

TASMANIA

**GUARDIANSHIP AND ADMINISTRATION
AMENDMENT BILL 2015**

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GUARDIANSHIP AND ADMINISTRATION AMENDMENT BILL 2015

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

D. T. Pearce, *Clerk of the Council*
20 August 2015

*(Brought in by the Minister for Justice, the Honourable Dr.
Vanessa Goodwin)*

A BILL FOR

An Act to amend the *Guardianship and Administration Act 1995*

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:

1. Short title

This Act may be cited as the *Guardianship and Administration Amendment Act 2015*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

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3. Principal Act

In this Act, the *Guardianship and Administration Act 1995** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of *information*:

intimate forensic procedure means –

- (a) an external examination of the genital or anal area, the buttocks or, in the case of a female, the breasts; and
- (b) an internal examination of a body cavity other than the mouth; and
- (c) the taking of a sample of pubic hair; and
- (d) the taking of a sample by swab or washing from the external genital or anal area, the buttocks or, in the case of a female, the breasts; and

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- (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 Regulations 2010* as an intimate forensic procedure;
- (b) by inserting the following paragraph after paragraph (b) in the definition of *medical or dental treatment*:

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- (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) by inserting the following definition after the definition of *medical or dental treatment*:

non-intimate forensic procedure
means –

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

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- (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 or,

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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;

**5. Section 4 amended (Meaning of “person
responsible”)**

Section 4 of the Principal Act is amended as
follows:

- (a) by omitting from subsection (1)(c)(iv)
“other person.” and substituting “other
person; or”;
- (b) by inserting the following paragraph after
paragraph (c) in subsection (1):

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- (d) in relation to an intimate forensic procedure, or a non-intimate forensic procedure, in respect of the other person, to which a request under subsection (1A) relates, the Public Guardian.
- (c) by inserting the following subsections after subsection (1):
 - (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

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(c) the police officer or registered practitioner is satisfied as to the relevant matters in relation to the person.

(1B) For the purposes of subsection (1A)(c), the relevant matters in relation to a person are that –

(a) another person, who is not the Public Guardian and who is the person responsible for the person –

(i) has refused to consent to the carrying out of the intimate 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.

6. Section 43 amended (Consent by persons responsible)

Section 43 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “For” and substituting “Subject to subsection (3), for”;
- (b) by inserting the following paragraph after paragraph (e) in subsection (2):
 - (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

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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

(c) by inserting the following subsection after subsection (2):

(3) Subsection (2)(e) does not apply to medical or dental treatment that is an intimate forensic procedure or a non-intimate forensic procedure.

7. Section 45 amended (Consent of Board)

Section 45(2) of the Principal Act is amended by inserting after paragraph (e) the following paragraph:

(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

8. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.