

7 December 2022

Advance Care Directives

Important Information for the Legal Profession – Practice Management

Recent commencement of the *Guardianship and Administration Amendment (Advance Care Directives) Act 2021* and changes to *Guardianship and Administration Regulations 2017*

The *Guardianship and Administration Amendment (Advance Care Directives) Act 2021* and related changes to the *Guardianship and Administration Regulations 2017* came into effect on 21 November 2022.

A declaration of commencement in 2022 was unexpected and the Society will welcome public and legal profession guidance notes from the Department of Justice or TASCAT.

In the meantime, the Elder & Succession Law Committee is able to provide the below information. A seminar will also be delivered in the coming months – further details will be provided in due course via the Society’s weekly CPD newsletter.

1. Below is a suite of new forms that practitioners will need to familiarise themselves with. These documents are not yet easily accessible via a central location on the TASCAT website; copies are available on the Law Society website [here](#).
 - (a) Advance Care Directive Form
 - (b) Instrument Appointing an Enduring Guardian Form
 - (c) Notice of Revocation of a Registered Advance Care Directive Form
 - (d) Application regarding an Advance Care Directive Form
 - (e) TASCAT Application Form for Advance Care Directives
 - (f) Advance Care Directive Fact Sheet from TASCAT

2. At a minimum, we recommend that all estate planning practitioners should as a matter of priority:
 - (a) review the *Guardianship and Administration Amendment (Advance Care Directives) Act 2021* and the *Guardianship and Administration Regulations 2017*;

- (b) update the Instrument Appointing an Enduring Guardian Forms they use (including where they have a bespoke precedent) to include the new sections;
 - (c) use the new Advance Care Directive Form;
 - (d) take instructions from their clients about Advance Care Directives generally, as well as registration of Advance Care Directives;
 - (e) when sending out an Instrument Appointing an Enduring Guardian to an Enduring Guardian to sign, ensure copies of any Advance Care Directive are also sent/provided. This is because the new Instrument Appointing an Enduring Guardian Form includes a statement by the appointed Enduring Guardian that they “*declare that I have obtained and understood any Advance Care Directive given by my appointor*”; and
 - (f) develop a process for registration.
3. Part 3A of the *Guardianship and Administration Regulations 2017* provides that an application to register an Advance Care Directive can only be made by:
- (g) the person who gave the advance care directive; or
 - (h) the legal representative of the person who gave the advance care directive; or
 - (i) an adult on behalf of the person who gave the advance care directive only if the registration of the advance care directive by that adult is requested by the person; or
 - (j) a guardian for the person who gave the advance care directive, if that guardian has authority to make health care decisions in respect of that person; or
 - (k) the person responsible under the Act for the person who gave the advance care directive; or
 - (l) any other person who the Tribunal is satisfied has a proper interest in the matter.
4. TASCAT has advised the Society that:
- (a) there is **currently no registration fee** for Advance Care Directives;
 - (b) to register an Advance Care Directive, it must **be sent to TASCAT (not to Service Tasmania) with the ACD Registration Application Form ('ARA Form')**;
 - (c) TASCAT will register the Advance Care Directive, and will then **return the original document**:
 - (i) to the law firm; or

(ii) to the maker of the Advance Care Directive.

This is important as TASCAT currently keep the originals of all Instruments Appointing Enduring Guardians; and

- (d) there is a section in the updated Instrument Appointing an Enduring Guardian Form for the Advance Care Directive Registration Number, obviously this will need to be left blank (or a strikethrough applied) if completing the Instrument Appointing an Enduring Guardian and Advance Care Directive at the same time. TASCAT has advised the Society that it will not write the Registration Number onto the Instrument Appointing an Enduring Guardian.
- (e) TASCAT has advised that common law ACDs will remain valid and will be accepted for registration so long as the documentation satisfies the Act's formal ACD requirements (e.g. s35h, s35i, and s35j). If TASCAT refuses to register an ACD it does not necessarily mean it is invalid.

5. A copy of the *Guardianship and Administration Amendment (Advance Care Directives) Act 2021* can be found at:
<https://www.legislation.tas.gov.au/view/pdf/asmade/act-2021-015>.
6. A copy of the amended *Guardianship and Administration Regulations 2017* (see Part 3A) can be found at:
<https://www.legislation.tas.gov.au/view/html/inforce/current/sr-2017-066#GS2@EN>.
7. A copy of the *Guardianship and Administration Act 1995* can be found at:
<https://www.legislation.tas.gov.au/view/html/inforce/current/act-1995-044>.

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