

TASMANIA

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**JUSTICE MISCELLANEOUS (ADVANCE CARE  
DIRECTIVES) BILL 2022**

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# **JUSTICE MISCELLANEOUS (ADVANCE CARE DIRECTIVES) BILL 2022**

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*  
29 September 2022

*(Brought in by the Minister for Justice, the Honourable Elise Nicole Archer)*

## **A BILL FOR**

**An Act to amend the *Guardianship and Administration Amendment (Advance Care Directives) Act 2021* and the *Tasmanian Civil and Administrative Tribunal Act 2020***

Be it enacted by Her 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 *Justice Miscellaneous (Advance Care Directives) Act 2022*.

### **2. Commencement**

- (1) Except as provided by this section, this Act commences on the day on which this Act receives the Royal Assent.

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Part 1 – Preliminary

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(2) Part 3 commences on 21 November 2022.

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**PART 2 – GUARDIANSHIP AND ADMINISTRATION  
AMENDMENT (ADVANCE CARE DIRECTIVES) ACT  
2021 AMENDED**

**3. Principal Act**

In this Part, the *Guardianship and Administration Amendment (Advance Care Directives) Act 2021\** is referred to as the Principal Act.

**4. Section 2 amended (Commencement)**

Section 2 of the Principal Act is amended by omitting “on a day to be proclaimed” and substituting “on 21 November 2022”.

**5. Section 5 amended (Section 3 amended (Interpretation))**

Section 5 of the Principal Act is amended –

- (a) by omitting from paragraph (c) “*guardianship order*” and substituting “*Guardianship stream proceedings*”;
- (b) by inserting after paragraph (f) the following paragraphs:

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(g) by omitting “human body.” from the definition of *tissue* and substituting “human body;”;

(h) by inserting the following definition after the definition of *tissue*:

***Tribunal*** means the  
Tasmanian Civil and  
Administrative Tribunal.

**6. Section 8 repealed**

Section 8 of the Principal Act is repealed.

**7. Section 13 amended (Section 31 amended (Advice or directions as to guardianship orders))**

Section 13(b) of the Principal Act is amended by omitting “Board” from paragraph (d) to be inserted by that paragraph and substituting “Tribunal”.

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

Section 15 of the Principal Act is amended as follows:

(a) by omitting “Board” from section 35K(1) to be inserted by that section and substituting “Tribunal”;

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- (b) by omitting “Board” from section 35K(2) to be inserted by that section and substituting “Tribunal”;
  - (c) by omitting “Board” from section 35K(3) to be inserted by that section and substituting “Tribunal”;
  - (d) by omitting “Board” from section 35P to be inserted by that section and substituting “Tribunal”;
  - (e) by omitting “Board” from section 35S(2)(b) to be inserted by that section and substituting “Tribunal”;
  - (f) by omitting “Board” from section 35T(2)(b) to be inserted by that section and substituting “Tribunal”;
  - (g) by omitting “Board” from section 35U(5)(b) to be inserted by that section and substituting “Tribunal”;
  - (h) by omitting “Board” from section 35X(1) to be inserted by that section and substituting “Tribunal”;
  - (i) by omitting “Board” from section 35X(2) to be inserted by that section and substituting “Tribunal”;
  - (j) by omitting “Board” from section 35X(4) to be inserted by that section and substituting “Tribunal”;

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- (k) by omitting “Board” from section 35X(5)(b) to be inserted by that section and substituting “Tribunal”;
- (l) by omitting “Board” from section 35Y(2)(c) to be inserted by that section and substituting “Tribunal”;
- (m) by omitting “Board”, first occurring, from section 35Z(1) to be inserted by that section and substituting “Tribunal”;
- (n) by omitting “Board” from section 35Z(1)(c)(iii) to be inserted by that section and substituting “Tribunal”;
- (o) by omitting “Board”, twice occurring, from section 35Z(2) to be inserted by that section and substituting “Tribunal”;
- (p) by omitting “Board”, twice occurring, from section 35Z(3) to be inserted by that section and substituting “Tribunal”;
- (q) by omitting “Board”, twice occurring, from section 35Z(4) to be inserted by that section and substituting “Tribunal”;
- (r) by omitting “Board” from section 35Z(5) to be inserted by that section and substituting “Tribunal”;
- (s) by omitting “Board”, twice occurring, from section 35Z(6) to be inserted by that section and substituting “Tribunal”;



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- (t) by omitting “Board” from section 35Z(6)(a) to be inserted by that section and substituting “Tribunal”;
  - (u) by omitting “Board” from section 35Z(6)(b) to be inserted by that section and substituting “Tribunal”;
  - (v) by omitting “Board” from section 35Z(7) to be inserted by that section and substituting “Tribunal”;
  - (w) by omitting “Board” from section 35ZD to be inserted by that section and substituting “Tribunal”;
  - (x) by omitting “Board” from paragraph (f) of the definition of *eligible person* in section 35ZF to be inserted by that section and substituting “Tribunal”;
  - (y) by omitting “Board” from the headnote to section 35ZH to be inserted by that section and substituting “Tribunal”;
  - (z) by omitting “Board” from section 35ZH to be inserted by that section and substituting “Tribunal”;
  - (za) by omitting “Board” from section 35ZI(4)(c) to be inserted by that section and substituting “Tribunal”;
  - (zb) by omitting “Board”, twice occurring, from section 35ZI(4)(d) to be inserted by that section and substituting “Tribunal”;

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- (zc) by omitting “Board” from section 35ZI(5)(a) to be inserted by that section and substituting “Tribunal”;
- (zd) by omitting “Board” from section 35ZI(8) to be inserted by that section and substituting “Tribunal”;
- (ze) by omitting “Board” from the headnote to section 35ZJ to be inserted by that section and substituting “Tribunal”;
- (zf) by omitting “Board”, twice occurring, from section 35ZJ to be inserted by that section and substituting “Tribunal”;
- (zg) by omitting “Board” from the headnote to section 35ZK to be inserted by that section and substituting “Tribunal”;
- (zh) by omitting “Board” from section 35ZK(1) to be inserted by that section and substituting “Tribunal”;
- (zi) by omitting “Board” from section 35ZK(2) to be inserted by that section and substituting “Tribunal”;
- (zj) by omitting “Board” from section 35ZK(3) to be inserted by that section and substituting “Tribunal”;
- (zk) by omitting “Board”, first occurring, from section 35ZK(4) to be inserted by that section and substituting “Tribunal”;

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- (zl) by omitting “Board” from section 35ZK(4)(a) to be inserted by that section and substituting “Tribunal”;
  - (zm) by omitting “Board” from section 35ZK(4)(b) to be inserted by that section and substituting “Tribunal”;
  - (zn) by omitting “Board” from section 35ZK(5) to be inserted by that section and substituting “Tribunal”;
  - (zo) by omitting “Board”, twice occurring, from section 35ZK(6) to be inserted by that section and substituting “Tribunal”;
  - (zp) by omitting “Board” from section 35ZK(6)(b) to be inserted by that section and substituting “Tribunal”;
  - (zq) by omitting “Board”, first occurring, from section 35ZK(7) to be inserted by that section and substituting “Tribunal”;
  - (zr) by omitting “Board” from section 35ZK(7)(b)(v) to be inserted by that section and substituting “Tribunal”;
  - (zs) by omitting “Board”, twice occurring, from section 35ZK(8) to be inserted by that section and substituting “Tribunal”;
  - (zt) by omitting “Board” from section 35ZK(9) to be inserted by that section and substituting “Tribunal”.

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**9. Section 19 substituted**

Section 19 of the Principal Act is repealed and the following section is substituted:

**19. Section 45 amended (Consent of Board)**

Section 45 of the Principal Act is amended as follows:

(a) by omitting paragraph (a) from subsection (2) and substituting the following paragraph:

(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) by omitting from subsection (3) “section 76” and substituting “section 137 of the *Tasmanian Civil and Administrative Tribunal Act 2020*”.

**10. Sections 20 and 21 repealed**

Sections 20 and 21 of the Principal Act are repealed.

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**11. Section 22 substituted**

Section 22 of the Principal Act is repealed and the following section is substituted:

**22. Section 78 inserted**

After section 77 of the Principal Act, the following section is inserted in Division 4:

**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 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*.

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**12. Section 23 substituted**

Section 23 of the Principal Act is repealed and the following section is substituted:

**23. Section 85 inserted**

After section 84 of the Principal Act, the following section is inserted in Division 5:

**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 he or she acts in good faith and has reasonable and probable grounds for believing the document, report or information to be true.

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- (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.

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

Section 25(b) of the Principal Act is amended by omitting “Board” from paragraph (d) to be inserted by that paragraph and substituting “Tribunal”.

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

Section 26(b) of the Principal Act is amended as follows:

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- (a) by omitting “Board” from paragraph (f) to be inserted by that paragraph and substituting “Tribunal”;
- (b) by omitting “Board” from paragraph (g) to be inserted by that paragraph and substituting “Tribunal”.



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**PART 3 – TASMANIAN CIVIL AND  
ADMINISTRATIVE TRIBUNAL ACT 2020 AMENDED**

**15. Principal Act**

In this Part, the *Tasmanian Civil and Administrative Tribunal Act 2020\** is referred to as the Principal Act.

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

Part 4 of Schedule 3 to the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of *administrator* in clause 1:

*advance care directive* has the same meaning as in the *Guardianship and Administration Act 1995*;

- (b) by inserting the following paragraph after paragraph (f) in clause 5(2):

(fa) if the matter relates to the provision of health care pursuant to an advance care directive –

- (i) the health practitioner, within the meaning of Part 5A of the *Guardianship and Administration Act 1995*,

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\*No. 24 of 2020

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proposing to provide the health care; and

(ii) any authorised decision maker, within the meaning of Part 5A of the *Guardianship and Administration Act 1995*, for the person who has given the advance care directive; and

(c) by inserting the following subclause after subclause (1) in clause 8:

(1A) The Tribunal may adjourn a hearing held in relation to an advance care directive and, if the Tribunal considers that there may be grounds to make an interim order or interim determination, may make any interim order or interim determination that it considers appropriate in the circumstances.

(d) by inserting in clause 8(2) “or interim determination” after “order”;

(e) by inserting in clause 8(3) “or interim determination” after “an interim order”;

(f) by inserting in clause 8(3) “or further interim determination” after “further interim order”.

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Part 4 – Concluding Provision

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**PART 4 – CONCLUDING PROVISION**

**17. Repeal of Act**

This Act is repealed on the first anniversary of the day on which the last uncommenced provision of this Act commenced.