepare and present their case to the Tribunal and to make submissions to the Tribunal about a document in the Tribunal's records.

Prior to the hearing

Before the start of the hearing each active party can access a document in the Tribunal's file that is relevant to an issue in the proceeding.

During the hearing

Once the hearing has begun each active party can access a document in the Tribunal's file or other information that the Tribunal considers credible, relevant and significant to an issue in the proceeding.

After the hearing

Within a reasonable time after a hearing each active party or a person the Tribunal considers has a sufficient interest in the proceeding, can access a document on the Tribunal's file that the Tribunal considered credible, relevant and significant to an issue in the proceeding.

HOW IS ACCESS TO DOCUMENTS IN THE TRIBUNAL'S FILE ARRANGED?

If you are an active party you can arrange to inspect the Tribunal's file before the hearing by contacting the officer in the Tribunal's registry who is preparing the guardianship proceeding for hearing.

During the hearing the Tribunal will enable access to documents by active parties.

If you are not an active party but wish to access a document after the hearing you should request access from the Registrar of the Tribunal.

Presidential Direction No. 1 of 2009 has more information about the practical issues and arrangements for accessing documents on the Tribunal's records before, during or after a hearing.

CAN ACCESS TO RELEVANT DOCUMENTS EVER BE RESTRICTED OR PROHIBITED?

Yes but only in very limited circumstances. The Tribunal can withhold from an active party or other person a document or other information if the Tribunal is satisfied that it is necessary to avoid serious harm or injustice to a person. If the document or other information contains health information about a person 'serious harm to a person' includes 'significant health detriment to the person'. This type of order is called a **Confidentiality Order**.

CAN ANYONE ATTEND A TRIBUNAL HEARING?

Yes, hearings of the Tribunal are open to the public and anyone can attend a Tribunal hearing except in very limited circumstances. The Tribunal conducts hearings across Queensland. If you are interested in attending a Tribunal hearing the hearing schedule of the Tribunal is published on its website at www.gaat.qld.gov.au. If you are an active party in an application to the Tribunal you will receive a Notice of Hearing which provides the details of the hearing including time and location. Fact Sheet 4 has more information about what to expect at a Tribunal hearing.

CAN A TRIBUNAL HEARING BE CLOSED TO THE PUBLIC AND/OR SOME OF THE ACTIVE PARTIES?

Yes but only in very limited circumstances. The Tribunal may close a hearing or part of a hearing to all or some members of the public and/or exclude a particular person or an active party from the hearing only if the Tribunal is satisfied that it is necessary to avoid serious harm or injustice to a person. If the hearing or part of the hearing concerns health information about a person, 'serious harm to a person' includes 'significant health detriment to the person'. This type of order is called a **Closure Order**.

The Tribunal can also make an **Adult Evidence Order** if the Tribunal is satisfied that it is necessary to avoid serious harm or injustice to a person or to obtain relevant information the Tribunal would not otherwise receive. An Adult Evidence Order allows the Tribunal to obtain relevant information from the adult about whom the application has been made without anyone else being present in the hearing room. If the relevant information is health information about a person, 'serious harm to a person' includes 'significant health detriment to the person'.

CAN INFORMATION ABOUT A GUARDIANSHIP PROCEEDING BE PUBLISHED?

Yes, generally, information about a guardianship proceeding can be published. However, a person must not, without reasonable excuse, publish information that will, or is likely to, identify the person about whom the application was made (the adult). The prohibition against publishing information that will or is likely to identify the adult does not apply after the adult has died except in cases where a non-publication order has been made concerning health information.

The Tribunal may authorise the publication of information that identifies, or is likely to identify the adult if the Tribunal is satisfied that the publication is in the public interest or in the interests of the adult.

It is an offence to publish information that identifies or is likely to identify the adult without a reasonable excuse unless the tribunal has authorised the publication of that information. The maximum penalty for a contravention is 200 penalty units.

CAN PUBLICATION OF INFORMATION ABOUT A GUARDIANSHIP PROCEEDING BE PROHIBITED?

Yes but only in very limited circumstances. The Tribunal can make an order that prohibits publication of information about a guardianship proceeding if the Tribunal is satisfied that it is necessary to avoid serious harm or injustice to a person. This type of order is called a **Non-publication Order**.

WHO CAN APPLY FOR A LIMITATION ORDER?

Any active party can apply for a limitation order (an adult evidence order, a closure order, a non-publication order or a confidentiality order). The Tribunal may also make a limitation order on its own initiative.

As well as active parties others can apply to the Tribunal for a **confidentiality order** or **non-publication order** in some circumstances:

- If an entity prepares or provides a document or information to the Tribunal, that entity can apply to the Tribunal for a **Confidentiality Order** and/or a **Non-publication order** over that document or information.
- A person whose health information is disclosed (or an 'interested person' on their behalf) can apply for a **Non-publication Order** over that health information. The application can be made by an 'interested person' even after the death of the person whose health information is disclosed.

HOW DO I MAKE AN APPLICATION FOR A LIMITATION ORDER?

An application for a limitation order should be made in writing on the 'Miscellaneous Applications' form available on the Tribunal's website or by contacting the registry of the Tribunal. Your application must identify the type of limitation order (an adult evidence order, a closure order, a non-publication order or a confidentiality order) you wish to apply for and why you believe the limitation order is necessary to avoid serious harm or injustice to a person. You must also provide any other information or documentation that supports your belief and that you would like the Tribunal to consider when it hears your application.

The Tribunal will make a decision about your application for a limitation order at the hearing after also hearing the views and submissions from active parties and others who may be adversely affected by the limitation order.

HOW WILL I KNOW IF ANOTHER PARTY HAS MADE AN APPLICATION FOR A LIMITATION ORDER?

The Notice of Hearing sent to all active parties will include details of any application for a limitation order that is to be heard at the hearing.

CAN A LIMITATION ORDER BE MADE BEFORE THE TRIBUNAL HEARING?

Only a **confidentiality order** or a **non-publication order** can be made before the hearing starts. If this occurs the order is automatically vacated at the start of the hearing and no longer has any affect. For example, if a confidentiality order is made three weeks before the hearing, over information contained in a medical report, the order is automatically vacated at the start of the hearing.

If the applicant for the confidentiality order wishes to apply for a further confidentiality order over the relevant document or information they will need to advise the Tribunal at the commencement of the hearing. The Tribunal will make a decision about the application for a confidentiality order after also hearing the views and submissions from active parties and others who may be adversely affected by the confidentiality order.

WHO CAN MAKE A SUBMISSION TO THE TRIBUNAL ABOUT WHETHER A LIMITATION ORDER SHOULD BE MADE?

Each active party and any entity that would be adversely affected by a proposed limitation order, for example, a journalist who would be excluded from a hearing by a proposed closure order, has standing to be heard by the Tribunal in relation to the making of the order.

WHAT IF I DON'T AGREE WITH A LIMITATION ORDER MADE BY THE TRIBUNAL?

Each active party and any entity adversely affected by a limitation order, for example, a journalist prohibited from publishing information about a hearing by a non-publication order, can appeal to the Supreme Court against the Tribunal's decision to make the order.

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