

FACT SHEET

Guardianship and Administration Amendment (Advance Care Directives) Bill 2021

The Guardianship and Administration Amendment (Advance Care Directives) Bill 2021 (the Bill) inserts provisions into the *Guardianship and Administration Act 1995* (the Principal Act) to provide for the making and implementation of advance care directives in Tasmania.

The Bill provides that a person with decision-making ability may make decisions and give directions about their future health care by giving an advance care directive. The advance care directive may be given in writing or by any other means.

Witnessing requirements are prescribed in the Bill and witnesses are required to attest that the person giving the advance care directive is not acting under any form of duress or coercion.

The advance care directive may contain both binding and non-binding directives. Refusals or instructions to withdraw health care that are clear and unambiguous are binding. All other directives are non-binding. Non-binding directives must be complied with to the extent that it is reasonably practicable to do so.

The Bill makes provisions for circumstances in which a health practitioner is not obliged to comply with the terms of the advance care directive:

- where the health practitioner believes on reasonable grounds that the person who gave the advance care directive did not intend the provision to apply in the particular circumstances or where the provision is ambiguous or does not appear to reflect the current wishes of the person who gave the advance care directive;
- where the instructions contained in the advance care directives seek a particular kind of health care;
- where the provision of the health care would be futile in the circumstances;
- where the health care is urgent or being provided in an emergency; or
- where the health practitioner has a conscientious objection to providing the care.

Advance care directives may be registered by the Guardianship and Administration Board. However registration is not mandatory.

The Bill includes provisions for revoking an advance care directive in circumstances where the person has decision-making ability and where they do not. Powers have been provided to the Guardianship and Administration Board (the Board) to make a final determination of whether to revoke or vary an advance care directive in circumstances where the person lacks decision-making ability.

Consent to a particular health care given or refused in an advance care directive has the same effect for all purposes as if the person who gave the advance care directive were capable of giving or refusing such consent at the time the health care decision is being made.

A health practitioner, authorised decision maker or other person acting under the authority of the Guardianship and Administration Act to give effect to an advance care directive is protected from liability for any action taken or not taken as long as that action is done in good faith and without negligence.

The Bill confers on the Public Guardian the ability to provide preliminary assistance to resolve differences over the effect and application of the advance care directive, including through the use of mediation.

The Board has also been accorded formal powers in the Bill to make binding directions in relation to the advance care directive.

Offence provisions are included to provide that:

- a person by dishonesty or undue influence must not induce another person to give an advance care directive (s35G(4));
- a person must not require another person to give an advance care directive as a precondition of providing a service (s35G(5));
- parties must act in accordance with any direction made by the Board to revoke or vary an advance care directive (s35Z(6)); and
- parties must comply with a determination of the Board made in relation to dispute resolution proceedings (s35ZK(9)).

The Bill also enables the recognition of advance care directives made in other Australian jurisdictions.