

**GUARDIANSHIP AND ADMINISTRATION AMENDMENT
(MEDICAL RESEARCH) BILL 2023
EXPLANATORY MEMORANDUM**

Overview of the Bill

The Guardianship and Administration Amendment (Medical Research) Bill 2023 (Bill) amends the *Guardianship and Administration Act 1990* (WA) (GAA) and the *Guardianship and Administration Amendment (Medical Research) Act 2020* (WA) (Amendment Act) to implement two recommendations contained in the Attorney General's Final Report on the review of the Amendment Act. The Attorney General tabled the Final Report on the review of the Amendment Act on 21 February 2023.

The Amendment Act provides authorisation for and includes appropriate safeguards to enable a represented person to (through their nominated research decision-maker) provide consent for their participation in medical research. There are two circumstances in which a represented person may be enrolled in medical research: with the consent of their research decision-maker, or in urgent circumstances, where that consent is not obtained prior to their participation.

The Final Report contains 11 findings and five recommendations regarding the operation and effectiveness of the Amendment Act, including two recommendations that legislation be drafted to:

- amend the definition of 'lead researcher' in section 110ZO of the GAA by changing 'medical' practitioner in the definition to 'health' practitioner; and
- delete clauses 2(b), 13 and 15 of the Amendment Act (together, the 'sunset clause') that will remove the ability to enrol represented persons in urgent medical research when the clauses become operational on 8 April 2024.

Both recommendations from the Final Report that the Bill seeks to implement are in line with similar recommendations made by the Standing Committee on Legislation in its Report 48: *Guardianship and Administration Amendment (Medical Research) Bill 2020 and amendments made by the Guardianship and Administration Amendment (Medical Research) Act 2020*.

Part 1 – Preliminary

Clause 1 Short title

Clause 1 provides that the Act, once enacted, will be known as the *Guardianship and Administration Amendment (Medical Research) Act 2023* (Act).

Clause 2 Commencement

Clause 2 provides for the commencement of the Act.

Clause 2(a) provides that Part 1 comes into effect on the day that the Act receives Royal Assent.

Clause 2(b) provides that the rest of the Act will come into operation on the day after the day on which Part 1 receives Royal Assent.

Part 2 – *Guardianship and Administration Act 1990* amended

Clause 3 Act amended

Clause 3 provides that the Act amends the GAA.

Clause 4 Section 110ZO amended

Clause 4(1) provides that section 110ZO of the GAA is amended by inserting a new definition of 'registered health practitioner', which has the meaning given in section 5 of the Health Practitioner Regulation National Law (Western Australia) (HPRNL).

The HPRNL is contained in Schedule 1 of the *Health Practitioner Regulation National Law (WA) Act 2010*. Section 5 of the HPRNL defines 'registered health practitioner' as meaning an individual who –

- (a) is registered under this Law to practise a health profession, other than as a student; or
- (b) holds non-practising registration under this Law in a health profession.

'Health profession' is defined in section 5 of the HPRNL to mean the following professions, and includes a recognised speciality in any of the following professions:

- (a) Aboriginal and Torres Strait Islander health practice;
- (b) Chinese medicine;
- (c) chiropractic;
- (d) dental (including the profession of a dentist, dental therapist, dental hygienist, dental prosthetist and oral health therapist);
- (e) medical;
- (f) medical radiation practice;
- (g) midwifery;
- (ga) nursing;
- (h) occupational therapy;
- (i) optometry;
- (j) osteopathy;
- (ja) paramedicine;
- (k) pharmacy;
- (l) physiotherapy;
- (m) podiatry; and
- (n) psychology.

Clause 4(2) provides that section 110ZO of the GAA is amended by deleting the words 'medical practitioner' in the definition of 'lead researcher' and inserting the words 'registered health practitioner' in their place.

Part 3 – Guardianship and Administration Amendment (Medical Research) Act 2020 amended

Clause 5 Act amended

Clause 5 provides that the Act amends the Amendment Act.

Clause 6 Section 2 amended

Clause 6 provides that section 2(b) of the Amendment Act is deleted.

Section 2(b) of the Amendment Act provides that sections 13 and 15 of the Amendment Act commence on the day after the period of four years beginning on the day after Royal Assent is received. This date is 8 April 2024.

Clause 7 amended

Clause 7 provides that section 13 of the Amendment Act is deleted.

Section 13 of the Amendment Act deletes section 110ZS of the GAA.

Clause 8 amended

Clause 8 provides that section 15 of the Amendment Act is deleted.

Section 15 of the Amendment Act inserts a new Division into the GAA at the end of Schedule 5, 'Division 3 – Transitional provisions in relation to *Guardianship and Administration Amendment (Medical Research) Act 2020*.' Section 15 contains a transitional provision to enable urgent medical research that commenced before section 13 of the Amendment Act is in operation to continue in the circumstances specified in the provision. This transitional provision is no longer required as the sunset clause is being deleted by clauses 6, 7 and 8 of this Bill.