

FACT SHEET

Guardianship and Administration Amendment Bill 2023

The Guardianship and Administration Amendment Bill 2023 (the Bill) gives effect to a second tranche of recommendations from the Tasmanian Law Reform Institute's *Review of the Guardianship and Administration Act 1995 Final Report* released in December 2018, and to the legislative recommendations of the *Independent Review of the Public Trustee* conducted by Damian Bugg AM KC in 2021.

The Bill will amend the *Guardianship and Administration Act 1995* (the Guardianship Act) and *Tasmanian Civil and Administrative Tribunal Act 2020* to:

- update approaches to the appointment of guardians and administrators by the Tasmanian Civil and Administrative Tribunal (TASCAT);
- apply a framework for determining decision-making ability to the whole of the Guardianship Act;
- insert requirements to provide persons with impaired decision-making ability with access to the support necessary to enable the person to as far as is practicable make and participate in decisions and promote their own decision-making ability;
- remove the 'best interests' test for determining how decisions should be made in relation to person's with impaired decision-making ability and preferences - 'will and preference test' - of a person with impaired decision-making;
- provide substitute decision-makers should only override the wishes and preferences of persons in narrow circumstances, including preventing serious harm;
- provide new objects and principles, including applying the principles of the United Nations Convention on the Rights of People with Disabilities;
- remove the criteria of disability as a stand-alone test of impairment;
- provide for the regulation of health and medical research in circumstances where a person has impaired decision-making ability and is unable to give or refuse consent, such as clinical trials that are subject to national ethical research guidelines, in order to allow access by this group to the benefits of participating in trials.
- provide for circumstances where protected information can be disclosed, including where a person consents to their information being published;
- amend conflict of interest provisions which can currently prevent close family members from being appointed as private guardians or administrators;
- amend standing provisions and appeal procedures; and
- insert requirements in relation to the resolution of disputes and the handling of complaints.