# Submission: Guardianship and Administration Amendment Bill 2022

October 2022

## 1. Introduction

Each year, Advocacy Tasmania Inc. ('Your Say Tas') supports hundreds of people whose lives have been drastically impacted by the Guardianship and Administration Act of Tasmania ('the Act'). These are people who have committed no crime, yet who have had their agency and freedom taken from them – often arbitrarily and without due process or support.

Too many vulnerable people have been imprisoned against their will, lost their treasured possessions, and often had to fight for months and years to regain some semblance of control over their lives. Many of the harms they experience through orders under the Act become entrenched and lead to further disempowerment and suffering. This cycle needs to end, and this consultation process is a significant part of creating this change.

The disability rights movement has been continuously fighting against inequity, discrimination and segregation faced daily by those with disability, older people and people who experience mental illness. Their collective demands to address the immense injustices they face, which continue to this day in Tasmania and are too often enabled by the Act, was pivotal in establishing the text of the Convention on the Rights of Persons with Disabilities (CRPD) and informing the work of the Tasmanian Law Reform Institute (TLRI) in undertaking their review into the Act and CRPD.

We make this submission seeking justice for these people, and for everyone subject to substitute decision-making in Tasmania. Without hearing and acknowledging the collective harms and suffering caused by laws and policies such as the Act, we risk failing to learn from our mistakes and making them right. This change is too important, and we have to get it right now.

Our submission aims to ensure that:

- people's fundamental agency, rights and humanity are recognised and respected within Tasmania
- people have access to effective support to realise their rights and make decisions
- no one who is able to make decisions about their lives, including through access to effective support, has those decisions arbitrarily overridden by the state
- no one's agency is arbitrarily removed, especially for reasons of expedience
- people can tell their own stories of the injustices they experience and advocate for change
- there are accessible and effective complaint processes and related remedies and consequences for harms caused
- people have the information and independent support and evidence required to challenge decisions about their lives; and
- no one is subject to medical research without their informed and free consent.

## 2. Consultation

The Act establishes a legal framework that impacts thousands of Tasmanians' lives each year, removing or modifying their legal capacity, and enabling others to make decisions for especially vulnerable people. Many of these people experience significant barriers to communicating, navigating Government processes, and having their voices heard – both individually and collectively.

It is imperative that their voices are heard and respected through this consultation process, as the changes in the draft Bill directly impact their lives, fundamental rights, and agency as people. The level of consultation and involvement must be proportional and appropriate for the level of impact on people's lives and the changes envisioned, which are substantial from the Act and draft Bill.

Your Say Tas is concerned that a rapid 3-week consultation period, without any accessible and supportive documentation and submission processes, could undermine what the Bill is, ostensibly, seeking to achieve. It also runs contrary to the core call for justice from the disability rights movement and the development of the CRPD of "Nothing About Us Without Us".

Further and better consultation should be undertaken, which is both technically and informationally accessible for people with disability, older people and others affected by the content of the Bill. This should involve both plain and easy English consultation documents that support people to understand the practical impact of changes and to

effectively have their say in relation to whether changes go far enough and meet their needs.

Recommendations:

A. The Department of Justice:
   a. develop both an Easy English and Plain English consultation document outlining the changes from the Bill and their impact on processes and people
   b. undertake a further consultation process targeted directly at people who have, or may be, subject to orders under the Act; and
   c. ensure independent support is available to help people have their say through the further consultation process.

## 3. Supported Decision Making and Principles

The core principle underpinning the CRPD is found in Article 12, which ensures people with disability have equal recognition before the law. It challenges attitudes and beliefs that people, either due to having a disability or having a shifting medical capacity lose their legal agency and control over their own lives. Instead, it affirms their legal agency and capacity as an inherent, inalienable human right, and ensures Governments take appropriate measures to provide people with any support they require to exercise their legal agency.

Guardianship has a long history of being used to deny legal agency to people, in ways that treat groups of people as lacking legal capacity and being unable to enjoy their rights on an equal basis with others. While progress has been made for some groups historically subject to guardianship, change has been slow to non-existent, realising the very same rights for people with disability, older people and people who experience mental illness.

The TLRI, in making their recommendations, gave supported decision-making (SDM) an appropriately central focus, alongside reflecting the rights and principles of the CRPD through Recommendations 3.1 – 3.3 and 7.1 – 7.10. The law reform work they were undertaking in this area depends on these recommendations, as they are the operational alternative to traditional guardianship and administrative arrangements and the harms they cause.

The Bill currently does not realise this ambition. While there are references to SDM under Clause 7, 8(d), 10(6)(n) and centrally 10(6), there is no legislated SDM scheme or operational means to actually realise these supports for people with disability. For comparison, in Victoria, half the legislative reforms and resulting Act are based on

operationalising and realising supported decision-making and giving them legal status and effect.

So much of the operation of the Act depends upon the operation of informal and formal decision supports, and the State ensuring access to them. Without it, the Bill is really missing its heart, or the mechanism by which change, and rights are actually realisable for people.

Your Say Tas is concerned that without an appropriately legislated SDM scheme in Tasmania, the Bill will not actually shift practice and change the experiences of the people we work with – who face very real suffering through orders under the Act. We are incredibly concerned the Bill may shift language and optics but lead to many of the same experiences of injustice that our clients face day in and day out.

We have included a range of deidentified client experiences in Appendix A – Client Stories. For this Bill to be successful, it needs to prevent these client experiences from being repeated. In every instance, if our clients had had access to SDM and legal recognition of their decisions made with supports, the harms they experienced would have been avoided.

In addition, there are significant differences between the principles and objects in the Bill and those recommended for inclusion by the TLRI, many of which relate directly to legal agency and the rights of people to support. These should be reviewed and strengthened according to the TLRI recommendations and the CRPD.

Recommendations:

B. That the full recommendation 7.5 of the TLRI be implemented, particularly:
   (1) That a legislated supported decision-making scheme be introduced in Tasmania; and
   (2) That, as part of introducing legislative reforms to establish a supported decision-making scheme, the Act be renamed to reflect the new framework."
C. Core principles and requirements from the TLRI Report and CRPD are reviewed and included in full in the Bill.

## 4. Decision Making

We are concerned that Section 10 – Decision-making ability is currently too discretionary in nature, subject to interpretation and unclear as to its prioritisation. As a core and

substantive section of the legislation that the remainder of the Bill depends upon to function, it is essential that this section is clear, tight, and effective.

Currently, the section contains several provisions that result in a person either having, or having impaired, decision-making ability, but it currently lacks a process for determining the priority of clauses, especially where there is potential for a person to both have and not have decision-making ability.

We recommend that a clear prioritisation matrix be included, making clear that sections that lead to a person having decision-making ability take precedence over other sections. For example, where a person can make decisions with practicable and appropriate support 7(a) or where reasonable steps have not been taken to provide a person with access to practicable and appropriate support 7(b), they must be taken to have decision-making ability.

In relation to taking reasonable steps to provide a person with access to support before establishing impaired decision-making, we believe this section needs to be strengthened. The Act should require evidence that all reasonable steps have been exhausted – i.e that supported decision-making processes must have been trialled and proven to be ineffective before even considering that a person has impaired decision-making ability.

We are also concerned that the threshold under clause (2) is too discretionary for people assessing decision-making ability. A threshold for an assessor of 'satisfied that the adult has impaired decision-making ability' is a subjective assessment and is open to interpretation by decision-makers. We recommend a clearer legislative process that initially reflects that all Adults have decision-making ability in respect of a decision until established otherwise through TasCAT based on objective, evidence-based assessments.

Currently, many medical assessments of our clients lack objective, evidence, and criteria-based assessments of capacity under the current Act and are diagnosis and opinion-focused. In considering medical evidence, TasCAT needs to consider evidence-based assessments and testing in relation to the requirements of the Act, rather than the satisfaction or otherwise of the particular medical practitioner.

Recommendations:

D. That the Bill clearly outlines that clauses establishing decision-making ability, including that reasonable steps have been taken (and exhausted) to provide people with access to practicable and appropriate support, take precedence over other clauses.

E. That evidence is required to establish all reasonable steps to provide practicable and appropriate supportive decision-making supports have been exhausted before establishing impaired decision-making ability.
F. That the threshold for establishing impaired decision-making ability be increased from assessor satisfaction to TasCAT determination based on objective, evidence-based assessments of decision-making ability.

## 5. Emergency Orders

Much of the suffering Tasmanians experience under the Act relates to emergency orders. While Your Say Tas acknowledges the threshold has changed to an immediate risk of harm to health, welfare or property, the fundamental issue remains – that these orders can apply for 28 days, be renewed, and apply in a plenary fashion. One of the goals of the Bill is to reduce open-ended and plenary decision-making, which is not reflected in this section.

Many of the Client Stories included at Appendix A – Client Stories, relate to experiences of emergency orders, and will continue under the provisions of the Bill unless they are amended.

We work with people regularly who have life-altering decisions made on an emergency basis under the current Act. These are people who are placed in permanent residential aged care or have access to community and housing supports ended. These decisions can be impossible to undo and should never happen on an emergency/permanent basis, but regularly do.

We do not believe the changes in the Bill will end these practices and the harm they cause as they currently stand, or that it is required for emergency provisions to exist within the legislation at all. There are provisions under the Mental Health Act and Common Law to deal with urgent and emergency circumstances, particularly where there is a serious risk to life and health. The provisions of the Act do not add to these provisions in a meaningful way, outside of lasting for up to two months on renewal and authorising a plenary-style decision-making approach – which is the very cause of their major harm and runs contrary to the drafting approach of removing plenary decision orders.

While we recommend this section is removed, if it is maintained, it should reflect the remainder of the changes to the Bill. In particular, it should be limited to only decisions that manage an immediate emergency involving a serious risk to life, be time limited as with interim orders under the Mental Health Act to 10 days and ensure decisions cannot have direct/indirect long-term impacts.

Recommendations:

G. Clause 65 be removed from the Bill entirely, with recourse to urgent provisions of the Mental Health Act 2013; or if not accepted
H. Clause 65 be amended to:
    a. only apply for a maximum of 10 days
    b. be limited to decisions that directly respond to managing the emergency itself
    c. require an immediate and serious risk to life; and
    d. ensure decisions cannot lead to ongoing effects after the 10-day period.

## 6. Gag Provisions

The Act and the TasCAT Act contain two primary provisions that limit the rights of people with disability and older people to tell their own stories. These provisions have clear parallels with provisions creating offences for victims of sexual violence from telling their own stories of abuse publicly. Section 86 of the Act protects the personal information and confidentiality of information before TasCAT and Section 123 of the TasCAT Act prevents the publication of information or photographs calculated to lead to the identification of people whom orders have been brought in relation to.

The TLRI considered these protections as being privacy-based protections for people with disability, and they serve a clear purpose of preventing people with disability from being publicly and involuntarily named and reported against by media. However, these sections are ambiguous in nature and fail to appropriately reflect the ability of people with impaired (or otherwise) decision-making ability to implement their own will and preferences in relation to their own personal information and experiences.

While we understand there is an incidental purpose to these sections of maintaining confidence and integrity in the system, we do not believe the current approach is reasonably appropriate and adapted to achieving this end. Rather, it entrenches the disadvantage faced by vulnerable people subject to orders and effectively gags them from telling their own stories and advocating for systemic and political change – which is exactly what so many of our clients are seeking to do. Other sections of the TasCAT Act, such as Section 128, provide a more considered and appropriate balance without providing an unclear and ineffective gag for vulnerable people.

Your Say Tas recommends that these sections are both amended to reflect these exceptions, following the shift to will and preference-based decision-making informing the drafting of the Bill.

Recommendations:

I. That Section 86 be amended to include the clause "Subjection (1) does not prevent disclosure of information by the represented person or proposed represented person or at their direction in accordance with their will and preferences.
J. That Tasmanian Civil and Administrative Tribunal Act 2020 section 123(1) be amended to read "Except as provided by clause 10 of Part 4 of Schedule 3 **or as directed and in accordance with their will and preferences, by the person in respect of whom any Guardianship stream proceedings have been brought**, a person must not publish"

## 7. Complaints, Remedies and Offences

Currently, the Act lacks effective provisions to ensure compliance with the Act. These include effective complaint and review processes, remedies for harms caused and offences for gross breaches of trust and confidence by those exercising their responsibilities under the legislation.

An equivalent jurisdiction in Victoria considered and adopted a wide range of compensatory and criminal offences in their review of their legislation, which provides for enforcement and remedies where harms are caused through guardianship and administration.

Your Say Tas strongly recommends that this approach is adopted in Tasmania, to enforce the legislation. Our clients often speak of the great harms they have experienced. They talk of emotional suffering, of lost and treasured possessions, of feeling imprisoned and not communicated with. So often, people feel locked away, out of sight and out of mind. With no remedy or recourse to start making these wrongs right. This needs to change, and the starting point is having accessible pathways to seek justice.

We are also concerned that sections providing dispute resolution powers to the Public Guardian create an inherent conflict of interest. In practice, the Public Guardian is often directly involved in decisions made by the Public Trustee or as a guardian itself. We acknowledge that when the TLRI made its recommendations, there was no Disability Commissioner in Tasmania, who could provide independent oversight and resolution without an inherent conflict of interest in decision-making. However, the external situation has moved on since this point and we recommend that an external approach is adopted in drafting and becomes one of the initial functions of the Disability Commissioner.

Our clients also face significant barriers to having complaints addressed in a timely, ac cessible, and effective manner, through both internal and external complaint mechanisms. Complaints often extend on into years without resolution. There is an opportunity through the Bill to establish minimum timeframes, expectations, and escalation pathways for complaints outside of requiring a published complaint process. Such sections would provide security and confidence for vulnerable people that complaints would be handled appropriately, and pathways to escalate complaints where they are not.

In particular, we believe it appropriate for both the Disability Commissioner and Equal Opportunity Tasmania to have escalation pathways for complaints. Many complaints directly relate to experiences of discrimination and/or poor quality service provision, with a clear overlap with responsibilities and areas of operation.

Recommendations:

K. That a new Section is introduced based on Section 181 of the Guardianship and Administration Act 2019 (Victoria), that:

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|---|
| (1) The Supreme Court, Disability Commissioner, or TASCAT may order a guardian or administrator to compensate the represented person for whom the guardian or administrator is appointed for a loss caused by the guardian or administrator contravening this Act when acting as guardian or administrator.<br><br>(2) Subsection (1) applies even if—<br><br>(a) the guardian or administrator is convicted of an offence in relation to the guardian's or administrator's contravention; or<br><br>(b) the represented person or missing person has died, in which case compensation is payable to the estate of the represented person or missing person; or<br><br>(c) the order appointing the guardian or administrator is no longer in force or is revoked or set aside. |

L. Criminal Provisions are established based on sections 188 - 189 and 193 of the Guardianship and Administration Act 2019 (Victoria), to criminalise the dishonest use of Guardianship and Administration Orders causing loss.

M. That Section 70 – Resolution of disputes by Public Guardian be amended to:

   a. Enshrine the powers in the Disability Commissioner instead of the Public Guardian

b. Ensure the provisions apply to the Public Trustee and Public Guardian

N. To expand Section - 71 Publication of complaints process to include:
   a. Statutory timeframes for the resolution of complaints
   b. Statutory requirements for minimum complaint resolution standards (eg: ISO 10002:2004)
   c. Provide for escalation of complaints to both:
      i. The Disability Commissioner; and
      ii. Equal Opportunity Tasmania
   d. Provide relevant enforcement powers to implement the outcomes from the escalation of complaints.

## 8. Medical Research

Your Say Tas is incredibly concerned about the introduction of Part 6A – Medical Research in the Bill. This Part establishes a framework for the authorisation of medical research on people with impaired decision-making ability. While we understand the intention of this part is to provide a framework and safeguards for medical research that is occurring in its absence, we view this section as fundamentally misguided and likely to substantially detract from improvements in the legislation.

Under the CRPD that this Bill is seeking to implement, Article 15 provides protection for people with disability from being subject to medical and scientific experimentation without their free consent. Subjecting people without their free and informed consent is viewed by the Convention as amounting to torture or cruel, inhuman or degrading treatment or punishment. This language is not semantics. It is the lived experience of our clients and others in regard to having involuntary medical research forced upon them without their consent.

While we acknowledge there is a wide arrange of research undertaken and related ethical considerations, we cannot downplay the very real human suffering caused by involuntary experimentation. Potentially implementing a system that amounts to torture or cruel, inhuman or degrading treatment is the opposite of achieving progress on this issue. No torture or cruel, inhuman or degrading treatment or punishment can be allowed to continue within Tasmania

We recommend that any provisions that authorise medical research without free and informed consent, particularly 48G(b)(ii-iii), 48I and Div 3, are removed in their entirety. Protections regarding human research ethics committees for research on people with impaired decision-making ability should remain, but these provisions must only increase safeguards and protections, rather than authorise involuntary medical research in a range of prescribed circumstances.

Instead, we believe the Bill should focus on providing people who may have impaired decision-making with independent support to enable them to make decisions with free and informed consent about medical research.

Recommendations**:**

O. Medical Research Provisions that authorise medical research without free and informed consent, particularly 48G(b)(ii-iii), 48I and Div 3, are removed in their entirety.

P. Refocus the Bill on providing people with independent support to enable them to make decisions with free and informed consent about medical research.

## 9. Support and Information

People experience a wide range of structural and power-based imbalances through Tasmania's guardianship and administration system. Many of these imbalances relate to accessing effective and independent support and information through the process. The system is interacting with a cohort of people who often lack financial resources, educational opportunities and who experience considerable vulnerability and disadvantage.

It is essential that appropriate steps are taken to remedy these disadvantages and ensure people experience justice through the system. This is especially important, as this is a system that can remove control over fundamental agency and liberty. People with disability and older people need to enjoy their fundamental right to liberty and security of their person on an equal basis with others, and no one can be deprived of their liberty unlawfully or arbitrarily.

There are a range of procedural and independent supports that need to be established to reduce the arbitrary nature of orders that are made and to ensure people can effectively have their say and exercise their rights.

Currently, statements of reasons are only provided on request within a short timeframe and transcripts/recordings are only provided at a cost and where possible. Without this information, people are unable to effectively exercise appeal and review rights within the legislation. Given the serious impact of the orders being made, both statements and transcripts/recordings need to be provided as an automatic right to people who are placed on orders.

Our clients also only receive limited, or no, information about the likely impacts on their lives should an order be made. If you do not understand what an order might mean in your life, it is difficult to impossible for clients to exercise their free will and preferences in relation to the process. The Bill should ensure that accessible and detailed information about the likely impacts of orders is made available throughout the process.

Currently, the vast majority of people appearing before TasCAT in relation to the Act are entirely unrepresented. According to the last annual report, 96.4% of people were self-represented through the Guardianship stream. Given that orders under the Act remove legal agency, liberty and can and do authorise detention, no one should be appearing self-represented against the State.

Instead, everyone appearing before the Guardianship stream should be entitled to support as a right, with the ability to opt-out of those supports. Supports need to be fully funded and independent of the service system, whether through Legal Aid, Advocacy Services or otherwise.

In addition, defending applications for orders depends on independent medical evidence. This independent medical evidence can be next to impossible for people to access within Tasmania due to both cost and the unavailability of independent practitioners who can provide an alternate assessment or review of medical evidence. To ensure people experience justice within the system, access to fully funded and independent medical evidence, and testing of Government medical evidence, is essential and needs to be provided.

Recommendations:

Q. When an order is made, a statement of reasons and full transcript/recording of the Tribunal hearings must be provided to all individuals subject to a hearing at no cost to the individual.
R. All individuals appearing before the Tribunal must receive accessible and detailed information (not just through the provision of information sheets) about the likely impacts on their lives should an order be made.
S. All individuals appearing before the Tribunal must have access to both free independent medical reviews and Tribunal representation.

**10. Summary of Key Issues**

A. A consultation period of 3 weeks is too short and lacks accessible and meaningful ways for those most directly impacted by the Bill to contribute. There should be a further consultation period directly for people who are (or may be) subject to orders, with accessible and easy English consultation supports and documentation.
B. Supported decision-making is not currently at the heart of the Bill. The Bill must embed meaningful and operationalised supported decision making in Tasmania to create meaningful change.
C. Supported decision-making processes must have been trailed and proven to be ineffective prior to guardianship and administration being considered.
D. Core principles and requirements from the Tasmanian Law Reform Institute (TLRI) Report and Convention on the Rights of Persons with Disabilities (CRPD) are not included and realised through the Bill. They need to be especially that:
    a. all adults have an equal right to make decisions that affect their lives and to have those decisions respected.
    b. persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
    c. people who require support in decision-making must be provided with access to the support necessary for them to make, communicate and participate in decisions that affect their lives.
    d. there must be respect for the inherent dignity of persons with disability and their individual autonomy including the freedom to make one's own choices, and their right to independence; and
    e. the views, will, preferences and rights of persons who may require decision-making support must direct decisions that affect their lives.
E. The Decision-Making Process is currently unclear, discretionary and needs clear prioritisation. It places too much power in the hands of doctors making assessments and makes minimum standards into guides for decision making.
F. Emergency orders need to be either removed in their entirety or limited to only making decisions to manage the immediate emergency, for a short timeframe, without ongoing impacts, and requiring an immediate risk to life.
G. Gag provisions need to exclude any disclosure/publication done by, or at the direction of, the person subject to proceedings.
H. Compensation provisions need to be included to remedy wrongs caused, such as in Victoria.
I. Independent oversight is required by external bodies, with enforcement powers, rather than mediation through the Public Guardian (who has an inherent conflict of interest).
J. Complaint processes need to establish statutory timeframes and minimum expectations.

K. Criminal provisions are required for abuse of Guardianship/Administration orders, including by public bodies.
L. Removal of medical research sections, ensuring medical research is only undertaken on those who give their free and informed consent.
M. When an order is made, a statement of reasons and full transcript of their Tribunal hearings must be provided to all individuals subject to an order. This must be at no cost to the individual. Failure to provide this information severely limits an individual's ability to appeal a Tribunal decision. It will also provide greater transparency and accountability.
N. All individuals appearing before the Tribunal must receive accessible and detailed information (not just through the provision of information sheets) about the likely impacts on their lives should an order be made.
O. All individuals appearing before the Tribunal must be able to access free independent medical reviews and Tribunal representation.

**11. Recommendations:**

A. The Department of Justice:
   a. develop both an Easy English and Plain English consultation document outlining the changes from the Bill and their impact on processes and people
   b. undertake a further consultation process targeted directly at people who have, or may be, subject to orders under the Act; and
   c. ensure independent support is available to help people have their say through the further consultation process.
B. That the full recommendation 7.5 of the TLRI be implemented, particularly:
   (1) That a legislated supported decision-making scheme be introduced in Tasmania; and
   (2) That, as part of introducing legislative reforms to establish a supported decision-making scheme, the Act be renamed to reflect the new framework."
C. Core principles and requirements from the TLRI Report and CRPD are reviewed included and included in full in the Bill.
D. That the Bill clearly outlines that clauses establishing decision-making ability, including that reasonable steps have been taken (and exhausted) to provide people with access to practicable and appropriate support, take precedence over other clauses.
E. That evidence is required to establish all reasonable steps to provide practicable and appropriate supportive decision-making supports have been exhausted before establishing impaired decision-making ability.

F. That the threshold for establishing impaired decision-making ability be increased from assessor satisfaction to TasCAT determination based on objective, evidence-based assessments of decision-making ability.
G. Clause 65 be removed from the Bill entirely, with recourse to urgent provisions of the Mental Health Act 2013; or if not accepted
H. Clause 65 be amended to:
    a. only apply for a maximum of 10 days
    b. be limited to decisions that directly respond to managing the emergency itself
    c. require an immediate and serious risk to life; and
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I. That Section 86 be amended to include the clause "Subjection (1) does not prevent disclosure of information by the represented person or proposed represented person or at their direction in accordance with their will and preferences.
J. That Tasmanian Civil and Administrative Tribunal Act 2020 section 123(1) be amended to read "Except as provided by clause 10 of Part 4 of Schedule 3 or as directed and in accordance with their will and preferences, by the person in respect of whom any Guardianship stream proceedings have been brought, a person must not publish"
K. That a new Section is introduced based on Section 181 of the Guardianship and Administration Act 2019 (Victoria), that:

(1) The Supreme Court, Disability Commissioner, or TASCAT may order a guardian or administrator to compensate the represented person for whom the guardian or administrator is appointed for a loss caused by the guardian or administrator contravening this Act when acting as guardian or administrator.

(2) Subsection (1) applies even if—

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O. Medical Research Provisions that authorise medical research without free and informed consent, particularly 48G(b)(ii-iii), 48I and Div 3, are removed in their entirety.

P. Refocus the Bill on providing people with independent support to enable them to make decisions with free and informed consent about medical research.

Q. When an order is made, a statement of reasons and full transcript/recording of the Tribunal hearings must be provided to all individuals subject to a hearing at no cost to the individual.

R. All individuals appearing before the Tribunal must receive accessible and detailed information (not just through the provision of information sheets) about the likely impacts on their lives should an order be made.

S. All individuals appearing before the Tribunal must have access to both free independent medical reviews and Tribunal representation.

## Appendix A – Client Stories

A. The client was admitted to hospital and during this time, a hospital social worker made an application for an Administration Order, which was granted by the Board. Since the date of the order, the client received no contact from the Public Trustee and the client's friend had attempted to contact a previous administrator and communications were refused. The client's belongings were sold without consultation or notification and the current administrator could not provide the client with any information about the status of his belongings. The client has had no access to any of his own money since the order was put in place and the Public Trustee made payments towards a debt which they had not verified and was in fact incorrect and later waived and payments refunded.

B. The client had a Guardianship and Administration order in place. The client's Public Trustee administrator had paid debts for the client's storage facility to release his belongings but advised that they would sell his belongings that they did not deem were necessary or 'of value'. The advocate and the client's NDIS support coordinator had to continually advocate for the client to have his belongings as they were all of value to him. The Public Trustee banned the client from calling them, and then stopped taking calls from the advocate, the client's accommodation manager or their support coordinator. The client's administrator was also changed three times due to staff resignations. The client was eventually allowed to have all of his belongings delivered to his accommodation.

C. The hospital social worker made an application for a guardianship order to the Tribunal. There was no application for an administrator to be appointed nor was there any assessment that the client could not manage their own finances. The Tribunal decided to appoint the Public Trustee as administrator for an eight-month period in 2020. The Public Trustee made no attempt to speak with the client. They terminated the client's lease on their Housing Tasmania property based on discussions with the client's guardian and support worker. The client was not aware that they would be moving permanently to aged care. The Public Trustee failed to contact the client. They did not consult with the client in terminating their lease. The client did not know that the Public Trustee was involved until their friend attended their home to gather belongings for him only to find that the Public Trustee had changed the locks. The Public Trustee sold and disposed of all the client's belongings on the basis that they had been told the client did not want anything from their property, knowing the client was not aware of a permanent move, and failing to consult with the client about which belongings they might like to keep. They rehomed his dog. The Public Trustee cancelled the client's funeral policy that they had been making payments into for approximately 10 years, due to the Public Trustee's non-payment of the fees. This left

the client distressed that they have no funeral plan in place. The client had exhausted the Public Trustee complaints process with the only recourse to take legal action.

D. The Public Trustee was appointed as an emergency administrator for the client and subsequently was proposed to be a formal administrator until an existing Enduring Power of Attorney instrument was discovered. The powers provided by this instrument are not substantially different from that of an administrator. The client received no communication from the Public Trustee during the emergency order and only received contact from their client account manager once an advocate was engaged to provide support. The Public Trustee communicated with the client's son without the client's consent to do so. As the client had a lengthy stay in hospital with no access to their bank statements through the online portal and limited opportunities to visit a bank branch, they were unaware of whether bills were being paid and this caused them great distress. The client's account manager also applied for an extension on the client's lease without their consent.

E. The client had the Public Guardian and Public Trustee appointed as substitute decision makers some time ago. The client's experiences with the Public Trustee have been in their words 'horrible' and 'disrespectful'. The Public Trustee reduced the client's weekly allowance without discussion or notification. The client's weekly allowance did not increase until the client and his advocate appeared at a GAB hearing. The client has also had significant difficulty in contacting the Public Trustee, at some points having to have their advocate make contact on their behalf as the Public Trustee had placed a ban on their calls. The client also has ongoing investigations into the Public Trustee's conduct regarding the sale of their house and items missing from the storage facility unit managed by the Public Trustee.

F. The client had excellent supports from family. He was unaware that he was being assessed when he was visiting his wife in her aged care home. He was placed on 2 consecutive emergency orders and physically and chemically restrained. His wife passed away, he was grieving and was offered no support. He was not provided with sufficient notice to allow him to obtain representation. After being detailed for 2 months he obtained representation to attend a subsequent hearing. The client wanted his daughter's support to assist him to move to a different aged care facility and this was agreed. He is now living in a new home and his medication has been reassessed with all psychotropic chemical restraint medications now ceased. He endures ongoing trauma as a result of his experience in the guardianship system.

There are many other examples of the trauma experienced by our clients on the Advocacy Tasmania Facebook page and we urge readers of this submission to review those stories.