

AMIDA

Guardianship Comments:

8th April, 2011

Current Law:

The current law was not designed to respond to the needs of those people whose capacity fluctuates over time, or who can make their own decisions with some assistance. (page 6 of consultation paper)

Reasons to modernise the law:

Maximise participation in decision-making.

A more realistic view of capacity

Changing attitudes to informal arrangements

The G&A act strongly encouraged the use of informal decision-making arrangements. In practice, a guardian or administrator is usually appointed only when there is evidence of a demonstrated need for a formal substitute decision maker. It has been widely accepted that many day-to-day decisions are best left to informal arrangements – often involving family members and carers, because this gives the person concerned greater freedom to participate in those decisions.(P.7.)

Important changes proposed are:

New supported decision-making mechanisms

A new decision making continuum

Modern principles to guide decision makers

Improved safeguards and accountability

An expanded role for the Public Advocate

A more accessible and effective tribunal

Lowering the age limit for some appointments

Expanded use of automatic appointments

Interaction with other laws

More user-friendly laws

(Explanations page 9 – 13)

p.13 requesting which options are supported and which are not.

Questions:

Question 1, Any general comments about matters identified as influencing the need for change? Any other important matters that should affect the content of future guardianship laws?

Question 2, Do you agree with the commission's draft statement of purpose for new guardianship laws? (p. 15) yes.

Question 3 Do you agree with the Commission's draft general principles for new guardianship laws?

Yes, except in dot point 5, why are only some people 'found to be unable to make a decision'. There is great inequity in those who are 'found' and those whose capacity has never been questioned, and therefore no administrator is appointed, and no supervision is required. There are many people for whom an administrator is not appointed, but whose capacity to make decisions could just as well be questioned. Seems like the current laws, and those proposed are only partially taking care of the interests of those who are seen to be vulnerable.

Inability to sign should not be a reason for appointment of administrator or guardian.

Question 4, are there principles that should be added or removed from these general principles (p. 16)

Supported Decision Making Mechanisms (p. 20) (Aimed to better recognise the range of different decision-making abilities and provide more decision-making options)

Personal appointments are made by the person with impaired decision-making capacity. Supporters, and co-decision makers.

Question 14, Do you agree with the introduction of new supported decision-making arrangements? YES. At the moment guardians and administrators are supposed to make decisions with the person they act for as much as possible and this should remain so. As a step before the appointment of a guardian however the proposal for appointment or supporters and co-decision makers is one we agree would give people more power over decisions in their own lives. We agree the roll of supporters would be to provide information and options to the person to support them to make their own decision. A framework of rights and responsibilities and possibly training would be necessary to protect the person and the process.

The co-decision making proposal is one that could provide an alternative to substitute decision making and power of attorney but we have questions about how this would be monitored to protect the person from abuse. The proposed extended powers of OPA to train and monitor are supported. However, AMIDA has experience that even OPA appointed guardians are too quick to make best interest decisions at times and these people are trained professionals. Co-decision making power in the hands of even well meaning family and friends may be a mistake. And there is always the possibility that relatives could abuse the process for their own gain.

Who should take on the roles of supporters or co-decision makers? (p. 21)

Question 17, OPA currently employs guardians with substitute decision making power. It also employs advocates and provides advocacy that involves the person with a disability in the advocacy process as much as possible but also where the person is judged not to have capacity to direct this, it advocates in the persons best interests. We see no conflict in them employing supporters in the same way. If resourcing is the issue then OPA could recruit train and monitor volunteers to do this, however we believe this is less desirable. this is a huge conflict of interest.

Financial Decisions:

Question 21, should Public Advocate be involved in training, monitoring. Training – yes, monitoring? Instead of State Trustees and VCAT?? Monitoring by all these organisations is not necessary.

Question 22, What safeguards are necessary to protect supported people from abuse? Monitoring, yes, but also make sure those who are not presently monitored are also protected in the same way.

