



Department of Justice
Office of the Secretary
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via email: haveyoursay@justice.tas.gov.au

Re: Guardianship and Administration Amendment Bill 2022

The Tasmanian Aboriginal Legal Service (“TALS”) welcomes the opportunity to provide feedback in relation to the *Guardianship and Administration Amendment Bill 2022* (“the Bill”).

TALS is a community legal centre that specialises in criminal, civil and family law matters for Aboriginal people in Tasmania. TALS goal is to halve Aboriginal Tasmanians’ rate of negative contact with the justice system in a decade.

TALS is committed to closing the gap and improving life outcomes of Aboriginal people. TALS is an Aboriginal Community Controlled Organisation incorporated under the Office of the Registrar of Aboriginal Corporations.

Overview:

TALS is supportive of the proposed Bill generally, given that it restricts the powers that Guardians and Administrators have whilst increasing and protecting the rights of people with an impairment.

We see there to be a need to protect people’s right to their cultural identity and this should be a legislated consideration for the Tribunal.

We have outlined some specific provisions below.

Specific Provisions:

There should be an overall consideration which forms part of the objects and principles, similar to the provisions of Section 60B of the *Family Law Act 1975* (Cth), for example:

If the represented person identifies as Aboriginal and/or Torres Strait Islander, the Tribunal should consider:

1. The persons right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture);
2. The likely impact any proposed guardianship or administration order under this Act will have on that right.

Section 5. Section 3 amended (Interpretation)

We are supportive of the definition of “appointer” being extended to close relatives; however, we see there to be an opportunity to extend the definition to take into account Aboriginal culture and familial relationships to ensure it is not restrictive.

We are also supportive of the new definition of disability, which is broader and more inclusive. We are strongly supportive of the position that people are people before the disability and therefore person with disability/people with disability should be used.

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

It is our position that there should be specific reference to Aboriginal culture. For some people there should be significant weight placed on the way connecting/or not being connected to culture may affect their well-being, and the amendment should account for this specifically in respect of Aboriginal culture.

Section 6. Medical research

We would require more information as to why this has been included, to be able to support it. It is TALS understanding that this is not supported by a substantial number of practitioners in the field of health care, and it appears to take away rights of those person represented.

Section 8. Principles to be observed

It is TALS position, we need to include cultural wellbeing and safety. It would be included with either (b) with personal and social well-being (and cultural), or (c) views, wishes and preferences – (including cultural practices/traditions).

It is our position that any reference to culture and traditions should also include the culture, values and beliefs held by Aboriginal people.

Section 9. Decision-making process

Consideration as to culture could also be considered in this section, for example “the substitute decision maker should give all practicable and appropriate effect to the views, wishes, preferences and culture/cultural considerations of the person...”

Section 21(2). Persons eligible as guardians

The Tribunal should also account for any cultural practices and interests of the represented person particularly Aboriginal culture.

We also note there may be a grammatical error in Section 48I Consent of person responsible, where the word capacity is absent from section (1)(b).

It is fundamental that people’s rights are protected, including the right to enjoy their culture. This can engage physical health, mental health and a sense of belonging. We must ensure that this right is protected in the Bill.

We are also of the view that all Tribunal members should undertake cultural training, provided by Aboriginal community organisation to ensure there is an understanding of the impact of intergenerational trauma and the intersectionality for Aboriginal people with disabilities.

Any Tribunal processes should be flexible and culturally safe and adapt to the needs of the parties involved (communication and cultural barriers), to ensure cultural inclusiveness in the process.

Thank you for the opportunity to comment on this Bill. Please do not hesitate to be in contact if any points require clarification or elaboration.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'HPP', written in a cursive style.

Hannah Phillips
Acting State Manager
Tasmanian Aboriginal Legal Service
