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Dated 21 November 2022



TASMANIA

GUARDIANSHIP AND ADMINISTRATION ACT 1995

No. 44 of 1995

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Meaning of “person responsible”
5. Objects of Act
6. Principles to be observed

[PART 2 – Repealed

7 - 13. *Repealed*]

PART 3 – THE PUBLIC GUARDIAN

14. Public Guardian and Deputy Public Guardian

15. Functions and powers of Public Guardian
16. Staff of Public Guardian
17. Investigations
18. Delegation

PART 4 – GUARDIANSHIP ORDERS

Division 1 – Application for guardianship order

19. Application for guardianship order

Division 2 – Appointment of guardian

20. Guardianship order
21. Persons eligible as guardians
22. Alternative guardians
23. Orders to be forwarded to Public Guardian
24. Expiration of guardianship orders

Division 3 – Powers and duties of guardian

25. Authority of full guardian
26. Authority of limited guardian
27. Exercise of authority by guardian
28. Power to enforce guardianship order
29. Urgent powers in case of unlawful detention of persons with a disability
30. Removal of persons to place of safety
31. Application by guardian to Board for advice or direction

PART 5 – APPOINTMENT OF ENDURING GUARDIAN

32. Appointment of enduring guardian
- 32A. Alternative enduring guardian
- 32B. Right of enduring guardian to information
- 32C. Transactions that may involve conflict of duty
- 32D. Keeping of records, &c.
33. Revocation of appointment by appointor
34. Revocation or amendment of appointment by Tribunal

35. Advice or directions as to instruments of appointment

PART 5A – ADVANCE CARE DIRECTIVES

Division 1 – Objects and principles

- 35A. Objects of Part
35B. Principles to be taken into account

Division 2 – Preliminary

- 35C. Interpretation of Part
35D. Decision making ability
35E. Meaning of health care
35F. Meaning of medical research procedure

Division 3 – Advance care directives

- 35G. Giving an advance care directive
35H. Formal requirements for advance care directives
35I. Witnessing of advance care directive
35J. Formal requirements for advance care directive in language other than English
35K. Advance care directives that do not meet requirements
35L. Provisions that are void or of no effect in advance care directives

Division 4 – Operation of advance care directives

- 35M. Binding and non-binding provisions
35N. When advance care directives are in force
35O. Requirement to make reasonable inquiries as to advance care directive
35P. No variation of advance care directive

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

- 35Q. Consent given or refused in advance care directive
35R. Consent given or refused by authorised decision maker for person who has given an advance care directive
35S. Authorised decision maker to make decisions to give effect to advance care directive
35T. Health practitioners to give effect to advance care directives

- 35U. Circumstances where health practitioners may not comply with advance care directive
- 35V. Urgent health care
- 35W. Conscientious objection

Division 6 – Registration of advance care directives

- 35X. Registration of advance care directives

Division 7 – Revocation of advance care directives

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

Division 8 – Validity and limitation of liability

- 35ZA. Presumption of validity
- 35ZB. Protection from liability
- 35ZC. Preservation of liability
- 35ZD. Validity of acts and decisions under revoked or varied advance care directive
- 35ZE. Advance care directive to take precedence

Division 9 – Dispute resolution, review and appeals

- 35ZF. Interpretation of Division
- 35ZG. Application of Division
- 35ZH. Functions and powers of Public Guardian and Tribunal
- 35ZI. Resolution of matters by Public Guardian
- 35ZJ. Public Guardian may refer matter to Tribunal
- 35ZK. Resolution of matters by Tribunal

Division 10 – Miscellaneous

- 35ZL. Common law advance care directives not affected
- 35ZM. Other legal rights not affected
- 35ZN. Advance care directives from other jurisdictions
- 35ZO. Advance care directive does not authorise appointment of power of attorney or enduring guardian
- 35ZP. Review of Part

PART 6 – CONSENT TO MEDICAL AND DENTAL TREATMENT

Division 1 – Preliminary

- 36. Application of Part 6
- 37. Part 6 to prevail over *Criminal Code*

Division 2 – Medical and dental treatment

- 38. Unlawful medical or dental treatment
- 39. Persons authorized to consent to medical or dental treatment
- 40. Urgent medical or dental treatment
- 41. Medical or dental treatment without consent
- 42. Unlawful consent to medical or dental treatment
- 43. Consent by persons responsible
- 44. Applications for consent of Tribunal
- 45. Consent of Tribunal
- 46. Consent to continuing or further special treatment by guardian with authority of Tribunal

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

- 46A. Power to make guardianship order or administration order

Division 3 – General

- 47. Effect of consent
- 48. Preservation of liability
- 48A. Saving for rights under other laws

PART 7 – ADMINISTRATION ORDERS

Division 1 – Objects of Part 7

- 49. Objects of Part 7

Division 2 – Administration orders

- 50. Application for administration order
- 51. Administration orders
- 52. Expiration of administration orders
- 53. Administration order may not be made if enduring power of attorney is in force
- 54. Persons eligible as administrators

55. Remuneration of professional administrators

Division 4 – Powers and duties of administrator

56. Powers and duties of administrator
57. Exercise of power by administrator
58. Settlements and gifts
59. Powers of investment
60. Preservation of interests in represented person's property
61. Application by administrator for advice, &c.
62. Power of administrator to act until notice of discharge
63. Reporting requirements for administrators
64. Delegation of Tribunal's functions as to reporting

PART 8 – EMERGENCY ORDERS

65. Emergency orders

PART 9 – ANNUAL REPORTS AND REVIEW OF ORDERS

66. Annual reports in respect of represented persons
67. Review of orders
68. Order after review

PART 10 – MISCELLANEOUS AND SUPPLEMENTAL

[Division 1 – Repealed

- 69 - 74A. *Repealed]*

[Division 2 – Repealed

- 75 - 76. *Repealed]*

Division 3 – Powers of courts

77. Powers of courts

Division 4 – Legal provisions

78. Protection from liability
79. Evidentiary
[80. *Repealed]*
81. Recognition of orders made in other States, &c.
81A. Instruments made under corresponding laws

Division 5 – Accounts and reports

- 82. Accounts and records of Public Guardian
- [83. *Repealed*]
- 84. Annual report of Public Guardian
- 85. Protection relating to reports and information of Public Guardian

Division 6 – Offences and supplemental

- 86. Confidentiality of information
- [87. *Repealed*]
- 88. Power to open wills
- 89. Duty to keep register
- 90. Regulations
- 90A. Savings and transitional provisions
- 90B. Transitional provisions consequent on *Guardianship and Administration Amendment Act 2013*
- 90C. Validation
- 91. Administration of Act

[SCHEDULE 1 – *Repealed*]

[SCHEDULE 2 – *Repealed*]

SCHEDULE 3 – INSTRUMENTS RELATING TO ENDURING GUARDIANS

SCHEDULE 4 – SAVINGS AND TRANSITIONAL PROVISIONS



GUARDIANSHIP AND ADMINISTRATION ACT 1995

No. 44 of 1995

An Act to enable persons with a disability to be represented by a guardian or administrator, to recognise the giving of advance care directives and to provide for medical and dental treatment for persons with a disability

[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:

PART 1 – PRELIMINARY

1. Short title

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

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 2

Part 1 – Preliminary

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 an administrator of the estate of a person;

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

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;

contravene includes failure to comply with;

determination includes decision and order;

disability means any restriction or lack (resulting from any absence, loss or abnormality of mental, psychological, physiological or anatomical structure or function) of ability to perform an activity in a normal manner;

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

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 1 – Preliminary

s. 3

function includes duty and power;

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;

impaired decision making ability – see section 35D;

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

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 3

Part 1 – Preliminary

- (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
- (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*

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 1 – Preliminary

s. 3

Regulations 2010 as an intimate forensic procedure;

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
- (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 –

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 3

Part 1 – Preliminary

- (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 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

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 1 – Preliminary

s. 3

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- 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 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

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 3

Part 1 – Preliminary

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;

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*;

person responsible has the meaning given by section 4;

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;

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 1 – Preliminary

s. 3

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 disability, becomes unable to make reasonable judgments in relation to his or her personal circumstances;

service provider includes a financial institution or person with whom a proposed represented person has

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 3

Part 1 – Preliminary

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 Part 6;

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 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;

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 1 – Preliminary

s. 4

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(6), references to a guardian in this Act are taken as references to the guardian exercising the relevant function.
- (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) his or her guardian;

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 4

Part 1 – Preliminary

- (ii) his or her spouse;
 - (iii) the person having the care of the other person;
 - (iv) a close friend or relative of the other person; or
- (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*, would be in the best interests of the person; and
 - (c) the police officer or registered practitioner is satisfied as to the relevant matters in relation to the person.

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 1 – Preliminary

s. 4

- (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 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 in the best interests of the person 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

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 4

Part 1 – Preliminary

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
 - (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 friend or relative 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

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 1 – Preliminary

s. 5

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- (c) a person is taken not to be a close friend or relative if the person is receiving remuneration (whether from the person or some other source) for any services 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 friend or relative of another person.

5. Objects of Act

The objects of this Act are –

- (a)
- (b) to enable the making of guardianship orders and administration orders; and
- (ba) to recognise the giving of advance care directives; and
- (c) to make better provision for the authorization and approval of medical and dental treatment for persons who are incapable of giving informed consent to any such treatment; and

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 6

Part 1 – Preliminary

- (d) to ensure that persons with a disability and their families are informed of, and make use of, the provisions of this Act.

6. Principles to be observed

A function or power conferred, or duty imposed, by this Act is to be performed so that –

- (a) the means which is the least restrictive of a person's freedom of decision and action as is possible in the circumstances is adopted; and
- (b) the best interests of a person with a disability or impaired decision making ability, or in respect of whom an application is made under this Act, are promoted; and
- (c) the wishes, directions, preferences and values of a person with a disability or impaired decision making ability, or in respect of whom an application is made under this Act, are, if possible, carried into effect.

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 2 –

s. 7

PART 2 –

7 - 13.

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 a disability;
 - (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;
 - (e) to deal, on behalf of any such persons, with persons or bodies providing services;

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 3 – The Public Guardian

s. 15

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- (f) to represent any such persons before the Tribunal in relation to Guardianship stream proceedings;
 - (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 a disability 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.
- (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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 16

Part 3 – The Public Guardian

- (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 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.
- (2) A delegation –

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 18

Part 3 – The Public Guardian

- (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 full or limited guardian in respect of a person with a disability who is of or over the age of 18 years.
- (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) If the Tribunal, after a hearing, is satisfied that the person in respect of whom an application for an order appointing a guardian or an order appointing an administrator is made–
 - (a) is a person with a disability; and
 - (b) is unable by reason of the disability to make reasonable judgements in respect of all or any matters relating to his or her person or circumstances; and

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 20

Part 4 – Guardianship Orders

(c) is in need of a guardian–

the Tribunal may make an order appointing a full or limited guardian in respect of that person and any such order may be subject to such conditions or restrictions as the Tribunal considers necessary.

- (2) In determining whether or not a person is in need of a guardian, the Tribunal must consider whether the needs of the proposed represented person could be met by other means less restrictive of that person’s freedom of decision and action.
- (3) The Tribunal must not make an order under subsection (1) unless it is satisfied that the order would be in the best interests of the proposed represented person.
- (4) The Tribunal must not make an order appointing a full guardian unless it is satisfied that an order for limited guardianship would be insufficient to meet the needs of the proposed represented person.
- (5) Where the Tribunal makes an order appointing a limited guardian in respect of a person the order to be made is that which is least restrictive of that person’s freedom of decision and action as is possible in the circumstances.
- (6) Two or more guardians of a person, each with different functions, may be appointed under one or more limited guardianship orders.

21. Persons eligible as guardians

- (1) The Tribunal may appoint as a full guardian or limited guardian any person who is of or over the age of 18 years and consents to act as guardian if the Tribunal is satisfied that that person—
 - (a) will act in the best interests of the proposed represented person; and
 - (b) is not in a position where the person's interests conflict or may conflict with the interests of the proposed represented person; and
 - (c) is a suitable person to act as guardian of the proposed represented person.
- (2) In determining whether a person is suitable to act as a guardian of a represented person, the Tribunal must take into account—
 - (a) the wishes of the proposed represented person so far as they can be ascertained; and
 - (b) the desirability of preserving existing family relationships; and
 - (c) the compatibility of the person proposed as guardian with the proposed represented person and with the administrator (if any) of his or her estate; and

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 22

Part 4 – Guardianship Orders

- (d) whether the person proposed as guardian will be available and accessible to the proposed represented person so as to fulfil the requirements of guardianship of that person.

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 of the represented person.
- (2) During the absence or incapacity of the guardian of a represented person, the alternative guardian of that person has the functions of his or her guardian.

23. Orders to be forwarded to Public Guardian

If the Tribunal makes a guardianship order appointing a person other than the Public Guardian as a guardian, the Tribunal must cause a copy of the order to be forwarded to the Public Guardian.

24. Expiration of guardianship orders

A guardianship order lapses on the expiration of 3 years after the date on which it is made unless it is continued under section 68.

Division 3 – Powers and duties of guardian

25. Authority of full guardian

- (1) A guardianship order appointing a full guardian confers on the full guardian in respect of the represented person all the powers and duties which the full guardian would have in Tasmania if he or she was a parent and the represented person his or her child.
- (2) Without limiting subsection (1), an order appointing a full guardian confers on the person named as full guardian the power –
 - (a) to decide where the represented person is to live, whether permanently or temporarily; and
 - (b) to decide with whom the represented person is to live; and
 - (c) to decide whether the represented person should or should not be permitted to work and if so –
 - (i) the nature or type of work; and
 - (ii) the person for whom the represented person is to work; and
 - (iii) any related matters; and
 - (d) to restrict visits to a represented person to such extent as may be necessary in his or her best interests and to prohibit visits

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 26

Part 4 – Guardianship Orders

by any person if the guardian reasonably believes that they would have an adverse effect on the represented person;

- (e) except as provided in Part 5A or Part 6, to consent to any health care that is in the best interests of the represented person and to refuse or withdraw consent to any such treatment.
- (3) Where a decision is made, action taken, consent given or act done by a full guardian, 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.
- (4) A full 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.

26. Authority of limited guardian

- (1) A guardianship order appointing a limited guardian confers on the limited guardian such one or more of the powers and duties in respect of the represented person which are conferred on a full guardian under this Act as the Tribunal may specify in the order.
- (2) Where a decision is made, action taken, consent given or act done by a limited guardian, 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 limited 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.

27. Exercise of authority by guardian

- (1) A guardian must act at all times in the best interests of the person under guardianship.
- (2) Without limiting subsection (1), a guardian acts in the best interests of a person under guardianship if the guardian acts as far as possible –
 - (a) in consultation with that person, taking into account, as far as possible, his or her wishes, directions, preferences and values (including those expressed in an advance care directive); and
 - (b) as an advocate for that person; and
 - (c) in such a way as to encourage that person to participate as much as possible in the life of the community; and
 - (d) in such a way as to encourage and assist that person to become capable of caring for himself or herself and of making reasonable judgements relating to his or her person; and

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 28

Part 4 – Guardianship Orders

- (e) in such a way as to protect that person from neglect, abuse or exploitation.
- (3) A guardian must take reasonable steps to ascertain whether the person under guardianship has given an advance care directive.

28. Power to enforce guardianship order

- (1) Without limiting section 25 or 26, if the Tribunal makes a guardianship order appointing a full or limited guardian, the Tribunal may specify in the order that the person named as full or limited 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.
- (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 in the best interests of the represented person; 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 with a disability

- (1) If the Tribunal has received information that a person with a disability–
- (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 Tribunal may empower the Public Guardian or some other person specified in the order to visit the person with a disability 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 with a disability 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 with a disability is found.

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 30

Part 4 – Guardianship Orders

- (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 with a disability 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
 - (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

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 4 – Guardianship Orders

s. 31

- (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.
- (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

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 31

Part 4 – Guardianship Orders

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 –
 - (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 directive given by the appointor; and

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 32

Part 5 – Appointment of enduring guardian

- (c) 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
 - (d) it is registered with the Tribunal.
- (3) A person is not eligible to be appointed as an enduring guardian unless he or she is of or over the age of 18 years.
- (4) A person is not eligible to be appointed as an enduring guardian if he or she 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 authorizes each appointee to exercise the powers of a guardian under section 25 if the appointor subsequently becomes unable by reason of a disability to make reasonable judgements in respect of matters relating to his or her personal circumstances.
- (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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5 – Appointment of enduring guardian

s. 32A

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- (7) Section 25(3) applies to an enduring guardian as if he or she were a full 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 a disability to make reasoned judgments in respect of matters relating to his or her personal circumstances, to all information to which the appointor

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 32C

Part 5 – Appointment of enduring guardian

would have been entitled but for the disability –

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 a disability to make reasoned judgments in respect of matters relating to his or her personal circumstances, 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.
- (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 –

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5 – Appointment of enduring guardian

s. 32C

- (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 –
- (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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 32D

Part 5 – Appointment of 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 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) –

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5 – Appointment of enduring guardian

s. 33

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
 - (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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 34

Part 5 – Appointment of enduring guardian

- (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 and after a hearing, revoke or amend the instrument of appointment of an enduring guardian if–
- (a) the enduring guardian seeks revocation of the appointment; or
 - (b) the Tribunal is satisfied that the enduring guardian–
 - (i) is not willing or able to act in that capacity; or
 - (ii) has, in that capacity, not acted in the best interests of the appointor or has acted in an incompetent or negligent manner or contrary to the provisions of this Act.

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5 – Appointment of enduring guardian

s. 34

- (1A) The Tribunal may, on an application under this section and after a hearing, declare that the instrument of appointment of an enduring guardian is invalid if the Tribunal is satisfied that –
- (a) the appointor did not have the mental capacity to make it; or
 - (b) it is contrary to the provisions of this Act; or
 - (c) the appointor was induced to make it by reason of dishonesty or undue influence.
- (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 –
- (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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 35

Part 5 – Appointment of enduring guardian

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
 - (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

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5 – Appointment of enduring guardian

s. 35

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

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;

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 35B

Part 5A – Advance care directives

- (f) subject to this Part, an advance care directive has the same authority as the person who gave the advance care directive had when he or she 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 United Nations Convention on the Rights of Persons with Disabilities;

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5A – Advance care directives

s. 35C

- (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

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 35C

Part 5A – Advance care directives

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

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 that is prescribed for the purposes of this definition;

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

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5A – Advance care directives

s. 35C

assisted ventilation, the provision of nutrition and hydration through artificial means and cardiopulmonary resuscitation;

medical research procedure – see section 35F;

non-binding provision – see section 35M;

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).

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

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 35D

Part 5A – Advance care directives

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. Decision making ability

(1) In this section –

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.
- (2) For the purposes of this Part, an adult is taken to have decision making ability in respect of a health care decision unless a health practitioner considering that ability under this Act reasonably believes that the adult has impaired decision making ability in respect of the decision.
- (3) For the purposes of this Part, an adult has impaired decision making ability in respect of a health care decision if the adult is unable to –
- (a) understand information relevant to the decision; or

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5A – Advance care directives

s. 35D

- (b) retain information relevant to the decision; or
 - (c) use or weigh information relevant to the decision; or
 - (d) communicate the decision (whether by speech, gesture or other means).
- (4) For the purposes of this Part, a child is taken to have decision making ability in respect of a health care decision only if a registered health practitioner considering that ability under this Act is satisfied that –
- (a) the child is sufficiently mature to make the decision; and
 - (b) the child is able to –
 - (i) understand information relevant to the decision; and
 - (ii) retain information relevant to the decision; and
 - (iii) use or weigh information relevant to the decision; and
 - (iv) communicate the decision (whether by speech, gesture or other means).
- (5) However, an adult or child does not have impaired decision making ability in respect of a health care decision for the purposes of this Part merely because –

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 35D

Part 5A – Advance care directives

- (a) the adult or child is not able to understand matters of a technical or trivial nature; or
- (b) the adult or child does not have a particular level of literacy or education; or
- (c) the adult or child can only retain information relevant to the decision for a limited time; or
- (d) the adult or child has decision making ability to make some decisions and not others; or
- (e) a decision made by the adult or child results, or may result, in an adverse outcome for the adult or child; or
- (f) a decision made by the adult or child is unwise in the opinion of other persons; or
- (g) the adult or child makes a decision because of cultural or religious practices or beliefs; or
- (h) of the age of the adult or child; or
- (i) of the adult or child's appearance; or
- (j) the adult or child is perceived to be eccentric; or
- (k) the adult or child has engaged in illegal or immoral conduct; or

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5A – Advance care directives

s. 35D

- (l) the adult or child has a particular sexual orientation or expresses a particular sexual preference; or
 - (m) the adult or child has a disability, illness or other medical condition (whether physical or mental); or
 - (n) the adult or child requires practicable and appropriate support in order to make or communicate the decision, including –
 - (i) the use of information or formats tailored to the particular needs of the adult or child; and
 - (ii) assistance to communicate the adult or child’s decisions; and
 - (iii) the giving of additional time to make the decision; and
 - (iv) the use of technology to alleviate the effects of the adult’s or child’s disability.
- (6) For the purposes of this Part –
- (a) an adult or child may be taken to understand information relevant to a health care decision if it reasonably appears that the adult or child is able to understand an explanation, of the nature and consequences of the decision, given in a way that is appropriate to the adult or child’s circumstances (whether by words, signs or other means); and

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 35E

Part 5A – Advance care directives

- (b) an adult or child may fluctuate between having impaired decision making ability and decision making ability.
- (7) A health practitioner is to take reasonable steps to ensure that an assessment of a person's decision making ability by the health practitioner occurs at a time and in an environment that best enables the person's decision making ability to be accurately assessed.

35E. Meaning of health care

- (1) Subject to subsection (2), in this Part, *health care* means health care of the following kinds:
 - (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) a medical research procedure;
 - (d) any other kind of health care prescribed to be health care for the purposes of this Part.

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5A – Advance care directives

s. 35F

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

35F. Meaning of medical research procedure

- (1) Subject to subsection (2), in this Part, *medical research procedure* means –
- (a) a procedure carried out for the purposes of medical research, including, as part of a clinical trial –
 - (i) the administration of pharmaceutical drugs; and
 - (ii) the use of equipment or a device; or
 - (b) a prescribed medical research procedure.

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 35G

Part 5A – Advance care directives

- (2) In this Part, *medical research procedure* does not include –
- (a) any non-intrusive examination including –
 - (i) a visual examination of the mouth, throat, nasal cavity, eyes or ears; or
 - (ii) the measuring of a person’s height, weight or vision; or
 - (b) observing a person’s activities; or
 - (c) undertaking a survey; or
 - (d) collecting or using information, including the following:
 - (i) personal information within the meaning of the *Personal Information Protection Act 2004*;
 - (ii) health information; or
 - (e) any other procedure prescribed as not being a medical research procedure for the purposes of this Part.

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

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5A – Advance care directives

s. 35G

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; 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.
- (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

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 35H

Part 5A – Advance care directives

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 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 –

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5A – Advance care directives

s. 35H

- (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
 - (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

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 35H

Part 5A – Advance care directives

- (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
 - (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

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5A – Advance care directives

s. 35I

- (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) In this section –

close relative, in relation to a person, means the following persons:

- (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;

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 35I

Part 5A – Advance care directives

- (g) an aunt or uncle of the person.
- (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

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5A – Advance care directives

s. 35I

advance care directive reflect the directions, preferences and values 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 relative 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

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 35J

Part 5A – Advance care directives

section 35H(4)(b)(ii) on behalf of the 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 the person's guardian under this Act; 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

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5A – Advance care directives

s. 35K

- 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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 35L

Part 5A – Advance care directives

- (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

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5A – Advance care directives

s. 35L

- (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

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 35M

Part 5A – Advance care directives

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;

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5A – Advance care directives

s. 35N

- (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;

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 350

Part 5A – Advance care directives

- (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 –

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5A – Advance care directives

s. 35P

- (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 –

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 35R

Part 5A – Advance care directives

- (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

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5A – Advance care directives

s. 35S

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 –

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 35S

Part 5A – Advance care directives

- (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;

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 35U

Part 5A – Advance care directives

- (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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5A – Advance care directives

s. 35V

- (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 –

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 35W

Part 5A – Advance care directives

- (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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5A – Advance care directives

s. 35Y

- (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 he or she has decision making ability 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 –

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 35Z

Part 5A – Advance care directives

- (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 an 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; 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
 - (c) the person is –

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5A – Advance care directives

s. 35Z

- (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

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 35Z

Part 5A – Advance care directives

- (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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5A – Advance care directives

s. 35ZA

- (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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 35ZC

Part 5A – Advance care directives

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

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 35ZG

Part 5A – Advance care directives

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

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5A – Advance care directives

s. 35ZI

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

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 35ZI

Part 5A – Advance care directives

- (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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5A – Advance care directives

s. 35ZJ

- (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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 35ZK

Part 5A – Advance care directives

- (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

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5A – Advance care directives

s. 35ZK

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;

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 35ZK

Part 5A – Advance care directives

- (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 –

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 35ZN

Part 5A – Advance care directives

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

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 5A – Advance care directives

s. 35ZO

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 with a disability who is incapable of giving consent to the carrying out of medical or dental treatment, whether or not the 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 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 of 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

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 6 – Consent to Medical and Dental Treatment

s. 41

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
- (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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 42

Part 6 – Consent to Medical and Dental Treatment

- (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 wellbeing; 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 which is not special treatment if he or she is satisfied that –
 - (a) the relevant person is incapable of giving consent; and
 - (b) the medical or dental treatment would be in the best interests of that person.
- (2) Subject to subsection (3), for the purposes of determining whether any medical or dental treatment would be in the best interests of a person to whom this Part applies, 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

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 43

Part 6 – Consent to Medical and Dental Treatment

- (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) that the treatment is to be carried out only to promote and maintain the health and wellbeing 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 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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 45

Part 6 – Consent to Medical and Dental Treatment

- (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 the Tribunal may consent to the carrying out of the medical or dental treatment if it is satisfied that—
- (a) the medical or dental treatment is otherwise lawful; and
 - (b) that person is incapable of giving consent; and
 - (c) the medical or dental treatment would be in the best interests of that person.
- (2) For the purposes of determining whether any medical or dental treatment would be in the best interests of a person to whom this Part applies, 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

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 6 – Consent to Medical and Dental Treatment

s. 45

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- (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 –
 - (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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 46

Part 6 – Consent to Medical and Dental Treatment

(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 of 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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 6 – Consent to Medical and Dental Treatment

s. 46A

- (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, 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) or section 51(1), 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

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Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 48

Part 6 – Consent to Medical and Dental Treatment

- (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
- (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 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 the estates of 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 administration order in favour of himself, herself or any other person in respect of the estate of a person with a disability.
- (2) Where a person with a disability who is of or over the age of 18 years does not reside in Tasmania but has an estate the whole or part of which is in Tasmania, any person may apply to the Tribunal for an administration order in respect of so much of the estate as is 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

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 51

Part 7 – Administration Orders

- (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) If, after a hearing, the Tribunal is satisfied that the person in respect of whom an application for an order appointing an administrator or an order appointing a guardian is made—
 - (a) is a person with a disability; and
 - (b) is unable by reason of the disability to make reasonable judgements in respect of matters relating to all or any part of his or her estate; and
 - (c) is in need of an administrator of his or her estate—

the Tribunal may make an order appointing an administrator of that person's estate.

- (2) In determining whether or not a person is in need of an administrator of his or her estate, the Tribunal must consider whether the needs of the proposed represented person could be met by other means less restrictive of the person's freedom of decision and action.
- (3) The Tribunal must not make an order under subsection (1) unless it is satisfied that the order would be in the best interests of the proposed represented person.

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 7 – Administration Orders

s. 52

- (4) Where the Tribunal makes an order appointing an administrator of a person's estate, the order is to be that which is the least restrictive of that person's freedom of decision and action as is possible in the circumstances.
- (5) An order made under subsection (1) –
 - (a) may be made subject to such conditions and restrictions as the Tribunal thinks fit; and
 - (b) may be expressed to take effect when the represented person is aged 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

An administration order lapses on the expiration of 3 years after the date on which it is made unless it is continued under section 68.

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 his or her estate so long as the enduring power of

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 54

Part 7 – Administration Orders

attorney is in force unless the order is made under Part 8.

- (2) If any such enduring power of attorney relates to part only of the estate of the proposed represented person, the Tribunal may make an administration order relating to any part of the represented person's estate that is 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 he or she has notice of an enduring power of attorney is valid and effectual.

54. Persons eligible as administrators

- (1) The Tribunal may appoint as an administrator of the estate of a proposed represented person—
 - (a) The Public Trustee; or
 - (b) the Public Guardian; or
 - (c) a trustee company within the meaning of the *Trustee Companies Act 1953*; or
 - (d) any other person, including the guardian of the proposed represented person, who consents to act as administrator if the Tribunal is satisfied that—
 - (i) the person will act in the best interests of the proposed represented person; and

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 7 – Administration Orders

s. 55

- (ii) the person is not in a position where his or her interests conflict or may conflict with the interests of the proposed represented person; and
 - (iii) the person is a suitable person to act as the administrator of the estate of the proposed represented person; and
 - (iv) the person has sufficient expertise to administer the estate.
- (2) In determining whether a person is suitable to act as the administrator of the estate of a proposed represented person, the Tribunal must take into account–
- (a) the wishes of the proposed represented person, so far as they can be ascertained; and
 - (b) the compatibility of the person proposed as administrator with the proposed represented person and with his or her guardian, if any.

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

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 56

Part 7 – Administration Orders

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 appointing him or her, an administrator –
- (a) has the general care and management of the estate of the represented person; and
 - (b) has the duty to take possession and care of, recover, collect and administer the property and estate of the represented person and generally to manage his or her affairs with the exercise of all rights, statutory or otherwise, in respect of the estate; and
 - (c) in the name of, and on behalf of, the represented person may generally do all acts and exercise all powers that he or she is authorized to do with respect to the estate with the same effect and in the same manner as the represented person could have done if that person were not under a legal disability.

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 7 – Administration Orders

s. 56

- (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 he or she thinks fit, but not for a term exceeding 5 years without the consent of the Tribunal; and
 - (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

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 56

Part 7 – Administration Orders

- (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
- (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

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 7 – Administration Orders

s. 56

- maintenance and education of his or her children as may be expedient and reasonable; and
- (p) expend money in the 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
 - (s) do all matters necessary or incidental to the performance of any of the matters specified in this subsection and apply any money 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.
- (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 his or her property or estate.
- (4) The Tribunal may, subject to such conditions or restrictions as it considers necessary, authorize

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 57

Part 7 – Administration Orders

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 of that person's estate under this Act ceases to have effect except so far as it authorizes payment of funeral expenses.

57. Exercise of power by administrator

- (1) An administrator must act at all times in the best interests of the represented person.
- (2) Without limiting subsection (1), an administrator acts in the best interests of the represented person if the administrator acts as far as possible
 - (a) in such a way as to encourage and assist the represented person to become capable of administering his or her estate; and
 - (b) in consultation with the represented person, taking into account as far as possible the wishes of the represented person.

58. Settlements and gifts

The Tribunal on the application 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 he or she were not a person with a disability; 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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 60

Part 7 – Administration Orders

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 his or her 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–

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 7 – Administration Orders

s. 60

- (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 his or her 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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 60

Part 7 – Administration Orders

(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 the estate 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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 62

Part 7 – Administration Orders

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, he or she may exercise all or any of the powers given to him or her by the Tribunal with respect to the estate of the represented person.
- (3) On notice being given under subsection (1), the represented person or his or her 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 he or she had legal capacity to do so.

63. Reporting requirements for administrators

- (1) An administrator of a represented person's estate must furnish the Tribunal, at such times as the Tribunal determines, with a statement of the accounts of the estate, specifying—
 - (a) the assets and liabilities of the estate; and
 - (b) the income and expenditure of the estate over a specified period; and

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 7 – Administration Orders

s. 63

- (c) such other particulars relating to the estate 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 verified by statutory declaration signed by the administrator and supported by such other evidence, if any, as the Tribunal may require.
- (3) Where a represented person dies –
- (a) the administrator of his or her estate 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 of the estate–
- 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

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 64

Part 7 – Administration Orders

- (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.

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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 7 – Administration Orders

s. 64

- (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) Where the Tribunal considers it proper to do so by reason of urgency, the Tribunal may in respect of a represented person make any order or give any direction considered appropriate in the circumstances.
- (2) Where the Tribunal considers it proper to do so, by reason of urgency, the Tribunal may, in respect of a person who is not a represented person but in respect of whom the Tribunal considers that there may be grounds for making a guardianship order or an administration order make an order appointing—
 - (a) the Public Guardian as his or her guardian; or
 - (b) The Public Trustee as administrator of his or her estate—

and in either case the Tribunal may make any order or give any direction considered appropriate in the circumstances.

- (3) The Tribunal may make an order under this section of its own motion or on request by any person whom the Tribunal considers to have a proper interest in the matter.
- (4) In the exercise of its powers under this section –
 - (a) the Tribunal is not required to give notice to any person or to hold a hearing before

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 8 – Emergency Orders

s. 65

-
- making an order but the Tribunal must make such inquiries or investigations as the Tribunal may think appropriate; and
- (b) the Tribunal may act on a request made, or information received, by telephone or any other means that the Tribunal considers appropriate in the circumstances; and
 - (c) the Tribunal may make an administration order in respect of the estate of a person who is the donor of an enduring power of attorney in force under Part 4 of the *Powers of Attorney Act 2000*, if he or she is of or over the age of 18 years.
- (4A) The powers and functions of the Tribunal under this section may be exercised and performed by one or 3 members of the Tribunal as may be determined in each case by the President.
- (5) An order under this section –
- (a) remains in effect for such period as the Tribunal determines but not exceeding 28 days; and
 - (b) may be renewed but only once for a further period not exceeding 28 days.
- (6) A power or function under this section that has been exercised or performed, or purportedly exercised or performed, by any member or members of the Board before the commencement of the *Guardianship and Administration Amendment Act 2006* is taken to

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 65

Part 8 – Emergency Orders

have been validly exercised or performed by the Board.

**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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 67

Part 9 – Annual Reports and Review of Orders

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 the application of any other 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 vary or continue a guardianship order or administration order subject to any conditions or requirements it considers necessary or the Tribunal may revoke the order.
- (2) The Tribunal may make such further orders as it considers necessary in order to give effect to an order made under subsection (1).

PART 10 – MISCELLANEOUS AND SUPPLEMENTAL

Division 1 –

69 - 74A.

Division 2 –

75 - 76.

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

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 79

Part 10 – Miscellaneous and Supplemental

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—

Guardianship and Administration Act 1995
Act No. 44 of 1995

- (a) the Tribunal is satisfied that a person has under a corresponding law been appointed guardian of another person or the administrator of the estate of 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 of the estate of 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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 81A

Part 10 – Miscellaneous and Supplemental

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).

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- (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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 85

Part 10 – Miscellaneous and Supplemental

- (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) A person must not disclose any information obtained by the Tribunal or the Public Guardian under this Act, or under the *Tasmanian Civil and Administrative Tribunal Act 2020*, that deals with the personal history or records of a represented person, proposed represented person or a person to whom Part 5A or Part 6 applies 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 it is in the best interests of the represented person, proposed represented person or person to whom Part 5A or Part 6 applies to disclose the information; or
 - (c) where the disclosure of the information is made by a person authorized in writing either generally or in a particular case by the President.
- (2) Subsection (1) does not prevent the disclosure of information as required or permitted by any law

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 87

Part 10 – Miscellaneous and Supplemental

if, in the case of information relating to the personal affairs of another person, that other person has given consent in writing.

- (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) 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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 10 – Miscellaneous and Supplemental

s. 89

- (3) The Tribunal may, for the purposes of a hearing in relation to Guardianship stream proceedings, open and read any paper or writing which 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.

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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 90

Part 10 – Miscellaneous and Supplemental

- (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
 - (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

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 10 – Miscellaneous and Supplemental

s. 90

- (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;
 - (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.
- (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

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 90A

Part 10 – Miscellaneous and Supplemental

restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

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.

90C. Validation

- (1) In this section –

Board means the Guardianship and Administration Board established under

Guardianship and Administration Act 1995
Act No. 44 of 1995

Part 10 – Miscellaneous and Supplemental

s. 90C

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 –

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

Guardianship and Administration Act 1995
Act No. 44 of 1995

s. 91

Part 10 – Miscellaneous and Supplemental

- (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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

sch. 1

SCHEDULE 1 –

Guardianship and Administration Act 1995
Act No. 44 of 1995

sch. 2

SCHEDULE 2 –

Guardianship and Administration Act 1995
Act No. 44 of 1995

sch. 3

CERTIFICATE OF WITNESSES

We (*insert name, addresses and occupations of at least 2 witnesses*) certify –

- (a) that the appointor has signed this instrument freely and voluntarily in our presence; and
- (b) that the appointor appeared to understand the effect of this instrument.

.....

.....

(Signature of at least 2 witnesses)

Form 2 – Revocation of Appointment of Enduring Guardian

1—I (*insert name, address and occupation of appointor*), revoke the appointment of (*insert name, address and occupation of proposed guardian*) as my guardian.

2—This revocation of appointment as an enduring guardian is made under Part 5 of the *Guardianship and Administration Act 1995*.

.....

(Signature of appointor)

CERTIFICATE OF WITNESSES

We (*insert names, addresses and occupations of at least 2 witnesses*) certify—

- (a) that the appointor has signed this instrument freely and voluntarily in our presence; and
- (b) that the appointor appeared to understand the effect of this instrument.

.....

.....

(Signature of at least 2 witnesses)

**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

Guardianship and Administration Act 1995
Act No. 44 of 1995

sch. 4

it had been appointed as a full 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 of the estate of 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 of the estate of the person to whom the order relates on the same terms and conditions, if any, as are specified in the order.

7. (1) The Guardianship and Administration Board must within the initial period review all

Guardianship and Administration Act 1995
Act No. 44 of 1995

sch. 4

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.

Guardianship and Administration Act 1995
Act No. 44 of 1995

sch. 4

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 21 November 2022 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

Guardianship and Administration Act 1995
Act No. 44 of 1995

sch. 4

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
<i>¹Guardianship and Administration Amendment (Advance Care Directives) Act 2021</i>	No. 15 of 2021	21.11.2022

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
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 and No. 18 of 2021, s. 117
Section 4	Amended by No. 9 of 2003, Sched. 1 and No. 30 of 2015, s. 5
Section 5	Amended by No. 15 of 2021, s. 6 and No. 18 of 2021, s. 118
Section 6	Amended by No. 15 of 2021, s. 7
Part 2	Repealed by No. 18 of 2021, s. 119
Section 7	Amended by No. 66 of 2007, Sched. 1

Guardianship and Administration Act 1995
Act No. 44 of 1995

sch. 4

Provision affected	How affected
Section 7A	Repealed by No. 18 of 2021, s. 119 Inserted by No. 43 of 2006, s. 22
Section 8	Repealed by No. 18 of 2021, s. 119 Substituted by No. 68 of 2000, s. 61
Section 8A	Repealed by No. 18 of 2021, s. 119 Inserted by No. 43 of 2006, s. 23
Section 9	Repealed by No. 18 of 2021, s. 119 Amended by No. 86 of 2000, Sched. 1
Section 10	Repealed by No. 18 of 2021, s. 119 Amended by No. 66 of 2007, Sched. 1
Section 11	Repealed by No. 18 of 2021, s. 119 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
Section 12	Repealed by No. 18 of 2021, s. 119
Section 13	Repealed by No. 18 of 2021, s. 119
Section 14	Amended by No. 86 of 2000, Sched. 1
Section 15	Amended by No. 15 of 2021, s. 9 and No. 18 of 2021, s. 120
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
Section 20	Amended by No. 4 of 2000, s. 6 and No. 18 of 2021, s. 123
Section 21	Amended by No. 18 of 2021, s. 124
Section 23	Amended by No. 18 of 2021, s. 125
Section 25	Amended by No. 4 of 2000, s. 7 and No. 15 of 2021, s. 11
Section 26	Amended by No. 18 of 2021, s. 126
Section 27	Amended by No. 15 of 2021, s. 12
Section 28	Amended by No. 18 of 2021, s. 127
Section 29	Amended by No. 18 of 2021, s. 128
Section 30	Amended by No. 18 of 2021, s. 129
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 and No. 18 of 2021, s. 131
Section 32A	Inserted by No. 4 of 2000, s. 9
Section 32B	Inserted by No. 40 of 2013, s. 5
Section 32C	Inserted by No. 40 of 2013, s. 5
Section 32D	Inserted by No. 40 of 2013, s. 5
Section 33	Amended by No. 18 of 2021, s. 132 Amended by No. 18 of 2021, s. 133

Guardianship and Administration Act 1995
Act No. 44 of 1995

sch. 4

Provision affected	How affected
Section 34	Amended by No. 43 of 2006, s. 26, No. 23 of 2009, s. 14, No. 40 of 2013, s. 6 and No. 18 of 2021, s. 134
Section 35	Amended by No. 18 of 2021, s. 135
Division 1	Inserted by No. 15 of 2021, s. 15
Division 2	Inserted by No. 15 of 2021, s. 15
Division 3	Inserted by No. 15 of 2021, s. 15
Division 4	Inserted by No. 15 of 2021, s. 15
Division 5	Inserted by No. 15 of 2021, s. 15
Division 6	Inserted by No. 15 of 2021, s. 15
Division 7	Inserted by No. 15 of 2021, s. 15
Division 8	Inserted by No. 15 of 2021, s. 15
Division 9	Inserted by No. 15 of 2021, s. 15
Division 10	Inserted by No. 15 of 2021, s. 15
Section 36	Amended by No. 15 of 2021, s. 16
Section 37	Amended by No. 72 of 2013, s. 16
Section 39	Amended by No. 18 of 2021, s. 136
Section 41	Amended by No. 15 of 2021, s. 17
Section 43	Amended by No. 30 of 2015, s. 6 and No. 15 of 2021, s. 18
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 and No. 18 of 2021, s. 138
Section 46	Amended by No. 18 of 2021, s. 139
Section 46A	Amended by No. 18 of 2021, s. 140
Section 46A of Part 6	Inserted by No. 72 of 2005, s. 122
Section 48A	Inserted by No. 4 of 2000, s. 11
Section 50	Amended by No. 18 of 2021, s. 141
Section 51	Amended by No. 4 of 2000, s. 12, No. 68 of 2000, s. 61 and No. 18 of 2021, s. 142
Section 53	Amended by No. 33 of 1996, s. 5, No. 4 of 2000, s. 13, No. 9 of 2003, Sched. 1 and No. 18 of 2021, s. 143
Section 54	Amended by No. 18 of 2021, s. 144
Section 55	Amended by No. 18 of 2021, s. 145
Section 56	Amended by No. 18 of 2021, s. 146
Section 58	Amended by No. 18 of 2021, s. 147
Section 59	Amended by No. 18 of 2021, s. 148
Section 60	Amended by No. 18 of 2021, s. 149
Section 61	Amended by No. 18 of 2021, s. 150
Section 62	Amended by No. 18 of 2021, s. 151
Section 63	Amended by No. 18 of 2021, s. 152
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, No. 11 of 2006, s. 4 and No. 18 of 2021, s. 154
Section 66	Amended by No. 18 of 2021, s. 155
Section 67	Amended by No. 18 of 2021, s. 156
Section 68	Amended by No. 18 of 2021, s. 157
Division 1 of Part 10	Repealed by No. 18 of 2021, s. 158

Guardianship and Administration Act 1995
Act No. 44 of 1995

sch. 4

Provision affected	How affected
Section 69	Amended by No. 4 of 2000, s. 15 Subsection (3) substituted by No. 4 of 2000, s. 15 Repealed by No. 18 of 2021, s. 158
Section 69A	Inserted by No. 31 of 2011, Sched. 1 Repealed by No. 18 of 2021, s. 158
Section 70	Repealed by No. 18 of 2021, s. 158
Section 71	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
Division 2 of Part 10	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
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
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 and No. 18 of 2021, s. 165
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 and No. 18 of 2021, s. 167
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 and No. 18 of 2021, s. 169
Section 90A	Inserted by No. 33 of 1996, s. 6
Section 90B	Inserted by No. 40 of 2013, s. 7

Guardianship and Administration Act 1995
Act No. 44 of 1995

sch. 4

Provision affected	How affected
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
Schedule 3	Amended by No. 4 of 2000, s. 18 and No. 15 of 2021, s. 27
Schedule 4	Inserted by No. 33 of 1996, s. 7
