

Dear Stakeholder

Guardianship and Administration Amendment (Advance Care Directives) Bill 2020

The purpose of this letter is to invite you to comment on the Guardianship and Administration Amendment (Advance Care Directives) Bill 2020 (the Bill). The Bill amends the *Guardianship and Administration Act 1995* (Tas) (the Act) to make provision for Advance Care Directives (ACDs).

ACDs are instructions about a person's future decisions for medical treatment or health care made by a person when they have decision making ability in anticipation of a time when they do not have the ability to make those decisions due to injury or illness.

The Bill progresses the recommendations of Tasmanian Law Reform Institute (TLRI) which relate to ACDs in the TLRI Report on the "Review of the *Guardianship and Administration Act 1995* (Tas)". The Report endorsed aspects of the *Advance Care Directives Act 2013* of South Australia, and that Act has also informed development of the Bill.

While ACDs were part of significant consultation by the TLRI, release of the draft Bill provides an opportunity to take into account any issues raised by stakeholders about how to give effect to the recommendations arising from the TLRI Report in relation to ACDs.

The Government is continuing to consider the remaining recommendations of the TLRI Report relating to matters other than ACDs to inform any future reform of the *Guardianship and Administration Act 1995*.

In overview, the Bill includes provisions which aim to:

- Provide a legislative basis for the giving, recognition and implementation of advance care directives;
- Enable any person with decision making ability to be able to give an advance care directive;
- Provide new definitions, including the proposed terms of 'health care' and 'life sustaining measures';
- Provide that those responsible for giving consent to medical and dental treatment under Part 6 of the current Act take into account ACD directives;
- Adopt a test for determining whether an adult has the ability to make decisions about their own health care and treatment based on s7(1) of the *Mental Health Act 2013* (Tas);
- Enable a child who is sufficiently mature to make a decision about their health care and treatment and is able to understand, retain, use or weigh information relevant to the decision to give an advance care directive based on the test contained in s7(2) of the *Mental Health Act 2013*(Tas);
- Prevent anyone by dishonesty or undue influence from inducing another person to give an advance care directive;

- Enable the development and approval of an advance care directive form by the President of the Guardianship and Administration Board;
- Set out witnessing requirements and provisions identifying mandatory information to be made available to a person making an advance care directive;
- Provide for arrangements to enable a person who is unable to personally complete an advance care directive form because English is not their first language or where they are unable to communicate in writing, to give an advance care directive verbally or with the assistance of a communication assistant;
- Provide for the registration of advance care directives including arrangements for maintaining the register and accessibility of ACDs in health care settings;
- Recognise advance care directives made under corresponding laws from other jurisdictions;
- Provide that directives comprising a refusal of a particular health care or treatment be binding as if they were made voluntarily by a person with decision making ability at the time the decision is made;
- Provide that all directives, other than binding directives, be known as non-binding directives which must be given effect to as far as is reasonably practicable;
- Not permit any directive that is:
 - Unlawful;
 - Require an unlawful act to be performed;
 - Result in a health practitioner breaching professional standards or codes of conduct; or
 - Provide for the refusal of mandatory treatment such as that provided for under the *Mental Health Act 2013* (Tas);
- Require that a health practitioner or other substitute decision maker only make decisions or provide health care or treatment pursuant to an advance care directive if at the relevant time the person who gave the advance care directive has impaired decision making ability in respect of the decision at hand;
- Require health practitioners and others, including prescribed health care facilities, to make all reasonable efforts to determine whether a person has an advance care directive including the exceptions that may apply in emergency circumstances);
- Provide for circumstances where it is reasonable for health practitioners and other decision makers to be exempt from giving effect to an advance care directive, including circumstances where the treatment is urgent or undertaken as part of an emergency and a valid advance care directive has not been located;
- Enable a health practitioner to refuse to comply with the provision of an advance care directive on conscientious grounds, so long as that objection is not used to impede access to treatments that are legal;
- Exempt health practitioners and other substitute decision makers from civil or criminal liability for an act or omission done in good faith without negligence in accordance with an advance care directive;
- Include dispute resolution provisions, including authority to enable the Public Guardian to mediate disputes; and
- Provide powers to enable the Guardianship and Administration Board to resolve disputes, including by making legally binding orders in relation to advance care directives.

Date comments due

Submissions on the Bill can be made by COB Friday 16 October 2020 in one of the following ways:

1. Online via our [Public Consultation website](#)
2. Via email at HaveYourSay@justice.tas.gov.au using the subject line 'Advance Care Directives'
3. Or via post to:
Department of Justice
Office of the Secretary
GPO Box 825 Hobart TAS 7001

Please note that this consultation process is subject to the Government's 'Publication of Submissions Received by Tasmanian Government Department in Response to Consultation on Major Policy Issues' Policy, which can be accessed through the [Department of Premier and Cabinet's website](#).

Under this policy, submissions will be made publicly available on the Department of Justice website unless, for instance, the submitting party requests that their submission remain confidential, or it contains material that is defamatory or offensive.

If you would like your submission to be treated as confidential, please indicate this in writing at the time of making your submission, including the reasons why. Submissions that have not been marked as confidential and which meet publication guidelines will be published once they have been considered.

Thank you for your consideration of this matter.

Yours sincerely



Brooke Craven
Director

22 September 2020

Attachment:

- *Guardianship and Administration Amendment (Advance Care Directives) Bill 2020*