

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: AS [2022] QCAT 148

PARTIES: **In an application about matters concerning AS**
In applications about matters concerning AS

APPLICATION NO/S: GAA5767-21, GAA6777-21, GAA10368-21, GAA10369-21

MATTER TYPE: Guardianship and administration matters for adults

DELIVERED ON: 26 April 2022

HEARING DATE: 14 April 2022

HEARD AT: Brisbane

DECISION OF: Member Browne

ORDERS: **DECLARATION ABOUT CAPACITY**

- 1. The application for a declaration about the capacity of AS is dismissed.**

GUARDIANSHIP

- 2. The Public Guardian is appointed as the guardian for AS for the following personal matter:**
 - (a) Legal matters not relating to AS's financial or property matters.**
- 3. Unless the Tribunal orders otherwise, this appointment remains current for six (6) months.**

LIMITATION ORDERS

- 4. Pursuant to s 108 and 109 of the *Guardianship and Administration Act 2000 (Qld)*, the publication of any document or information that could identify or lead to the identification of any child or a party to a proceeding under the *Child Protection Act 1999 (Qld)* is prohibited.**
- 5. Pursuant to s 108 and 109 of the *Guardianship and Administration Act 2000 (Qld)* the report of [redacted] dated [redacted] that does not relate to AS is confidential and must be withheld from all persons.**

CATCHWORDS: GUARDIANS, COMMITTEES, ADMINISTRATORS, MANAGERS AND RECEIVERS – OTHER MATTERS – where applications for the appointment of guardian and for a declaration of capacity – where limitation orders made

pursuant to s 108 and s 110 of the *Guardianship and Administration Act 2000* (Qld) – where evidence before the Tribunal to satisfy the requirements of s 12, s 108 and s 109 of the *Guardianship and Administration Act 2000* (Qld) – where order made to keep information relied upon confidential

Acts Interpretation Act 1954 (Qld), s 14A
Guardianship and Administration Act 2000 (Qld), s 6, s 11A, s 100, s 111, s 105, s 108, s 109, s 110, s 118(2)(a)
Human Rights Act 2019 (Qld), s 13, s 48
Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 66

DAA [2009] QGAAT 8

JSM [2011] QCAT 351

APPEARANCES & REPRESENTATION:

AS, via teleconference

Representative of the Office of the Public Guardian

Representative of Aged and Disability Advocacy Services

Support worker

REASONS FOR DECISION

- [1] On 14 April 2022, the Tribunal dismissed an application for a declaration of capacity about AS and appointed the Public Guardian as guardian for legal matters for AS, not related to AS's financial or property matters, to remain current for 6 months.
- [2] At the oral hearing, the Tribunal being satisfied that limitation orders should be made ordered that pursuant to s 108 and s 109 of the *Guardianship and Administration Act 2000* (Qld) (GA Act) the publication of any document or information that could identify or lead to the identification of any child or a party to a proceeding under the *Child Protection Act 1999* (Qld) is prohibited and the report of [redacted] dated [redacted] that does not relate to AS is confidential and must be withheld from all persons.
- [3] The Tribunal delivered oral reasons at the conclusion of the hearing about the application for the appointment of the guardian and the making of the limitation orders. The following are my reasons for the limitation orders made.
- [4] A hearing by the Tribunal of a proceeding must be in public. However, the Tribunal may make a non-publication order and/or a confidentiality order only if satisfied certain requirements as provided under the GA Act have been met.
- [5] Under s 108 of the GA Act, the Tribunal may in certain circumstances prohibit publication of information about a tribunal proceeding if it is considered necessary to avoid serious harm or injustice to a person. Further, under s 109 of the GA Act, the Tribunal may in certain circumstances withhold from an active party or other

person a document or other information if satisfied that it is necessary to avoid serious harm or injustice to a person.

- [6] In making relevant orders under s 108 for a non-publication order and/or under s 109 for a confidentiality order, the Tribunal may do so, only ‘to the extent necessary’, as provided under the Act.
- [7] The GA Act does not define the meaning of ‘serious harm’ or ‘injustice’. An interpretation that will best achieve the purpose of the Act is preferred.¹ The GA Act seeks to strike a balance between the right of an adult with impaired capacity, to whom the applications for the appointment of a guardian and/or administrator concern, to the greatest possible degree of autonomy in decision-making. Further, the GA Act seeks to strike a balance between the adult’s right to adequate and appropriate support for decision-making.² The adult with impaired capacity is the primary focus of the GAA.³
- [8] In the present matter I am satisfied that a non-publication order and confidentiality order pursuant to s 108 and s 109 of the GA Act is necessary to avoid an ‘injustice’ to AS and relevant persons known to AS. The disclosure of the information captured by the non-publication and confidentiality orders may interference with an ongoing investigation and may cause an injustice to the adult and relevant persons known to the adult.⁴
- [9] As required under s 113 of the GA Act, a copy of the Tribunal’s reasons for its decision to make the limitation orders must be given to all active parties and the Public Advocate.
- [10] In making the orders under s 108 and s 109 of the GA Act the Tribunal considered the relevant human rights as set out in the *Human Rights Act 2019* (Qld) as required by s 48. AS’s rights to recognition as a person before the law entitled to equal protection without discrimination, freedom of movement and privacy are all engaged and limited by the making of these orders. Taking into account the Tribunal’s findings about the criteria set out in the GA Act, the limits imposed by the orders are reasonable and justified in accordance with s 13. The orders made are the least restrictive based on the information before the Tribunal.

¹ *Acts Interpretation Act 1954* (Qld), s 14A.

² GA Act, s 6 and s 11B.

³ *Ibid*, s 11A.

⁴ See JSM [2011] QCAT 351 and DAA [2009] QGAAT 8, [42].