

TASMANIA

CONSENT TO MEDICAL TREATMENT BILL

2020

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CONSENT TO MEDICAL TREATMENT BILL 2020

(Brought in by Madeleine Ruth Ogilvie, Independent Member for Clark)

A BILL FOR

An Act to deal with consent to medical treatment; to regulate medical practice so far as it affects consent to medical treatment by people who are dying; and for other purposes.

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and the House of Assembly, in Parliament assembled, as follows:

Part 1 - Preliminary

1 - Short title

This Act may be cited as the Care and Consent to Medical Treatment Act (Tas) 2020.

2 - Objects

The objects of this Act are:

- (a) to make certain reforms to the law relating to consent to medical treatment;
 - (i) to allow persons of or over the age of 16 years to decide freely for themselves on an informed basis whether or not to undergo medical treatment; and
 - (ii) to provide for the administration of emergency medical treatment in certain circumstances without consent; and
- (b) to provide for the medical treatment of people who have impaired decision-making capacity; and
- (c) to allow for the provision of palliative care, in accordance with proper standards, to people who are dying and to protect their right to refuse medical treatment that is intrusive, burdensome and futile.

3 - Interpretation

(1) In this Act, unless the contrary intention appears -

administration of medical treatment includes the prescription or supply of drugs;

advance care directive means an advance care plan under the Advance Care Directives Act (Tas) 2020 that is in force;

Board means the Guardianship and Administration Board established by the Guardian and Administration Act Tas 1995;

child means a person under 16 years of age;

decision of the Board, has the same meaning as in the Acts Interpretation Act (Tas) 1931;

guardian means a person acting or appointed under the provisions of the Guardianship and Administration Act (Tas) 1995 or any other law as the guardian of another;

impaired decision-making capacity, in respect of a particular decision is defined at subsection (2);

internal review means a review under the Advance Care Directive Act (Tas) 2020;

life sustaining measures means medical treatment that supplants or maintains the operation of vital bodily functions that are temporarily or permanently incapable of independent operation, and includes assisted ventilation, artificial nutrition and hydration and cardiopulmonary resuscitation;

medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student) and includes a dentist;

medical treatment means the provision by a medical practitioner of physical, surgical or psychological therapy to a person (including the provision of such therapy for the purposes of preventing disease, restoring or replacing bodily function in the face of disease or injury or improving comfort and quality of life) and includes the prescription or supply of drugs;

palliative care is the active, total care of patients whose disease is not responsive to curative treatment, including control of pain and other symptoms, and the provision of care for social, psychological and spiritual issues of patients and their families.

parent of a child, includes—

(a) a step-parent; and

(b) an adult who acts in loco parentis in relation to the child;

persistent unresponsive state is a condition of profound non-responsiveness, and includes post-coma unresponsiveness and a minimally responsive state;

Public Advocate means the person holding or acting in the office of Public Advocate under the Guardianship and Administration Act (Tas)1995;

representative of a patient, means a person authorised under this or any other Act or law to make decisions about the administration of medical treatment of the relevant kind to the patient;

substitute decision-maker means a person authorised to act in place of a decision maker.

terminal illness means an illness or condition that is reasonably likely to result in death;

terminal phase of an eventually fatal illness means the phase of the illness reached when there is no reasonable prospect of recovery or remission of symptoms (on either a permanent or temporary basis);

(2) For the purposes of this Act, a person will be taken to have impaired decision-making capacity in respect of a particular decision if—

(a) the person is not capable of—

(i) understanding any information that may be relevant to the decision (including information relating to the consequences of making a particular decision); or

(ii) retaining such information; or

(iii) using such information in the course of making the decision; or

(iv) communicating his or her decision in any manner; or

(b) the person is, by reason of being comatose, lacking in capacity or otherwise unconscious, unable to make a particular decision about his or her medical treatment.

(3) For the purposes of this Act-

(a) a person will not be taken to be incapable of understanding information merely because the person is not able to understand matters of a technical or trivial nature;

(b) a person will not be taken to be incapable of retaining information merely because the person can only retain the information for a limited time;

(c) a person may fluctuate between having impaired decision-making capacity and full decision-making capacity;

(d) a person's decision-making capacity will not be taken to be impaired merely because a decision made by the person results, or may result, in an adverse outcome for the person.

(4) For the purposes of this Act, a medical practitioner is entitled to presume that a person who purports to be in a close and continuing relationship with another person is in such a relationship unless the medical practitioner knew, or ought reasonably to have known, that those persons were not in such a relationship.

(5) For the purposes of this Act, a medical practitioner is entitled to presume that a person who purports to have a particular relationship to another person (whether the relationship is based on affinity or consanguinity or otherwise) does have such a relationship unless the medical practitioner knew, or ought reasonably to have known, that the person did not have such a relationship to the other person.

(a) References to provision of medical treatment includes withdrawal of medical treatment. Unless the contrary intention appears, a reference in this Act to the

administration of medical treatment to a person will be taken to include a reference to the withdrawal, alteration or withholding, of medical treatment to the person (including, to avoid doubt, the withdrawal or withholding of life sustaining measures).

(b) Nothing in this Act operates to require the consent of a person to be given before medical treatment (including, to avoid doubt, life sustaining measures) can be withdrawn or withheld.

Part 2 - Consent to medical treatment generally

4 - Legal competence to consent to medical treatment

A person of or over 16 years of age may make decisions about his or her own medical treatment as validly and effectively as an adult.

5 - Administration of medical treatment to a child

A medical practitioner may administer medical treatment to a child if—

- (a) the parent or guardian consents; or
- (b) the child consents and—
 - (i) the medical practitioner who is to administer the treatment is of the opinion that the child is capable of understanding the nature, consequences and risks of the treatment and that the treatment is in the best interest of the child's health and wellbeing; and
 - (ii) that opinion is supported by the opinion of at least one other medical practitioner who personally examines the child before the treatment is commenced.

6 - Consent required

Nothing in this Act is to be taken as applying to any procedure over which the consent of any Court exercising jurisdiction of a law of the Commonwealth of Australia is required to be obtained.

7 - Emergency medical treatment

(1) Subject to this section, a medical practitioner may lawfully administer emergency medical treatment to a person (the patient) if -

- (a) the patient is incapable of consenting (whether or not the person has impaired decision-making capacity in respect of a particular decision); and
- (b) the medical practitioner who administers the treatment is of the opinion that the treatment is necessary to meet an imminent risk to life or health and that opinion is supported by the written opinion of another medical practitioner who has personally examined the patient; and

(c) the patient (if of or over 16 years of age) has not, to the best of the medical practitioner's knowledge, refused to consent to the treatment; and

(d) the medical practitioner proposing to administer the treatment has made, or has caused to be made, reasonable inquiries to ascertain whether the patient (if the patient is 18 or more years of age) has given an advance care directive.

(2) Subject to this section, a medical practitioner may lawfully administer medical treatment to a person (the patient) despite a provision of an advance care directive given by the patient comprising a refusal of medical treatment if -

(a) the patient is incapable of consenting (whether or not the patient has impaired decision-making capacity in respect of a particular decision); and

(b) the medical practitioner who administers the treatment is of the opinion that the treatment is necessary to meet an imminent risk to life or health and that opinion is supported by the written opinion of another medical practitioner who has personally examined the patient; and

(c) the medical practitioner who administers the treatment reasonably believes that the provision of the advance care directive is not intended to apply -

(i) to treatment of the kind proposed; or

(ii) in the circumstances in which the proposed medical treatment is to be administered; and

(3) A supporting opinion is not necessary under subsection (1)(b) or (2)(b) if in the circumstances of the case it is not practicable to obtain such an opinion.

(4) Inquiries under subsection (1)(d) need not be made if in the circumstances of the case it is not reasonably practicable to do so.

(5) If -

(a) the patient has given an advance care directive; and

(b) the medical practitioner proposing to administer the treatment is aware of that fact (whether on the basis of inquiries made under this section or otherwise); and

(c) a substitute decision-maker appointed under the advance care directive is empowered or authorised to make decisions relating to the administration of such treatment and is reasonably available to make such a decision,

(d) the medical treatment must not be administered without the consent of the substitute decision-maker.

(e) this provision requires the substitute decision-maker to be given the opportunity to make the decision about consent if he or she is available.

(5) If no such substitute decision-maker is available and a guardian of the patient is available, the medical treatment may not be administered without the guardian's consent.

(6) If neither a substitute decision-maker nor a guardian of the patient is available, but a person responsible for the patient (within the meaning of Part 2A) is reasonably available and willing to consent to the administration of the medical treatment, the medical treatment may not be administered without the consent of the person responsible for the patient (given in accordance with Part 2A).

(7) If the patient is a child, and a parent or guardian of the child is available to decide whether the medical treatment should be administered, the parent's or guardian's consent to the treatment must be sought but the child's health and well-being are paramount and if the parent or guardian refuses consent, the treatment may be administered despite the refusal if it is in the best interests of the child's health and well-being.

Part 2A - Consent to medical treatment if person has impaired decision making capacity

8 - Impaired decision making

(1) In this Part -

health care means any care, service, procedure or treatment provided by, or under the supervision of, a health practitioner for the purpose of diagnosing, maintaining or treating a physical or mental condition of a person;

health practitioner means a person who practises one or more of the following:

- (a) a health profession (within the meaning of the Health Practitioner Regulation National Law (Tas));
- (b) any other profession or practice declared by the regulations to be included in the ambit of this definition;

medical practitioner in respect of particular health care, includes a health practitioner practising in the relevant profession or practice;

medical treatment includes health care;

patient means a person to whom medical treatment is, or is proposed to be, administered pursuant to this Part;

person responsible for a patient means—

- (a) if a guardian has been appointed in respect of the patient, and his or her powers as guardian have not been limited so as to exclude the giving of a consent contemplated by this Part and he or she is available and willing to make a decision as to such consent - that guardian; or
- (b) if paragraph (a) does not apply, but a prescribed relative of the patient who has a close and continuing relationship with the patient is available and willing to make a decision as to a consent contemplated by this Part - that prescribed relative; or

(c) if paragraphs (a) or (b) do not apply, but an adult who is charged with overseeing the ongoing day-to-day supervision, care and well-being of the patient is available and willing to make a decision as to a consent contemplated by this Part - that person; or

(d) if none of the preceding paragraphs apply, or otherwise with the permission of the Board then the Board on the application of -

(i) a prescribed relative of the patient; or

(ii) the medical practitioner proposing to give the treatment; or

(iii) any other person who the Public Advocate is satisfied has a proper interest in the matter;

prescribed relative - the following persons are prescribed relatives of a patient:

(a) a person who is legally married to the patient;

(b) an adult domestic partner of the patient (within the meaning of the Relationships Act (Tas) 2003 and whether declared as such under that Act or not);

(c) an adult related to the patient by blood or marriage;

(d) an adult related to the patient by reason of adoption;

(e) an adult of Aboriginal or Torres Strait Islander descent who is related to the patient according to Aboriginal kinship rules or Torres Strait Islander kinship rules (as the case requires).

(2) If a man and woman are married according to Aboriginal tradition, they will be regarded as legally married for the purposes of this Part.

9 - Application of Part

(1) This Part does not apply to, or in relation to, a child.

(2) This Part does not apply to, or in relation to, a person who has given an advance care directive to the extent that -

(a) a substitute decision-maker has been appointed under the advance care directive who is authorised to make decisions relating to the administration of medical treatment of the relevant kind to the patient; or

(b) the advance care directive makes specific provision in respect of the administration of medical treatment of the relevant kind to the patient.

(3) This Part does not apply to, or in relation to, prescribed treatment (within the meaning of the Guardianship and Administration Act (Tas) 1995).

(4) Nothing in this Part limits the operation of section 6.

10 - Consent of person responsible for patient effective in certain circumstances

(1) Where it is proposed to administer medical treatment to a patient with impaired decision-making capacity in respect of a decision that is required in relation to the medical treatment, a consent given by a person responsible for the patient to the administration of the proposed medical treatment -

(a) will be taken to be a consent given by the patient; and

(b) will be taken to have the same effect for all purposes as if the patient gave the consent.

(2) The regulations may make further provision in relation to the giving of consent by a person responsible for a patient for the purposes of this Act (including by limiting the kinds of medical treatment to which a specified class of person responsible can consent).

(3) The effectiveness of a consent given by a person responsible for a patient is not affected merely because insufficient inquiries were made to locate a person with higher responsibility for the patient before the consent was given (as contemplated by the hierarchy in the definition of person responsible in section 7).

(4) Consent to the administration of particular medical treatment will, for all purposes, be taken to have been given by the patient if—

(a) the medical treatment was administered with the purported consent of a person who represented to the medical practitioner that he or she was a person responsible for the patient; and

(b) the medical practitioner did not know and could not reasonably be expected to have known that the person was not, in fact, a person responsible for the patient.

11 - Person responsible for patient to make substituted decision

A decision of a person responsible for a patient to give, or to refuse to give, consent under this Part must, as far as is reasonably practicable, reflect the decision that the patient would have made in the circumstances had his or her decision-making capacity not been impaired.

(1) A person who is not a person responsible for a particular patient is guilty of an offence if he or she, knowing that he or she is not a person responsible for the patient or being recklessly indifferent as to whether or not he or she is a person responsible for the patient -

(a) purports to give a consent under this Part in respect of the patient; or

(b) represents to a medical practitioner that he or she is a person responsible for the patient.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 50 penalty units.

Part 3 - Provisions governing medical practice

13 - Medical practitioner's duty to explain

A medical practitioner has a duty to explain to a patient (or the patient's representative), so far as may be practicable and reasonable in the circumstances—

- (a) the nature, consequences and risks of proposed medical treatment; and
- (b) the likely consequences of not undertaking the treatment; and
- (c) any alternative treatment or courses of action that might be reasonably considered in the circumstances of the particular case.

14 - Protection for medical practitioners

(1) A medical practitioner responsible for the treatment or care of a patient, or a person participating in the treatment or care of the patient under the medical practitioner's supervision, incurs no civil or criminal liability for an act or omission done or made -

- (a) with the consent of the patient or the patient's representative or without consent but in accordance with an authority conferred by this Act or any other Act; and
- (b) in good faith; and
- (c) in accordance with proper professional standards of medical practice; and
- (d) in order to preserve or improve the quality of life.

(2) Nothing in this section shall be taken as rendering inapplicable any common law duty owed by a medical practitioner to the patient of the medical practitioner.

15 - Care of people who are dying

(1) A medical practitioner responsible for the treatment or care of a patient in the terminal phase of a terminal illness, or a person participating in the treatment or care of such patient under the medical practitioner's supervision, incurs no civil or criminal liability by administering medical treatment with the intention of relieving pain or distress -

- (a) with the consent of the patient or the patient's representative; and
- (b) in good faith and without negligence; and
- (c) in accordance with proper professional standards of palliative care,

even where such treatment may carry increased risks to the patient, beyond those that would be deemed acceptable, in the normal course of medical practice.

(2) A medical practitioner responsible for the treatment or care of such patient in the terminal phase of a terminal illness, or a person participating in the treatment or care of the patient under the medical practitioner's supervision -

(a) is under no duty to use, or to continue to use, life sustaining measures in treating the patient if the effect of doing so would be merely to prolong life in a moribund state without any real prospect of improved life quality or in a persistent nonresponsive state (whether or not the patient or the patient's representative has requested that such measures be used or continued); and

(b) should, if the patient or the patient's representative so directs, withdraw life sustaining measures from the patient whilst continuing comprehensive palliative care including measures to achieve symptom relief.

(3) For the purposes of the law of the State -

(a) the administration of medical treatment for the relief of pain or distress in accordance with subsection (1) does not constitute an intervening cause of death; and

(b) the non-application or discontinuance of life sustaining measures in accordance with subsection (2) does not constitute an intervening cause of death.

16 - Certain acts not authorised

This Act does not authorise the administration of medical treatment for the purpose of causing the death of the person to whom the treatment is administered.

Part 4 - Dispute resolution, reviews and appeals

17 - Interpretation

In this Part -

eligible person in relation to a matter, means -

(a) if the matter relates to a child - a parent or guardian of the child; and

(b) if the matter relates to a patient with impaired decision-making capacity in respect of a particular decision - a person responsible for the patient; and

(c) a medical practitioner who is providing, or is to provide, the medical treatment to which the matter relates; and

(d) any other person who satisfies the Public Advocate that he or she has a proper interest in the matter;

medical practitioner and **medical treatment**, in relation to the administration, or proposed administration, of medical treatment to a patient pursuant to Part 2A, have the same meanings as in that Part;

patient means a patient within the meaning of Part 2A;

person responsible for a patient has the same meaning as in Part 2A.

18 - Application of Part

This Part applies to the following matters:

- (a) a decision of a parent or guardian of a child to consent, or to refuse to consent, to the administration of medical treatment to the child;
- (b) a decision of a medical practitioner to administer, or not administer, medical treatment to a patient pursuant to Part 2A;
- (c) a decision of a person responsible for a patient to consent, or to refuse to consent, to the administration of medical treatment to the person pursuant to Part 2A;
- (d) any other matter prescribed by the regulations for the purposes of this section.

19 - Appointment of Public Advocate and resolution of disputes

(1) The Public Advocate shall have responsibility for determining and resolving disputes under this Act.

(2) The Public Advocate may, on application by an eligible person in relation to a matter to which this Part applies or on his or her own initiative, provide preliminary assistance in resolving the matter, including by—

- (a) ensuring that the parties to the matter are fully aware of their rights and obligations; and
- (b) identifying the issues (if any) that are in dispute between the parties; and
- (c) canvassing options that may obviate the need for further proceedings; and
- (d) where appropriate, facilitating full and open communication between the parties.

(3) The Public Advocate may mediate a matter to which this Part applies on application by an eligible person in relation to the matter.

(4) An application under this section -

- (a) must be made in a manner and form determined by the Public Advocate; and
- (b) must be accompanied by such information as the Public Advocate may reasonably require; and
- (c) must be accompanied by the prescribed fee.

(5) Before undertaking a mediation, the Public Advocate may, if he or she thinks it appropriate to do so, require an applicant for mediation who is not a medical practitioner to first obtain a written report from an independent medical practitioner (made after examining the relevant person) setting out -

- (a) the potential advantages and disadvantages of -
 - (i) the medical treatment that a medical practitioner proposes to administer to the relevant person; and
 - (ii) any medical treatment that the eligible person, or some other person, has requested be administered to the relevant person; and

this includes where the medical treatment comprises the withdrawal or withholding of medical treatment.

(b) whether, in the independent medical practitioner's opinion, the requested treatment is in the best interest of the relevant person's health and well-being; and

(c) any other information required by the regulations for the purposes of this subsection.

(6) The Public Advocate may bring a mediation to an end at any time -

(a) if, in the opinion of the Public Advocate, it is more appropriate that the matter be dealt with by the Guardianship and Administration board or the court; or

(b) at the request of a party to the mediation.

(7) Evidence of anything said or done in the course of a mediation is not admissible in subsequent proceedings except by consent of all parties to the proceedings.

(8) Without limiting any other ways in which the Public Advocate may inform himself or herself for the purposes of a mediation, the Public Advocate may seek advice from such persons as the Public Advocate thinks fit in relation to protecting the interests of a child who is a party to, or is otherwise affected by, the matter the subject of the mediation.

(9) The Public Advocate has, for the purposes of this section, the same privileges and immunities as a member of the Board under the Guardianship and Administration Act (Tas) 1995.

(10) Subject to this Act, the Public Advocate may conduct a mediation in such manner as he or she thinks fit.

(11) The regulations may make further provisions in relation to mediations under this section.

20 - Public Advocate may refer matter to the Board

(1) If the Public Advocate ends a mediation under section 19 on the grounds that it is more appropriate that the matter be dealt with by the Board, the Public Advocate may refer the matter to the Board.

(2) The regulations may make further provision in respect of referrals under this section.

21 - Public Advocate may refer question of law to Supreme Court

The Public Advocate may refer any question of law for the opinion of the Supreme Court.

22 - Applications for review

(1) An eligible person in relation to a matter to which this Part applies may apply to the Board for -

(a) a review of a matter mediated by the Public Advocate under section 18; or

(b) a declaration or direction in relation to the matter (including, to avoid doubt, a matter contemplated by section 18).

(2) The Board may, on determining an application under this section -

(a) in the case of a review of a matter mediated by the Public Advocate - confirm, cancel or reverse a decision that is the subject of the review; and

(b) in any case -

(i) make any declarations that the Board thinks necessary or desirable in the circumstances of the case; and

(ii) give any directions that the Board thinks necessary or desirable in the circumstances of the case (including a direction that the administration of particular medical treatment to a person be withdrawn or withheld); and

(iii) give any advice that the Board considers necessary or desirable in the circumstances of the case.

(3) The Board may vary or revoke a declaration or direction under this section.

(4) The person to whom the medical treatment is to be provided or not provided (as the case requires) is (if he or she is not the applicant) a party to the proceedings.

(5) Without limiting any other ways in which the Board may inform itself for the purposes of this section, the Board may seek advice from such persons or bodies as the Board thinks fit in relation to protecting the interests of a child who is a party to, or is otherwise affected by, an application.

(6) The regulations may make further provisions in relation to proceedings under this section.

(7) Subject to this Act, the Board may conduct a review under this section in such manner as it thinks fit.

23 - Board may refer matter to Public Advocate

(1) If the Board is of the opinion that it is more appropriate that a particular application under section 20 be dealt with by the Public Advocate, the Board may refer the matter to the Public Advocate.

(2) The regulations may make further provision in respect of referrals under this section.

24 - Failing to comply with direction of Board

(1) Subject to this Act, a person who fails to comply with a direction of the Board under section 22 is guilty of an offence.

(2) It is a defence to a charge of an offence against subsection (1) if the defendant proves that he or she did not know, and could not reasonably have been expected to know, that his or her conduct amounted to a failure to comply with the relevant direction.

25 - Reviews and appeals

The following provisions operate in connection with decision of the Public Advocate and Board in relation to this Act:

(1) a decision of the Public Advocate not to authorise publication of a report of proceedings before the Board may not be the subject of an application for internal review;

(2) an application for internal review may be made by -

(a) the applicant in proceedings before the Board in the exercise of its original jurisdiction for the purposes of this Act; or

(b) a person to whom the proceedings relate (if not the applicant under paragraph (a)); or

(c) the Public Advocate; or

(d) any person who presented evidence or material before, or made submissions to, the Board in the relevant proceedings; or

(e) any other person who satisfies the Board that he or she has a proper interest in the matter;

(3) the person to whom an application for internal review relates (if he or she is not the applicant) will be a party to those proceedings;

(4) the Board may make an order for costs against a party to proceedings for internal review, but only if the Board is satisfied that the institution of the proceedings, or the party's conduct in relation to the proceedings, was frivolous, vexatious or calculated to cause delay;

(5) an appeal must be instituted within 14 days -

(a) after the making of the decision to which the appeal relates; or

(b) after being furnished with the reasons for that decision,

whichever is the later (but the Supreme Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal should be instituted within that period (even if the time for instituting the appeal has expired));

(6) no order for costs may be made against an applicant in an appeal if he or she is the person to whom the decision appealed against relates.

26—Board must give notice of proceedings

(1) The Board must give the following persons reasonable notice of the time and place of the hearings of proceedings before the Board:

(a) the applicant;

(b) the person to whom the proceedings relate;

(c) the Public Advocate;

(d) such other persons as the Board considers have a proper interest in the matter.

(2) Despite subsection (1) -

(a) the Board is not obliged to give notice of proceedings to a person if the person's whereabouts cannot, after reasonable enquiries, be ascertained; and

(b) the Board may, if satisfied that urgent action is required in proceedings before the Board, make an order (or any other decision) as a matter of urgency without complying with subsection (1), with effect for a period not exceeding 21 days as directed by the Board.

27 - Reasons for decisions

The Board must, on request by a person who has a right of internal review of a decision of the Board or who satisfies the Board that he or she has a proper interest in the matter, furnish the person with a written statement of the Board's reasons for the decision, but not -

(a) if the request is made after the period for the review has expired; or

(b) if a review has been instituted—after the review has been decided.

28 - Representation of person who is subject of proceedings

(1) A person who is the subject of proceedings before the Board is entitled to appear before the Board by -

(a) the Public Advocate; or

(b) except in the case of an internal review—a recognised advocate.

(2) In this section -

recognised advocate means a person who is, by instrument in writing, recognised by the Tribunal as a person who is qualified to act as an advocate in proceedings before the Board for the person to whom the proceedings relate.

29 - Regulations

(1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Without limiting subsection (1), the regulations may make provisions of a saving or transitional nature.

(3) The regulations may -

(a) be of general application or vary in their application according to prescribed factors;

(b) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or a specified person or body.

30 - Transitional Provisions

If before the commencement of this Act a person granted an enduring power of attorney and purported to confer on the agent power to decide questions about the medical treatment of the grantor of the power in the event of the grantor's incapacity to do so, that power of attorney is as valid and effective as if it had been made under this Act.

31 - Amendments to the Guardianship and Administration Act (Tas) 1995

The Guardianship and Administration Act (Tas) 1995 is amended as set out in Schedule 1.

Schedule 1

Amendments to the Guardianship and Administration Act (Tas) 1995

1. Sub-section (1) of section 3 is amended by inserting after the definition of President the following definition:

Public Advocate means the Public Advocate established under section 18A.

2. By inserting after Part 3 the following Part:

Part 3A – The Public Advocate

18A Public Advocate

Subject to and in accordance with the State Service Act 2000, a person is to be appointed as the Public Advocate and that person may hold that office in conjunction with State Service employment.

18B Functions and powers of Public Advocate

(1) The Public Advocate has the following functions:

- (a) Exercise any of the powers and functions as provided in the Consent to Medical Treatment Act (Tas) 2020.
- (b) Exercise any other functions assigned to the Public Advocate by any other act or law.
- (c) The Public Advocate has power to do all things necessary or convenient to be done in connection with the performance and of his or her functions.
- (d) In the performance of his or her functions under this Act the Public Advocate is not subject to the control or direction of the Minister.