

TASMANIA

**GUARDIANSHIP AND ADMINISTRATION
AMENDMENT BILL 2013**

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GUARDIANSHIP AND ADMINISTRATION AMENDMENT BILL 2013

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.

P. R. ALCOCK, *Clerk of the House*
19 September 2013

*(Brought in by the Minister for Justice, the Honourable Brian
Neal Wightman)*

A BILL FOR

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

Be it enacted by His 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 2013*.

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 of the Principal Act is amended as follows:

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

appointor, in relation to an enduring guardian, means the person who appointed the enduring guardian to be the person's enduring guardian;

- (b) by inserting the following subsection after subsection (2):

- (3) In this Act, a reference to an enduring guardian making or entering into a transaction is to be taken to be a reference to the enduring guardian making a decision, taking an action, giving a consent or doing an act.

*No. 44 of 1995

5. Sections 32B, 32C and 32D inserted

After section 32A of the Principal Act, the following sections are inserted in Part 5:

32B. Right of enduring guardian to information

- (1) An enduring guardian has a right –
- (a) to all the information to which the appointor is entitled; and
 - (b) if the appointor is unable by reason of a disability to make reasoned judgments in respect of matters relating to his or her personal circumstances, to all information to which the appointor would have been entitled but for the disability –

if the information is reasonably required for the purpose of exercising a power, or determining whether to exercise a power, of the enduring guardian.

- (2) An enduring guardian has, if the appointor is unable by reason of a disability to make reasoned judgments in respect of matters relating to his or her personal circumstances, a right to obtain, from a person who has possession of a will of the appointor, a copy, of the will, that is certified by the person.
- (3) A person who has custody or control of information, or a will, to which an

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enduring guardian has a right under subsection (1) or (2), must, at the request of the enduring guardian, disclose the information to the enduring guardian or provide to the enduring guardian a copy, of the will, that is certified by the person.

- (4) Subsections (1), (2) and (3) are subject to any condition or contrary intention, or express limitation, in the instrument of appointment of the enduring guardian.

32C. Transactions that may involve conflict of duty

- (1) An enduring guardian may only enter into a transaction that results, or may result, in a conflict of interest, if –
- (a) the instrument of appointment of the enduring guardian specifies that the transaction may, even though it will or may result in a conflict of interest, be entered into by the enduring guardian; or
 - (b) the transaction is a member of a class of transactions that the instrument of appointment of the enduring guardian specifies may, even though the transactions will or may result in a conflict of interest, be entered into by the enduring guardian; or
 - (c) the instrument of appointment of the enduring guardian specifies

that, even though such a transaction will or may result in a conflict of interest, any transaction may be entered into by the enduring guardian.

(2) For the purposes of subsection (1), a conflict of interest is a conflict between –

(a) the duties of an enduring guardian in respect of the appointor; and

(b) either –

(i) the interests of the enduring guardian, or a relative, business associate or close friend of the enduring guardian; or

(ii) another duty of the enduring guardian.

32D. Keeping of records, &c.

(1) An enduring guardian must keep an accurate record of all dealings and transactions made by the person as the enduring guardian.

Penalty: Fine not exceeding 20 penalty units.

(2) A person who has ceased to be an enduring guardian must –

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- (a) retain, for at least 7 years after so ceasing, an accurate record of all dealings and transactions made as the enduring guardian; or
- (b) provide to the Board an accurate record of all dealings and transactions made as the enduring guardian.

Penalty: Fine not exceeding 20 penalty units.

- (3) A person with a proper interest in the matter may, in writing, request the Board to exercise its power under subsection (4) in relation to a person who is or was an enduring guardian.
- (4) The Board, after receiving under subsection (3) a request in relation to –
 - (a) a person who is an enduring guardian; or
 - (b) a person who was, within the previous 7 years, an enduring guardian and who has not provided an accurate record to the Board in accordance with subsection (2)(b) –

may, by notice in writing to the person, require the person to provide to the Board, within the period of not less than 14 days specified in the notice, a document setting out an accurate record

of all dealings and transactions made by the person as an enduring guardian.

- (5) A person who receives a notice under subsection (4) must provide to the Board, before the end of the period specified in the notice, a document setting out an accurate record of all dealings and transactions made by the person as the enduring guardian.

Penalty: Fine not exceeding 20 penalty units.

- (6) A document provided to the Board by a person in accordance with a notice under subsection (4) –
- (a) is to be in a form approved by the Board; and
 - (b) is to be verified by a statutory declaration that is signed by the person; and
 - (c) is to be accompanied by other evidence, if any, that the Board specifies in the notice is required to accompany the document.

6. Section 34 amended (Revocation or amendment of appointment by Board)

Section 34(1A) of the Principal Act is amended as follows:

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- (a) by omitting from paragraph (a) “donor” and substituting “appointor”;
- (b) by omitting from paragraph (c) “donor” and substituting “appointor”.

7. Section 90B inserted

After section 90A of the Principal Act, the following section is inserted in Division 6:

90B. Transitional provisions consequent on *Guardianship and Administration Amendment Act 2013*

- (1) Section 32C applies to, and in relation to, an enduring guardianship created before that section commences, but only to, or in relation to, the taking of an action, or an action taken, after that section commences.
- (2) Section 32D applies to, and in relation to, an enduring guardianship created before that section commences, but only in relation to a dealing or transaction made after the section commences.
- (3) Nothing in this section is to be taken to limit the application of sections 32C and 32D to an enduring guardianship created after section 32C or 32D, respectively, commences.

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8. Repeal of Act

This Act is repealed on the three hundredth and sixty fifth day from the day on which all of the provisions on this Act commence.