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K Woodward
Chief Parliamentary Counsel
Dated 2 September 2024



TASMANIA

GUARDIANSHIP AND ADMINISTRATION ACT 1995

No. 44 of 1995

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**GUARDIANSHIP AND ADMINISTRATION ACT
1995**

No. 44 of 1995

An Act to enable persons with impaired decision-making ability to be represented by a guardian or administrator, to recognise the giving of advance care directives, to provide a process for obtaining consent for persons with impaired decision-making ability to participate in health and medical research projects and to provide for medical and dental treatment for persons who are unable to consent to such treatment

[Royal Assent 22 September 1995]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

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PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Guardianship and Administration Act 1995*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

(1) In this Act, unless the contrary intention appears

—

administration order means an order of the Tribunal appointing a person as administrator;

administrator means any person appointed as administrator in an administration order;

adult means a person who has attained the age of 18 years;

advance care directive means an advance care directive under Part 5A that is in force;

appointor, in relation to an enduring guardian, means the person who appointed the enduring guardian to be the person's enduring guardian;

child means a person who has not attained the age of 18 years;

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close family member, in relation to a person, means any of the following persons who is in a close and continuing relationship with that person:

- (a) a spouse of the person;
- (b) a parent of the person;
- (c) a person who has one or both parents in common with the person;
- (d) a child of the person;
- (e) a child of, or a parent of, the spouse of the person;
- (f) a grandparent of the person;
- (g) an aunt or uncle of the person;
- (h) an adult of Aboriginal or Torres Strait Islander descent who is related to the person according to Aboriginal kinship rules or Torres Strait Islander kinship rules (as the case requires);
- (i) any other carer or close friend who provides on-going personal support to the person, whether or not the other person is biologically related to the person;

close friend, in relation to a person, means another person who has a close personal

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relationship with the person and a personal interest in the person's welfare;

contravene includes failure to comply with;

Convention on the Rights of Persons with Disabilities means the United Nations Convention on the Rights of Persons with Disabilities, done at New York on 13 December 2006, as in force for Australia;

decision-making ability – see section 11;

determination includes decision and order;

disability includes a long-term physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may hinder a person's full and effective participation in society on an equal basis with others;

enduring guardian means a person appointed as an enduring guardian under Part 5;

financial matter, in relation to a person, means any matter relating to the estate of the person including the income, assets, debts, liabilities, real property, personal property and financial affairs of the person, and includes any legal matter that relates to the property or finances of the person;

function includes duty and power;

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government department means a Government department within the meaning of the *State Service Act 2000*;

guardian means a person named as a guardian in a guardianship order or as an enduring guardian in an instrument of appointment as such;

guardianship order means an order of the Tribunal appointing a person as guardian;

Guardianship stream proceedings means proceedings of the Tribunal under an Act in relation to which the functions and powers of the Tribunal are allocated, under the *Tasmanian Civil and Administrative Tribunal Act 2020*, to the Guardianship stream of the Tribunal established under that Act;

health and medical research – see section 6;

health practitioner means the following:

- (a) a health practitioner within the meaning of the Health Practitioner Regulation National Law (Tasmania) (other than a student);
- (b) any other professional who is prescribed as a health practitioner for the purposes of this definition;

impaired decision-making ability – see section 11;

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information means information however stored or transmitted;

intimate forensic procedure means –

- (a) an external examination of the genital or anal area, the buttocks or, in the case of a female, the breasts; and
- (b) an internal examination of a body cavity other than the mouth; and
- (c) the taking of a sample of pubic hair; and
- (d) the taking of a sample by swab or washing from the external genital or anal area, the buttocks or, in the case of a female, the breasts; and
- (e) the taking of a sample by vacuum suction, by scraping or by lifting by tape from the external genital or anal area, the buttocks or, in the case of a female, the breasts; and
- (f) the taking of a sample by swab or washing from a body cavity other than the mouth; and
- (g) the taking of an X-ray of a part of the body; and

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-
- (h) the taking of a dental impression; and
 - (i) the taking of a photograph of, or an impression or cast from, the external genital or anal area, the buttocks or, in the case of a female, the breasts; and
 - (j) any other procedure prescribed by the *Forensic Procedures Regulations 2010* as an intimate forensic procedure;

legal matter, in relation to a person, includes –

- (a) the use of legal services for the person’s benefit; and
- (b) bringing or defending a legal proceeding or hearing in a court, tribunal or other body on behalf of the person, including settling a claim before or after a legal proceeding or hearing starts;

medical or dental treatment or treatment
means –

- (a) medical treatment (including any medical or surgical procedure, operation or examination and any prophylactic, palliative or rehabilitative care) normally carried out by, or under, the supervision of a medical practitioner; or

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- (b) dental treatment (including any dental procedure, operation or examination) normally carried out by or under the supervision of a dentist; or
- (ba) an intimate forensic procedure and a non-intimate forensic procedure normally carried out by a person authorised to carry out the procedure under section 40 of the *Forensic Procedures Act 2000*; or
- (c) any other act declared by the regulations to be medical or dental treatment for the purposes of this Act –

but does not include –

- (d) any non-intrusive examination made for diagnostic purposes (including a visual examination of the mouth, throat, nasal cavity, eyes or ears); or
- (e) first-aid medical or dental treatment; or
- (f) the administration of a pharmaceutical drug for the purpose, and in accordance with the dosage level, recommended in the manufacturer's instructions (if the drug is one for which a prescription is not required and

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which is normally self-administered); or

- (g) any other kind of treatment that is declared by the regulations not to be medical or dental treatment for the purposes of this Act;

non-intimate forensic procedure means –

- (a) the taking of a sample of blood; and
- (b) the taking of a sample of saliva; and
- (c) the taking of a sample by buccal swab; and
- (d) an external examination of a part of the body, other than the external genital or anal area, the buttocks or, in the case of a female, the breasts, that requires the touching of the body or the removal of clothing; and
- (e) an internal examination of the mouth; and
- (f) the taking of a sample of hair other than pubic hair; and
- (g) the taking of a sample from a nail or under a nail; and
- (h) the taking of a sample by swab or washing from any external part of

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the body other than the genital or anal area, the buttocks or, in the case of a female, the breasts; and

- (i) the taking of a sample by vacuum suction, by scraping or by lifting by tape from any external part of the body other than the genital or anal area, the buttocks or, in the case of a female, the breasts; and
- (j) the taking of a handprint, fingerprint, footprint or toeprint; and
- (k) the taking of a photograph of a person or an external part of a person other than the external genital or anal area, the buttocks or, in the case of a female, the breasts; and
- (l) the taking of an impression or cast from a part of the body other than the genital or anal area, the buttocks or, in the case of a female, the breasts; and
- (m) any other procedure prescribed by the *Forensic Procedures Regulations 2010* as a non-intimate forensic procedure –

but does not include an intrusion into any body cavity of a person other than the mouth;

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non-regenerative tissue means tissue that, after injury or removal, is not replaced in the body of a living person by natural processes of growth or repair;

parent means a person who has parental responsibility and includes a guardian and a person acting *in loco parentis*;

personal matter, in relation to a person, means a matter relating to the personal affairs or lifestyle of the person, including, but not limited to, the following matters:

- (a) where and with whom the person lives, whether permanently or temporarily;
- (b) who may contact (whether by post, telephone, or electronic or other means) or visit the person, including –
 - (i) restrictions on contact with the person or visits to the person that are necessary to promote the personal and social well-being of the person; and
 - (ii) the prohibition on contact with, or visits to, the person by any person if that contact or those visits would have an adverse effect on the person;

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- (c) the provision of care services to the person;
- (d) what education, training or work the person undertakes;
- (e) except as provided under Parts 5A and 6, consenting to or refusing or withdrawing consent to the provision of health care or medical or dental treatment to the person;
- (f) except as provided under Part 6A, consenting to or refusing or withdrawing consent to the conduct of health and medical research in relation to the person;
- (g) any legal matter that relates to the personal affairs of the person;

person responsible has the meaning given by section 4;

pharmaceutical drug includes any substance specified in the Poisons List, within the meaning of the *Poisons Act 1971*;

President has the same meaning as in the *Tasmanian Civil and Administrative Tribunal Act 2020*;

Public Guardian means the person appointed as the Public Guardian under section 14;

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registered health practitioner means a person who is registered under the Health Practitioner Regulation National Law (Tasmania) to practise a health profession (other than as a student);

registered practitioner means a person who is a medical practitioner or a person registered under the Health Practitioner Regulation National Law (Tasmania) in the dental profession as a dentist;

registrar means the Registrar, within the meaning of the *Tasmanian Civil and Administrative Tribunal Act 2020*;

regulations means regulations made and in force under this Act;

represented person means a person –

(a) in respect of whom –

(i) a guardianship order is in force; or

(ii) an administration order is in force; or

(iii) both a guardianship order and an administration order are in force; or

(b) who appoints an enduring guardian and who, by reason of impaired decision-making ability, becomes unable to make

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decisions in relation to personal matters;

service provider includes a financial institution or person with whom a proposed represented person has deposited money or on whose account money has been deposited;

special treatment means –

- (a) any treatment that is intended, or is reasonably likely, to have the effect of rendering permanently infertile the person on whom it is carried out; or
- (b) termination of pregnancy; or
- (c) any removal of non-regenerative tissue for the purposes of transplantation; or
- (d) any other medical or dental treatment that is declared by the regulations to be special treatment for the purposes of this Act;

spouse, in relation to a person, includes the person who is in a significant relationship, within the meaning of the *Relationships Act 2003*, with that person;

State authority means a body or authority, whether incorporated or not, which is established or constituted by or under an

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Act or under the Royal Prerogative, where the body or authority or its governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister or another such body or authority;

support, in relation to the making of a decision by a person, includes, but is not limited to, the following:

- (a) the use of information or formats tailored to the particular needs of the person making the decision;
- (b) assistance to communicate the decision of the person making the decision;
- (c) the giving of additional time to the person making the decision;
- (d) the use of technology to alleviate the effects of any disability of the person making the decision;

tissue includes an organ or part of a human body or substance extracted from, or from a part of, the human body;

Tribunal means the Tasmanian Civil and Administrative Tribunal.

- (2) Where 2 or more guardians of a person have been appointed under section 20(4), references to a guardian in this Act are taken as references to the guardian exercising the relevant function.

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- (3) In this Act, a reference to an enduring guardian making or entering into a transaction is to be taken to be a reference to the enduring guardian making a decision, taking an action, giving a consent or doing an act.

4. Meaning of *person responsible*

- (1) In this Act, *person responsible* for another person means –
- (a) where the other person is under the age of 18 years and has a spouse, the spouse; or
 - (b) where the other person is under the age of 18 years and has no spouse, his or her parent; or
 - (c) where the other person is of or over the age of 18 years, one of the following persons, in order of priority:
 - (i) the other person’s guardian, if the order or instrument appointing the guardian provides authority for the guardian to make the relevant decision;
 - (ii) the other person’s spouse;
 - (iii) the person having the care of the other person;
 - (iv) a close family member of the other person; or

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- (d) in relation to an intimate forensic procedure, or a non-intimate forensic procedure, in respect of the other person, to which a request under subsection (1A) relates, the Public Guardian.
- (1A) A police officer or registered practitioner may, by notice to the Public Guardian, request the Public Guardian to become the person responsible for a person in relation to an intimate forensic procedure or a non-intimate forensic procedure in respect of the person if –
- (a) the person is a person to whom Part 6 applies; and
 - (b) the police officer or registered practitioner reasonably believes that the carrying out of the procedure on the person, by a person authorised to carry out the procedure under section 40 of the *Forensic Procedures Act 2000*, is necessary in the circumstances; and
 - (c) the police officer or registered practitioner is satisfied as to the relevant matters in relation to the person.
- (1B) For the purposes of subsection (1A)(c), the relevant matters in relation to a person are that –
- (a) another person, who is not the Public Guardian and who is the person responsible for the person –
 - (i) has refused to consent to the carrying out of the intimate

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- forensic procedure or non-intimate forensic procedure on the person; or
- (ii) is unavailable or inaccessible and his or her consent cannot be sought within a reasonable time; or
- (b) there is no person responsible for the person who is not the Public Guardian; or
- (c) it is not appropriate in the circumstances for the consent, of a person who is not the Public Guardian and who is a person responsible for the person, to be sought.
- (2) If a person is under the guardianship of the Secretary of the department administering the *Children, Young Persons and Their Families Act 1997* pursuant to a care and protection order made under that Act, the Secretary of that department is, notwithstanding subsection (1), taken to be the person responsible for him or her.
- (3) The circumstances in which a person is to be regarded as having the care of another person include, but are not limited to, the case where the person, otherwise than for remuneration (whether from the other person or any other source), regularly –
- (a) provides domestic services and support to the other person; or

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- (b) arranges for the other person to be provided with domestic services and support.
- (4) A person who resides in a hospital, nursing home, group home, boarding-house or hostel or any other similar facility at which he or she is cared for by some other person is not, by reason only of that fact, taken to be in the care of that other person and is taken to remain in the care of the person in whose care he or she was immediately before residing in the facility.
- (5) For the purposes of this section –
 - (a) a reference to a spouse is to be read as a reference to a spouse who is not under guardianship and with whom the relevant person has a close and continuing relationship; and
 - (b) a person is taken to be a close family member of another person if the person maintains both a close personal relationship with the other person through frequent personal contact and a personal interest in the other person's welfare; and
 - (ba) where more than one person would qualify as a spouse, spouse means only the last person to so qualify; and
 - (c) a person is taken not to be a close family member if the person is receiving remuneration (whether from the person or some other source) for any services

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that he or she performs for the other person in relation to the person's care; and

- (d) a reference to remuneration is to be read as not including a reference to a carer's pension; and
- (e) the President may issue guidelines, not inconsistent with this section, specifying the circumstances in which a person is to be regarded as a close family member of another person.

5. Meaning of *promoting a person's personal and social well-being*

For the purposes of this Act, and without limiting the ways in which this may occur, the personal and social well-being of a person is promoted by –

- (a) respecting the inherent dignity of the person and the person's individual autonomy, including the freedom to make their own choices and their right to independence; and
- (b) respecting and promoting the person's own decision-making ability; and
- (c) ensuring that the person is free from neglect, abuse, exploitation and other forms of harm; and

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-
- (d) the importance of preserving the dignity of risk of a person with impaired decision-making ability in respect of decisions is to be recognised and to inform those decisions; and
 - (e) respecting the right of the person to be treated without discrimination; and
 - (f) respecting the person’s individuality, including personal or lifestyle activities that provide pleasure, purpose and fulfilment to the person; and
 - (g) having regard to the person’s existing supportive relationships, religion, values, gender identity, gender expression, sexual orientation and cultural and linguistic environment; and
 - (h) respecting the right of Aboriginal and Torres Strait Islander people to enjoy their culture, including with other people who share that culture; and
 - (i) respecting the person’s right to privacy and to have contact with and correspond privately with others; and
 - (j) recognising the importance of, and facilitating access to, the provision of supports that enable the person to exercise the person’s autonomy; and
 - (k) recognising the importance to the person of any companion animal that the person has and having regard to the benefits that

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may be obtained from the person having
a companion animal.

6. Meaning of *health and medical research*

- (1) Subject to subsection (3), in this Act, ***health and medical research*** –
 - (a) means research conducted with or about individuals, or their data or tissue, in the field of medicine or health; and
 - (b) includes an activity undertaken for the purposes of that research.
- (2) Without limiting subsection (1), health and medical research includes the following:
 - (a) the administration of pharmaceutical drugs, biologicals or placebos;
 - (b) the use of equipment or a device;
 - (c) providing health care that has not yet gained the support of a substantial number of practitioners in that field of health care;
 - (d) providing health care to which paragraph (c) does not apply to carry out a comparative assessment referred to in paragraph (e);
 - (e) carrying out a comparative assessment of the health care provided under paragraphs (c) and (d);

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- (f) taking samples from an individual, including –
 - (i) a blood sample; and
 - (ii) a sample of tissue or fluid from the body, including the mouth, nose, nasal cavity, eyes and ears;
 - (g) conducting medical imaging of an individual, including the use of computed tomography, magnetic resonance imaging, x-ray and ultrasound;
 - (h) taking photographs, films or audio or visual recordings of an individual;
 - (i) any non-intrusive examination, including –
 - (i) a visual examination of the mouth, throat, nasal cavity, eyes or ears; and
 - (ii) the measuring of an individual's height, weight or vision;
 - (j) observing an individual;
 - (k) undertaking a survey, interview or focus group;
 - (l) collecting, using or disclosing information, including personal information in accordance with the provisions of the *Personal Information Protection Act 2004*;

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- (m) considering or evaluating samples or information taken under an activity listed in this subsection;
 - (n) any other activity prescribed to be health and medical research for the purposes of this Act.
- (3) In this Act, ***health and medical research*** does not include any of the following:
- (a) research conducted with or about individuals, or their data or tissue, in the field of medicine or health that –
 - (i) only involves analysing data about the individuals; and
 - (ii) does not result in the disclosure or publication of personal information;
 - (b) special treatment;
 - (c) any treatment or procedure that would otherwise require the consent of the Tribunal or any other person or body under law;
 - (d) any other activity prescribed not to be health and medical research for the purposes of this Act.
- (4) In this section –
- biological*** has the same meaning as in section 32A of the *Therapeutic Goods Act 1989* of the Commonwealth.

7. Objects of Act

- (1) The objects of this Act are to protect and promote the rights and dignity of persons who have impaired decision-making ability by –
 - (a) applying the principles of the Convention on the Rights of Persons with Disabilities, including recognising the need to support persons with impaired decision-making ability to make, participate in and implement decisions that affect their lives; and
 - (b) enabling the making of guardianship orders and administration orders; and
 - (c) recognising the giving of advance care directives; and
 - (d) making provision for the authorisation and approval of medical and dental treatment for persons with impaired decision-making ability; and
 - (e) providing for arrangements for the conduct of health and medical research involving persons with impaired decision-making ability; and
 - (f) setting out principles and procedures to be observed by persons when performing a function under the Act, including making decisions for or on behalf of a represented person; and

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- (g) ensuring that persons with impaired decision-making ability and their families are informed of, and make use of, the provisions of this Act.

8. Principles to be observed

- (1) A person performing a function under this Act is to observe the following principles:
 - (a) a person's decision-making ability is to be respected and promoted;
 - (b) a person who requires support in decision making is to be provided with access to the support necessary to enable the person, as far as is practicable in the circumstances –
 - (i) to make and participate in decisions affecting the person; and
 - (ii) to express the person's will and preferences; and
 - (iii) to develop the person's decision-making ability;
 - (c) the views, wishes and preferences of a person with impaired decision-making ability in respect of decisions are to be respected and used to inform those decisions;
 - (d) the role of close family members, carers and other significant persons in the life

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- of a person with impaired decision-making ability in respect of decisions is to be recognised;
- (e) the importance of preserving the cultural and linguistic environment of the person is to be recognised;
 - (f) the personal and social well-being of a person with impaired decision-making ability in respect of decisions is to be promoted;
 - (g) the means which is the least restrictive of a person's freedom of decision and action as possible in the circumstances is to be adopted.
- (2) In addition to the principles set out in subsection (1), if a function is to be performed under this Act by a person in relation to a child, that function is to be performed so that –
- (a) as far as is practicable the best interests of the child are paramount; and
 - (b) full consideration is given to the following needs:
 - (i) to protect the child from harm;
 - (ii) to promote the child's development;
 - (iii) to strengthen, preserve and promote positive relationships between the child and the child's

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parents, family members and
other people who are significant
in the life of the child.

- (3) Persons providing assistance on an informal basis to a person with impaired decision-making ability in respect of a decision are encouraged to apply and promote the principles in this section in providing that assistance.

9. Decision-making process

- (1) In this section –

serious harm, to a person, means any harm that has a significant impact on the health, welfare, property or financial situation of the person, including as a consequence of abuse, exploitation, neglect or self-neglect;

substitute decision-maker means a person with authority under this Act to make decisions for or on behalf of a person with impaired decision-making ability.

- (2) A substitute decision-maker is to have regard to the following in determining whether to make a decision for or on behalf of a person with impaired decision-making ability in respect of that decision:
- (a) whether the person has made an advance care directive in respect of that decision;

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- (b) whether the person is likely to regain decision-making ability in respect of that decision and, if so, whether the decision can be postponed without the delay causing harm.
- (3) If a substitute decision-maker is satisfied that there is a need to make a decision for or on behalf of another person, the substitute decision-maker –
 - (a) is to give effect, as far as practicable, to the views, wishes and preferences of the person with impaired decision-making ability, if known (including those expressed in an advance care directive); and
 - (b) if the substitute decision-maker is not able to determine the views, wishes and preferences of the person with impaired decision-making ability, is to –
 - (i) give effect as far as practicable to what the substitute decision-maker reasonably believes those views, wishes and preferences are, based on all the information available; and
 - (ii) act in a manner that promotes the personal and social well-being of the person with impaired decision-making ability and is the least restrictive of the person's human rights.

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- (4) For the purposes of subsection (3)(b)(i), ***information available*** includes information obtained by consulting with close family members, carers and other significant people in the life of the person with impaired decision-making ability whom the substitute decision-maker reasonably believes the person with impaired decision-making ability would want to be consulted.
- (5) The views, wishes and preferences of the person with impaired decision-making ability should only be overridden by a substitute-decision maker for that person to the extent that –
- (a) it is necessary to prevent serious harm, or the risk of serious harm, to the person or another person; or
 - (b) the implementation of the decision would be unlawful; or
 - (c) the implementation of the decision would be inconsistent with the terms of any determinations made by the Tribunal under this Act.
- (6) If a substitute decision-maker overrides the views, wishes and preferences of a person with impaired decision-making ability, the substitute decision-maker is to, as far as is reasonably practicable, provide the person with information as to why they have overridden the person's views, wishes and preferences in a way that is appropriate to the person's circumstances.

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Part 2 – Decision-making ability

PART 2 – DECISION-MAKING ABILITY

10. Interpretation of Part

(1) In this Part –

information, relevant to a decision, includes information on the consequences of –

- (a) making the decision one way or the other; and
- (b) deferring the making of the decision; and
- (c) failing to make the decision.

11. Decision-making ability

- (1) For the purposes of this Act, an adult is taken to have decision-making ability in respect of a decision unless a person or body responsible for assessing that decision-making ability under this Act is satisfied that the adult has impaired decision-making ability in respect of that decision.
- (2) For the purposes of this Act, an adult has impaired decision-making ability in respect of a decision if the adult is unable, even with the provision of access to practicable and appropriate support, to –
 - (a) understand information relevant to the decision; or

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- (b) retain information relevant to the decision for a sufficient time to make and consistently communicate the decision; or
 - (c) use or weigh information relevant to the decision; or
 - (d) communicate the decision (whether by speech, gesture or other means).
- (3) For the purposes of this Act, a child is taken to have impaired decision-making ability in respect of a decision unless a registered health practitioner is satisfied that the child has decision-making ability in respect of that decision.
- (4) For the purposes of this Act, a child has decision-making ability in respect of a decision if the child –
- (a) is sufficiently mature to make the decision; and
 - (b) is able to –
 - (i) understand information relevant to the decision; and
 - (ii) retain information relevant to the decision for a sufficient time to make and consistently communicate the decision; and
 - (iii) use or weigh information relevant to the decision; and

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(iv) communicate the decision (whether by speech, gesture or other means), including with the provision of support.

(5) For the purposes of this Act –

- (a) a person may be taken to understand information relevant to a decision if it reasonably appears, to the person assessing that person's decision-making ability, that the person is able to understand an explanation, of the nature and consequences of the decision, given in a way that is appropriate to the person's circumstances (whether by words, signs or other means); and
- (b) a person may fluctuate between having impaired decision-making ability and decision-making ability in respect of a decision.

12. Limits on finding of impaired decision-making ability

- (1) For the purposes of this Act, a person's decision-making ability in respect of a decision is not to be assessed as impaired merely because –
 - (a) the person is not able to understand matters of a technical or trivial nature; or
 - (b) the person does not have a particular level of literacy or education; or

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- (c) the person can only retain information relevant to the decision for a limited time; or
- (d) the person has decision-making ability to make some decisions and not others; or
- (e) a decision made by the person results, or may result, in an adverse outcome for the person; or
- (f) a decision made by the person is unwise in the opinion of other persons; or
- (g) the person makes a decision because –
 - (i) of current or past cultural or religious practices or beliefs; or
 - (ii) of a failure or refusal to adhere to particular cultural or religious practices or beliefs; or
- (h) subject to section 11(3), of the age of the person; or
- (i) of the person's appearance; or
- (j) the person is perceived to be eccentric; or
- (k) the person has engaged in illegal or immoral conduct; or
- (l) of the person's current or past expression of, or failure or refusal to express, a particular gender identity, gender expression or sexual orientation; or

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- (m) the person has a disability, illness or other medical condition (whether physical or mental).
- (2) A person is not to be assessed under this Act as having impaired decision-making ability in respect of a decision unless reasonable steps have been taken to provide that person with access to the practicable and appropriate support needed to make and communicate the decision.

13. Formal assessment of decision-making ability

- (1) If a health practitioner or other person is responsible for conducting an assessment of a person's decision-making ability for the purposes of a hearing or determination of the Tribunal, that person is to take reasonable steps to –
 - (a) inform the person whose decision-making ability is being assessed of the nature and purpose of the assessment; and
 - (b) provide information to the person or the person responsible for that person about the nature of any conclusions made during the assessment and the basis for those conclusions; and
 - (c) provide the person or the person responsible for that person with an opportunity to ask questions about the findings of the assessment; and

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- (d) comply with such other requirements in relation to the assessment, if any, as may be prescribed.
- (2) Where the assessment of a person’s decision-making ability is being undertaken for the purposes of an application to the Tribunal under this Act, the person making that application is to take reasonable steps to –
- (a) inform the person and the person responsible for that person that an application is being considered; and
 - (b) identify the matter or matters in relation to which the application is being considered; and
 - (c) assist the person or the person responsible for that person to identify any less restrictive alternatives to making the application; and
 - (d) advise the person and the person responsible for that person of the right to seek legal representation or advocacy support; and
 - (e) provide information about access to legal representation and advocacy support; and
 - (f) comply with any other prescribed requirements.
- (3) A person must not intentionally or recklessly interfere with, or affect, the assessment of

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another person's decision-making ability under this Act.

Penalty: Fine not exceeding 20 penalty units.

PART 3 – THE PUBLIC GUARDIAN

14. Public Guardian and Deputy Public Guardian

Subject to and in accordance with the *State Service Act 2000*, persons are to be appointed as the Public Guardian and the Deputy Public Guardian and those persons may hold those offices in conjunction with State Service employment.

15. Functions and powers of Public Guardian

- (1) The Public Guardian has the following functions:
 - (a) to foster the provision of services and facilities for persons with impaired decision-making ability in respect of decisions;
 - (b) to support the establishment of organizations which support any such persons;
 - (c) to encourage the development of programmes that support any such persons (including advocacy programmes, educational programmes and programmes to encourage persons to act as guardians and administrators);
 - (d) to promote, speak for and protect the rights and interests of any such persons;

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- (e) to deal, on behalf of any such persons, with persons or bodies providing services;
- (f)
- (g) to investigate, report and make recommendations to the Minister on any matter relating to the operation of this Act;
- (h) to act as a guardian or administrator when so appointed by the Tribunal;
- (i) to disseminate information concerning –
 - (i) the functions of the Public Guardian; and
 - (ii)
 - (iii) the operation of this Act;
- (j) to give advice on the powers that may be exercised under this Act relating to persons with impaired decision-making ability in respect of decisions or impaired decision making ability as to the operation of this Act generally and on appropriate alternatives to taking action under this Act;
- (k) to perform such other functions as are assigned to the Public Guardian by this Act or any other Act or law.

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- (2) The Public Guardian has power to do all things necessary or convenient to be done in connection with the performance of his or her functions.
- (3) During any illness or absence of the Public Guardian or during any vacancy in the office of the Public Guardian, the Deputy Public Guardian has the functions of the Public Guardian.
- (4) Any function exercised by the Deputy Public Guardian while acting under subsection (3) is taken to have been exercised by the Public Guardian.
- (5) The Deputy Public Guardian in exercising the functions of the Public Guardian is taken to have sufficient authority to do so.
- (6) In the performance of his or her functions under this Act neither the Public Guardian nor the Deputy Public Guardian is subject to the control or direction of the Minister.
- (7) The Public Guardian may require any government department or State authority, service provider, health practitioner, guardian or administrator to provide a document, report or information to the Public Guardian if the provision of that document, report or information is necessary for the performance of the Public Guardian's functions under this Act.

16. Staff of Public Guardian

Subject to and in accordance with the *State Service Act 2000*, there are to be appointed such

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officers as are necessary to assist the Public Guardian and the Deputy Public Guardian in the performance of their functions under this Act and those officers may hold office in conjunction with State Service employment.

17. Investigations

- (1) The Public Guardian may investigate complaints and allegations concerning the actions of a guardian or administrator or a person acting or purporting to act under an enduring power of attorney.
- (1A) The Public Guardian may, of its own motion or following a complaint or allegation, investigate any matter relating to action taken or proposed to be taken in relation to an advance care directive.
- (2) If requested to do so by the Tribunal in Guardianship stream proceedings, the Public Guardian must investigate and report to the Tribunal in relation to a matter to which those proceedings relate.

18. Delegation

- (1) The Public Guardian may in writing –
 - (a) delegate to a person appointed under section 16 any of the functions or powers of the Public Guardian, other than this power of delegation; and
 - (b) revoke wholly or partly a delegation.

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- (2) A delegation –
 - (a) may be made either generally or as otherwise provided by the instrument of delegation; and
 - (b) does not prevent the performance or exercise of a function or power by the Public Guardian.
- (3) A function or power performed or exercised by a delegate has the same effect as if performed or exercised by the Public Guardian.

PART 4 – GUARDIANSHIP ORDERS

Division 1 – Application for guardianship order

19. Application for guardianship order

- (1) A person may apply to the Tribunal for an order appointing a guardian for a person who has impaired decision-making ability in respect of decisions relating to one or more personal matters.
- (2) The application –
 - (a) is to be lodged with the registrar; and
 - (b) is to contain the prescribed information; and
 - (c) is to specify the grounds on which it is alleged that the proposed represented person needs a guardian.

Division 2 – Appointment of guardian

20. Guardianship order

- (1) The Tribunal, after a hearing, may make an order appointing a guardian for a person in respect of one or more personal matters if –
 - (a) an application for an order appointing a guardian, or for an order appointing an administrator, has been made to the Tribunal in respect of the person; and
 - (b) the Tribunal is satisfied that the person –

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- (i) has impaired decision-making ability in respect of decisions relating to those personal matters; and
 - (ii) is in need of a guardian; and
 - (c) the Tribunal is satisfied that the order will promote the person’s personal and social well-being.
- (2) For the purposes of subsection (1)(b)(ii), in determining whether a person is in need of a guardian, the Tribunal must consider the following:
- (a) the wishes and preferences of the person, as far as they can be ascertained;
 - (b) whether the needs of the person could be met by other means less restrictive of that person’s freedom of decision and action;
 - (c) the wishes and preferences of any close family members, carers and other significant persons in the life of the person who are present at the hearing and are entitled to be heard at that hearing.
- (3) If the Tribunal makes a guardianship order under subsection (1), the order –
- (a) is to specify the personal matters for which a guardian is required; and

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- (b) may be subject to such conditions or restrictions as the Tribunal considers necessary.
- (4) Two or more guardians for a person, each with authority in respect of different personal matters, may be appointed for that person under one or more guardianship orders.
- (5) An order made under this section may be expressed to take effect when the represented person attains the age of 18 years.

21. Persons eligible to be appointed as guardian

- (1) The Tribunal may only appoint as a guardian for a proposed represented person –
 - (a) a person who is eligible for appointment under subsection (2); or
 - (b) if the Tribunal is satisfied that no person is eligible for appointment as a guardian for the proposed represented person under subsection (2), the Public Guardian.
- (2) A person who is of or over the age of 18 years is eligible for appointment as a guardian for a proposed represented person if –
 - (a) the person consents to act as a guardian; and
 - (b) in the Tribunal’s opinion, the person –

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- (i) understands their obligations and duties and will act in accordance with the requirements of this Act; and
 - (ii) is a suitable person to act as a guardian for the proposed represented person in respect of the personal matters specified in the guardianship order under section 20(3)(a).
- (3) For the purposes of subsection (2)(a), a person consents to act as guardian if the person gives to the Tribunal a written declaration, in a form approved by the Tribunal, that states the following:
 - (a) that the person consents to act as a guardian for the represented person;
 - (b) that the person understands the person's obligations and duties under this Act;
 - (c) that the person understands the consequences of failing to comply with the person's obligations and duties under this Act;
 - (d) that the person undertakes to act in accordance with this Act;
 - (e) such other information, if any, as may be prescribed.
- (4) For the purposes of subsection (2)(b)(ii), in determining whether a person is a suitable

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person to act as a guardian for a represented person, the Tribunal must take into account the following:

- (a) the wishes and preferences of the proposed represented person, so far as they can be ascertained;
 - (b) the desirability of preserving existing relationships that are important to the proposed represented person;
 - (c) the compatibility of the person proposed as guardian with the proposed represented person and with the administrator (if any) for the proposed represented person;
 - (d) the extent to which the person's interests may conflict with the interests of the proposed represented person;
 - (e) the desirability of appointing a person who has a personal relationship with the proposed represented person, rather than a person without such a relationship;
 - (f) whether the person will be available to act as the proposed represented person's guardian;
 - (g) whether the person has the requisite skills and access to appropriate support to competently perform the role.
- (5) For the purposes of subsection (4)(d) –

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- (a) the fact that the person is a close family member of the proposed represented person does not, of itself, mean that the person's interests are likely to conflict with the interests of the proposed represented person; and
- (b) the fact that the person may be a beneficiary of the proposed represented person's estate on the proposed represented person's death does not, of itself, mean that the person's interests are likely to conflict with the interests of the proposed represented person; and
- (c) the fact that the person is in conflict with a close family member of the proposed represented person does not, of itself, mean that the person's interests are likely to conflict with the interests of the proposed represented person.

21A. Duty to notify Tribunal of change in circumstances

If there has been a change in circumstances that means that a guardian for a represented person may no longer be eligible to be appointed as a guardian for that represented person under section 21, that guardian must inform the Tribunal of that change as soon as practicable after its occurrence.

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22. Alternative guardians

- (1) A guardianship order, other than an order appointing the Public Guardian as a guardian, may appoint a person to be an alternative guardian for the represented person.
- (2) During the absence or incapacity of the guardian for a represented person, the alternative guardian of that person has the functions of his or her guardian.

23.

24. Expiration of guardianship orders

- (1) A guardianship order has effect for 3 years, or such shorter period as the Tribunal may specify in the order, unless the order is continued under section 68.
- (2) In determining the duration of an order, the Tribunal must take into account the following:
 - (a) the likelihood of improvements to the represented person's decision-making ability;
 - (b) the prospect that changes to circumstances, including interventions to establish support arrangements, will mitigate the need for a guardian;
 - (c) the requirement that the order to be made be that which is the least restrictive of the

person's freedom of decision and action
as is possible in the circumstances.

Division 3 – Powers and duties of guardian

25. Authority of guardian

- (1) Subject to this Act, a guardianship order confers, on the person appointed as guardian, power to make decisions in relation to such of the represented person's personal matters as are specified in the order.
- (2) Where a decision is made, action taken, consent given, or act done, by a guardian for a represented person, the decision, action, consent or act has effect as if it had been made, taken, given, or done, by the represented person and the represented person had the legal capacity to do so.
- (3) A guardian may, on behalf of a represented person, sign documents and do all such things as are necessary to give effect to any power or duty vested in the guardian by the guardianship order.

26. Exercise of authority by guardian

- (1) A guardian under this Act must –
 - (a) promote the personal and social well-being of the person under guardianship;
and
 - (b) act in accordance with the principles set out in section 8; and

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- (c) have regard to the decision-making process set out in section 9; and
- (d) act honestly, diligently and in good faith; and
- (e) treat the person under guardianship with respect and dignity; and
- (f) communicate with the person under guardianship by means that the person will be best able to understand; and
- (g) keep the person under guardianship informed about decisions made, information obtained and steps taken by the guardian, as appropriate in the circumstances; and
- (h) regularly consult with any other guardian or administrator of the person under guardianship and keep them informed about substantial decisions or actions, subject to the terms of the guardian's appointment; and
- (i) act as an advocate for the person under guardianship where possible; and
- (j) encourage and support the person under guardianship to develop the person's decision-making ability in respect of decisions where possible; and
- (k) protect the person under guardianship from violence, neglect, abuse and exploitation.

- (2) A guardian must make reasonable efforts –
- (a) to ascertain whether the person under guardianship has given an advance care directive; and
 - (b) if the person under guardianship has given an advance care directive, to obtain a copy of that advance care directive.

27. Right of guardian to information

A guardian has a right to all information to which the represented person is entitled, if the information is reasonably required for the purposes of performing a function as guardian.

27A. Keeping of records, &c.

- (1) A guardian for a represented person must keep an accurate record of all dealings and transactions made by the person as guardian.

Penalty: Fine not exceeding 20 penalty units.

- (2) A person who has ceased to be a guardian (the *former guardian*) for a person must retain the records required to be kept under subsection (1) in relation to that person for at least 7 years after so ceasing.

Penalty: Fine not exceeding 20 penalty units.

- (3) The former guardian for a person may give a copy of the records required to be retained under

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subsection (2) in relation to that person to the following persons:

- (a) a guardian for that person;
 - (b) if the person has ceased to be a represented person, that person;
 - (c) if the person has died, the legal representative of that person;
 - (d) if the person responsible for that person is required to make decisions in relation to the person's health care, the person responsible for that person.
- (4) The former guardian for a person must, on request, give a copy of the records required to be retained under subsection (2) in relation to that person to a person referred to in subsection (3)(a), (b), or (c) within 14 days after receipt of the request.

Penalty: Fine not exceeding 20 penalty units.

28. Power to enforce guardianship order

- (1) Without limiting section 25, if the Tribunal makes a guardianship order appointing a guardian, the Tribunal may specify in the order that the person named as guardian or some other specified person is empowered to take such measures or actions as are specified in the order to ensure that the represented person complies with any decision of the guardian in the exercise of the powers and duties conferred by the order.

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(1A) Measures or actions specified in a guardianship order under subsection (1) may be subject to such conditions or limitations as the Tribunal considers necessary.

(2) Where a guardian or other person specified in the order under subsection (1) takes any measure or action specified in the order in the reasonable belief that –

(a) the measure or action is required to comply with the order; and

(b) it is necessary or desirable to take that measure or action in the circumstances –

the guardian or other person is not liable to any action for false imprisonment or assault or any other action, liability, claim or demand arising out of the taking of that measure or action.

29. Urgent powers in case of unlawful detention of persons in need of a guardian

(1) If the Tribunal has received information that a person who appears to be in need of a guardian–

(a) is being unlawfully detained against his or her will; or

(b) is likely to suffer damage to his or her physical, emotional or mental health or well-being unless immediate action is taken–

and the Tribunal considers it necessary to do so in order to secure access to that person, the

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Tribunal may empower the Public Guardian or some other person specified in the order to visit the person in the company of a police officer for the purpose of preparing a report for the Tribunal.

- (2) If, after receiving a report under subsection (1), the Tribunal is satisfied that the information referred to in subsection (1)(a) or (b) is correct, the Tribunal may make an order enabling the person in need of a guardian to be taken to, and cared for at, a place specified in the order until an application under section 19 is heard.
- (3) A police officer acting under an order made under subsection (1) may, with such assistance as is necessary, use such force as is reasonably necessary to enter the premises where the person in need of a guardian is found.
- (4) Any person who delays or obstructs any person acting under an order under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

30. Removal of persons to place of safety

- (1) If it appears to a police officer that there is reasonable cause to suspect that a person who appears to be in need of a guardian—
 - (a) has been, or is being, ill-treated, neglected or unlawfully detained against his or her will; or

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- (b) is likely to suffer serious damage to his or her physical, emotional or mental health or well-being unless immediate action is taken–

the police officer may enter, if necessary by force, any premises in which that person is believed to be, and, if thought fit, remove that person from those premises.

- (2) A police officer, in removing a person under subsection (1), is to be accompanied by a person nominated by the Public Guardian.
- (3) A person nominated by the Public Guardian must, as soon as practicable –
 - (a) convey the person to a place of safety; and
 - (b) ensure that an application for guardianship or other appropriate arrangements are made; and
 - (c) provide the Tribunal with a written report giving details of the action that he or she has taken under this section.

31. Application by guardian to Board for advice or direction

- (1) A guardian may apply for advice or direction by the Tribunal on any matter relating to the scope of the guardianship order or the exercise of any power by the guardian under the guardianship order.

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- (2) The Tribunal may require notice of an application under subsection (1) to be given to any person that the Tribunal directs and may exercise its powers under this section without a hearing.
- (3) The Tribunal may–
 - (a) approve or disapprove of any act proposed to be done by the guardian; and
 - (b) give such advice or direction as it considers appropriate; and
 - (c) vary the guardianship order or make any other order that it could have made on the original application; and
 - (d) if the person under guardianship has given an advance care directive, give such advice and direction in relation to the advance care directive as the Tribunal considers appropriate.
- (4) The Tribunal of its own motion may direct, or offer advice to, a guardian in respect of any matter.
- (5) A guardian who contravenes a direction given to him or her under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.

PART 5 – APPOINTMENT OF ENDURING GUARDIAN

32. Appointment of enduring guardian

- (1) A person who is of or over the age of 18 years may, by instrument in writing, appoint a person as his or her enduring guardian and any such instrument may appoint 2 or more persons to act jointly as enduring guardians.
- (2) An instrument is not effective to appoint an enduring guardian unless –
 - (aa) the appointor understands the nature and effect of the instrument; and
 - (a) it is in accordance with Form 1 in Schedule 3 or in a form to similar effect; and
 - (b) there is endorsed on it –
 - (i) an acceptance in the form, or to the effect, of the acceptance specified in Form 1 signed by each person appointed as an enduring guardian; and
 - (ii) a declaration in the form, or to the effect, of the declaration specified in Form 1 signed by each person appointed as an enduring guardian, that the person has obtained and understood any advance care

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directive given by the appointor;
and

- (c) it is signed by the appointor with that signature attested by the signature of two witnesses neither of whom is a party to it nor a close family member of a party to it and each of whom has witnessed it in the presence of the appointor and each other;
and
 - (d) it is registered with the Tribunal.
- (2A) For the purposes of subsection (2)(aa), an appointor is taken to understand the nature and effect of the instrument only if the appointor understands the following matters:
- (a) that the appointor may, in the instrument of appointment of an enduring guardian, specify or limit the power to be given to an enduring guardian and provide instructions to the enduring guardian about the exercise of the power;
 - (b) when the powers contained in the instrument of appointment of an enduring guardian may be exercised;
 - (c) that, once the powers contained in the instrument may be exercised, the enduring guardian has power to make decisions on behalf of the appointor, subject to the terms or information about exercising the power in the instrument and in accordance with the duties and responsibilities under this Act;

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- (d) that the appointor may revoke the instrument of appointment of an enduring guardian at any time if the appointor has the decision-making ability to do so;
 - (e) that the power that the appointor has given continues even if the appointor subsequently loses decision-making ability;
 - (f) that the appointor is unable to oversee the use of the power if the appointor subsequently loses decision-making ability.
- (3) A person is not eligible to be appointed as an enduring guardian unless the person is of or over the age of 18 years.
 - (4) A person is not eligible to be appointed as an enduring guardian if the person is, in a professional or administrative capacity, directly or indirectly responsible for, or involved in, the medical care or treatment of the appointor and, if a person who is validly appointed as an enduring guardian becomes so responsible or involved, the appointment lapses.
 - (5) Subject to any conditions specified in the instrument, an instrument appointing an enduring guardian confers, on each appointee, power to make decisions in relation to the appointor's personal matters if the appointor subsequently is unable, by reason of impaired

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decision-making ability, to make decisions in relation to those personal matters.

- (6) The powers conferred by an instrument appointing an enduring guardian are, unless the Tribunal otherwise directs, to be exercised in accordance with any lawful directions specified in the instrument.
- (7) Subject to any conditions specified in the instrument, section 25(2) and (3) apply to an enduring guardian as if the enduring guardian were a guardian appointed under section 20.
- (8) The amendments to this section and Schedule 3 made by the *Guardianship and Administration Amendment (Advance Care Directives) Act 2021* do not apply in relation to an instrument of appointment of an enduring guardian made before the commencement of that Act.

32A. Alternative enduring guardian

- (1) An instrument of appointment of an enduring guardian under section 32(1) who is not the Public Guardian may appoint a person to be an alternative enduring guardian of the represented person.
- (2) During the absence or incapacity of an enduring guardian of a represented person, an alternative enduring guardian of that person has the functions of his or her enduring guardian.

32B. Right of enduring guardian to information

- (1) An enduring guardian has a right –
- (a) to all the information to which the appointor is entitled; and
 - (b) if the appointor is unable, by reason of impaired decision-making ability, to make decisions in relation to personal matters, to all information to which the appointor would have been entitled but for the impaired decision-making ability –

if the information is reasonably required for the purpose of exercising a power, or determining whether to exercise a power, of the enduring guardian.

- (2) An enduring guardian has, if the appointor is unable, by reason of impaired decision-making ability, to make decisions in relation to the appointor's personal matters, a right to obtain, from a person who has possession of a will of the appointor, a copy, of the will, that is certified by the person.
- (3) A person who has custody or control of information, or a will, to which an enduring guardian has a right under subsection (1) or (2), must, at the request of the enduring guardian, disclose the information to the enduring guardian or provide to the enduring guardian a copy, of the will, that is certified by the person.

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- (4) Subsections (1), (2) and (3) are subject to any condition or contrary intention, or express limitation, in the instrument of appointment of the enduring guardian.

32C. Transactions that may involve conflict of duty

- (1) An enduring guardian may only enter into a transaction that results, or may result, in a conflict of interest, if –
- (a) the instrument of appointment of the enduring guardian specifies that the transaction may, even though it will or may result in a conflict of interest, be entered into by the enduring guardian; or
 - (b) the transaction is a member of a class of transactions that the instrument of appointment of the enduring guardian specifies may, even though the transactions will or may result in a conflict of interest, be entered into by the enduring guardian; or
 - (c) the instrument of appointment of the enduring guardian specifies that, even though such a transaction will or may result in a conflict of interest, any transaction may be entered into by the enduring guardian.
- (2) For the purposes of subsection (1), a conflict of interest is a conflict between –

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- (a) the duties of an enduring guardian in respect of the appointor; and
- (b) either –
 - (i) the interests of the enduring guardian, or a relative, business associate or close friend of the enduring guardian; or
 - (ii) another duty of the enduring guardian.

32D. Keeping of records, &c.

- (1) An enduring guardian must keep an accurate record of all dealings and transactions made by the person as the enduring guardian.

Penalty: Fine not exceeding 20 penalty units.

- (2) A person who has ceased to be an enduring guardian must –
 - (a) retain, for at least 7 years after so ceasing, an accurate record of all dealings and transactions made as the enduring guardian; or
 - (b) provide to the Tribunal an accurate record of all dealings and transactions made as the enduring guardian.

Penalty: Fine not exceeding 20 penalty units.

- (3) A person with a proper interest in the matter may, in writing, request the Tribunal to exercise

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its power under subsection (4) in relation to a person who is or was an enduring guardian.

- (4) The Tribunal, after receiving under subsection (3) a request in relation to –
- (a) a person who is an enduring guardian; or
 - (b) a person who was, within the previous 7 years, an enduring guardian and who has not provided an accurate record to the Tribunal in accordance with subsection (2)(b) –

may, by notice in writing to the person, require the person to provide to the Tribunal, within the period of not less than 14 days specified in the notice, a document setting out an accurate record of all dealings and transactions made by the person as an enduring guardian.

- (5) A person who receives a notice under subsection (4) must provide to the Tribunal, before the end of the period specified in the notice, a document setting out an accurate record of all dealings and transactions made by the person as the enduring guardian.

Penalty: Fine not exceeding 20 penalty units.

- (6) A document provided to the Tribunal by a person in accordance with a notice under subsection (4) –
- (a) is to be in a form approved by the Tribunal; and

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- (b) is to be verified by a statutory declaration that is signed by the person; and
- (c) is to be accompanied by other evidence, if any, that the Tribunal specifies in the notice is required to accompany the document.

33. Revocation of appointment by appointor

- (1) The appointor of an enduring guardian may, by instrument in writing, revoke the appointment.
- (2) An instrument is not effective to revoke an appointment as enduring guardian unless –
 - (a) it is in accordance with Form 2 in Schedule 3; and
 - (b) there are at least 2 attesting witnesses to the instrument, neither of whom is a party to it nor a relative of a party to it and who have witnessed the instrument in the presence of the appointor and each other; and
 - (c) it is registered with the Tribunal.

34. Revocation or amendment of appointment by Tribunal

- (1) The Tribunal may, on an application under this section or on its own motion and after a hearing –

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- (a) revoke or amend an instrument of appointment of an enduring guardian if –
 - (i) the enduring guardian seeks revocation of the appointment; or
 - (ii) the Tribunal is satisfied that the enduring guardian is not willing or able to act in that capacity; or
 - (iii) the Tribunal is satisfied that the enduring guardian has, in that capacity –
 - (A) not acted to promote the personal and social well-being of the appointor; or
 - (B) acted in an incompetent or negligent manner or contrary to the provisions of this Act; or
 - (iv) the Tribunal is satisfied that the circumstances of the appointor have changed to the extent that it is appropriate to revoke or amend the instrument; and
 - (b) if the Tribunal thinks fit, and is satisfied of the matters specified in 20(1)(b) and (c), appoint a guardian for the appointor of the enduring guardian.
- (1A) The Tribunal may, on an application under this section or on its own motion and after a hearing –

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-
- (a) declare that an instrument of appointment of an enduring guardian or an instrument revoking the appointment of an enduring guardian is invalid if the Tribunal is satisfied that –
- (i) the appointor did not have decision-making ability in respect of the making or revoking of the instrument; or
 - (ii) the instrument is contrary to the provisions of this Act; or
 - (iii) the appointor was induced to make the instrument by reason of dishonesty or undue influence; and
- (b) if the Tribunal thinks fit, and if satisfied of the matters specified in 20(1)(b) and (c), appoint a guardian for the appointor of the enduring guardian.
- (1B) An appointment of a person as a guardian under subsections (1)(b) or (1A)(b) has the same effect as if it had been made under Part 4.
- (2) The application –
- (a) is to be in writing; and
 - (b) is to be lodged with the registrar; and
 - (c) is to contain the prescribed information.
- (3) The application may be made by –

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- (a) the Public Guardian; or
- (b) the enduring guardian; or
- (c) the appointor of the enduring guardian;
or
- (d) the administrator of the appointor's
estate; or
- (e) any other person who the Tribunal is
satisfied has a proper interest in the
matter.

**35. Advice or directions as to instruments of
appointment**

- (1) An enduring guardian may apply for advice or
direction by the Tribunal on any matter relating
to the scope of his or her appointment as such or
the exercise of any power by the guardian under
the instrument of appointment.
- (2) The Tribunal may require notice of an
application under subsection (1) to be given to
any person that the Tribunal directs and may
exercise its powers under this section without a
hearing.
- (3) The Tribunal may–
 - (a) approve or disapprove of any act
proposed to be done by the enduring
guardian; and
 - (b) give such advice or direction as it
considers appropriate; and

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- (c) vary the effect of the instrument of appointment or make any other order that it could have made on an application for a guardianship order.
- (4) The Tribunal of its own motion may direct, or offer advice to, an enduring guardian in respect of any matter.
- (5) An enduring guardian who contravenes a direction given to him or her under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.

PART 5A – ADVANCE CARE DIRECTIVES

Division 1 – Objects and principles

35A. Objects of Part

The objects of this Part include the following:

- (a) to enable persons with decision-making ability to give directions about their future health care;
- (b) to enable persons with decision-making ability to express their preferences and values in respect of their future health care, including by specifying outcomes or interventions they wish to avoid;
- (c) to ensure, as far as is reasonably practicable and appropriate, that health care that is provided to a person who has given an advance care directive accords with the person's directions, preferences and values;
- (d) to protect health practitioners and others giving effect to the directions, preferences and values of a person who has given an advance care directive;
- (e) to provide mechanisms for the resolution of disputes in relation to advance care directives.

35B. Principles to be taken into account

In addition to the principles set out in section 8, the following principles must be taken into account in connection with the administration, operation and enforcement of this Part:

- (a) advance care directives enable persons with decision-making ability to make decisions about their future health care by stating their own directions, values and preferences;
- (b) a person with decision-making ability can decide what constitutes quality of life for that person and can express that in an advance care directive;
- (c) an adult is, in the absence of evidence or a law of the State to the contrary, to be presumed to have decision-making ability in respect of decisions about the adult's health care;
- (d) a person must be allowed to make his or her own decisions about the person's health care to the extent that the person is able;
- (e) a person can exercise his or her autonomy by making self-determined decisions, making collaborative decisions within a family or community, or a combination of any of these, according to the person's culture, background, history, or spiritual or religious beliefs;

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- (f) subject to this Part, an advance care directive has the same authority as the person who gave the advance care directive had when the person had decision-making ability;
- (g) a person giving effect to an advance care directive on behalf of another in accordance with this Part –
 - (i) must, as far as is reasonably practicable, reflect the decision that the person would have made in the circumstances; and
 - (ii) must, in the absence of any specific directions or expressed views of the person, make decisions that are consistent with the proper care of the person and the protection of the person's interests; and
 - (iii) must, as far as is reasonably practicable, promote the human rights of the person including rights recognised in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities;

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- (h) in the event of a dispute arising in relation to an advance care directive, the directions, preferences and values (whether expressed or implied) of the person who gave the advance care directive are of paramount importance and should, insofar as is reasonably practicable, be given effect;
- (i) subject to this Part, in determining the preferences and values of a person who has given an advance care directive containing a direction that is unclear, consideration may be given to –
 - (i) any past preferences and values expressed by the person in relation to the matter; and
 - (ii) the person’s values as displayed or expressed during the whole or any part of the person’s life; and
 - (iii) any other matter that is relevant in determining the preferences and values of the person in relation to the matter.

Division 2 – Preliminary

35C. Interpretation of Part

- (1) In this Part –

advance care directive form means a form approved by the Secretary of the

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Department for the giving of advance care directives or a form to similar effect;

authorised decision maker, in relation to a person, means a person referred to in section 35R(1) who is authorised to provide consent or a refusal of consent to the provision of health care to that person;

binding provision – see section 35M;

health care – see section 35E;

health care decision, in relation to a person, means a decision regarding the provision of health care to that person;

health service has the same meaning as in the Health Practitioner Regulation National Law (Tasmania);

life-sustaining measures means health care that supplants or maintains the operation of vital bodily functions that are temporarily or permanently incapable of independent operation, and includes assisted ventilation, the provision of nutrition and hydration through artificial means and cardiopulmonary resuscitation;

non-binding provision – see section 35M;

- (2) For the purposes of this Part, a reference to an act is to be taken to include a reference to an

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attempt to do the act, and a refusal or omission to act.

- (3) For the purposes of this Part, a reference to a provision of an advance care directive is to be taken to include a reference to a condition of, or instruction or direction in, an advance care directive.
- (4) Unless the contrary intention appears, a reference in this Part to the provision of health care to a person is to be taken to include a reference to the withdrawal, or withholding, of health care to the person (including the withdrawal or withholding of life-sustaining measures).
- (5) Subject to any provision of an advance care directive to the contrary, a reference in an advance care directive to particular health care is to be taken to include a reference to any other health care that is of substantially the same kind, or that is only distinguishable on technical grounds not likely to be understood or appreciated by the person who gave the advance care directive.

35D.

35E. Meaning of *health care*

- (1) Subject to subsection (2), in this Part, ***health care*** means health care of the following kinds:

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- (a) any care, health service, procedure or treatment (including medical or dental treatment) provided by, or under the supervision of, a health practitioner for the purpose of diagnosing, preventing, assessing, maintaining or treating a physical condition or mental illness;
 - (b) an intimate forensic procedure and a non-intimate forensic procedure normally carried out by a person authorised to carry out the procedure under section 40 of the *Forensic Procedures Act 2000*;
 - (c) the conduct of health and medical research;
 - (d) any other kind of health care prescribed to be health care for the purposes of this Part.
- (2) In this Part, **health care** does not include –
- (a) any non-intrusive examination made for diagnostic purposes (including a visual examination of the mouth, throat, nasal cavity, eyes or ears); or
 - (b) first-aid medical or dental treatment; or
 - (c) the administration of a pharmaceutical drug for the purpose, and in accordance with the dosage level, recommended in the manufacturer’s instructions (if the drug is one for which a prescription is not required and which is normally self-administered); or

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-
- (d) any other kind of health care that is prescribed as not being health care for the purposes of this Part.

35F.

Division 3 – Advance care directives

35G. Giving an advance care directive

- (1) Subject to this Part, a person may give an advance care directive containing provisions that reflect the directions, values and preferences of that person with regard to that person's future health care.
- (2) A person may give an advance care directive if the person –
 - (a) has decision-making ability in respect of health care decisions; and
 - (b) understands what an advance care directive is; and
 - (c) understands the consequences of giving an advance care directive.
- (3) An advance care directive is invalid if the advance care directive –
 - (a) was not made voluntarily; or
 - (b) was made as a result of dishonesty, inducement or coercion.

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- (4) A person must not by dishonesty or undue influence induce another person to give an advance care directive or include a provision in an advance care directive.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 100 penalty units; or
 - (b) a body corporate, a fine not exceeding 500 penalty units.
- (5) A person must not require another person to give an advance care directive, or include a provision in an advance care directive, as a precondition to providing a service.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 100 penalty units; or
- (b) a body corporate, a fine not exceeding 500 penalty units.

35H. Formal requirements for advance care directives

- (1) In this section –

minor error includes, but is not limited to, a typographical, grammatical, spelling, punctuation, cross referencing or obsolete referencing error.

- (2) Subject to this Part, a person may give an advance care directive in writing, orally or by

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any other means that enables the directions, preferences and values of the person giving the advance care directive to be documented (including through audio visual recording).

- (3) A person giving an advance care directive in writing may give the advance care directive by completing an advance care directive form or causing an advance care directive form to be so completed.
- (4) An advance care directive given in writing must –
 - (a) include the name, residential address and date of birth of the person giving the advance care directive; and
 - (b) be signed and dated by –
 - (i) the person giving the advance care directive; or
 - (ii) an adult on behalf of the person giving the advance care directive, only if the signing by that adult –
 - (A) is requested by the person giving the advance care directive; and
 - (B) is made in the presence of the person giving the advance care directive; and

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- (c) be witnessed upon completion in accordance with section 35I(2); and
 - (d) comply with any prescribed requirements in relation to the giving of written advance care directives.
- (5) An advance care directive given by means, other than writing, must –
 - (a) include the name, residential address and date of birth of the person giving the advance care directive; and
 - (b) include the date on which the advance care directive was given; and
 - (c) be witnessed upon completion in accordance with section 35I(4); and
 - (d) comply with any prescribed requirements in relation to the giving of advance care directives by means other than writing.
- (6) An advance care directive, or a provision of an advance care directive, is not invalid under section 35K merely because –
 - (a) in the case of a written advance care directive, the person giving the advance care directive did not complete a particular section of the advance care directive form, or did not cause it to be completed, other than a section specified in an instruction on the form as being a section that must be completed; or

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-
- (b) the person giving the advance care directive was not fully informed in relation to each medical condition, or any other circumstance, to which the advance care directive relates; or
 - (c) the person giving the advance care directive did not seek medical, legal or other professional advice in relation to the advance care directive; or
 - (d) the advance care directive contains a minor error that does not affect the ability to understand the directions, preferences and values of the person who gave the advance care directive; or
 - (e) provisions in the advance care directive are expressed in informal language rather than medical or technical terminology; or
 - (f) the person giving the advance care directive expressed his or her preferences and values in general terms rather than specific provisions, or his or her preference and values in relation to a particular matter need to be inferred from the advance care directive; or
 - (g) provisions in the advance care directive are based on cultural or religious grounds.

35I. Witnessing of advance care directive

- (1)

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- (2) A written advance care directive must be witnessed by 2 persons as follows:
- (a) each witness must sign and date the advance care directive in the presence of each other and the person giving the advance care directive;
 - (b) each witness must certify on the advance care directive form the following:
 - (i) that he or she is satisfied as to the identity of the person giving the advance care directive;
 - (ii) that the person giving the advance care directive appears to understand that the advance care directive is about future health care;
 - (iii) that the person giving the advance care directive appears to understand the nature and effect of each statement contained in the advance care directive;
 - (iv) that, in the opinion of the witness, the person giving the advance care directive did not appear to be acting under any form of duress or coercion;
 - (v) that, in the opinion of the witness, the provisions contained in the advance care directive reflect the directions, preferences and values

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of the person making the advance care directive;

- (c) in accordance with any other prescribed witnessing requirements.
- (3) If a written advance care directive is given by a child, one of the witnesses referred to in subsection (2) must be a registered health practitioner.
- (4) An advance care directive given by means other than writing must be witnessed –
- (a) by 2 persons (one of whom is a registered health practitioner) who are present at the same time; and
 - (b) in accordance with any prescribed witnessing requirements.
- (5) A person must not witness an advance care directive given under this Part –
- (a) if the person is a close family member of the person giving the advance care directive; or
 - (b) if the person is a carer for the person giving the advance care directive (whether those services are provided in a paid or voluntary capacity); or
 - (c) if the person has signed the advance care directive pursuant to section 35H(4)(b)(ii) on behalf of the

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- person giving the advance care directive;
or
- (d) if the person has not attained 18 years of age; or
 - (e) if the person has a known pecuniary interest in the estate of the person giving the advance care directive; or
 - (f) if the person, as a result of his or her position in a hospital, hospice, nursing home or other facility, has a direct or indirect ability to control or influence the care and management of the person giving the advance care directive who is resident at that facility; or
 - (g) if the person has been appointed as a guardian for the person giving the advance care directive; or
 - (h) in any other prescribed circumstances in which a person may not be a witness in relation to an advance care directive.

35J. Formal requirements for advance care directive in language other than English

- (1) The following provisions apply if a person wishes to give an advance care directive in a language other than English:
 - (a) the advance care directive may be given with the assistance of an interpreter or translator who is qualified as an

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- interpreter or translator in the language that the person who wishes to give the advance care directive understands;
- (b) the advance care directive form must be completed in English;
 - (c) the interpreter or translator must certify on the advance care directive form that the interpreter or translator assisted in the interpretation or translation of the advance care directive form.
- (2) A person must not act as an interpreter or translator for a person who wishes to give an advance care directive under this Part if the interpreter or translator is a person prohibited from witnessing the advance care directive under section 35I(5).

35K. Advance care directives that do not meet requirements

- (1) If a person has given, or attempted to give, an advance care directive in a form that does not meet a requirement under section 35H, 35I or 35J, that advance care directive is not valid unless the Tribunal otherwise orders under subsection (2).
- (2) The Tribunal may make an order declaring that an advance care directive is valid despite a failure to comply with a requirement under section 35H, 35I or 35J.

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- (3) Despite subsection (1), if an advance care directive given by a person does not meet a requirement under section 35H, 35I or 35J, a provision of that advance care directive may be taken into account by a health practitioner, the Public Guardian, the Tribunal or an authorised decision maker for that person, in determining the person's directions, preferences and values.

35L. Provisions that are void or of no effect in advance care directives

- (1) In this section –

mandatory health care means –

- (a) an assessment that is authorised under an assessment order under the *Mental Health Act 2013*; or
 - (b) treatment that is authorised under a treatment order under the *Mental Health Act 2013*; or
 - (c) health care of a kind prescribed for the purposes of this definition.
- (2) Subject to this Part, a provision in an advance care directive is void and of no effect to the extent that the provision –
- (a) is unlawful; or
 - (b) requires an unlawful act to be performed;
or

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- (c) comprises a refusal of mandatory health care; or
 - (d) would, if given effect, cause a health practitioner or other person to provide health care that –
 - (i) contravenes a professional standard or code of conduct that applies to the health practitioner or person; or
 - (ii) would otherwise amount to professional misconduct or unprofessional conduct under the Health Practitioner Regulation National Law (Tasmania); or
 - (e) is a type of provision prescribed for the purposes of this section as being void and of no effect.
- (3) For the purposes of subsection (2), a reference to a professional standard or code of conduct does not include a reference to a standard or code of conduct that –
- (a) is prepared by or on behalf of a hospital, clinic, hospice, nursing home or any other place at which health care is provided to a person; and
 - (b) regulates the provision of health care or other services at that place.
- (4) A provision in an advance care directive that compromises a refusal or withdrawal of health

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care is not void under subsection (2)(b) solely on the basis that the refusal or withdrawal of that health care would result in the necessities of life not being provided.

- (5) For the purposes of subsection (4), the expression *necessaries of life* has the same meaning as in sections 144 and 145 of the *Criminal Code*.

Division 4 – Operation of advance care directives

35M. Binding and non-binding provisions

- (1) Subject to this section, a provision of an advance care directive that comprises a clear and unambiguous refusal or withdrawal of particular health care is a binding provision.
- (2) If a binding provision of an advance care directive is expressed to apply, or to be binding, only in specified circumstances, the provision is to be taken to be a binding provision only in respect of those circumstances.
- (3) All other provisions of an advance care directive are non-binding provisions.
- (4) For the purposes of this Part, a non-binding provision is a statement of a person's preferences and values with regard to their future health care and may include but is not limited to the following:
- (a) what is important to the person regarding any future health care;

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- (b) what gives the person quality of life;
 - (c) what health care outcomes the person regards as acceptable;
 - (d) the person's preferred places of care and place to die;
 - (e) cultural or religious beliefs which may impact on future health care;
 - (f) any other matter that the person wishes to be taken into account in making decisions about their future health care.
- (5) If an otherwise binding provision is unclear or ambiguous in relation to a particular circumstance but is still indicative of a person's preferences or values in relation to those circumstances, the provision is to be taken to be a non-binding provision for that particular circumstance.

35N. When advance care directives are in force

- (1) An advance care directive is taken to be in force from the time the advance care directive is witnessed in accordance with this Part.
- (2) Subject to this Part, an advance care directive remains in force until the earliest of the following:
 - (a) if an expiry date is specified in the advance care directive, that date;
 - (b) it is revoked in accordance with this Act;

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- (c) the death of the person who gave the advance care directive.

350. Requirement to make reasonable inquiries as to advance care directive

- (1) In this section –

health care facility means a hospital, nursing home or such other facility as is prescribed for the purposes of this definition.

- (2) If a health practitioner reasonably believes that an adult has impaired decision-making ability in respect of a health care decision, the health practitioner must, before providing health care to that adult, make reasonable efforts –
 - (a) to ascertain if the adult has given an advance care directive; and
 - (b) if the adult has given an advance care directive, to obtain a copy of that advance care directive.
- (3) If a health practitioner reasonably believes that a child has given an advance care directive, the health practitioner must make reasonable efforts to obtain a copy of that advance care directive before providing health care to that child.
- (4) Subsections (2) and (3) apply subject to section 35V.
- (5) The person in charge of a health care facility must take reasonable steps –

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- (a) to ascertain if a person who is cared for in that facility has given an advance care directive; and
- (b) if the person who is cared for in that facility has given an advance care directive, to ensure that a copy of the advance care directive is placed on the person's health records at the facility.

35P. No variation of advance care directive

An advance care directive may not be varied except by the Tribunal pursuant to sections 35Z or 35ZK.

Division 5 – Consent to health care when advance care directive in effect

35Q. Consent given or refused in advance care directive

- (1) A health practitioner may provide health care in accordance with a consent given or refused in an advance care directive if –
 - (a) at the relevant time, the person who gave the advance care directive has impaired decision-making ability in respect of the health care decision; and
 - (b) the consent or refusal of consent to the health care is clear and unambiguous.
- (2) Clear and unambiguous consent to health care given or refused in an advance care directive –

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- (a) is taken to be the consent or refusal of consent (as the case requires) of the person who gave the advance care directive; and
- (b) is taken to have the same effect for all purposes as if the person who gave the advance care directive were capable of giving such consent or the refusal of such consent.

35R. Consent given or refused by authorised decision maker for person who has given an advance care directive

- (1) A person may provide consent or a refusal of consent to the provision of health care to a person who has given an advance care directive if, at the relevant time –
 - (a) the health practitioner seeking consent reasonably believes that the person who gave the advance care directive has impaired decision-making ability in respect of the decision; and
 - (b) the advance care directive does not provide clear and unambiguous consent or a refusal of consent to the health care; and
 - (c) the person being asked to provide the consent –
 - (i) is a person who would otherwise be authorised to provide consent

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to the provision of that health care under Part 6; or

(ii) has been appointed as a guardian for the person who gave the advance care directive and that appointment provides authority for them to make a decision of the relevant kind; or

(iii) is the person responsible under this Act for the person who has given the advance care directive.

(2) A consent provided under this section in respect of the provision of health care to a person who has given an advance care directive has effect as if –

(a) the person had been capable of giving consent to the provision of the health care; and

(b) the health care had been carried out with that person's consent.

35S. Authorised decision maker to make decisions to give effect to advance care directive

(1) Subject to this Part, an authorised decision maker for a person who has given an advance care directive –

(a) must comply with any binding provisions of the advance care directive; and

(b) is to, as far as is reasonably practicable –

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- (i) comply with any non-binding provisions of the advance care directive that relates to health care of the relevant kind; and
 - (ii) seek to avoid any outcome or intervention that the person who gave the advance care directive would wish to be avoided (whether such wish is expressed or implied); and
 - (iii) endeavour to make health care decisions in a manner that is consistent with the principles set out in section 35B; and
 - (iv) make health care decisions that the authorised decision maker reasonably believes the person who gave the advance care directive would have made in the circumstances.
- (2) Despite subsection (1), an authorised decision maker for a person who has given an advance care directive must act in accordance with –
- (a) any agreement reached in relation to the advance care directive at a mediation under section 35ZI; and
 - (b) any direction of the Tribunal given in relation to the advance care directive.

35T. Health practitioners to give effect to advance care directives

- (1) Subject to this Part, a health practitioner who is providing, or is to provide, health care to a person who has given an advance care directive and who has impaired decision-making ability in respect of a health care decision –
 - (a) must comply with a binding provision of the advance care directive; and
 - (b) is to comply, as far as is reasonably practicable, with a non-binding provision of the advance care directive; and
 - (c) must seek, as far as is reasonably practicable, to avoid any outcome or intervention that the person who gave the advance care directive would wish to be avoided (whether such wish is expressed or implied); and
 - (d) must endeavour to provide the health care in a manner that is consistent with the principles set out in section 35B.
- (2) Despite subsection (1), a health practitioner who is providing, or is to provide, health care to a person who has given an advance care directive, must, in providing that health care, act in accordance with the following:
 - (a) any agreement reached in relation to the advance care directive at a mediation under section 35ZI;

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- (b) any direction of the Tribunal given in relation to the advance care directive.

35U. Circumstances where health practitioners may not comply with advance care directive

- (1) A health practitioner may refuse to comply with a provision of an advance care directive if the health practitioner believes on reasonable grounds that –
 - (a) the person who gave the advance care directive did not intend the provision to apply in the particular circumstances; or
 - (b) the provision is ambiguous or does not appear to reflect the current wishes of the person who gave the advance care directive.
- (2) A health practitioner must, before refusing to comply with a provision of an advance care directive under subsection (1), make reasonable efforts to consult with the authorised decision maker for the person who gave the advance care directive.
- (3) A health practitioner who refuses to comply with a binding provision of an advance care directive must, in the clinical records of the person who gave the advance care directive, make a written record of the refusal and the reasons for the refusal.

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- (4) A health practitioner is not compelled to comply with a provision of an advance care directive that –
- (a) specifies a particular kind of health care that the person giving the advance care directive wishes to receive; or
 - (b) in the opinion of the health practitioner would result in health care being provided that is futile in the circumstances; or
 - (c) requests a kind of health care that is not consistent with current standards of health care in this State.
- (5) Despite this section, a health practitioner is to –
- (a) provide health care consistent with the values and preferences expressed in the advance care directive; and
 - (b) act in accordance with any direction of the Tribunal given in relation to the advance care directive.

35V. Urgent health care

A health practitioner may provide health care to a person who has given an advance care directive, despite the health practitioner not having access to that advance care directive, if the health practitioner considers that providing the health care is necessary, as a matter of urgency –

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- (a) to save the person's life; or
- (b) to prevent serious damage to the person's health; or
- (c) to prevent the person from suffering or continuing to suffer significant pain or distress.

35W. Conscientious objection

- (1) Despite any other provision of this Part, a health practitioner may refuse to comply with a provision of an advance care directive if the health practitioner has a conscientious objection to complying with the provision.
- (2) If a health practitioner refuses to comply with a provision of an advance care directive under subsection (1) the health practitioner –
 - (a) must refer the patient's care on to another health practitioner in the same profession as the referring health practitioner; and
 - (b) must not, in any event, provide treatment that would prevent provisions in an advance care directive from being given effect.

Division 6 – Registration of advance care directives

35X. Registration of advance care directives

- (1) The Tribunal may, on application, register an advance care directive.

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- (2) The Tribunal may, at its discretion, refuse to register an advance care directive if the advance care directive does not comply with sections 35H, 35I or 35J.
 - (3) An advance care directive is not invalid merely because it is not registered under this section.
 - (4) The Tribunal is to keep, or cause to be kept, a register of advance care directives.
 - (5) The register of advance care directives maintained under subsection (4) –
 - (a) may be kept in any form, including electronic; and
 - (b) is to include copies of all advance care directives that are registered with the Tribunal under this Act.

Division 7 – Revocation of advance care directives

35Y. Revoking advance care directive where person has decision-making ability

- (1) A person giving an advance care directive may revoke the advance care directive at any time in the prescribed manner if the person has decision-making ability in respect of that decision and understands the consequences of revoking the advance care directive.
- (2) On revoking an advance care directive, the person who revoked the advance care directive must, as soon as is reasonably practicable, take reasonable steps –

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- (a) to advise each person appointed as the person's enduring guardian of the revocation; and
 - (b) to notify each other person or organisation that has been given a copy of the advance care directive of the revocation; and
 - (c) in the case of an advance care directive that has been registered, notify the Tribunal of the revocation.
- (3) If a person gives an advance care directive, any previous advance care directive given by the person is revoked.

35Z. Revoking or varying advance care directive where person has impaired decision-making ability

- (1) A person may make an application to the Tribunal in relation to an advance care directive if –
- (a) the person who has given the advance care directive has impaired decision-making ability in respect of decisions relating to the advance care directive; and
 - (b) the person has reasonable cause to believe that the person who gave the advance care directive wishes or may wish to revoke or vary the advance care directive; and

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- (c) the person is –
- (i) a health practitioner who is providing, or is to provide, health care to the person who gave the advance care directive; or
 - (ii) an authorised decision maker for the person who gave the advance care directive; or
 - (iii) any other person who the Tribunal is satisfied has a proper interest in the matter.
- (2) An application to the Tribunal under subsection (1) is to be lodged with the registrar in a manner and form determined by the Tribunal.
- (3) The Tribunal on receiving an application under subsection (1) may make such inquiries or investigations as the Tribunal may think appropriate.
- (4) Subject to subsection (5) the Tribunal may, on application under subsection (1) and after a hearing, revoke or vary an advance care directive if the Tribunal is satisfied that –
- (a) the person who gave the advance care directive wishes to revoke or vary the advance care directive; and
 - (b) the person who gave the advance care directive understands the nature and consequences of the revocation or variation; and

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- (c) the revocation or variation genuinely reflects the wishes of the person; and
 - (d) the revocation or variation is, in all the circumstances, appropriate.
- (5) If an advance care directive expressly provides that the advance care directive is not to be revoked or varied in the circumstances contemplated by this section, the Tribunal should not revoke or vary the advance care directive unless satisfied that the current wishes of the person who gave the advance care directive indicate a conscious wish to override such a provision.
- (6) If the Tribunal revokes or varies an advance care directive under this section, the Tribunal –
 - (a) must advise the person who made the application under subsection (1) and any other person the Tribunal is satisfied has a proper interest in the matter of the revocation or variation as soon as is reasonably practicable; and
 - (b) may give such advice and directions as the Tribunal considers necessary or desirable in the circumstances of the case.
- (7) A person who, without reasonable excuse, refuses or fails to comply with a direction of the Tribunal under subsection (6) is guilty of an offence.

Penalty: Fine not exceeding 50 penalty units.

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- (8) It is a defence in proceedings for an offence under subsection (7) if the defendant establishes that he or she did not know, and could not reasonably have been expected to know, that the defendant's conduct amounted to a failure to comply with the direction.

Division 8 – Validity and limitation of liability

35ZA. Presumption of validity

A health practitioner or other person is entitled to presume that an apparently genuine advance care directive is in force unless he or she knew, or ought reasonably to have known, that the advance care directive was not in force.

35ZB. Protection from liability

- (1) A health practitioner, authorised decision maker or other person acting under the authority of this Act does not incur any civil or criminal liability for an act done or omitted to be done by the person in good faith, without negligence and in accordance with, or purportedly in accordance with, an advance care directive.
- (2) For the purposes of this section, a reference to the civil liability of a person includes a reference to liability arising under disciplinary, regulatory, administrative or similar proceedings.

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35ZC. Preservation of liability

Nothing in this Part relieves a person from liability, in respect of the provision of health care to a person to whom this Part applies, where the first-mentioned person would have been subject to that liability if –

- (a) the person to whom this Part applies had been capable of giving consent to the carrying out of the health care; and
- (b) the health care had been carried out with the person's consent.

35ZD. Validity of acts and decisions under revoked or varied advance care directive

Subject to this Act, the variation of an advance care directive by the Tribunal or the revocation of an advance care directive does not affect the validity of any act done or decision made in accordance with the advance care directive before the variation or revocation.

35ZE. Advance care directive to take precedence

If there is an inconsistency between a provision in an advance care directive and a direction specified in an instrument appointing an enduring guardian, the provision of the advance care directive applies, to the extent of the inconsistency.

Division 9 – Dispute resolution, review and appeals

35ZF. Interpretation of Division

In this Division –

eligible person, in respect of an advance care directive, means the following persons:

- (a) the person who gave the advance care directive;
- (b) an authorised decision maker for the person who gave the advance care directive;
- (c) a health practitioner providing, or proposing to provide, health care to the person who gave the advance care directive;
- (d) a health service provider from whom a person who gave the advance care directive is receiving, or is proposed to receive, health care;
- (e) a party to a mediation held, in respect of the advance care directive, by the Public Guardian under this Division;
- (f) any other person who satisfies the Public Guardian or the Tribunal that the person has a proper interest in a particular matter

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relating to the advance care directive.

35ZG. Application of Division

This Division applies to the following:

- (a) the giving or revoking of an advance care directive;
- (b) the provision, or proposed provision, of health care to a person who has given an advance care directive;
- (c) any other matter prescribed for the purposes of this section.

35ZH. Functions and powers of Public Guardian and Tribunal

The Public Guardian and the Tribunal must, in performing a function or exercising a power under this Division in respect of an advance care directive, seek, as far as is reasonably practicable, to give full effect to the directions, preferences and values of the person who gave the advance care directive.

35ZI. Resolution of matters by Public Guardian

- (1) The Public Guardian may, on application by an eligible person in respect of an advance care directive or on the Public Guardian's own initiative, provide preliminary assistance in

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resolving a matter relating to an advance care directive, including by –

- (a) ensuring that the parties to the matter are fully aware of their rights and obligations; and
 - (b) identifying any issues that are in dispute between parties to the matter; and
 - (c) canvassing options that may obviate the need for further proceedings; and
 - (d) where appropriate, facilitating full and open communication between the parties to a dispute; and
 - (e) seeking to resolve differences between eligible persons in relation to any other matter prescribed by the regulations for the purposes of this section.
- (2) The Public Guardian may, in providing preliminary assistance undersubsection (1), arrange a mediation between parties to a dispute if all parties to the dispute agree to such a mediation.
- (3) The Public Guardian must put procedures in place to allow a person who has given an advance care directive to attend any mediation relating to that advance care directive under this section unless the Public Guardian is satisfied that –
- (a) the person does not wish to attend the mediation in person; or

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- (b) the personal attendance of the person at the mediation is impracticable or unreasonable, despite any arrangement that the Public Guardian may make.
- (4) If a matter under this section is resolved by mediation –
 - (a) the parties must sign an agreement setting out the terms of the settlement; and
 - (b) the Public Guardian must cause a copy of the signed agreement to be provided to each of the parties; and
 - (c) the Public Guardian must cause a copy of the signed agreement to be provided to the Tribunal; and
 - (d) if the advance care directive has been registered by the Tribunal, the Tribunal may cause a copy of the signed agreement to be attached to the copy of the advance care directive in the register kept under section 35X.
- (5) The Public Guardian may bring a mediation to an end at any time –
 - (a) if, in the opinion of the Public Guardian, it is more appropriate that the matter be dealt with by the Tribunal; or
 - (b) at the request of a party to the mediation.

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- (6) Evidence of anything said or done in the course of a mediation under this section is not admissible in subsequent proceedings except by consent of all parties to the proceedings.
- (7) An application under this section –
 - (a) must be made in a manner and form determined by the Public Guardian; and
 - (b) must be accompanied by such information as the Public Guardian may reasonably require.
- (8) The Public Guardian may refuse to provide preliminary assistance in resolving a matter under this section if, in the opinion of the Public Guardian, it is more appropriate that the matter be dealt with by the Tribunal.

35ZJ. Public Guardian may refer matter to Tribunal

The Public Guardian may refer a matter to which this Part applies to the Tribunal if the Public Guardian has ended a mediation under section 35ZI, or refused to provide preliminary assistance in resolving a matter, on the grounds that it is more appropriate that the matter be dealt with by the Tribunal.

35ZK. Resolution of matters by Tribunal

- (1) The Tribunal may, on application by an eligible person, provide advice or direction in relation to an advance care directive.

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- (2) The Tribunal may, at any time, hold a hearing in relation to an advance care directive to –
 - (a) review a matter dealt with by the Public Guardian under section 35ZI; or
 - (b) make a determination in relation to any matter to which this Part applies.
- (3) A hearing in relation to an advance care directive under subsection (2) may be held by the Tribunal –
 - (a) of its own motion; or
 - (b) on referral by the Public Guardian; or
 - (c) on application by an eligible person.
- (4) An application to the Tribunal under this section is to –
 - (a) be lodged with the registrar in a manner and form determined by the Tribunal; and
 - (b) be accompanied by such information as the Tribunal may reasonably require.
- (5) A person who has given an advance care directive is to be a party to any hearing before the Tribunal relating to that advance care directive.
- (6) The Tribunal must put procedures in place to allow a person who has given an advance care directive to attend any hearing relating to that

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advance care directive unless the Tribunal is satisfied that –

- (a) the person does not wish to attend the hearing in person; or
- (b) the personal attendance of the person at the hearing is impracticable or unreasonable, despite any arrangement that the Tribunal may make.

(7) The Tribunal may –

- (a) in the case of a review of a matter dealt with by the Public Guardian under section 35ZI, make an order confirming, varying or cancelling an agreement reached at a mediation under section 35ZI; or
- (b) in any case, make a determination in relation to the following matters:
 - (i) whether a person who gave an advance care directive did or did not have the decision-making ability to make the advance care directive;
 - (ii) whether a person who gave an advance care directive did or did not have impaired decision-making ability in relation to any of the provisions in the advance care directive;

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- (iii) whether an advance care directive, or a provision of an advance care directive, is invalid or valid;
 - (iv) whether a person has the authority to make a decision in relation to a provision in an advance care directive;
 - (v) such other determinations that the Tribunal thinks necessary or desirable in the circumstances of the case.
- (8) If the Tribunal is of the opinion that it is more appropriate that an application under subsection (3)(c) be dealt with by the Public Guardian, the Tribunal may refer the matter to the Public Guardian.
- (9) A person who, without reasonable excuse, refuses or fails to comply with a determination of the Tribunal under this section is guilty of an offence.
- Penalty: Fine not exceeding 50 penalty units.
- (10) It is a defence in proceedings for an offence under subsection (9) if the defendant establishes that he or she did not know, and could not reasonably have been expected to know, that the defendant's conduct amounted to a failure to comply with the determination.

Division 10 – Miscellaneous

35ZL. Common law advance care directives not affected

This Part does not affect common law recognition of instructions about health care given by an adult that are not given in an advance care directive under this Act.

35ZM. Other legal rights not affected

- (1) Subject to section 35ZE, this Part does not affect instructions about future health care included in an instrument appointing an enduring guardian made in accordance with Part 5.
- (2) Nothing in this Part is taken to affect any rights conferred by any other law to consent to, or to refuse to consent to, health care.
- (3) Nothing in this Part is to be taken to affect any rights conferred –
 - (a) by any law or a court; or
 - (b) by the inherent jurisdiction of a court –to consent, or to refuse to consent, to the provision of health care to a person.

35ZN. Advance care directives from other jurisdictions

- (1) In this section –

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corresponding law means a law that is declared to be a corresponding law under subsection (2);

interstate advance care directive means an instrument, containing future health care decisions, made by a person in another State, or in a Territory or another country.

- (2) Where it appears to the Minister that a law in force in another State, or in a Territory or country has substantially the same effect as Part 5A of this Act, the Minister may by notice published in the *Gazette* declare that the law is a corresponding law for the purpose of this section.
- (3) Subject to this section, if an interstate advance care directive is made under a corresponding law and that directive complies with that corresponding law, that interstate advance care directive is taken to be an advance care directive given in accordance with this Part.
- (4) An interstate advance care directive that is taken to be an advance care directive under subsection (3) is valid only to the extent that it would be valid if it were an advance care directive given in accordance with this Part.
- (5) For the purposes of this section, a certificate, from an Australian legal practitioner or from the Registrar of a relevant Court, or Board, that the interstate advance care directive satisfies the

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requirements of the relevant corresponding law is evidence of that fact.

- (6) If an interstate advance care directive is not recognised, whether wholly or partly, as valid for the purposes of this Part, the advance care directive may nevertheless be taken into consideration under this Part as an expression of a person's preferences and values.
- (7) A notice under subsection (2) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

35ZO. Advance care directive does not authorise appointment of power of attorney or enduring guardian

Nothing in this Act authorises an advance care directive to have the effect of authorising the appointment of a power of attorney or an enduring guardian.

35ZP. Review of Part

- (1) The Minister is to cause an independent review of the operation of this Part to be undertaken as soon as practicable after the fifth anniversary of its commencement.
- (2) The Minister is to cause a report on the outcome of the review to be tabled in each House of Parliament within 10 sitting-days of that House after the review is completed.

**PART 6 – CONSENT TO MEDICAL AND DENTAL
TREATMENT**

Division 1 – Preliminary

36. Application of Part 6

- (1) This Part applies to a person who –
- (a) has impaired decision-making ability in respect of decisions relating to the carrying out of medical or dental treatment on that person; and
 - (b) is incapable of indicating whether or not the person consents or refuses to consent to the carrying out of that treatment –
- whether or not that person is a represented person.
- (2) For the purposes of subsection (1), a person is incapable of giving consent to the carrying out of medical or dental treatment if the person –
- (a) is incapable of understanding the general nature and effect of the proposed treatment; or
 - (b) is incapable of indicating whether or not he or she consents or does not consent to the carrying out of the treatment.
- (3) For the purposes of subsection (1), a person is capable of giving consent to the carrying out of medical or dental treatment if –

- (a) the person has given an advance care directive; and
- (b) the medical or dental treatment is carried out pursuant to that advance care directive in accordance with a consent given or refused under Part 5A.

37. Part 6 to prevail over *Criminal Code*

This Part has effect notwithstanding sections 51 and 178E of the *Criminal Code*.

Division 2 – Medical and dental treatment

38. Unlawful medical or dental treatment

- (1) A person must not carry out medical or dental treatment on a person to whom this Part applies unless –
 - (a) consent for the treatment has been given in accordance with this Part; or
 - (b) the carrying out of the treatment is authorized by this Part without any such consent.
- (2) A person who contravenes subsection (1) by carrying out special treatment is guilty of a crime and is liable to punishment on indictment under the *Criminal Code* accordingly.
- (3) A person who contravenes subsection (1) by carrying out any treatment other than special treatment is guilty of an offence and is liable on

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summary conviction to imprisonment for a period not exceeding one year or to a fine not exceeding 10 penalty units, or both.

39. Persons authorized to consent to medical or dental treatment

- (1) Consent to the carrying out of medical or dental treatment on a person to whom this Part applies may be given by the Tribunal or, if the medical treatment or dental treatment is not special treatment, by the person responsible for that person.
- (2) The guardian for a person to whom this Part applies may also consent to the carrying out of, or continuing, special treatment if the Tribunal has previously given consent to the carrying out of, or continuing, that treatment and has authorized the guardian to give consent to the continuation of that treatment or to further treatment of a similar nature.
- (3) Where a consent to medical or dental treatment has been given by a person who is not authorized to give that consent under this section, the consent may be taken as valid if the person providing the medical or dental treatment did not know that the person giving the consent was not authorized to do so or reasonably believed that the person giving the consent was authorized to do so.

40. Urgent medical or dental treatment

Medical or dental treatment may be carried out on a person to whom this Part applies without consent given in accordance with this Division if the medical practitioner or dentist carrying out or supervising the treatment considers the treatment is necessary, as a matter of urgency –

- (a) to save the person’s life; or
- (b) to prevent serious damage to the person’s health; or
- (c) except in the case of special treatment, to prevent the person from suffering or continuing to suffer significant pain or distress.

41. Medical or dental treatment without consent

(1) Where –

- (a) it is proposed to carry out any medical or dental treatment which is not special treatment on a person to whom this Part applies; and
- (b) there is no person responsible for that person; and
- (c) the treatment is necessary and is the form of treatment that will most successfully promote that person’s health and well-being; and

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(d) that person does not object to the carrying out of the treatment –

it is lawful, subject to subsection (2), for the medical or dental treatment to be carried out on that person without consent under this Division.

- (1A) For the purposes of subsection (1)(d), a person may indicate an objection to the carrying out of the treatment in writing, orally or in another way.
- (2) The regulations may provide that in such cases as are specified in the regulations medical or dental treatment may not be carried out on a person to whom this Part applies without consent under this Division.
- (3) A medical practitioner or dentist who carries out or supervises any medical or dental treatment under subsection (1) without the consent of the relevant person must certify in the clinical records relating to the treatment that –
- (a) the treatment is necessary and is the form of treatment that will most successfully promote that person's health and well-being; and
 - (b) the person does not object to the carrying out of the treatment; and
 - (c) the medical practitioner or dentist has made reasonable inquiries to ascertain whether the person has given an advance care directive and, if so, has taken

reasonable steps to locate the advance care directive.

42. Unlawful consent to medical or dental treatment

A person who is not authorized to give consent to medical or dental treatment for a person to whom this Part applies but purports to give any such consent, or represents to a registered practitioner that he or she has the power to consent, is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.

43. Consent by persons responsible

- (1) A person responsible for a person to whom this Part applies may consent to the carrying out of medical or dental treatment, other than special treatment, on that person if the person responsible –
 - (a) is satisfied that the person to whom this Part applies is incapable of giving consent; and
 - (b) is satisfied that the medical or dental treatment would promote the personal and social well-being of that person; and
 - (c) in making that decision, takes into account the matters specified in subsection (2).

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- (2) For the purposes of subsection (1)(c), matters to be taken into account by the person responsible include–
- (a) the wishes, directions, preferences and values of that person (including those expressed in an advance care directive), so far as they can be ascertained; and
 - (b) the consequences to that person if the proposed treatment is not carried out; and
 - (c) any alternative treatment available to that person; and
 - (d) the nature and degree of any significant risks associated with the proposed treatment or any alternative treatment; and
 - (e) subject to subsection (3), that the treatment is to be carried out only to promote and maintain the health and well-being of that person; and
 - (ea) in the case of proposed medical or dental treatment that is an intimate forensic procedure or a non-intimate forensic procedure –
 - (i) that a police officer or registered practitioner suspects that that person is a victim of a crime; and
 - (ii) that a police officer or registered practitioner has requested the treatment be carried out in

relation to that person because the officer or practitioner suspects that that person is a victim of a crime; and

- (f) any other matters prescribed by the regulations.
- (3) Subsection (2)(e) does not apply to medical or dental treatment that is an intimate forensic procedure or a non-intimate forensic procedure.

44. Applications for consent of Tribunal

- (1) An application for the consent of the Tribunal to the carrying out of any medical or dental treatment on a person to whom this Part applies may be made by any person who the Tribunal is satisfied has a proper interest in the matter.
- (2) The application –
 - (a) is to be in writing; and
 - (b) is to be lodged with the registrar; and
 - (c) is to contain the prescribed information.
- (3) The Tribunal may issue and make available to members of the public guidelines specifying situations in which applications under subsection (1) should be made to the Tribunal for its consent to medical or dental treatment.
- (4) Where the application is made for consent to the carrying out of medical or dental treatment and

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the treatment cannot be carried out without that consent, the Tribunal may, by order—

- (a) direct the person who is to carry out the treatment not to start the treatment; or
- (b) if the treatment has already started, direct the person who is carrying out the treatment to discontinue it—

until the Tribunal has determined the application.

- (5) A person who, without lawful excuse, fails to comply with an order under subsection (4) is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units or to imprisonment for a term not exceeding 1 year, or both.

45. Consent of Tribunal

- (1) On hearing an application for its consent to the carrying out of medical or dental treatment on a person, the Tribunal may consent to the carrying out of the medical or dental treatment if the Tribunal –
 - (a) is satisfied that the medical or dental treatment is otherwise lawful; and
 - (b) is satisfied that the person is incapable of giving consent; and
 - (c) is satisfied that the medical or dental treatment would promote the personal and social well-being of the person; and

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- (d) in making that decision, takes into account the matters specified in subsection (2).
- (2) For the purposes of subsection (1)(d), matters to be taken into account by the Tribunal include–
- (a) the wishes, directions, preferences and values of the person (including those expressed in an advance care directive) so far as they can be ascertained; and
 - (b) the consequences to that person if the proposed treatment is not carried out; and
 - (c) any alternative treatment available to that person; and
 - (d) whether the proposed treatment can be postponed on the ground that better treatment may become available and whether that person is likely to become capable of consenting to the treatment; and
 - (e) in the case of transplantation of tissue, the relationship between the 2 persons concerned; and
 - (ea) in the case of proposed medical or dental treatment that is an intimate forensic procedure or a non-intimate forensic procedure, where a police officer or registered practitioner suspects that that person is a victim of a crime –

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- (i) that a police officer or registered practitioner reasonably believes that the person responsible for that person may have committed the crime of which that person is suspected of being a victim; or
 - (ii) that a police officer or registered practitioner reasonably believes that that person's interests would not be protected if the consent of a person responsible is sought; and
 - (f) any other matters prescribed by the regulations.
- (3) Subject to subsection (4), a decision of the Tribunal to give its consent to medical or dental treatment has no effect until the period of appeal under section 137 of the *Tasmanian Civil and Administrative Tribunal Act 2020* has expired or, if an appeal has been instituted, it is set aside, withdrawn or dismissed.
- (4) If –
- (a) an application for the consent of the Tribunal for the carrying out of medical or dental treatment on a person has been made under section 44; and
 - (b) the Tribunal considers that the treatment is urgent –
- the Tribunal may give its consent for the treatment to be carried out immediately.

46. Consent to continuing or further special treatment by guardian with authority of Tribunal

- (1) The Tribunal may, in giving consent to the carrying out of special treatment on a person to whom this Part applies, confer on the guardian for the person authority to consent–
 - (a) to the continuation of the treatment; or
 - (b) to the carrying out on the person of further special treatment of a similar nature.
- (2) The Tribunal may confer the authority only at the request, or with the consent, of the guardian.
- (3) The Tribunal may–
 - (a) impose conditions or give directions as to the exercise of the authority; or
 - (b) revoke the authority.
- (4) If the guardian has authority under this section, a person may request his or her consent to the carrying out of the relevant treatment.

Division 2A – Power to make guardianship order or administration order

46A. Power to make guardianship order or administration order

At the hearing of an application under this Part for the consent of the Tribunal to the carrying out of medical or dental treatment on a person,

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the Tribunal, in addition to giving or refusing that consent, may make under section 65 a guardianship order or an administration order, or both, if satisfied of the matters specified in section 20(1)(b) and (c) or section 51(1)(b) and (c), or both those sections.

Division 3 – General

47. Effect of consent

A consent given under this Part in respect of the carrying out of medical or dental treatment on a person to whom this Part applies has effect as if –

- (a) that person had been capable of giving consent to the carrying out of the treatment; and
- (b) the treatment had been carried out with that person's consent.

48. Preservation of liability

Nothing in this Part relieves a person from liability in respect of the carrying out of medical or dental treatment on a person to whom this Part applies, where that person would have been subject to that liability if –

- (a) that person had been capable of giving consent to the carrying out of the treatment; and

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- (b) the treatment had been carried out with that person's consent.

48A. Saving for rights under other laws

Nothing in this Part is taken to affect any rights conferred by any other law to consent to, or to refuse to consent to, medical or dental treatment.

PART 6A – HEALTH AND MEDICAL RESEARCH

Division 1 – Preliminary

48B. Application of Part

(1) Subject to subsection (2), this Part applies to a person who –

- (a) is of or over the age of 18 years; and
- (b) has impaired decision-making ability in respect of decisions relating to the conduct of health and medical research in relation to that person; and
- (c) is incapable of indicating whether or not they consent or refuse to consent to the conduct of health and medical research in relation to that person –

whether or not that person is a represented person.

(2) For the purposes of subsection (1), a person is incapable of giving consent to the conduct of health and medical research in relation to that person if the person is –

- (a) incapable of understanding the general nature and effect of the conduct of the proposed health and medical research in relation to that person; or
- (b) incapable of indicating whether or not the person consents or does not consent

to the conduct of health and medical research in relation to that person.

48C. Interpretation of Part

In this Part –

health and medical research practitioner means the following persons:

- (a) a lead health and medical researcher;
- (b) a person who conducts, or assists with the conduct of, health and medical research under the authority and direction of a lead health and medical researcher;
- (c) any other category or class of persons prescribed for the purposes of this definition;

human research ethics committee means a human research ethics committee established in accordance with the requirements of –

- (a) the *National Statement on Ethical Conduct in Human Research* published by the National Health and Medical Research Council, as in force from time to time; or
- (b) any superseding document of the statement referred to in paragraph (a) published by the

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National Health and Medical Research Council, that covers the same subject matter, issued under the *National Health and Medical Research Council Act 1992* of the Commonwealth;

lead health and medical researcher, in relation to a relevant research project, means –

- (a) a health practitioner who has sole or joint overall responsibility for the relevant research project; or
- (b) any other category of persons prescribed for the purpose of this definition;

relevant research project, in relation to the conduct of health and medical research, means the research project for the purposes of which the health and medical research is conducted.

48D. Requirement if recovery of decision-making ability likely

- (1) If a person to whom this Part applies is likely to recover decision-making ability within a reasonable time to make a decision in relation to the conduct of health and medical research relating to that person, a health and medical research practitioner must not conduct health and medical research in relation to that person under this Part.

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- (2) For the purposes of subsection (1), a reasonable time is the time by which, given the nature of the relevant research project, the health and medical research would need to be conducted, having regard to the following:
- (a) the medical or physical condition of the person;
 - (b) the stage of treatment or care;
 - (c) other circumstances specific to the person.

48E. Requirement to ascertain existence of advance care directive

Before a health and medical research practitioner conducts health and medical research in relation to a person to whom this Part applies, the health and medical research practitioner must make reasonable efforts –

- (a) to ascertain if the person has given an advance care directive; and
- (b) if the person has given an advance care directive, to obtain a copy of that advance care directive.

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Division 2 – Approval and consent

48F. Health and medical research to be conducted in accordance with approval

Any health and medical research conducted in relation to a person under this Part must –

- (a) have been approved by the relevant human research ethics committee; and
- (b) be conducted in accordance with that approval, including any conditions of that approval.

48G. Approval to conduct health and medical research

- (1) Subject to subsection (2), a health and medical research practitioner may conduct health and medical research in relation to a person to whom this Part applies in the following circumstances:
 - (a) the person has given an advance care directive that authorises the conduct of the health and medical research in relation to the person;
 - (b) there is no advance care directive under paragraph (a) and the person responsible for that person has consented to the conduct of the health and medical research in relation to that person;
 - (c) the health and medical research is authorised under section 48K and there is no –

- (i) advance care directive under paragraph (a); or
 - (ii) person responsible for that person who is available or able to give or refuse consent to the conduct of the research.
- (2) A health and medical research practitioner must not conduct health and medical research in relation to a person to whom this Part applies if the person has given an advance care directive that provides a clear and unambiguous refusal to the conduct of health and medical research in relation to that person.

48H. Urgent medical and dental treatment

For the avoidance of doubt, nothing in this Part prevents the carrying out of medical or dental treatment that is part of a research project on a person without that person's consent if section 40 of this Act authorises the carrying out of that treatment on that person.

Division 3 – Health and medical research with consent of person responsible

48I. Consent of person responsible

- (1) The person responsible for a person to whom this Part applies may consent to the conduct of health and medical research in relation to that person if the person responsible reasonably believes that the person would have consented to

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the conduct of that health and medical research if the person had decision-making ability.

- (2) For the purposes of subsection (1), in determining whether a person would have consented to the conduct of the health and medical research, the person responsible is to have regard to –
- (a) any relevant directions, values or preferences outlined in an advance care directive given by the person in relation to whom the proposed health and medical research is to be conducted; and
 - (b) if the person has not given any relevant directions, values or preferences in an advance care directive, the views, wishes and preferences expressed by the person other than by way of an advance care directive; and
 - (c) if the person has not expressed any views, wishes or preferences, what the person responsible reasonably believes the views, wishes and preferences of the person are likely to be, based on all the information available including the values of the person inferred from the person's life; and
 - (d) whether consent to the conduct of the health and medical research will promote the person's personal and social well-being; and

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- (e) the likely effects and consequences of the health and medical research, including the likely effectiveness of the health and medical research, and whether these are consistent with the person's preferences and values; and
 - (f) the likely effects and consequences of the conduct of the health and medical research in relation to that person including –
 - (i) the known risks of the conduct of the health and medical research; and
 - (ii) any risks to the person that are greater than the risk that is inherent in the person's condition and in standard medical treatment or health care; and
 - (g) whether there are any alternatives, including refusing the conduct of the health and medical research.
- (3) For the purposes of subsection (2), the lead health and medical researcher for a relevant research project is to provide, or cause to be provided, to the person responsible for a person under this Part –
- (a) the following information:
 - (i) a clear and candid explanation of the relevant research project, including information about the

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- associated risk or any common or expected side effects of any activities proposed to be undertaken for the purposes of the research;
- (ii) a clear and candid explanation of any treatment or health care that may be available, including information about the associated advantages and disadvantages of any treatment given as part of a health or medical research trial as an alternative to, or in addition to, that treatment or health care;
 - (iii) any other information that is considered by the lead health and medical researcher to be of relevant importance and likely to influence the person's decision-making with regard to the relevant research project; and
- (b) an opportunity to ask questions regarding the research project and to receive clear and candid answers to those questions; and
- (c) a reasonable opportunity to –
- (i) obtain independent medical or other advice; and
 - (ii) consider the advantages and disadvantages of giving consent.

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- (4) Consent given under this section must be consistent with any requirements for consent specified in the relevant human research ethics committee approval for the relevant research project or the conditions of that approval.
- (5) Consent given by a responsible person under this section may be withdrawn by that responsible person at any time.
- (6) Where consent under this section is withdrawn, the lead health and medical researcher for the relevant research project is to ensure that the necessary arrangements are made to withdraw the person in respect of whom the consent is withdrawn from future participation in the relevant research project without compromising the person's ability to receive any available standard medical treatment or health care.
- (7) If a person in respect of whom consent has been given under this section regains decision-making ability in relation to decisions related to the conduct of health and medical research in relation to that person, the lead health and medical researcher is to, as soon as is reasonably practicable, ensure –
 - (a) that the person is informed of the person's inclusion in the relevant research project; and
 - (b) that the consent of the person to the person's continued participation in the research project is sought; and

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- (c) where consent is refused, that the necessary arrangements are made to withdraw the person from future participation in the research project without compromising the person's ability to receive any available standard medical treatment or health care.

48J. Basis for conducting health and medical research to be included in clinical records

Before, or as soon as practicable after, conducting health and medical research in relation to a person to whom this Part applies, the health and medical research practitioner must include, or cause to be included, in the person's clinical records relating to the conduct of the health and medical research, a written statement –

- (a) that the lead health and medical researcher for the relevant research project was satisfied that –
 - (i) the person has impaired decision-making ability in respect of decisions relating to the conduct of the health and medical research; and
 - (ii) the person was not likely to recover decision-making ability within a reasonable time; and
- (b) the reason or reasons for being so satisfied; and

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- (c) the name and contact details of the person who provided consent to the conduct of the health and medical research.

Division 4 – Health and medical research without prior consent

48K. Conducting health and medical research without prior consent of person responsible

- (1) A health and medical research practitioner is authorised, for the purposes of section 48G, to conduct health and medical research in relation to a person to whom this Part applies without the prior consent of the person responsible for that person if –
 - (a) the relevant human research ethics committee has approved the participation of persons in the health and medical research without the prior consent of those persons or the person responsible for those persons; and
 - (b) the health and medical research conducted involves –
 - (i) only observing the person or carrying out a non-invasive examination, treatment or procedure on the person; or
 - (ii) interventions or procedures other than those referred to in subparagraph (i) and the health

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and medical researcher believes on reasonable grounds that –

- (A) the research supports a reasonable possibility of benefit over standard care for the person; and
 - (B) any risk or burden of the intervention to the person is justified by its potential benefits to the person; and
 - (C) the conduct of the research is not contrary to the personal and social well-being of the person; and
 - (D) the person does not object (whether by speech, gesture or other means) to the procedure or intervention.
- (2) A health and medical research practitioner must continue to take reasonable steps to identify and contact the person responsible for a person to whom this Division applies to seek consent to the continuation of the conduct of health and medical research in relation to the person.

48L. Basis for conducting health and medical research without prior consent to be included in clinical records

If health and medical research is conducted under this Division, the lead health and medical researcher responsible for that research must include, or cause to be included, in the person's clinical records relating to the conduct of the health and medical research, a written statement –

- (a) that the lead health and medical researcher is satisfied that –
 - (i) the person has impaired decision-making ability in respect of decisions relating to the conduct of the health and medical research; and
 - (ii) the person was not likely to recover decision-making ability within a reasonable time; and
 - (iii) the reason or reasons for being so satisfied; and
- (b) providing details of –
 - (i) the nature of the risk presented in the person's condition; and
 - (ii) the grounds on which the lead health and medical researcher formed the view that the conduct of the research would be likely to

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benefit the person as compared to the standard medical treatment; and

- (iii) the relevant human research ethics committee's approval for the person to participate in the health and medical research without prior consent; and

(c) confirming that –

- (i) no advance care directive has been located for the person; and

- (ii) no person responsible for that person is available or able to give or refuse consent to the conduct of the research in relation to that person.

48M. Arrangements for continuing participation in research of person who regains decision-making ability

(1) If a person to whom this Part applies regains decision-making ability in relation to decisions related to the conduct of health and medical research in relation to that person, the lead health and medical researcher for the relevant research project is to, as soon as is reasonably practicable, ensure that –

- (a) the person is informed of their participation in the relevant research project; and

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- (b) the consent of the person is obtained to their continued participation in the research project where the relevant research project is ongoing; and
- (c) the person is provided with a clear and candid explanation of –
 - (i) the relevant research project, including information about the associated risk or any common or expected side effects of any activities undertaken for the purposes of the research; and
 - (ii) any treatment or health care that may be available, including information about the advantages and disadvantages of any treatment given as part of a health or medical research trial as an alternative to, or in addition to, that treatment or health care; and
- (d) the person is provided with any other information that is considered by the lead health and medical researcher to be of relevant importance and likely to influence the person's decision-making with regard to continuing participation in the relevant research project; and
- (e) the person is provided with an opportunity to ask questions regarding the research project and to receive clear

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and candid answers to those questions;
and

(f) the person is given a reasonable opportunity to –

(i) obtain independent medical or other advice; and

(ii) consider the advantages and disadvantages of giving consent.

(2) If a person who has regained decision-making ability does not consent to their continued participation under subsection (1)(b), the lead health and medical researcher for the relevant research project is to ensure that the necessary arrangements are made to withdraw the person from future participation in the research project without compromising the person's ability to receive any available standard medical treatment or health care.

48N. Arrangements for consent to continuing participation in research by person responsible

(1) If a person to whom this Part applies does not regain decision-making ability in relation to decisions related to the conduct of health and medical research in relation to that person and a person responsible is identified, the lead health and medical researcher for the relevant research project is to, as soon as is reasonably practicable, ensure that the person responsible is –

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- (a) informed of the inclusion of the person with impaired decision-making ability in the relevant research project; and
- (b) requested to provide consent to the person's continued participation in the research project where the relevant research project is ongoing; and
- (c) provided with a clear and candid explanation of the relevant research project, including information about the associated risk or any common or expected side effects of any activities undertaken for the purposes of the research; and
- (d) provided with a clear and candid explanation of any treatment or health care that may be available, including information about the advantages and disadvantages of any treatment given as part of a health or medical research trial as an alternative to, or in addition to, that treatment or health care; and
- (e) provided with any other information that is considered by the lead health and medical researcher to be of relevant importance and likely to influence the person responsible's decision-making with regard to the person's continuing participation in the relevant research project; and

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- (f) provided with an opportunity to ask questions regarding the research project and to receive clear and candid answers to those questions; and
 - (g) given a reasonable opportunity to –
 - (i) obtain independent medical or other advice; and
 - (ii) consider the advantages and disadvantages of giving consent.
- (2) If the person responsible for a person with impaired decision-making ability does not provide consent to the person’s continued participation in the relevant research project following a request under subsection (1)(b), the lead health and medical researcher for the relevant research project is to ensure that the necessary arrangements are made to withdraw the person from future participation in the research project without compromising the person’s ability to receive any available standard medical treatment or health care.
- (3) In circumstances where, after reasonable efforts by the lead health and medical researcher for the relevant research project, a person responsible is unable to be identified, the lead health and medical researcher may seek advice and direction from the Tribunal under section 48O.

Division 5 – Applications to Tribunal

48O. Applications to Tribunal

- (1) Each of the following persons may apply to the Tribunal in relation to any matter, question or dispute under this Part relating to the conduct of health and medical research in relation to a person:
 - (a) the person responsible for the person;
 - (b) a person who the Tribunal is satisfied has a proper interest in the matter, including a health and medical research practitioner.
- (2) Despite subsection (1)(b), a health and medical research practitioner who is involved in the relevant research project is not entitled to apply to the Tribunal under this Act in relation to –
 - (a) the refusal by a person to consent to the conduct of health and medical research in relation to a person to whom this Part applies; or
 - (b) the withdrawal of consent by a person to the conduct of health and medical research in relation to a person to whom this Part applies.
- (3) If an application is made under subsection (1), the person in relation to whom the health and medical research is being conducted is a party to the proceeding.

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- (4) The registrar must give notice of an application, of the hearing of the application and of any order of the Tribunal in respect of the application to –
 - (a) the Public Guardian; and
 - (b) any other person who the Tribunal considers has a proper interest in the matter.

- (5) On an application under subsection (1), the Tribunal may make a determination doing any one or more of the following:
 - (a) declaring that the conduct of any proposed health and medical research is or is not contrary to any known preferences and values of the person in relation to whom the health and medical research is to be conducted, whether –
 - (i) expressed within an advance care directive or otherwise; or
 - (ii) inferred from the person’s life;
 - (b) if the person’s preferences and values are not known, declaring that the conduct of any proposed health and medical research is or is not contrary to promoting the personal and social well-being of the person, having regard to the need to respect the person’s individuality;

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- (c) providing advice or directions in relation to the scope or exercise of the authority of the person responsible for the person;
 - (d) giving such advice or direction or making any order that it considers necessary in the circumstances.
- (6) A person must not contravene a direction given to that person by the Tribunal under this section.

Penalty: Fine not exceeding 20 penalty units.

Division 6 – Miscellaneous

48P. Protection of health and medical research practitioner

- (1) A health and medical research practitioner who conducts health and medical research in relation to a person under this Part does not incur any civil or criminal liability for the conduct of that health and medical research if it is done in good faith, without negligence and in the belief on reasonable grounds that the requirements of this Part are being complied with.
- (2) For the purposes of this section, a reference to the civil liability of a health and medical research practitioner includes a reference to liability arising under disciplinary, regulatory, administrative or similar proceedings.
- (3) Nothing in this section affects any duty of care owed by a health and medical research practitioner to a person.

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48Q. Offence to conduct unapproved health and medical research

A health and medical research practitioner must not conduct health and medical research in relation to a person to whom this Part applies unless the relevant research project has been approved by the relevant human research ethics committee.

Penalty: Fine not exceeding 40 penalty units.

48R. Offence to conduct health and medical research without consent or authorisation

A health and medical research practitioner must not conduct health and medical research in relation to a person to whom this Part applies unless –

- (a) the person has consented in an advance care directive to the health and medical research being conducted; or
- (b) the person responsible for the person or any body or authority responsible for providing consent to the conduct of the health and medical research has consented to the health and medical research being conducted; or
- (c) the conduct of the health and medical research is authorised under Division 4 or otherwise by law.

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Penalty: Fine not exceeding 40 penalty units or imprisonment for a term not exceeding 2 years or both.

PART 7 – ADMINISTRATION ORDERS

Division 1 – Objects of Part 7

49. Objects of Part 7

The objects of this Part are to provide for the administration, by virtue of administration orders, of financial matters for persons who are of or over the age of 18 years.

Division 2 – Administration orders

50. Application for administration order

- (1) A person may apply to the Tribunal for an order appointing an administrator for a person who has impaired decision-making ability in respect of decisions relating to financial matters.
- (2) If a person with impaired decision-making ability does not reside in Tasmania but has financial matters the whole or part of which are in Tasmania, a person may apply to the Tribunal for an administration order in respect of so much of the financial matters as are in Tasmania.
- (3) An application under this section –
 - (a) is to be lodged with the registrar; and
 - (b) is to contain the prescribed information; and
 - (c) is to be accompanied by the written consent of the person proposed as

administrator, if any, to act as administrator.

51. Administration orders

- (1) The Tribunal, after a hearing, may make an order appointing an administrator for a person in respect of the person's financial matters if –
 - (a) an application for an order appointing an administrator, or for an order appointing a guardian, has been made to the Tribunal in respect of the person; and
 - (b) the Tribunal is satisfied that the person –
 - (i) is a person with impaired decision-making ability in respect of decisions relating to those financial matters; and
 - (ii) is in need of an administrator; and
 - (c) the Tribunal is satisfied that the order will promote the person's personal and social well-being.
- (2) For the purposes of subsection (1)(b)(ii), in determining whether a person is in need of an administrator, the Tribunal must consider the following:
 - (a) the wishes and preferences of the person as far as they can be ascertained;

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- (b) whether the needs of the person could be met by other means that are less restrictive of that person's freedom of decision and action;
 - (c) the wishes and preferences of any close family members, carers and other significant persons in the life of the person who are present at the hearing and are entitled to be heard at that hearing.
- (3) If the Tribunal makes an administration order under subsection (1), the order may be subject to such conditions or restrictions as the Tribunal considers necessary.
- (4) The Tribunal must not make an order appointing an administrator for a person in respect of the person's financial matters unless the Tribunal is satisfied that the administrator is eligible to be appointed in respect of that matter under section 54.
- (5) An order made under this section may be expressed to take effect when the represented person attains the age of 18 years.
- (6) The Tribunal may exercise its powers under this section on an application under Part 4 of the *Powers of Attorney Act 2000*.

52. Expiration of administration orders

- (1) An administration order has effect for 3 years, or such shorter period as the Tribunal may specify

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in the order, unless the order is continued in effect under section 68.

- (2) In determining the duration of an order, the Tribunal must take into account the following:
 - (a) the likelihood of improvements to the represented person's decision-making ability;
 - (b) the prospect that changes to circumstances, including interventions to establish support arrangements, will mitigate the need for a guardian or administrator (or both);
 - (c) the requirement that the order is the least restrictive to the person's freedom of decision and action as is possible in the circumstances.

53. Administration order may not be made if enduring power of attorney is in force

- (1) Where a proposed represented person has granted an enduring power of attorney under section 11A of the *Powers of Attorney Act 1934* or under section 30 of the *Powers of Attorney Act 2000*, it is not competent for the Tribunal to make an administration order in respect of the proposed represented person's financial matters so long as the enduring power of attorney is in force unless the order is made under Part 8.
- (2) If any such enduring power of attorney relates to only some financial matters for the proposed

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represented person, the Tribunal may make an administration order for the proposed represented person in respect of the financial matters that are not subject to the enduring power of attorney.

- (3) Notwithstanding subsection (1), any action taken by a person purporting to act under an administration order before the person has notice of an enduring power of attorney is valid and effectual.

54. Persons eligible to be appointed as administrators

- (1) The Tribunal may only appoint the following persons as an administrator for a proposed represented person in respect of financial matters:
- (a) a person, including the guardian for the proposed represented person, who is eligible for appointment under subsection (2);
 - (b) if no person is eligible for appointment under subsection (2) –
 - (i) a trustee company within the meaning of the *Trustee Companies Act 1953*; or
 - (ii) The Public Trustee; or
 - (iii) the Public Guardian.
- (2) A person who is an adult is eligible for appointment as an administrator for a proposed

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represented person in respect of financial matters
if –

- (a) the person consents to act as administrator; and
 - (b) the Tribunal is satisfied that the person –
 - (i) understands their obligations and duties and will act in accordance with the requirements of the Act; and
 - (ii) is a suitable person to act as administrator for the proposed represented person in respect of those financial matters.
- (3) For the purposes of subsection (2)(a), a person consents to act as an administrator if the person gives to the Tribunal a written declaration, in a form approved by the Tribunal, that states the following:
- (a) that the person consents to act as the administrator for the represented person in respect of that person’s financial matters;
 - (b) that the person understands their obligations and duties under this Act;
 - (c) that the person understands the consequences of failing to comply with their obligations and duties under this Act;

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- (d) that the person undertakes to act in accordance with this Act;
 - (e) such other information as may be prescribed.
- (4) For the purposes of subsection (2)(b)(ii), in determining whether a person is a suitable person to act as the administrator for a proposed represented person in respect of financial matters, the Tribunal must take into account the following:
- (a) the wishes and preferences of the proposed represented person (so far as they can be ascertained);
 - (b) the desirability of preserving existing relationships that are important to the proposed represented person;
 - (c) the compatibility of the person proposed as administrator with the proposed represented person and with the proposed represented person's guardian, if any;
 - (d) the extent to which the person's interests may conflict with the interests of the proposed represented person;
 - (e) the desirability of appointing a person who has a personal relationship with the proposed represented person, rather than a person without such a relationship;
 - (f) whether the person will be available to act as administrator for the proposed

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represented person in respect of those financial matters;

- (g) whether the person has the requisite skills or access to appropriate support to perform the role competently.

(5) For the purposes of subsection (4)(d) –

- (a) the fact that the person is a close family member of the proposed represented person does not, of itself, mean that the person's interests are likely to conflict with the interests of the proposed represented person; and
- (b) the fact that the person may be a beneficiary of any part of the proposed represented person's estate on the proposed represented person's death does not, of itself, mean that the person's interests are likely to conflict with the interests of the proposed represented person; and
- (c) the fact that the person is in conflict with a close family member of the proposed represented person does not, of itself, mean that the person's interests are likely to conflict with the interests of the proposed represented person.

54A. Duty to notify Tribunal of change in circumstances

If there has been a change in circumstances that means that a person appointed as an

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administrator for a represented person in respect of financial matters may no longer be eligible to be appointed under section 54 as an administrator in respect of those financial matters, that administrator must inform the Tribunal of that change as soon as practicable after its occurrence.

55. Remuneration of professional administrators

- (1) An administrator who carries on a business of, or including, the administration of estates, whether under this Act or otherwise, is, if the Tribunal so determines, entitled to remuneration out of the estate of the represented person for the work involved in administering that estate, whether the work was or is performed before or after the commencement of this section.
- (2) This section does not affect the right of The Public Trustee or a trustee company to recover charges and expenses under any other law.

Division 4 – Powers and duties of administrator

56. Powers and duties of administrator

- (1) Subject to and in accordance with this Act and the relevant administration order, a person appointed as an administrator –
 - (a) has general care and management in respect of financial matters for the represented person; and

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- (b) has the duty to take possession and care of, recover, collect and administer financial matters for the represented person and generally to manage the represented person's affairs with the exercise of all rights, statutory or otherwise, in respect of financial matters; and
 - (c) in the name of, and on behalf of, the represented person, may generally do all acts and exercise all powers that the administrator is authorised to do or exercise in respect of financial matters for the represented person with the same effect and in the same manner as the represented person could have done if that person were not subject to the administration order.
- (2) Without limiting subsection (1), an administrator may, in the name and on behalf of the represented person and so far as may be specified in the administration order –
- (a) collect, receive and recover any income or property to which the represented person is entitled; and
 - (b) invest money in any manner in which trustees may by law invest; and
 - (c) take a lease of real estate at such rent and on such conditions as the administrator thinks fit; and

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- (d) exercise any power of leasing vested in the represented person; and
- (e) surrender any lease, accept any lease, accept the surrender of any lease or renew any lease; and
- (f) sell, exchange, partition or convert into money any property other than real estate; and
- (g) sell, exchange, partition, convert into money or grant any interest in any real estate; and
- (h) mortgage, purchase, acquire, lease or charge any property or sever any joint tenancy; and
- (i) pay any debts and settle, adjust or compromise any demand made by or against the estate, and discharge any encumbrance on the estate, and reimburse (whether legally obliged to make such reimbursement or not) any person who has expended money for the benefit of the represented person; and
- (j) carry on, so far as appears desirable, any trade, profession or business which the represented person carried on; and
- (k) agree to any alteration of the conditions of any partnership into which any represented person has entered or to a dissolution and distribution of the assets of the partnership; and

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- (l) bring and defend actions and other legal proceedings in the name of the represented person; and
- (m) execute and sign deeds, instruments and other documents; and
- (n) complete any contract for the performance of which the represented person was liable or enter into any agreement terminating liability; and
- (o) pay any sum for the maintenance of the represented person (and, in the event of his or her death, for funeral expenses) for the maintenance of his or her spouse or any child, parent or other person dependent on him or her and for the maintenance and education of his or her children as may be expedient and reasonable; and
- (p) expend money in the insurance, repair, maintenance, renovation, reconstruction or preservation of any property; and
- (q) pay or cause to be paid to the represented person for the personal use of that person an amount of money standing to the credit of that person; and
- (r) give or cause to be given to the represented person for the personal use of that person any personal property which belongs to that person; and

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- (s) do all matters necessary or incidental to the performance of any of the matters specified in this subsection and apply any money or property which it is necessary to apply for the purposes of this Act; and
 - (t) exercise any power, including a power to consent, vested in the represented person, whether beneficially, or as a trustee, or otherwise; and
 - (u) exercise any power of the represented person in respect of any superannuation of the represented person; and
 - (v) renounce on behalf of the represented person, the represented person's right to apply for a grant of probate in respect of an estate of which the represented person has been appointed as executor; and
 - (w) renounce, on behalf of the represented person, the donor's right to a grant of letters of administration; and
 - (x) use legal services for a represented person's benefit; and
 - (y) bring or defend a legal proceeding or hearing in a court, tribunal or other body on behalf of the represented person.
- (3) The Tribunal may, by order, limit the exercise of any power as it thinks fit or direct that the represented person may continue to be responsible for any part of the represented person's financial matters.

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- (4) The Tribunal may, subject to such conditions or restrictions as it considers necessary, authorize an administrator to do any act not specified in this section.
- (5) Where a decision, action, consent or act is made, taken, given or done by an administrator under an order made by the Tribunal or under any power or authority given by this Act, the decision, action, consent or act has effect as if it had been made, taken, given or done by the represented person and the represented person had the legal capacity to do so.
- (6) On the death of a represented person, an order appointing an administrator under this Act ceases to have effect except so far as it authorizes payment of funeral expenses.

57. Exercise of power by administrator

An administrator under this Act must –

- (a) promote the personal and social well-being of the represented person; and
- (b) act in accordance with the principles set out in section 8; and
- (c) have regard to the decision-making process set out in section 9; and
- (d) act honestly, diligently and in good faith; and
- (e) treat the represented person with respect and dignity; and

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- (f) communicate with the represented person by means that the represented person will be able to understand best; and
- (g) keep the represented person informed about decisions made, information obtained and steps taken by the administrator, as appropriate in the circumstances; and
- (h) consult regularly with any guardian for the represented person and keep the guardian informed about substantial decisions or actions, subject to the terms of the administrator's appointment; and
- (i) act as an advocate for the represented person where possible; and
- (j) encourage and support the represented person to develop decision-making ability in respect of decisions where possible; and
- (k) protect the represented person from violence, neglect, abuse and exploitation.

57A. Right of administrator to information

An administrator has a right to all information to which the represented person is entitled, if the information is reasonably required for the purposes of performing a function as administrator.

58. Settlements and gifts

The Tribunal at the request of an administrator or of its own motion after conducting a hearing may authorize the settlement of any property of a represented person, or the gift of any property of a represented person for–

- (a) the maintenance or other benefit of members of the represented person’s family; or
- (b) making provision for other persons for whom, or purposes for which the represented person might be expected to provide if the represented person were not a person with impaired decision-making ability; or
- (c) otherwise administering the represented person’s affairs.

59. Powers of investment

An administrator may, with the consent of the Tribunal and notwithstanding the *Trustee Act 1898*–

- (a) retain any investment, whether or not it is a trustee investment; and
- (b) invest in any investment specified by the Tribunal, whether or not it is a trustee investment.

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60. Preservation of interests in represented person's property

(1) Where –

- (a) any property of a represented person is disposed of under an administration order; and
- (b) under the will or intestacy of the represented person, or by any gift perfected or appointment taking effect on the represented person's death, any other person would, but for that disposal, have taken an interest in the property–

the other person is to take the same interest, so far as the circumstances may allow, in any property forming part of the represented person's estate that represents the property disposed of.

- (2) If the property disposed of was real property, any property representing it, so long as it remains part of the represented person's estate, is to be treated as if it were real property.
- (3) The Tribunal may give such directions as may be necessary or expedient for the purpose of facilitating the operation of subsections (1) and (2), including the carrying of money to a separate account and the transfer of property other than money.
- (4) Where–

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- (a) any property of a represented person is disposed of under an administration order; or
- (b) the Tribunal or the administrator has ordered, directed or authorized that any such property be so disposed of–

and the disposal would, but for this section, result in the conversion of personal property into real property, the Tribunal may direct that the property representing the property disposed of, so long as it remains the represented person's property or forms part of the represented person's estate, is to be treated as if it were personal property.

- (5) References in this section to the disposal of property are taken to include references to –
 - (a) the sale, exchange, charging or other dealing with property other than money; and
 - (b) the removal of property from one place to another; and
 - (c) the application of money in acquiring property; and
 - (d) the transfer of money from one account to another –

and any such references to property representing property disposed of are to be construed accordingly and as including the result of successive disposals.

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(6) Where–

- (a) any money is paid under an administration order; or
- (b) the Tribunal or the administrator has ordered, directed or authorized that any such money be paid–

for carrying out permanent improvements on, or otherwise for the benefit of, a represented person's property, the Tribunal may–

- (c) give directions as to accounting for the payment of that money; or
 - (d) order that the whole or any part of the money so paid, or to be paid, is to be a charge on the property, whether without interest or with interest at a specified rate.
- (7) A charge under subsection (6) may be made in favour of any person as the Tribunal may determine and, in particular, where the money charged is paid out of the represented person's estate, may be made in favour of a person as trustee for the represented person.
- (8) An order under subsection (6) may provide for excluding or restricting the operation of subsections (1) and (2).
- (9) A charge under subsection (6) does not confer any right of sale or foreclosure during the life of the represented person.

61. Application by administrator for advice, &c.

- (1) An administrator may apply to the Tribunal for advice or directions on any matter relating to the scope of an administration order or the exercise of any power by the administrator under it.
- (2) The Tribunal may require notice of the application under subsection (1) to be given to any person that the Tribunal directs and may exercise its powers under this section without a hearing.
- (3) The Tribunal may—
 - (a) approve or disapprove of any act proposed to be done by the administrator; and
 - (b) give such advice as it considers appropriate; and
 - (c) vary the administration order or make any other order that it could have made on the original application relating to the administration of financial matters for the represented person that it considers necessary.
- (4) The Tribunal of its own motion may direct, or offer advice to, an administrator in respect of any matter.
- (5) An administrator who contravenes a direction given to him or her under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.

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62. Power of administrator to act until notice of discharge

- (1) Where the Tribunal has received information otherwise than from the administrator that a represented person has died or has ceased to be a represented person, the Tribunal must forthwith give notice of that fact to the administrator.
- (2) Unless the administrator knows that a person has ceased to be a represented person or has died, the administrator may exercise all or any of the powers given to the administrator by the Tribunal in respect of financial matters for the represented person.
- (3) On notice being given under subsection (1), the represented person or the represented person's legal representative, as the case may be, is bound by and may take advantage of any act done on behalf of the represented person by the administrator within the powers conferred on the administrator by the Tribunal as if it had been done by the represented person and the represented person had legal capacity to do so.

62A. Keeping of records, &c.

- (1) The administrator for a represented person must keep an accurate record of all dealings and transactions made by the person as administrator.

Penalty: Fine not exceeding 20 penalty units.

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- (2) A person who has ceased to be an administrator (the *former administrator*) for a person in respect of financial matters must retain the records required to be kept under subsection (1) in relation to those financial matters for at least 7 years after so ceasing.

Penalty: Fine not exceeding 20 penalty units.

- (3) The former administrator for a person may give a copy of the records required to be retained under subsection (2) in relation to that person's financial matters to the following persons:
- (a) if another person is appointed as an administrator in respect of financial matters for the person, that person;
 - (b) if the person has ceased to be a represented person, to that person;
 - (c) if the person has died, the legal representative of that person.
- (4) The former administrator for a person must, on request, give a copy of the records required to be retained under subsection (2) in relation to the person's financial matters to a person referred to in subsection (3)(a), (b) or (c) within 14 days after receipt of the request.

Penalty: Fine not exceeding 20 penalty units.

63. Reporting requirements for administrators

- (1) An administrator appointed for a represented person in respect of financial matters must

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furnish the Tribunal, at such times as the Tribunal determines, with a statement of the accounts in respect of those financial matters, specifying –

- (a) the assets and liabilities relating to the financial matters; and
 - (b) the income and expenditure relating to the financial matters over a specified period; and
 - (c) such other particulars relating to the financial matters as the Tribunal may require.
- (2) A statement under this section –
- (a) is to be in a form approved by the Tribunal; and
 - (b) is to be supported by such evidence, if any, as the Tribunal may require.
- (3) Where a represented person dies –
- (a) the administrator appointed for the represented person in respect of financial matters must, within 7 days after notification of the death, inform the Tribunal in writing of the date of death; and
 - (b) the administrator must, within 28 days after that notification, provide the Tribunal with a statement of the accounts relating to the financial matters–

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and the cost of auditing the accounts may be paid from the estate notwithstanding that the administration order has ceased to have effect.

- (4) The Tribunal must examine a statement of accounts and may—
 - (a) cause the accounts to be audited by The Public Trustee or another person determined by the Tribunal at the cost of the represented person's estate; and
 - (b) if of opinion that the administrator, in making any expenditure in the exercise, or purported exercise, of his or her powers as such, did not act in good faith or with reasonable care, disallow that item of expenditure.
- (5) The Tribunal must not disallow an item of expenditure unless it first gives the administrator and any other person the Tribunal thinks fit the opportunity to appear before the Tribunal and be heard on the matter.
- (6) Where the Tribunal disallows an item of expenditure under subsection (4)(b), the administrator is personally liable to the represented person for the amount of the expenditure and to the Tribunal for its costs and expenses incurred in relation to the disallowance.
- (7) An administrator who, without reasonable excuse, contravenes this section is guilty of an offence and is liable on summary conviction to a penalty not exceeding 20 penalty units.

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64. Delegation of Tribunal’s functions as to reporting

- (1) The Tribunal may in writing—
 - (a) delegate to such person as the Tribunal may approve any of the functions or powers of the Tribunal under section 63; and
 - (b) revoke wholly or partly a delegation.
- (2) A delegation –
 - (a) may be made either generally or as otherwise provided by the instrument of delegation; and
 - (b) does not prevent the performance or exercise of a function or power by the Tribunal.
- (3) A function performed, or power exercised, by a delegate has the same effect as if performed or exercised by the Tribunal.

PART 8 – EMERGENCY ORDERS

65. Emergency orders

- (1) For the purposes of this section, a person is in *immediate risk of harm* if there is an immediate risk of harm to the health, welfare, property or financial situation of the person, including because of the risk of abuse, exploitation or neglect of the person, or self-neglect.
- (2) If the Tribunal considers a represented person is in immediate risk of harm, the Tribunal may, on an application and after a hearing, make any interlocutory order or give such advice or direction in respect of the represented person as the Tribunal considers appropriate.
- (3) If the Tribunal considers that a person who is not a represented person is in immediate risk of harm and that there may be grounds for making a guardianship order or an administration order in respect of that person, the Tribunal may, on an application under section 20 or 51 and after a hearing, do either or both of the following:
 - (a) make an interlocutory order appointing –
 - (i) the Public Guardian as the person’s guardian; or
 - (ii) The Public Trustee as administrator in respect of the financial matters of the person;

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- (b) make such other interlocutory orders or give such advice or direction in respect of the person as the Tribunal considers appropriate to manage the immediate risk of harm.
- (4) The Tribunal may, in holding a hearing under this section –
 - (a) vary the requirement to give notice of the hearing under clause 5 of Part 4 of Schedule 3 to the *Tasmanian Civil and Administrative Tribunal Act 2020*; or
 - (b) vary or dispense with a requirement for an application to contain prescribed information –

if the Tribunal is of the opinion that there is an immediate risk of harm to the person’s health, welfare, property or financial situation if such a variation or dispensation were not made, including because of a risk of abuse, exploitation, neglect of the person, or self-neglect.
- (5) In the exercise of its powers under this section the Tribunal may make –
 - (a) an administration order in respect of a person’s financial matters; or
 - (b) a guardianship order in respect of one or more of a person’s personal matters –

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if that person is an adult who has granted an enduring power of attorney that is in force under Part 4 of the *Powers of Attorney Act 2000*.

- (6) An interlocutory order under this section –
 - (a) remains in effect for such period specified in the order as the Tribunal determines but not exceeding 28 days; and
 - (b) may only be renewed once for a further period not exceeding 28 days.
- (7) An interlocutory order under this section may be subject to such conditions or restrictions as the Tribunal considers necessary.

PART 9 – ANNUAL REPORTS AND REVIEW OF ORDERS

66. Annual reports in respect of represented persons

- (1) The Tribunal must at least once in each period of 12 months obtain and consider a written report on the circumstances of each person who is subject to a guardianship order or administration order, including such details as the Tribunal may require as to the guardianship or administration from—
 - (a) the administrator or guardian or both; and
 - (b) such other person as the Tribunal may determine.
- (2) An administrator, guardian or other person referred to in subsection (1) must, within 14 days after receiving a notice requiring him or her to do so or within such further period as the Tribunal may allow, furnish the Tribunal with a written report on the circumstances of a person who is subject to a guardianship order or administration order giving such particulars in respect of that person as the Tribunal may require.
- (3) An administrator, guardian or other person who contravenes subsection (2) is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

67. Review of orders

The Tribunal may at any time –

- (a) of its own motion; or
- (b) on application by, or on behalf of, a represented person; or
- (c) on application by a guardian or administrator; or
- (d) on the application of any interested person –

hold a hearing to review a guardianship order or administration order.

68. Order after review

- (1) On a review under section 67, the Tribunal may –
 - (a) vary or continue, for a period not exceeding 3 years, a guardianship order or administration order subject to any conditions or requirements that it considers necessary; or
 - (b) revoke the guardianship order or administration order.
- (2) The Tribunal may only continue a guardianship order under subsection (1)(a) in respect of a represented person if satisfied of the matters specified in section 20(1)(b) and (c).

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- (3) The Tribunal may only continue an administration order for the proposed represented person in respect of financial matters under subsection (1)(a) if satisfied of the matters specified in section 51(1)(b) and (c).
- (4) The Tribunal may make such further orders as it considers necessary in order to give effect to a decision made under subsection (1).

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Part 10 – Miscellaneous and Supplemental

PART 10 – MISCELLANEOUS AND SUPPLEMENTAL

69A - 76.

Division 1 – Resolution of matters by Public Guardian

69. Assistance by Public Guardian in resolution of disputes

- (1) If there is conflict in relation to the actions or proposed actions of a guardian or administrator appointed for a represented person, the Public Guardian may, on application, provide preliminary assistance in resolving the matter, including by –
 - (a) ensuring that the parties to the matter are fully aware of their rights and obligations; and
 - (b) identifying any issues that are in dispute between parties to the matter; and
 - (c) canvassing options that may obviate the need for further proceedings; and
 - (d) where appropriate, facilitating full and open communication between the parties to a dispute; and
 - (e) seeking to resolve differences between persons in relation to the matter.
- (2) Subsection (1) does not apply where the guardian or administrator appointed for the

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represented person is the Public Guardian or The Public Trustee.

- (3) An application under this section –
 - (a) may be made by the represented person or any other person who the Public Guardian is satisfied has a proper interest in the matter; and
 - (b) must be made in a manner and form determined by the Public Guardian; and
 - (c) must be accompanied by such information as the Public Guardian may reasonably require.
- (4) The Public Guardian may, in providing preliminary assistance under subsection (1), arrange a mediation between parties to a dispute if all parties to the dispute agree to such a mediation.
- (5) If a matter under this section is resolved by mediation –
 - (a) the parties must sign an agreement setting out the terms of the settlement; and
 - (b) the Public Guardian must cause a copy of the signed agreement to be provided to each of the parties; and
 - (c) the Public Guardian must cause a copy of the signed agreement to be provided to the Tribunal.

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- (6) The Public Guardian may bring a mediation to an end at any time –
 - (a) if, in the opinion of the Public Guardian, it is more appropriate that the matter be dealt with by the Tribunal; or
 - (b) at the request of a party to the mediation.
- (7) Evidence of anything said or done in the course of a mediation under this section is not admissible in subsequent proceedings except by consent of all parties to the proceedings.
- (8) The Public Guardian may refuse to provide preliminary assistance in resolving a matter under this section if, in the opinion of the Public Guardian –
 - (a) it is more appropriate that the matter be dealt with by the Tribunal; or
 - (b) the application is frivolous, vexatious, misconceived, lacking substance or is otherwise an abuse of process.
- (9) If a matter cannot be resolved under this section, the Public Guardian or any party to the dispute may make an application to the Tribunal for a review of the relevant guardianship or administration order under section 67.

70. Complaints processes

- (1) The Public Guardian is to –

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- (a) establish procedures for the handling of complaints that are applicable in circumstances where the Public Guardian is appointed as a guardian for a represented person; and
 - (b) by electronic means and any other means that the Public Guardian considers necessary, ensure that the procedures established under paragraph (a) are publicly available.
- (2) The Public Trustee is to –
 - (a) establish procedures for the handling of complaints that are applicable in circumstances where The Public Trustee is appointed as an administrator; and
 - (b) by electronic means and any other means that The Public Trustee considers necessary, ensure that the procedures established under paragraph (a) are publicly available.
- (3) Procedures for the handling of complaints established by the Public Guardian or The Public Trustee under this section are to meet the minimum complaint resolution standards prescribed by the regulations.

Division 2 – Appeals to Supreme Court

71. Appeal costs

No order for costs is to be made against an applicant on an appeal under section 136(6A) of the *Tasmanian Civil and Administrative Tribunal Act 2020* if the applicant is the person to whom the decision that is appealed against relates.

Division 3 – Powers of courts

77. Powers of courts

- (1) If, in any proceedings before a court, the court considers that a party may need to have a guardian or administrator or both appointed under this Act, the court may refer the issue to the Tribunal for its determination.
- (2) A referral under this section has effect as if an application had been made to the Tribunal under this Act.

Division 4 – Legal provisions

78. Protection from liability

- (1) The Public Guardian and any person acting under the direction of the Public Guardian do not incur any personal liability in respect of any act done or omitted to be done in good faith in the performance or exercise, or purported

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performance or exercise, of any function or power of the Public Guardian.

- (2) Subsection (1) does not preclude the Crown or the Public Guardian from incurring liability that the Public Guardian or other person mentioned in subsection (1) would, but for that subsection, incur.
- (3) This section does not affect the operation of section 72 of the *Public Trustee Act 1930*.

79. Evidentiary

All courts and persons acting judicially must take judicial notice of the signature of any person who is or has been the Public Guardian or Deputy Public Guardian and of the fact that that person is or was the Public Guardian or Deputy Public Guardian, as the case may be.

80.

81. Recognition of orders made in other States, &c.

- (1) Where it appears to the Minister that a law in force in another State, a Territory or another country has substantially the same effect as this Act, the Minister may, by notice published in the *Gazette*, declare that that law is a corresponding law for the purposes of this section.
- (2) Where—

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- (a) the Tribunal is satisfied that a person has under a corresponding law been appointed guardian for another person or the administrator in respect of financial matters for another person; and
- (b) the applicant furnishes the Tribunal with the original instrument of his or her appointment, a certified copy of that instrument or other evidence satisfactory to the Tribunal of that appointment–

the Tribunal must register the instrument.

- (3) On registration of the instrument the applicant is taken to be–
 - (a) the guardian of that person; or
 - (b) the administrator in respect of financial matters for that person–

as the case may be, as if the applicant had been appointed as such by the Tribunal for the purposes of this Act.

- (4) On registration of the instrument the Tribunal must notify the appropriate authority in the relevant State, Territory or country of–
 - (a) that registration; and
 - (b) any subsequent revocation of the appointment; and
 - (c) any other action taken by the Tribunal relating to the appointment.

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81A. Instruments made under corresponding laws

- (1) Where it appears to the Minister that a law in force in another State, or in a Territory or country has substantially the same effect as Part 5 of this Act, the Minister may by notice published in the *Gazette* declare that the law is a corresponding law for the purpose of this section.
- (2) Subject to subsection (3), if an instrument appointing an enduring guardian that is made in another State, or in a Territory or country under a corresponding law complies with that corresponding law, the instrument is taken to be an instrument appointing an enduring guardian made in accordance with Part 5.
- (3) An instrument referred to in subsection (2) is valid only to the extent that it would be valid if it were an instrument appointing an enduring guardian made in accordance with Part 5.
- (4) For the purposes of this section, a certificate, from an Australian legal practitioner or from the Registrar of a relevant Court, Board or Tribunal exercising a guardianship jurisdiction, that the instrument appointing an enduring guardian satisfies the requirements of the relevant corresponding law is evidence of that fact.
- (5) An instrument appointing an enduring guardian recognised in accordance with this section must be registered in accordance with section 89(1)(c).

-
- (6) A notice under subsection (1) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

Division 5 – Accounts and reports

82. Accounts and records of Public Guardian

The Public Guardian must keep proper accounts and records of all matters relating to the administration of this Act by the Public Guardian and such other records as will present fairly the financial transactions and financial position of the Public Guardian, as the case requires.

83.

84. Annual report of Public Guardian

- (1) The Public Guardian must, in respect of each financial year prepare an annual report specifying—
- (a) a report of the administration of this Act during the financial year; and
 - (b) financial statements for the financial year –

and must furnish the Minister with the report and statements before the following 30 September.

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- (2) The Minister must cause the report and statements received under subsection (1) to be laid before each House of Parliament within 14 sitting days of that House after that receipt.

85. Protection relating to reports and information of Public Guardian

- (1) A person who provides a document, makes a report or gives information to the Public Guardian –
- (a) for the purpose of an application under this Act, to assist in deciding whether an application should be made under this Act; or
 - (b) when requested so to do by the Public Guardian –

is not subject to any liability for providing the document, making the report or giving the information so long as the person acts in good faith and has reasonable and probable grounds for believing the document, report or information to be true.

- (2) A person who provides a document, makes a report or gives information as mentioned in subsection (1) that is malicious or false in any material particular is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.
- (3) A person who is a personal information custodian, within the meaning of the *Personal*

Information Protection Act 2004, acting in good faith, does not commit a breach of that Act by reason only of collecting, using, disclosing or otherwise dealing with personal information for the purposes of this Act.

Division 6 – Offences and supplemental

86. Confidentiality of information

(1) In this section –

information includes –

- (a) information that identifies a person; and
- (b) information that deals with the personal history or records of a person;

protected information, in relation to a person, means information obtained in relation to that person by the Tribunal or the Public Guardian under this Act, or under the *Tasmanian Civil and Administrative Tribunal Act 2020*;

protected person means the following persons:

- (a) a represented person;
- (b) a proposed represented person;
- (c) a person to whom Part 5A, Part 6 or Part 6A applies.

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- (2) Subject to this section, a person must not disclose any protected information relating to a protected person except –
- (a) at a hearing under the *Tasmanian Civil and Administrative Tribunal Act 2020*; or
 - (b) where, in the opinion of the Tribunal or the Public Guardian, the disclosure of the protected information would promote the personal and social well-being of the protected person; or
 - (c) where the disclosure of the protected information is made by a person authorised in writing, either generally or in a particular case, by the President.
- (2A) Subsection (2) does not prevent the disclosure of information as required or permitted by any law if, in the case of information relating to another person, that other person has given consent in writing.
- (2B) A person may disclose protected information relating to a protected person if that disclosure –
- (a) has been consented to by, and with the full understanding of, the protected person; and
 - (b) the disclosure of the protected information does not involve the disclosure of information relating to another person, unless the other person has consented to the disclosure of that information.

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- (3) Nothing in this section prohibits the Tribunal from publishing notices of hearings or other notices that may be necessary in the interests of justice or for the proper administration of this Act.
- (4) A person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units or imprisonment for a period not exceeding 12 months or both.

87.

88. Power to open wills

- (1) The Tribunal, The Public Trustee or a trustee company, within the meaning of the *Trustee Companies Act 1953*, may, before or after the death of a represented person, open and read any paper or writing which purports to be, or is alleged to be, the will of the represented person.
- (2) A guardian or an administrator other than The Public Trustee or a trustee company may, with the approval of the Tribunal, open and read any paper or writing which purports to be the will of a represented person, but must not disclose its contents to any other person without the further approval of the Tribunal.
- (3) The Tribunal may, for the purposes of a hearing in relation to Guardianship stream proceedings, open and read any paper or writing which

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purports to be, or is alleged to be, the will of a person in respect of whom an application for a guardianship order or an administration order has been made.

- (4) For the purposes of subsections (1) and (3), the Tribunal has a right to obtain a copy of a will, from a person who has possession of the will of a represented person or a person in respect of whom an application for a guardianship order or an administration order has been made.
- (5) A person who has custody or control of a will, to which the Tribunal has a right under subsection (4), must, at the request of the Tribunal, provide to the Tribunal a copy, of the will, that is certified by the person.

Penalty: Fine not exceeding 20 penalty units.

- (6) In this section –

will includes any paper or writing that is a will, part of a will, a revoked will, a purported will or a copy of a will.

88A. Application of Act

- (1) Unless the contrary intention appears, this Act is in addition to, and does not derogate from, any other law of the State.
- (2) Nothing in this Act affects the inherent jurisdiction of the Supreme Court.

89. Duty to keep register

- (1) The Tribunal must keep a register, or cause a register to be kept, containing particulars of—
 - (a) applications lodged with the registrar; and
 - (b) any determinations of the Tribunal in Guardianship stream proceedings; and
 - (c) any instruments of appointment as an enduring guardian under Part 5; and
 - (d) any advance care directives registered with the Tribunal under section 35X; and
 - (e) any instruments registered under section 81(2).
- (2) The register is to be made available for inspection by persons in accordance with the regulations.

90. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the Governor may make regulations as to –
 - (a) fees to be paid to the Tribunal in respect of any matters arising under this Act; and
 - (ab) the waiving, and refunding, of any such fee or part of any such fee; and

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- (b) prescribing information to be supplied in support of an application under this Act; and
- (c) prescribing requirements in relation to the giving and witnessing of advance care directives; and
- (d) the referral of a matter to which Part 5A applies to a mediation and the conduct of such a mediation; and
- (e) the consideration and resolution of matters relating to advance care directives by the Public Guardian; and
- (f) the referral of matters from the Public Guardian to the Tribunal; and
- (g) the making of orders in relation to advance care directives by the Tribunal; and
- (h) any matter relating to the process and procedure of any of the matters referred to in paragraphs (d), (e), (f) and (g); and
- (i) any matter that is necessary or convenient for the registration of advance care directives, including the following:
 - (i) the form and manner in which the register must be established and kept under section 35X;
 - (ii) the contents of the register, including proof of the contents;

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- (iii) who may apply for registration;
 - (iv) the procedure for registration, including the alteration and removal of entries in the register;
 - (v) who may have access to or obtain information from the register;
 - (vi) the procedure for accessing or obtaining information from the register.
- (2A) The regulations may adopt, either wholly or in part and with or without modification, and either specifically or by reference, any standards, rules, codes, guidelines or other documents (whether published or issued before or after the commencement of a provision of this Act).
- (3) The regulations may –
- (a) provide that a contravention of any of the regulations is an offence; and
 - (b) in respect of any such offence, provide for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding 2 penalty units for each day during which the offence continues.
- (4) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

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Part 10 – Miscellaneous and Supplemental

90A. Savings and transitional provisions

The savings and transitional provisions specified in Schedule 4 have effect.

90B. Transitional provisions consequent on *Guardianship and Administration Amendment Act 2013*

- (1) Section 32C applies to, and in relation to, an enduring guardianship created before that section commences, but only to, or in relation to, the taking of an action, or an action taken, after that section commences.
- (2) Section 32D applies to, and in relation to, an enduring guardianship created before that section commences, but only in relation to a dealing or transaction made after the section commences.
- (3) Nothing in this section is to be taken to limit the application of sections 32C and 32D to an enduring guardianship created after section 32C or 32D, respectively, commences.

90BA. Transitional provisions consequent on enactment of *Guardianship and Administration Amendment Act 2023*

- (1) In this section –

amendment Act means the *Guardianship and Administration Amendment Act 2023*;

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commencement day means the day on which section 15 of the amendment Act commences;

full guardianship order means an order under this Act appointing a full guardian that is in effect immediately before the commencement day;

limited guardianship order means an order under this Act appointing a limited guardian that is –

- (a) in effect immediately before the commencement day; or
- (b) made as a consequence of an application referred to in subsections (4) or (5);

old administration order means an order appointing an administrator that is –

- (a) in effect immediately before the commencement day; or
- (b) made as a consequence of an application referred to in subsections (4) or (5).

(2) For the purposes of this Act –

- (a) a full guardianship order is taken to specify that the guardian may make decisions in respect of all of the represented person's personal matters; and

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- (b) a limited guardianship order is taken to specify that the guardian may make decisions in respect of such personal matters as are consistent with the terms of the limited guardianship order; and
 - (c) a reference in an old administration order to a represented person's estate is taken to be a reference to the represented person's financial matters.
- (3) Subsection (2) is subject to such terms and conditions as are specified in the relevant order.
- (4) Any applications made, or proceedings instituted, under this Act and not determined before the commencement day are to be, on or after the commencement day, determined under this Act as in force immediately before the commencement day.
- (5) The Tribunal may, on or after the commencement day, accept an application that has not been made in accordance with the requirements of this Act if –
 - (a) the application is made within 2 months after the commencement day; and
 - (b) the application is made in accordance with the requirements of this Act as in force immediately before the commencement day.
- (6) An application under subsection (5) is to be determined by the Tribunal under the provisions

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of this Act as in force immediately before the commencement day.

- (7) The amendments to section 25, Part 5 and Schedule 3 made by the amendment Act do not apply in relation to –
 - (a) an instrument appointing an enduring guardian that was in effect immediately before the commencement day; or
 - (b) an instrument appointing an enduring guardian that had been signed by the appointor before the commencement day but has not, immediately before the commencement day, been registered with the Tribunal.
- (8) For the avoidance of doubt, and unless otherwise specified in the amendment Act, nothing in the amendment Act affects the validity of any document, instrument or application made, direction issued, or order made, before the commencement day under this Act.
- (9) The Governor may make regulations of a savings and transitional nature consequent on the enactment of the amendment Act.
- (10) A regulation referred to in subsection (9) may take effect on a day on which a provision of the amendment Act commences or on a later day specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

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90C. Validation

(1) In this section –

Board means the Guardianship and Administration Board established under this Act as in force immediately before the validation day;

member of the Board has the same meaning as in this Act as in force immediately before the validation day;

validation day means the day on which the *Validation Act 2021* commences.

(2) If –

(a) a person was appointed as a member of the Board before the validation day; and

(b) during all or part of the period –

(i) beginning on the day on which the appointment referred to in paragraph (a) expired; and

(ii) ending immediately before the validation day –

the person purported to be authorised, under this Act or the *Acts Interpretation Act 1931*, to perform, or exercise, as a member of the Board, a function or power of a member of the Board that a member of the Board may perform or exercise –

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then, despite any provision of this Act or any other Act –

- (c) the person is to be taken to have been, and to always have been, a member of the Board during the period; and
- (d) that performance or exercise of that function or power by the person during the period is not to be taken to be, or to ever have been, invalid by reason only that the person was not, but for this section, a member of the Board during all or part of the period; and
- (e) the Board is not to be taken to have been, or to ever have been, invalidly constituted by reason only that the person was not, but for this section, a member of the Board during all or part of the period.

91. Administration of Act

Until an order is made under section 4 of the *Administrative Arrangements Act 1990* –

- (a) this Act is administered by the Minister for Justice; and
- (b) the Department responsible to the Minister for Justice in relation to the administration of this Act is the Department of Justice.

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SCHEDULE 1 –

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SCHEDULE 2 –

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sch. 3

**SCHEDULE 3 – INSTRUMENTS RELATING TO
ENDURING GUARDIANS**

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sch. 3

Section 32(2)(a) and (b)

Form 1 – Appointment of Enduring Guardian

1 – I (*insert name, address and occupation of appointor*), appoint (*insert name, address and occupation of proposed guardian*) to be my guardian.

2 – I authorise my guardian, in the event that I become unable by reason of impaired decision-making ability to make decisions in respect of my personal matters, to exercise the powers of an enduring guardian under section 32 of the *Guardianship and Administration Act 1995*.

3 – I require my guardian to observe the following conditions in exercising, or in relation to the exercise of, the powers conferred by this instrument:–

(State any conditions to which the powers are subject)

4 – This is an appointment of an enduring guardian made under Part 5 of the *Guardianship and Administration Act 1995*.

.....
(Signature of appointor)

ACCEPTANCE OF APPOINTMENT

I, (*insert name, address and occupation of proposed guardian*) accept appointment as a guardian under this instrument, declare that I have read and understood any advance care directives given by my appointor and undertake to exercise the powers conferred honestly and in accordance with the provisions of the *Guardianship and Administration Act 1995*.

**SCHEDULE 4 – SAVINGS AND TRANSITIONAL
PROVISIONS**

Section 90A

1. In this Schedule –

commencement date means the date on which this Act commences;

former Board means the Guardianship Board established under the *Mental Health Act 1963*;

initial period means the period of 6 months commencing on the commencement date.

2. Where a guardianship application was received by the former Board under section 23 of the *Mental Health Act 1963* and in force immediately before the commencement date, the application is taken to be an application for a guardianship order under this Act.

3. A guardianship order made under the *Mental Health Act 1963* and in force immediately before the commencement date is taken to be a guardianship order made under this Act.

4. Where an appointment of the former Board as guardian of a person was in force immediately before the commencement date, the Guardianship and Administration Board has the functions of a guardian for the initial period as if

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it had been appointed as a guardian of that person as mention in section 25.

5. Where the Public Trustee has been appointed as a committee on the filing of a certificate of disability under the *Mental Health Act 1963* and the appointment was in force immediately before the commencement date –
 - (a) the certificate of disability is taken to be an administration order made under this Act; and
 - (b) the Public Trustee is taken to be administrator in respect of financial matters for the person to whom the order relates without limitation of his or her powers.

6. Where an order for the appointment of a committee made under the *Mental Health Act 1963* was in force immediately before the commencement date –
 - (a) the order has effect as if it were an administration order made under this Act; and
 - (b) the person appointed as a committee is taken to be the administrator in respect of financial matters for the person to whom the order relates on the same terms and conditions, if any, as are specified in the order.

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- 7.(1) The Guardianship and Administration Board must within the initial period review all appointments and orders made under the *Mental Health Act 1963* that are continued in effect under this Schedule.
- (2) If the Minister is satisfied that it is impracticable for the Board to complete the review required under subclause (1) in the initial period, the Minister may, by notice published in the *Gazette*, extend that period for a further period not exceeding 6 months.

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NOTES

The foregoing text of the *Guardianship and Administration Act 1995* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 1 September 2024 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Guardianship and Administration (Miscellaneous Amendments) Act 1996</i>	No. 33 of 1996	13.11.1996
<i>Guardianship and Administration Act 1995</i>	No. 44 of 1995	1.9.1997
<i>Guardianship and Administration Amendment Act 2000</i>	No. 4 of 2000	28.4.2000
<i>Powers of Attorney Act 2000</i>	No. 68 of 2000	4.4.2001
<i>State Service (Consequential and Miscellaneous Amendments) Act 2000</i>	No. 86 of 2000	1.5.2001
<i>Evidence (Consequential Amendments) Act 2001</i>	No. 80 of 2001	1.7.2002
<i>Statute Law Revision Act 2003</i>	No. 9 of 2003	16.4.2003
<i>Relationships (Consequential Amendments) Act 2003</i>	No. 45 of 2003	1.1.2004
<i>Police Service (Consequential Amendments) Act 2003</i>	No. 76 of 2003	1.1.2004
<i>Statutory Officers (Age for Retirement) Act 2005</i>	No. 17 of 2005	10.6.2005
<i>Mental Health Amendment (Secure Mental Health Unit) Act 2005</i>	No. 72 of 2005	20.2.2006
<i>Guardianship and Administration Amendment Act 2006</i>	No. 11 of 2006	13.9.2006
<i>Justice and Related Legislation (Further Miscellaneous Amendments) Act 2006</i>	No. 43 of 2006	18.12.2006
<i>Legal Profession (Miscellaneous and Consequential Amendments) Act 2007</i>	No. 66 of 2007	31.12.2008
<i>Audit (Consequential Amendments) Act 2008</i>	No. 50 of 2008	1.3.2009

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Act	Number and year	Date of commencement
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2009</i>	No. 23 of 2009	16.6.2009
<i>Audit (Consequential Amendments) Act 2008</i>	No. 50 of 2008	1.7.2010
<i>Health Practitioner Regulation National Law (Tasmania) (Consequential Amendments) Act 2010</i>	No. 3 of 2010	1.7.2010
<i>Vexatious Proceedings Act 2011</i>	No. 31 of 2011	1.3.2013
<i>Guardianship and Administration Amendment Act 2013</i>	No. 40 of 2013	21.10.2013
<i>Reproductive Health (Access to Terminations) Act 2013</i>	No. 72 of 2013	12.2.2014
<i>Guardianship and Administration Amendment Act 2015</i>	No. 30 of 2015	6.10.2015
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2018</i>	No. 29 of 2018	10.12.2018
<i>Tasmanian Civil and Administrative Tribunal (Consequential Amendments) Act 2021</i>	No. 18 of 2021	5.11.2021
<i>Validation Act 2021</i>	No. 19 of 2021	5.11.2021
¹ <i>Guardianship and Administration Amendment (Advance Care Directives) Act 2021</i>	No. 15 of 2021	21.11.2022
<i>Guardianship and Administration Amendment Act 2023</i>	No. 21 of 2023	1.9.2024

¹As amended by Act. No. 28 of 2022

TABLE OF AMENDMENTS

Provision affected	How affected
The long title	Amended by No. 15 of 2021, s. 4 and No. 21 of 2023, s. 4
Section 2	Amended by No. 33 of 1996, s. 4
Section 3	Amended by No. 4 of 2000, s. 4, No. 45 of 2003, Sched. 1, No. 76 of 2003, Sched. 1, No. 72 of 2005, s. 121, No. 43 of 2006, s. 21, No. 3 of 2010, Sched. 1, No. 40 of 2013, s. 4, No. 30 of 2015, s. 4, No. 15 of 2021, No. 18 of 2021, s. 117 and No. 21 of 2023, s. 5
Section 4	Amended by No. 9 of 2003, Sched. 1, No. 30 of 2015, s. 5 and No. 21 of 2023, s. 6
Section 5	Amended by No. 15 of 2021, s. 6, No. 18 of 2021, s. 118 Substituted by No. 21 of 2023, s. 7
Section 6	Amended by No. 15 of 2021, s. 7

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Provision affected	How affected
Section 7	Substituted by No. 21 of 2023, s. 7 Amended by No. 66 of 2007, Sched. 1 Repealed by No. 18 of 2021, s. 119
Section 8	Substituted by No. 21 of 2023, s. 7 Substituted by No. 68 of 2000, s. 61 Repealed by No. 18 of 2021, s. 119
Section 9	Substituted by No. 21 of 2023, s. 7 Amended by No. 86 of 2000, Sched. 1 Repealed by No. 18 of 2021, s. 119
Section 7A	Substituted by No. 21 of 2023, s. 7 Inserted by No. 43 of 2006, s. 22 Repealed by No. 18 of 2021, s. 119
Section 8A	Inserted by No. 43 of 2006, s. 23 Repealed by No. 18 of 2021, s. 119
Part 2	Repealed by No. 18 of 2021, s. 119 Inserted by No. 21 of 2023, s. 8
Section 10	Amended by No. 66 of 2007, Sched. 1 Repealed by No. 18 of 2021, s. 119 Inserted by No. 21 of 2023, s. 8
Section 11	Amended by No. 4 of 2000, s. 5, No. 86 of 2000, Sched. 1, No. 80 of 2001, Sched. 1 Subsection (13) inserted by No. 43 of 2006, s. 24 Subsection (14) inserted by No. 43 of 2006, s. 24 Subsection (15) inserted by No. 43 of 2006, s. 24 Subsection (16) inserted by No. 43 of 2006, s. 24 Subsection (17) inserted by No. 43 of 2006, s. 24 Amended by No. 43 of 2006, s. 24 Repealed by No. 18 of 2021, s. 119 Inserted by No. 21 of 2023, s. 8
Section 12	Repealed by No. 18 of 2021, s. 119 Inserted by No. 21 of 2023, s. 8
Section 13	Repealed by No. 18 of 2021, s. 119 Inserted by No. 21 of 2023, s. 8
Section 14	Amended by No. 86 of 2000, Sched. 1
Section 15	Amended by No. 15 of 2021, s. 9, No. 18 of 2021, s. 120 and No. 21 of 2023, s. 9
Section 16	Amended by No. 86 of 2000, Sched. 1
Section 17	Amended by No. 15 of 2021, s. 10 and No. 18 of 2021, s. 121
Section 19	Amended by No. 18 of 2021, s. 122 and No. 21 of 2023, s. 10
Section 20	Amended by No. 4 of 2000, s. 6, No. 18 of 2021, s. 123 Substituted by No. 21 of 2023, s. 11
Section 21	Amended by No. 18 of 2021, s. 124 Substituted by No. 21 of 2023, s. 11
Section 21A	Inserted by No. 21 of 2023, s. 11
Section 22	Amended by No. 21 of 2023, s. 12
Section 23	Amended by No. 18 of 2021, s. 125

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Provision affected	How affected
	Repealed by No. 21 of 2023, s. 13
Section 24	Substituted by No. 21 of 2023, s. 14
Section 25	Amended by No. 4 of 2000, s. 7, No. 15 of 2021, s. 11 Substituted by No. 21 of 2023, s. 15
Section 26	Amended by No. 18 of 2021, s. 126 Substituted by No. 21 of 2023, s. 15
Section 27	Amended by No. 15 of 2021, s. 12 Subsection (3) inserted by No. 15 of 2021, s. 12 Substituted by No. 21 of 2023, s. 15
Section 27A	Inserted by No. 21 of 2023, s. 15
Section 28	Amended by No. 18 of 2021, s. 127 and No. 21 of 2023, s. 16
Section 29	Amended by No. 18 of 2021, s. 128 and No. 21 of 2023, s. 17
Section 30	Amended by No. 18 of 2021, s. 129 and No. 21 of 2023, s. 18
Section 31	Amended by No. 15 of 2021, s. 13 and No. 18 of 2021, s. 130
Section 32	Amended by No. 4 of 2000, s. 8, No. 43 of 2006, s. 25, No. 15 of 2021, s. 14, No. 18 of 2021, s. 131 and No. 21 of 2023, s. 19
Section 32A	Inserted by No. 4 of 2000, s. 9
Section 32B	Inserted by No. 40 of 2013, s. 5 Amended by No. 21 of 2023, s. 20
Section 32C	Inserted by No. 40 of 2013, s. 5
Section 32D	Inserted by No. 40 of 2013, s. 5 Amended by No. 18 of 2021, s. 132
Section 33	Amended by No. 18 of 2021, s. 133
Section 34	Amended by No. 43 of 2006, s. 26, No. 23 of 2009, s. 14, No. 40 of 2013, s. 6, No. 18 of 2021, s. 134 and No. 21 of 2023, s. 21
Section 35	Amended by No. 18 of 2021, s. 135
Division 1	Inserted by No. 15 of 2021, s. 15
Section 35A	Amended by No. 21 of 2023, s. 22
Section 35B	Amended by No. 21 of 2023 and No. 21 of 2023, s. 23
Division 2	Inserted by No. 15 of 2021, s. 15
Section 35C	Amended by No. 21 of 2023, s. 24 and No. 21 of 2023, s. 23
Section 35D	Repealed by No. 21 of 2023, s. 24
Section 35E	Amended by No. 21 of 2023, s. 25
Section 35F	Repealed by No. 21 of 2023, s. 26
Division 3	Inserted by No. 15 of 2021, s. 15
Section 35G	Amended by No. 21 of 2023, s. 27
Section 35I	Amended by No. 21 of 2023, s. 29
Division 4	Inserted by No. 15 of 2021, s. 15
Section 35O	Amended by No. 21 of 2023, s. 29
Division 5	Inserted by No. 15 of 2021, s. 15
Section 35Q	Amended by No. 21 of 2023, s. 30

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Provision affected	How affected
Section 35R	Amended by No. 21 of 2023, s. 31
Section 35T	Amended by No. 21 of 2023, s. 32
Division 6	Inserted by No. 15 of 2021, s. 15
Division 7	Inserted by No. 15 of 2021, s. 15
Section 35Y	Amended by No. 21 of 2023, s. 33
Section 35Z	Amended by No. 21 of 2023, s. 34
Division 8	Inserted by No. 15 of 2021, s. 15
Division 9	Inserted by No. 15 of 2021, s. 15
Section 35ZK	Amended by No. 21 of 2023, s. 36
Division 10	Inserted by No. 15 of 2021, s. 15
Section 36	Amended by No. 15 of 2021, s. 16 and No. 21 of 2023, s. 36
Section 37	Amended by No. 72 of 2013, s. 16
Section 39	Amended by No. 18 of 2021, s. 136 and No. 21 of 2023, s. 37
Section 41	Amended by No. 15 of 2021, s. 17 and No. 21 of 2023, s. 38
Section 43	Amended by No. 30 of 2015, s. 6, No. 15 of 2021, s. 18 and No. 21 of 2023, s. 40
Section 44	Amended by No. 18 of 2021, s. 137
Section 45	Amended by No. 4 of 2000, s. 10, No. 30 of 2015, s. 7, No. 15 of 2021, s. 19, No. 18 of 2021, s. 138 and No. 21 of 2023, s. 41
Section 46	Amended by No. 18 of 2021, s. 139 and No. 21 of 2023, s. 41
Section 46A	Amended by No. 18 of 2021, s. 140
Section 46A of Part 6	Inserted by No. 72 of 2005, s. 122
Section 46A	Amended by No. 21 of 2023, s. 42
Section 48A	Inserted by No. 4 of 2000, s. 11
Division 1	Inserted by No. 21 of 2023, s. 43
Division 2	Inserted by No. 21 of 2023, s. 43
Division 3	Inserted by No. 21 of 2023, s. 43
Division 4	Inserted by No. 21 of 2023, s. 43
Division 5	Inserted by No. 21 of 2023, s. 43
Division 6	Inserted by No. 21 of 2023, s. 43
Section 49	Amended by No. 21 of 2023, s. 44
Section 50	Amended by No. 18 of 2021, s. 141 and No. 21 of 2023, s. 45
Section 51	Amended by No. 4 of 2000, s. 12 Subsection (5) substituted by No. 4 of 2000, s. 12 Subsection (6) inserted by No. 4 of 2000, s. 12 Amended by No. 68 of 2000, s. 61, No. 18 of 2021, s. 142 Substituted by No. 21 of 2023, s. 46
Section 52	Substituted by No. 21 of 2023, s. 46
Section 53	Amended by No. 33 of 1996, s. 5, No. 4 of 2000, s. 13, No. 9 of 2003, Sched. 1, No. 18 of 2021, s. 143 and No. 21 of 2023, s. 48

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Section 54	Amended by No. 18 of 2021, s. 144 Substituted by No. 21 of 2023, s. 48
Section 54A	Inserted by No. 21 of 2023, s. 48
Section 55	Amended by No. 18 of 2021, s. 145
Section 56	Amended by No. 18 of 2021, s. 146 and No. 21 of 2023, s. 50
Section 57	Substituted by No. 21 of 2023, s. 50
Section 57A	Inserted by No. 21 of 2023, s. 50
Section 58	Amended by No. 18 of 2021, s. 147, No. 21 of 2023, s. 52 and No. 21 of 2023, s. 51
Section 59	Amended by No. 18 of 2021, s. 148
Section 60	Amended by No. 18 of 2021, s. 149 and No. 21 of 2023, s. 53
Section 61	Amended by No. 18 of 2021, s. 150 and No. 21 of 2023, s. 53
Section 62	Amended by No. 18 of 2021, s. 151 and No. 21 of 2023, s. 55
Section 62A	Inserted by No. 21 of 2023, s. 55
Section 63	Amended by No. 18 of 2021, s. 152 and No. 21 of 2023, s. 57
Section 64	Amended by No. 18 of 2021, s. 153
Section 65	Amended by No. 4 of 2000, s. 14, No. 68 of 2000, s. 61 Subsection (4A) inserted by No. 11 of 2006, s. 4 Subsection (6) inserted by No. 11 of 2006, s. 4 Amended by No. 18 of 2021, s. 154 Substituted by No. 21 of 2023, s. 57
Section 66	Amended by No. 18 of 2021, s. 155
Section 67	Amended by No. 18 of 2021, s. 156 Substituted by No. 21 of 2023, s. 58
Section 68	Amended by No. 18 of 2021, s. 157 Substituted by No. 21 of 2023, s. 58
Section 69A	Inserted by No. 31 of 2011, Sched. 1 Repealed by No. 18 of 2021, s. 158
Section 72	Substituted by No. 4 of 2000, s. 16 Repealed by No. 18 of 2021, s. 158
Section 73	Amended by No. 43 of 2006, s. 27 Repealed by No. 18 of 2021, s. 158
Section 73A	Inserted by No. 43 of 2006, s. 28 Subsection (1) substituted by No. 23 of 2009, s. 15 Repealed by No. 18 of 2021, s. 158
Section 74	Repealed by No. 18 of 2021, s. 158
Section 74A	Inserted by No. 43 of 2006, s. 29 Repealed by No. 18 of 2021, s. 158
Section 75	Repealed by No. 18 of 2021, s. 158
Section 76	Repealed by No. 18 of 2021, s. 158
Division 1 of Part 10	Repealed by No. 18 of 2021, s. 158 Inserted by No. 21 of 2023, s. 59
Section 69	Amended by No. 4 of 2000, s. 15

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	Subsection (3) substituted by No. 4 of 2000, s. 15
	Repealed by No. 18 of 2021, s. 158
	Inserted by No. 21 of 2023, s. 59
Section 70	Repealed by No. 18 of 2021, s. 158
	Inserted by No. 21 of 2023, s. 59
Division 2 of Part 10	Repealed by No. 18 of 2021, s. 158
	Inserted by No. 21 of 2023, s. 59
Section 71	Repealed by No. 18 of 2021, s. 158
	Inserted by No. 21 of 2023, s. 59
Section 77	Amended by No. 18 of 2021, s. 159
Section 78	Amended by No. 9 of 2003, Sched. 1
	Inserted by No. 15 of 2021, s. 22
	Repealed by No. 18 of 2021, s. 160
Section 79	Substituted by No. 18 of 2021, s. 160
Section 80	Repealed by No. 18 of 2021, s. 160
Section 81	Amended by No. 18 of 2021, s. 161 and No. 21 of 2023, s. 61
Section 81A	Inserted by No. 43 of 2006, s. 30
	Amended by No. 66 of 2007, Sched. 1
Section 82	Substituted by No. 18 of 2021, s. 162
Section 83	Amended by No. 50 of 2008, Sched. 1
	Repealed by No. 50 of 2008, Sched. 2
Section 84	Amended by No. 18 of 2021, s. 163
Section 85	Inserted by No. 15 of 2021, s. 23
	Repealed by No. 18 of 2021, s. 164
Section 86	Amended by No. 15 of 2021, s. 24, No. 18 of 2021, s. 165 and No. 21 of 2023, s. 61
Section 87	Amended by No. 43 of 2006, s. 31
	Repealed by No. 18 of 2021, s. 166
Section 88	Amended by No. 4 of 2000, s. 17, No. 18 of 2021, s. 167 and No. 21 of 2023, s. 63
Section 88A	Inserted by No. 21 of 2023, s. 63
Section 89	Amended by No. 15 of 2021, s. 25 and No. 18 of 2021, s. 168
Section 90	Amended by No. 29 of 2018, s. 36, No. 15 of 2021, s. 26, No. 18 of 2021, s. 169 and No. 21 of 2023, s. 64
Section 90A	Inserted by No. 33 of 1996, s. 6
Section 90B	Inserted by No. 40 of 2013, s. 7
Section 90BA	Inserted by No. 21 of 2023, s. 65
Section 90C	Inserted by No. 19 of 2021, s. 4
Schedule 1	Amended by No. 86 of 2000, Sched. 1, No. 17 of 2005, Sched. 1, No. 72 of 2005, s. 123
	Repealed by No. 18 of 2021, s. 170
Schedule 2	Repealed by No. 18 of 2021, s. 170
Part 1 of Schedule 2	Amended by No. 43 of 2006, s. 32 and No. 18 of 2021, s. 170
Part 2 of Schedule 2	Amended by No. 18 of 2021, s. 170

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Schedule 3	Amended by No. 4 of 2000, s. 18, No. 15 of 2021, s. 27 and No. 21 of 2023, s. 66
Schedule 4	Inserted by No. 33 of 1996, s. 7 Amended by No. 21 of 2023, s. 68