

## CLAUSE NOTES

### *Justice Miscellaneous (Advance Care Directives) Bill 2022*

#### **PART 1**

- Clause 1**      **Short title**  
Provides that the Bill may be cited as the *Justice Miscellaneous (Advance Care Directives) Act 2022*.
- Clause 2**      **Commencement**  
Provides for the amendments to commence on the day on which the Act receives the Royal Assent, except for Part 3 which commences on 21 November 2022.

#### **PART 2**

- Clause 3**      **Principal Act**  
Provides that the Principal Act being amended in Part 2 is the *Guardianship and Administration Amendment (Advance Care Directives) Act 2021*.
- Clause 4**      **Section 2 amended (Commencement)**  
Provides that the Principal Act will commence on 21 November 2022.
- Clause 5**      **Section 5 amended (Section 3 amended (Interpretation))**  
This clause amends section 5 of the Principal Act by omitting from paragraph (c) reference to 'guardianship order' and substituting it with 'Guardianship stream proceedings' to reflect the insertion in section 3 of the *Guardianship and Administration Act 1995* of the phrase 'Guardianship stream proceedings' by the *Tasmanian Civil and Administrative Tribunal (Consequential Amendments) Act 2021*. The clause also inserts a definition of Tribunal, being the Tasmanian Civil and Administrative Tribunal.
- Clause 6**      **Section 8 repealed**  
This clause repeals section 8 of the Principal Act to reflect changes made by the *Tasmanian Civil and Administrative Tribunal (Consequential Amendments) Act 2021* to transfer the functions of the former Guardianship and Administration Board to the Tasmanian Civil and Administrative Tribunal.
- Clause 7**      **Section 13 amended (Section 31 amended (Advice or directions as to guardianship orders))**

This clause is amended by omitting the word 'Board' from section 13(b) of the Principal Act and substituting the word 'Tribunal'.

**Clause 8 Section 15 amended (Part 5A inserted)**

This clause amends section 15 of the Principal Act to omit the word 'Board' in all instances in which it occurs and substitutes the word 'Tribunal'.

**Clause 9 Section 19 substituted**

Section 19 of the Principal Act is amended to simplify the section and correct a reference to a now repealed provision of the *Guardianship and Administration Act 1995*, inserting the current provision which is now in the *Tasmanian Civil and Administrative Tribunal Act 2020*.

**Clause 10 Section 20 and 21 repealed**

This clause provides for the repeal of section 20 and 21 of the Principal Act to reflect the transfer of provisions to the *Tasmanian Civil and Administrative Tribunal Act 2020*.

**Clause 11 Section 22 substituted**

This clause provides for the repeal of section 22 of the Principal Act and substitutes a new section to insert a new section 78 in the *Guardianship and Administration Act 1995* to provide protection from liability for the Public Guardian and any person acting under their direction for acts done or omitted to be done in good faith in the exercise of any power or function of the Public Guardian. This continues the intention of the Principal Act to provide protection to the Public Guardian, and is required because the Principle Act originally amended the former section 78, which provided protection to the former Board, that was repealed by the *Tasmanian Civil and Administrative Tribunal Act 2020*.

**Clause 12 Section 23 substituted**

This clause provides for the repeal of section 23 of the Principal Act and substitutes a new section to insert section 85 into the *Guardianship and Administration Act 1995* to provide protection relating to reports and information provided to the Public Guardian. Similarly to clause 11, this continues the intention of the Principal Act, while addressing changes brought about by the *Tasmanian Civil and Administrative Tribunal Act 2020*.

**Clause 13 Section 25 amended (section 89 amended (Duty to keep register))**

This clause omits the word 'Board' from section 25 and substitutes the word 'Tribunal'.

**Clause 14 Section 26 amended (Section 90 amended (Regulations))**

This clause amends omits the word 'Board' from section 26 and substitutes the word 'Tribunal'.

### **PART 3**

**Clause 15**      **Principal Act**

Provides that the Principal Act being referred to in this Part is the *Tasmanian Civil and Administrative Tribunal Act 2020*.

**Clause 16**      **Schedule 3 amended (Protective Division)**

This provision continues the intention of the *Guardianship and Administration Amendment (Advance Care Directives) Act 2021*, while addressing the current framework of the *Tasmanian Civil and Administrative Tribunal Act 2020*. It provides for the insertion of a definition of 'advance care directives'; amends clause 5(2) to provide for notice of hearing related to advance care directives to be provided to the relevant health practitioner and authorised decision maker; and inserts provisions enabling the Tribunal to make an interim order or determination if the Tribunal adjourns a hearing in relation to an advance care directive.

### **PART 4**

**Clause 17**      This clause repeals the amending Act on the first anniversary of the last uncommenced provision commencing, as the amending Act is no longer required after its amendments have been incorporated into the Principal Acts.