

CLAUSE NOTES

Guardianship and Administration Amendment Bill 2023

- Clause 1** **Short title**
Specifies the name by which the proposed Act can be cited.
- Clause 2** **Commencement**
Provides that the Act commences on a day or days to be proclaimed.
- Clause 3** **Principal Act**
Provides that the Principal Act being amended in Part 2 is the *Guardianship and Administration Act 1995*.
- Clause 4** **Long title amended**
Amends the title of the Principal Act to replace references to persons with disability and to insert reference to new provisions providing a process for obtaining consent for people with impaired decision-making to participate in health and medical research.
- Clause 5** **Section 3 amended (Interpretation)**
Inserts or amends definitions for the purposes of the Act. Of note:
- a definition of close family member includes adults of Aboriginal or Torres Strait Islander descent related to a person by kinship rules;
 - a definition of the *Convention on the Rights of Persons with Disabilities*;
 - the definition of disability is amended in accordance with the definition included in the UN *Convention on the Rights of Persons with Disabilities*;
 - inserts a definition of financial matters, as a consequence of use of this term rather than 'estate' in the amended Act;
 - inserts a definition of Health Practitioner consistent with the meaning of the Health Practitioner Regulation National Law (Tasmania);
 - inserts a definition of 'personal matter', relevant to matters such as the matters specified within power of a Guardianship order.
 - includes a definition of support, by an inclusive list of matters that can support person in decision-making
- Clause 6** **Section 4 amended (Meaning of person responsible)**
The amendment omits the current unconditional reference to a guardian and replaces it with a reference to guardian, if the guardian has authority in respect of a particular decision. This is to ensure that a guardian only has the powers of a person responsible to the extent that is consistent with the types of powers they are authorised to exercise as guardians.

The current reference to 'his or her spouse' is substituted with 'the other person's spouse' to remove the current gendered references.

The current references to 'close friend or relative' are replaced with a reference to a close family member, as the definition of that term now includes close friends in the appropriate circumstances.

There are amendments consistent with the shift from 'best interests' to decisions that are necessary or appropriate in the circumstances. This is consistent with the objects and principles of the Act that require consideration of matters such as will and preference, and promotion of personal and social well-being.

The Bill clarifies that where more than one person may qualify as a spouse, it is the last person to so qualify.

Clause 7

Sections 5 and 6 substituted

Repeals Section 5 and 6 and substitutes with the following sections:

Section 5 Meaning of promoting a person's personal and social well-being

Inserts provisions to define the meaning of *promoting a person's personal and social well-being*.

Section 6 Meaning of health and medical research

Inserts a definition of *health and medical research*;

Section 7 Objects of the Act

Updates the Objects of the Act, by reference to protecting and promoting the rights and dignity of persons who have impaired decision-making ability, by reference to matters such as the Convention on the Rights of Persons with Disabilities, and setting out principles and procedures to be observed, and requiring that persons with impaired decision making and their families are informed of, and make use of, the provisions of the Act.

Section 8 Principles to be observed

Inserts principles to be observed by person exercising a function under the Principal Act. This includes several important principles, such as: a person's decision-making ability and views, wishes and preferences are to be respected and promoted; a person who requires support in decision making is to be provided with access to the support necessary as far as is practicable in the circumstances to support the person as specified; the role of close family members, carers and other significant persons in the life of a person are recognised; the personal and social well-being of a person is to be promoted; and the least restrictive options are adopted.

Section 8 also provides for additional principles in respect of children, which recognise that the 'best interests' test is still an important obligation for children.

Section 8 provides persons providing assistance on an informal basis are encouraged to apply the principles.

Section 9 Decision-making process

Inserts a decision-making process to which a substitute decision-maker is to have regard in determining whether to make a decision for or on behalf of another person and the matters which are to be taken into account when making the decision. The section inserts a definition of *serious harm* and *substitute decision-maker* for the purposes of the section.

This process is subject to the important principles above, such as respecting and promoting a person's decision-making ability; and providing supports as necessary and as far as practicable in the circumstances.

As a result of the decision-making process and principles, for example, a person unsure whether a represented person has impaired decision-making ability, or unaware of their wishes and preferences, in respect of that type of decision would need to satisfy themselves of this before making decisions of that kind in future.

In any event, the views, wishes or preference of the person with impaired decision-making ability should only be overridden by a substitute decision-maker to the extent that it is necessary to prevent serious harm, or the risk of serious harm, to the person or another person; or the decision would be unlawful; or inconsistent with determinations of the Tribunal. If overriding the wishes of the person, the decision-maker is to, as far as reasonably practical, provide the person with information as to why.

Clause 8

Part 2 inserted

Provides for a new Part (Part 2 – Decision-Making Ability) to be inserted in the Act.

- **Section 10 Interpretation of Part**

Defines the term *information* as used in the Part.

- **Section 11 Decision-making ability**

Sets out criteria for determining whether an adult or child has decision-making ability. Subsection 11(1) provides that for the purposes of the Act an adult is presumed to have decision-making ability unless a person or body responsible for assessing that ability determines otherwise. Subsection 11(2) sets out when an adult is taken to have impaired decision making ability. Subsections 11(3) and (4) provide that a child is taken to have impaired decision making ability unless a registered health practitioner determines otherwise and sets out when a child has decision making ability. Subsection 11(5) sets out criteria for determining whether a person is taken to understand information and provides that a person's decision-making ability may fluctuate.

- **Section 12 Limits on finding of impaired decision-making ability**

Subsection 12(1) sets out the types of matters which should not automatically lead to an assumption of impaired decision making ability. Subsection 12(2) provides that a person is not to be assessed as having impaired decision-making ability unless reasonable steps have been taken to provide the person with practicable and appropriate support to make and communicate the decision.

- **Section 13 Formal assessment of decision-making ability**

Subsection 13(1) sets out requirements for persons conducting an assessment of decision-making ability, including the need to take reasonable steps to inform the person of that assessment. Subsection 13(2) requires a person making an application to the Tribunal to take reasonable steps to inform the person and their person responsible that an application is being considered; identify the matters to which the application relates; assist the person to identify any less restrictive alternatives; and provide advice and information in relation to options for legal

representation or advocacy support. Subsection 13(3) includes an offence provision in relation to interference or actions that may affect the assessment of another person's decision-making.

Clause 9 Section 15 amended (Functions and powers of Public Guardian)

Amends references to 'disability' and substitutes the words 'impaired decision-making ability' and omits reference to the Public Guardian representing a person with impaired decision-making ability before the Tribunal.

Clause 10 Section 19 amended (Application for guardianship order)

Amends subsection 19(1) to remove reference to the ability to apply for a full or limited guardianship order, as guardianship orders will not specify the personal matters for which they are made. The clause provides that applications can be made in respect of 'persons' without limitation of age.

Clause 11 Section 20 and 21 substituted

Repeals s20 and s21 of the Principal Act and inserts the following new sections:

- **Section 20 Guardianship order**

Inserts requirements the Tribunal is to be satisfied of before making a guardianship order and sets out factors the Tribunal is to consider to determine whether a person is in need of a guardian. Subsection 20(3) provides that if an order is made, the Tribunal is to set out the personal matters for which a guardian is required and any conditions of the order. Subsection 20(5) enables an order to take effect when the represented person attains the age of 18 years of age.

- **Section 21 Persons eligible to be appointed as guardian**

Inserts provisions in relation to persons eligible to be appointed as guardian. Subsection 21(1) requires that the Tribunal must be satisfied that no other person is eligible for appointment before appointing the Public Guardian. Subsection 21(2) sets out the eligibility requirements for a person to be appointed as a guardian and requires the person to consent to the appointment. Subsection 21(3) requires the person to provide written consent to the appointment and to attest that they understand their obligations and undertakes to act in accordance with the Act. Subsection 21(4) sets out criteria for determining whether a person is suitable to act as a guardian. Subsection 21(5) clarifies matters related to conflicts of interest, such as providing the fact that a person is a close family member or beneficiary does not of itself mean they have a conflict of interest.

- **Section 21A Duty to Notify Tribunal of Change of Circumstance**

Requires a person appointed as a guardian to notify the Tribunal of change in circumstance which may impact on their eligibility to continue to be appointed as a guardian.

Clause 12 Section 22 amended (Alternative guardians)

Makes minor amendments to update references to a person being an alternative guardian of the represented person, to a person being an alternative guardian for the represented person.

Clause 13 Section 23 repealed

Repeals the requirement for the Tribunal to provide to the Public Guardian a copy of any order appointing a person other than the Public Guardian, as this is no longer a necessary part of the Public Guardian's functions.

Clause 14 Section 24 substituted

Repeals s24 of the Principal Act and substitutes a new section in relation to the expiration of guardianship orders. Subsection 24(1) provides that a guardianship order has effect for 3 years or such shorter time period as the Tribunal determines unless the order is continued after review. Subsection 24(2) sets out matters the Tribunal must take into account in determining the duration of the order. Under the current Act, guardianship orders are a fixed duration of 3 years, unless continued.

Clause 15 Section 25, 26 and 27 substituted

Repeals ss25, 26 and 27 and substitutes the following sections:

- **Section 25 Authority of guardian**

Establishes the authority of a guardian to make decisions about a represented person's personal matters as specified in the order.

- **Section 26 Exercise of authority by guardian**

Provides a guardian under this Act must:

- promote the personal and social well-being of the represented person
- act in accordance with the Act's principles
- have regard to the Act's decision-making process
- act honestly and in good faith
- communicate with the person by means they are best able to understand
- keep the represented person informed.
- regularly consult with any other guardian or administrators of the person
- act as an advocate for the represented person where possible
- encourage the person to develop their decision-making ability
- protect the represented person from violence, abuse, neglect or exploitation.

Subsection 26(2) requires a guardian to ascertain whether the represented person has an advance care directive and to obtain a copy if they have done so.

- **Section 27 Right of guardian to information**

Provides for the right of a guardian to have access to all information to which the represented person is entitled, if the information is required for the purposes of performing a function as guardian.

- **Section 27A Keeping of records &c.**

Inserts obligations on the guardian to keep records of dealings and transactions made by the person as guardian. It provides a former guardian may give a copy of the records to a new guardian, the former represented person, to legal representatives, or persons responsible. It provides a penalty provision for circumstances in which this obligation is not met.

- Clause 16** **Section 28 amended (Power to enforce guardianship order)**
- The amendments update section references; omit references to full or limited guardianship orders; remove references to best interests (given the overriding principles in the Act such as promoting personal and social well-being); and provides that any measures or actions specified in a guardianship order may be subject to such limitations as the Tribunal considers necessary.
- Clause 17** **Section 29 amended (Urgent powers in case of unlawful detention of persons in need of a guardian)**
- Replaces the requirement for a person to have a disability with the requirement that a person appears to be in need of a guardian.
- Clause 18** **Section 30 amended (Removal of persons to place of safety)**
- Removes references to the requirement that the person is to have a disability, as the section already refers to a person appearing to be in need of a guardian.
- Clause 19** **Section 32 amended (Appointment of enduring guardian)**
- Inserts a requirement that the appointor of an enduring guardian is required to understand the nature and effect of the enduring guardianship instrument; inserts provisions setting out the matters the appointor is to understand about the nature and effect of the instrument; updates the witnessing requirements consistent with the arrangements for the appointment of an enduring power of attorney; provides for the powers conferred on the appointees and circumstances in which the powers under the instrument are enlivened.
- Clause 20** **Section 32B amended (Right of enduring guardian to information)**
- Removes the requirement for the appointor to have a disability and be able to make 'reasoned judgements' as a condition of the enduring guardian having rights to access information and replaces it with a requirement that the appointor has impaired decision-making ability. It further provides for the circumstances in which an enduring guardian has a right to obtain the appointor's will from another person.
- Clause 21** **Section 34 amended (Revocation or amendment of appointment by Tribunal)**
- Inserts a new subsection 34(1) and (1A) in respect of when the Tribunal may revoke or amend an instrument of appointment of an enduring guardian, or an instrument revoking that appointment.
- Clause 22** **Section 35A amended (Objects of Part)**
- Corrects "decision-making ability" to "decision making ability) for consistency with the Act (a typographical error also corrected in further clauses below).
- Clause 23** **Section 35B amended (Principles to be taken into account)**
- Corrects typographical errors and extends the application of the section to include a requirement to adhere to the principles set out in section 8 of the Bill, in addition to the current principles that apply to Advance Care Directives. As the 'Convention on the Rights of Persons with Disabilities' is now defined under previous amendments, the prefacing words 'United Nations' are not required in this section.

- Clause 24** **Section 35C amended (Interpretation of Part)**
Inserts a reference to health care and omits the definition of health practitioner, medical research procedure and registered health practitioner, as the Bill now inserts definitions for these terms in s3 of the Act.
- Clause 25** **Section 35D repealed**
Repeals s35D (Decision-making ability) as clause 8 inserts provisions related to decision-making ability that apply to the whole Act.
- Clause 26** **Section 35E amended (Meaning of health care)**
Replaces the reference to 'a medical research procedure' with the new term 'the conduct of health and medical research'.
- Clause 27** **Section 35F repealed**
Repeals the definition of medical research procedure contained in Part 5A of the Act, as the Bill inserts a definition for health and medical research in in s3 (referring to s6).
- Clause 28** **Section 35G amended (Giving an advance care directive)**
Corrects a typographical error and clarifies that decision-making ability is to be in respect of health care decisions.
- Clause 29** **Section 35I amended (Witnessing of advance care directive)**
Omits the definition of close relative and replaces the reference to close relative with the term close family member (now defined by the Bill); and amends the reference to a guardian to clarify that a reference to a guardian is to a guardian appointed for the person giving the advance care directive.
- Clause 30** **Section 35O amended (Requirement to make reasonable inquiries as to advance care directive)**
Corrects a typographical error.
- Clause 31** **Section 35Q amended (Consent given or refused in advance care directive)**
Corrects a typographical error.
- Clause 32** **Section 35R amended (Consent given or refused by authorised decision-maker for the person who has given an advance care directive)**
Corrects a typographical error.
- Clause 33** **Section 35T amended (Health practitioners to give effect to advance care directives)**
Corrects a typographical error.
- Clause 34** **Section 35Y amended (Revoking an advance care directive where person has decision-making ability)**
Corrects a typographical error and removes gendered references.

- Clause 35** **Section 35Z amended (Revoking or varying advance care directive where person has impaired decision-making ability)**
 Corrects a typographical error and clarifies that that the decision-making impairment relates to decisions relating to the advance care directive.
- Clause 36** **Section 35ZK amended (Resolution of matters by Tribunal)**
 Corrects typographical errors.
- Clause 37** **Section 36 amended (Application of Part 6)**
 Replaces the requirement for the person to have a disability with the requirement that the person has impaired decision-making in respect of decisions relating to medical and dental treatment and is incapable of providing consent.
- Clause 38** **Section 39 amended (Persons authorized to consent to medical or dental treatment)**
 Corrects a typographical error.
- Clause 39** **Section 41 amended (Medical or dental treatment without consent)**
 Corrects a typographical error.
- Clause 40** **Section 43 amended (Consent by persons responsible)**
 Removes gendered references; corrects typographical errors; and replaces the 'best interests' test with a requirement that the medical or dental treatment would promote the personal and social well-being of the person, and amends cross-section references.
- Clause 41** **Section 45 amended (Consent of Tribunal)**
 Replaces the 'best interests' test with a requirement that the medical or dental treatment would promote the personal and social well-being of the person; and corrects cross-section references.
- Clause 42** **Section 46 amended (Consent to continuing or further special treatment by guardian with authority of Tribunal)**
 Corrects a typographical error.
- Clause 43** **Section 46A amended (Power to make guardianship order or administration order)**
 Corrects cross-section references consequential to the Bill's amendments.
- Clause 44** **Part 6A inserted**
 Inserts Part 6A – Health and Medical Research.
- **Section 44B Application of Part**
- Restricts the application of the Part to adults with impaired decision-making ability in respect of decisions related to involvement in a health and medical research project and who are unable to provide consent whether or not they are a represented person.

Subsection 48B(2) applies the criteria for determining whether a person is incapable of giving consent to medical and dental treatment in s36 of the Principal Act to consent to health and medical research.

- **Section 48C Interpretation of Part**

Provides for the definition of terms used in the Part.

- **Section 48D Requirement if likely recovery of decision-making ability**

Inserts a requirement preventing the conduct of health and medical research in relation to a person who is likely to recover decision-making ability within a reasonable time. Subsection 48D(2) inserts criteria for the assessment of a reasonable time, taking into account the condition of the person, their stage of treatment or care and other circumstances specific to that person.

- **Section 48E Requirement to ascertain existence of advance care directive**

Requires a health and medical research practitioner to make reasonable efforts to ascertain whether the person has an advance care directive and to obtain a copy before the health and medical research is undertaken.

- **Section 48F Health and medical research to be conducted in accordance with approval**

Requires health and medical research conducted under this Part to be approved by a relevant human research ethics committee and to be conducted in accordance with that approval.

- **Section 48G Approval to conduct health and medical research**

Sets out circumstances in which health and medical research involving a person with impaired decision-making can be conducted. Subsection 48G(1)(a) provides that research can be undertaken if the person's advance care directive so authorises. Subsection 48G(1)(b) provides that if there is no advance care directive, research can be undertaken with the approval of the person responsible for the person with impaired decision-making. Subsection 48G(1)(c) provides that where there is no advance care directive or person responsible able to be located, the research may be conducted without prior consent if authorised under section 48K. Subsection 48G(2) provides that health and medical research must not be conducted in relation to a person to whom the Part applies if the person's advance care directive provides clear and unambiguous refusal to the conduct of the research.

- **Section 48H Urgent medical and dental treatment**

Provides that for the avoidance of doubt, nothing in the Part prevents the administration of urgent medical or dental treatment under s40 of the Principal Act which involves a research component.

- **Section 48I Consent of person responsible**

Provides that a person responsible may consent to the conduct of health and medical research involving a person with impaired decision-making ability if the person responsible reasonably believes that the person would have consented. Subsection 48I(2) sets out the matters to the person responsible is to have regard, such as the views, wishes and preferences of the person, and whether consent will promote the person's personal and social well-being, and the likely effects and

consequences, and the known risks, including any risks to the person that are greater than the risk that is inherent in the person's condition and in standard medical treatment.

Subsection 48I(3) sets out the information that the lead health and medical researcher is to make available to inform the decision, and the requirement to provide reasonable opportunity to obtain independent advice and time to consider the advantages or disadvantages of providing consent.

Subsection 48I(4) requires that the consent must be consistent with the any requirements for consent specified by the relevant human research ethics committee. Subsection 48I(5) provides that the person responsible may withdraw consent at any time and subsection 48I(6) provides for actions that must be taken if consent is withdrawn. Subsection 48I(7) provides for obtaining the consent of the person, if that person regains decision-making ability, and the arrangements if consent is refused.

- **Section 48J Basis for conducting health and medical research to be included in clinical records**

Sets out requirements for the health and medical research practitioner to include information in the person's clinical records regarding the decision-making ability of the person enrolled in the research and the details of the person responsible providing consent to the conduct of the research.

- **Section 48K Conducting health and medical research without prior consent of person responsible**

Sets out arrangements for the involvement of person with impaired decision-making ability in health and medical research in circumstances where an advance care directive is not able to be located and no person responsible is available or able to provide consent.

Subsection 48K(1) provides that research is able to proceed without prior consent where the relevant ethics committee has approved the participation of person without prior consent. In addition, a requirement is that the health and medical research involves non-invasive treatment or procedures, or the researcher believes on reasonable grounds that the research supports a reasonable possibility of benefit over standard treatment and that the research is not contrary to the personal and social well-being of the person. The subsection also provides that the researcher must believe on reasonable grounds that the person must not object to the intervention (whether by speech, gesture or other means).

Subsection 48K(2) provides that the researcher must continue to take reasonable steps to locate the person responsible for the person.

- **Section 48L Basis for conducting the health and medical research without prior consent to be included in clinical records**

Inserts provisions requiring the lead health and medical research to include a written statement in the person's clinical records providing details of the basis on which the research was conducted without prior consent.

- **Section 48M Arrangements for continuing participation in research of person who regains decision-making ability**

Inserts provisions in circumstances where the person regains decision-making ability and provides for arrangements if continuing consent is refused.

- **Section 48N Arrangements for consent to continuing participation in the research by person responsible**

Inserts provisions in circumstances where the person's person responsible is identified and provides for arrangements if continuing consent is refused.

- **Section 48O Applications to Tribunal**

Sets out criteria for applications to the Tribunal in relation to the conduct of health and medical research and authorises the Tribunal to give advice and directions or make any such order it considers appropriate in the circumstances. In such applications, the person in relation to whom the research is conducted is a party to the proceeding. An offence provision applies to contravention of a Tribunal direction.

- **Section 48P Protection of health and medical research practitioner**

Protects a health and medical research practitioner from liability where the research is conducted in good faith, without negligence, and in the belief on reasonable grounds that the Part is being complied with.

- **Section 48Q Offence to conduct unapproved health and medical research**

Inserts offence provisions in circumstances where health and medical research is conducted without the approval of the relevant human research ethics committee.

- **Section 48R Offence to conduct health and medical research without consent or authorisation**

Inserts offence provisions in circumstances where health and medical research is conducted without the relevant consent or authorisation, being a maximum penalty of 40 penalty units or imprisonment for a term not exceeding 2 years, or both. .

Clause 45 Section 49 amended (Objects of Part 7)

Amends section 49 to provide for the substitution of the word 'estates' with 'financial matters', which the Bill defines by amendment to s3.

Clause 46 Section 50 amended (Application for administration order)

Clarifies the authority to make application for an administration order; removes references to disability and replaces the term estate with financial matters.

Clause 47 Section 51 and 52 substituted

Repeals s51 Administration orders and s52 Expiration of administration orders and substitutes the following sections:

- **Section 51 Administration orders**

Inserts requirements the Tribunal is to be satisfied of before making an administration order and sets out factors the Tribunal is to consider to determine whether a person is in need of an administrator. Subsection 51(3) provides that the administration order may be subject to conditions or restrictions that the Tribunal considers necessary. Subsection 51(4) requires the Tribunal to be satisfied

the administrator is eligible for appointment. Subsection 51(5) enables an administration order to take effect when the represented person attains the age of 18 years. Subsection 51(6) provides the Tribunal may exercise its powers under this section on an application under Part 4 of the *Powers of Attorney Act 2000*.

- **Section 52 Expiration of administration orders**

Subsection 52(1) provides that an administration order has effect for 3 years or such shorter time period as the Tribunal determines unless the order is continued after review. Subsection 51(2) sets out matters the Tribunal must take into account in determining the duration of the order, including the likelihood of improvements to the person's decision-making ability and the requirement that the order is the least restrictive to the person as possible.

Clause 48 **Section 53 amended (Administration order may not be made if enduring power of attorney is in force)**

Substitutes reference to estate with the term financial matters and provides that the Tribunal may make an administration order in relation to financial matters that are not subject to the enduring power of attorney.

Clause 49 **Section 54 substituted**

Repeals section 54 and substitutes the following sections:

- **Section 54 Persons eligible to be appointed as administrators**

Provides provisions in relation to persons eligible to be appointed as an administrator. Subsection 54(1) requires the Tribunal to be satisfied that no other person is eligible for appointment before appointing a trustee company, the Public Trustee or Public Guardian as a person's administrator. Subsection 54(2) sets out the eligibility requirements for a person to be appointed as an administrator and requires the person to consent to the appointment. Subsection 54(3) requires the person to provide written consent to the appointment and to attest that they understand their obligations and undertakes to act in accordance with the Act. Subsection 54(4) sets out criteria for determining whether a person is suitable to be appointed as an administrator and sets out the matters the Tribunal must take into account before so determining. Subsection 54(5) clarifies matters related to conflicts of interest.

- **Section 54A Duty to notify Tribunal of change of circumstance**

Makes provision for a person appointed as an administrator to notify the Tribunal of change in circumstance which may impact on their eligibility to continue to be appointed as the administrator.

Clause 50 **Section 56 amended (Powers and duties of administrator)**

Omits 56(1) with a new subsection which replaces reference to estate with financial matters. The amendment makes changes for consistency with provisions of the *Powers of Attorney Act 2000*.

Clause 51 **Section 57 substituted**

Repeals section 57 and substitutes the following sections:

- **Section 57 Exercise of power by administrator**

Provides that an administrator must:

- promote the personal and social well-being of the represented person
- act in accordance with the principles of the Act
- have regard to the Act's decision-making process
- act honestly and in good faith
- communicate with the represented person by means they are best able to understand
- keep the represented person informed
- regularly consult with any guardian of the represented person
- act as an advocate for the represented person where possible
- encourage the person to develop their decision-making ability and
- protect the represented person from violence, abuse, neglect or exploitation.

- **Section 57A Right of administrator to information**

Provides for the right of an administrator to have access to all information to which the represented person is entitled, if the information is required for the purposes of performing a function as administrator.

Clause 52 Section 58 amended (Settlement and gifts)

Replaces a reference to an application to the Tribunal with a request to the Tribunal, and removes reference to disability.

Clause 53 Section 60 amended (Preservation of interests in the represented person's property) Application by administrator for advice, &c.)

Removes gendered language.

Clause 54 Section 61 amended (Application by administrator for advice, &c.)

Replaces reference to estate with the financial matters of the represented person.

Clause 55 Section 62 amended (Power of administrator to act until notice of discharge)

Replaces a provision to remove gendered language, and omits reference to estate and substitutes with financial matters.

Clause 56 Section 62A inserted

Inserts the following section:

- **Section 62A Keeping of records &c.**

Inserts obligations on the guardian to keep records of dealings and transaction made, and penalty provisions where obligations are not met. When a person ceases to be an administrator, provides arrangements for the transfer of a copy of the records where another person has been appointed as administrator, or the former represented person, or a legal representative where the represented person has deceased. This must be provided on request within 14 days, with a penalty for non-compliance.

Clause 57 Section 63 amended (Reporting requirements for administrators)

Inserts a new s63(1) so it applies to the financial matters under administration, rather than the estate generally. Removes the requirement for a report to the Tribunal to be verified by a statutory declaration, so that the requirement is any evidence that the Tribunal may require.

Clause 58 Section 65 substituted

Repeals s65 and inserts the following section:

- **Section 65 Emergency orders**

Subsection 65(1) inserts a definition of immediate risk of harm.

In relation to 'represented persons', subsection 65(2) enables the Tribunal on hearing to make any interlocutory order or give advice or direction in circumstances where the Tribunal considers a represented person may be at immediate risk of harm.

In relation to people who are not 'represented persons', subsection 65(3) enables the Tribunal on hearing to make an interlocutory order or give advice or direction in relation to a person who is not a represented person who the Tribunal is satisfied may be at risk of immediate harm. This includes the option of an interlocutory order appointing the Public Guardian or Public Trustee.

Subsection 65(4) enables the Tribunal to vary the notice of hearing requirements or vary or dispense with prescribed information requirements if satisfied there may be immediate risk of harm if not so varied.

Subsection 65(5) enables the Tribunal to make an interlocutory order for persons who have granted an enduring power of attorney.

Subsection 65(6) provides that the interlocutory order remains in effect for a period not exceeding 28 days and may only be renewed once for a further period not exceeding 28 days.

Clause 59 Section 67 and 68 substituted

Repeals sections 67 and 68 and inserts the following sections:

- **Section 67 Review of orders**

Inserts provisions enabling the Tribunal on its own motion to hold a hearing to review a guardianship or administration order and provides for categories of persons who may apply for a review of a guardianship or administration order. This adds guardians and administrators to the current categories, and includes applications be, or on behalf of, a represented person.

- **Section 68 Order after review**

Provides for actions open to the Tribunal on review of an order. Subsection 68(1) allows the Tribunal to vary or continue the order for a period not exceeding 3 years subject to any conditions it considers necessary or revoke the guardianship or administration order. Subsection 68(2) and s68(3) requires the Tribunal to be satisfied that continuation of the order meets the test for appointment of a guardian or administrator as if made under an original application. Subsection 68(4) enables the Tribunal to make such further orders as it considers necessary to give effect to decisions made on a review.

Clause 60 Division 1 and 2 of Part 10 inserted

- **Section 70 Assistance by Public Guardian in resolution of disputes**

Inserts arrangements for an application to be made to the Public Guardian to assist in the resolution of disputes in relation to the actions or proposed actions of a guardian or administrator other than the Public Guardian or Public Trustee.

Subsection 70(3) enables an application to be made by the represented person or any other person the Public Guardian is satisfied has a proper interest in the matter.

The amendments include provisions relating to the Public Guardian's arrangement of mediation to assist in settling the dispute.

Subsection 70(9) provides that if a dispute is not resolved, the Public Guardian or any party to the dispute may make application to the Tribunal for a review of the order.

- **Section 71 Complaints process**

Requires the Public Guardian and Public Trustee to establish and publicise procedures for the handling of complaints which meet minimum complaint resolution standards prescribed by the regulations. This will support the Public Guardian and Public Trustee in their commitment to best practice complaints management.

- **Section 72 Appeal Costs**

Provides that no order for costs is to be made against an applicant on appeal to the Supreme Court where the applicant is the person to whom the decision appealed relates. This includes where a person has appealed on behalf of the applicant.

Clause 61 **Section 81 amended (Recognition of orders made in other States, &c.)**

Corrects typographical errors and replaces references to estate with references to financial matters.

Clause 62 **Section 86 amended (Confidentiality of information)**

Replaces subsections (1) and (2) with new subsections. These amend the confidentiality provisions in s86 of the Principal Act to provide for definitions of *information*, *protected information* and *protected person* and establishes arrangements for when protected information in relation to a protected person or other party to proceedings may be disclosed.

These largely reflect the current arrangements, such as at a hearing, or where the Tribunal or Public Guardian considers the disclosure would promote the personal and social well-being of the person, or the President has authorised the disclosure either generally or in a particular case. Section 123 of the *Tasmanian Civil and Administrative Tribunal Act 2020* also permits the Tribunal, if considering it is in the public interest, to determine that a person may publish, or cause to be published, a report of any Guardianship stream proceedings.

New subsection (2A) also continues current arrangements, permitting disclosures required or permitted by any law. However, where such disclosures include

information about the personal affairs of a third party, that third party information can only be disclosed with the consent of the third party.

New subsection (2B) inserts a new provision, so that disclosure of a person's protected information is permitted if the protected person gives consent with full understanding. The disclosure of any third party information requires that third party's consent. For example, this addresses concerns that section 86 currently does not provide for persons to consent to their experiences under guardianship or administration being published.

Clause 63 Section 88 amended (Power to open wills)

Inserts the ability of a guardian to open a will with the approval of the Tribunal and inserts provisions requiring the person who has custody or control of the will to provide the Tribunal with a copy. A penalty provision applies to a person who does not comply.

Clause 64 Section 88A inserted

Provides that the Act does not derogate from any other law of the State or affect the inherent jurisdiction of the Supreme Court.

Clause 65 Section 90 amended (Regulations)

Provides for regulations that enable a reference to standards, rules, codes or guidelines to be adopted.

Clause 66 Section 90BA inserted

Provides for transitional provisions. Inserts provisions preserving the validity and powers conferred by documents, instruments or applications, directions issued or orders made prior to the commencement of the Act.

Provides that applications made, or proceedings started, but not determined prior to commencement are continued under the Act as in force immediately before commencement day.

Provides that the Tribunal may accept an application made in accordance with the requirements of the Act as in force immediately before commencement for a period of up to 2 months from the commencement of this Act. Where such application is accepted, the Tribunal is to determine the application under the provisions of the Act as in force immediately before the commencement of this Act. If the Tribunal does not accept the application, a new application in accordance with the Act as amended can be made.

Provides that amendments to section 25, Part 5 and Schedule 3 do not apply to instruments appointing enduring guardians that are in effect before the commencement day. Further provides that those amendments do not apply to instruments signed by the appointor before commencement day that have not been registered with the Tribunal. This transitional clause is intended to apply in the same circumstances as a similar transitional clause in 32(8) of the Act which refers to when instruments are made. That is, these provisions apply where an appointor has signed the instrument before the relevant commencement day, whether or not the endorsement on the instrument of acceptance of each person being appointed occurs after commencement day.

Provides authority to make regulations for transitional purposes, and these regulations may take effect on a day on which a provision of the Bill commences, or on a day after that commencement, whether or not the specified day is before, on or after the day on which the regulations are made.

Clause 67 **Schedule 3 substituted**

Amends the instrument of appointment of an enduring guardian to insert references to personal matters and correct section references.

Clause 68 **Schedule 4 amended (Savings and Transitional provisions)**

Removes reference to a full guardian and corrects and substitutes references to estate with references to financial matters.

Clause 69 **Principal Act**

Provides that the Principal Act being amended is the *Tasmanian Civil and Administrative Tribunal Act 2020*.

Clause 70 **Section 123 amended (Reports of proceedings and giving of information in relation to Guardianship stream proceedings)**

Provides that the section does not apply in respect of information that may be disclosed or published under s86(2A) or (2B) of the *Guardianship and Administration Act 1995*.

As set out in the clause notes above, s86(2A) continues current arrangements, permitting disclosures required or permitted by any law. However, where such disclosures include information about the personal affairs of a third party, that third party information can only be disclosed with the consent of the third party. Section 86(2B) inserts a new provision, so that disclosure of a person's protected information is permitted if the protected person gives consent with full understanding. The disclosure of any third party information requires that third party's consent. For example, this addresses concerns that section 86 currently does not provide for persons to consent to their experiences under guardianship or administration being published.

It is noted that 86(2) of that Act also provides for a prohibition on certain disclosures other than as specified.

Clause 71 **Section 136 amended (Appeals to Supreme Court)**

Amends s136(6) so that it no longer applies to appeals under the *Guardianship and Administration Act 1995*.

Instead, new 136(6A) provides for appeal to the Supreme Court in relation to sections 20, 34, 51 and 68 of the *Guardianship and Administration Act 1995* on a question of law or fact, while continuing the right to appeal against any other decision on a question of law, as of right, or with the leave of the Supreme Court on a question of fact.

Clause 72 **Schedule 3 amended (Protective Division)**

Inserts a definition of spouse and provides that a notice of hearing must be given to a person's spouse, if the person has a spouse.

Further provides notice is given to the relevant health and medical research practitioner and the lead health and medical research if the matter relates to the conduct of health and medical research.

Provides for the Tribunal to vary the required notice period for hearings in accordance with any Tribunal rules.

Provides that the notice of hearing period can only be shortened if the Tribunal is satisfied it is proper to do so, and the Tribunal must endeavour to give reasonable notice of reduced notice periods to all parties.

Provides that, if the Tribunal adjourns a hearing of an application in Guardianship stream proceedings, the Tribunal may not extend an interlocutory order made under the emergency provisions of s65 of the *Guardianship and Administration Act 1995*.

Replaces subsection 9(1) with a new section extending the time in which statements of reasons can be provided from the current 21 days to 30 days, and provides that these may be requested by persons entitled to appeal, and any other person the Tribunal is satisfied has a proper interest.

Clause 73 Principal Act

Provides that the Principal Act being amended is the *Disability Services Act 2011*.

Clause 74 Section 42 amended (Approvals to carry out restrictive interventions)

Removes reference to full or limited guardianship orders, as guardianship orders now specify the personal matters to which they relate.

Clause 75 Repeal of Act

Automatically repeals the amending legislation on the first anniversary of the day on which the last un-commenced provision of the Act commence.