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**Response to the Draft proposals for review of the
Guardianship Act 1987**

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About MDAA

The Multicultural Disability Advocacy Association of NSW (MDAA) is the peak body for all people in NSW with disability and their families and carers, with a focus on those from a culturally and linguistically diverse (CALD)/non-English speaking (NES) background with disability. MDAA is funded by the NSW and Commonwealth Governments to provide individual and systemic advocacy, advocacy development, industry development and training. MDAA also receives funding to run capacity building and community development projects.

MDAA has more than twenty years of experience working with people with disability, with a focus on people from CALD / NESB with disability, their families and carers. MDAA supports the active participation of its members and consumers in all aspects of its work. The voices of its members and consumers informs MDAA's systemic advocacy work thereby contributing to positive change for people with disability from CALD / NESB in policies, procedures, practices and service delivery in government and non-government agencies.

MDAA's vision is a society where everyone, regardless of background or disability feels welcome, included and supported. MDAA's vision is based on the social model of disability that calls for change in the physical, social and communication environment to enhance the participation of people with disability in community.

MDAA welcomes the opportunity to provide input into the Draft proposals for review of the Guardianship Act 1987. This submission is based on consultation with MDAA's consumers and employees and is informed by the experiences of people with disability, their families and carers, and their advocates.

Introduction

The Multicultural Disability Advocacy Association of NSW (MDAA) welcomes the opportunity to continue providing feedback on the review of the Guardianship Act 1987 (NSW) (Guardianship Act). At a time where disability services are increasingly reflective of the culture of rights set out by the United Nations Convention on the Rights of Persons with Disability and the empowerment of individuals, MDAA is pleased to see the shift in the language and practise reflected in the draft proposal of the Guardianship Act.

We continue to push however, for the legislation to be culturally responsive and with information which is easily accessible regardless of language or disability.

Furthermore, we seek to emphasise the fact that any changes should work together with, and not eliminate, any existing community and mainstream supports currently available.

Comments

CALD Specific Considerations

MDAA would like to acknowledge and support the expressed need to consider a persons' cultural identity as is highlighted in the draft proposal most noticeably, in sections 1.9 & 1.14. However, the well-known barriers that have in the past affected those with English as a second language require a more specific set of considerations. We suggest:

- Much like the specific nature of section 1.10 addressing the needs of Aboriginal and Torres Strait Islander (ATSI) people, the legislation should include a similar focus dedicated to the considerations required for culturally and linguistically diverse (CALD) people.

By including a separate set of considerations specific to people from CALD backgrounds, it will not only ensure we have clarity on the specifications that are to be kept in mind, it will also allow these provisions to be easily accessible by CALD individuals and services when referring to the legislation.

Advocacy and investigative functions

MDAA supports the proposed functions of a Public Advocate as outlined in 9.1. However, we are concerned that the far reaching function of the public advocate puts at risk the quality of advocacy currently carried out by community advocacy groups.

Above all, we wish to stress the importance of specifying the need to make any advocacy services independent and culturally sensitive. As has been the recent debate over advocacy in the disability sector, particularly with the developments succeeding the National Disability Insurance Scheme (NDIS), we cannot omit the necessity of any public representative providing advocacy services to have full statutory and administrative independence.

As is the case in Guardianship and Administration Act 1993 SA sections 20 and 24 we suggest:

- Outlining strict reporting requirements.
- An assurance that with administrative independence, the public representative will be employing its own staff.

Following this, MDAA welcomes the change that will allow a public authority to promptly respond and investigate a complaint or allegation of abuse without needing to apply for a guardianship order. Furthermore, the general functions focused on decision-making issues are also a welcome proposal, however, we believe a number of functions will still be best carried out by community advocacy bodies or other staff.

We suggest:

- Section 9.1 (3)(i) should not fall under the scope of a Public Advocate and should instead be performed by community advocates.
- Section 9.1 (3)(g) may pose a conflict of interest for a Public Advocate investigating the need for support or representation order. This should instead be performed by Tribunal staff.

On the topic of reporting, as mentioned above, we believe that this should be further emphasised in the systemic duties for a public representative. During our consultations with consumers and staff, we heard repeatedly the need for stronger reporting guidelines. This was especially so in group/ nursing homes. A lack of

reporting in these cases resulted in an inability to follow up with any complaints made by individuals under Guardianship orders.

Restrictive practices

As highlighted in the DFN response to Question Paper 5, restrictive practices should only be permitted as a last resort. Further to this, the sector should be working towards eliminating the use of restrictive practices, as they may constitute cruel or degrading treatment contrary to Article 15 of the UNCRPD.

In line with our previous comments, we believe mandatory reporting should be specified in any Guardianship legislation. This can then be used to follow up any complaints, as well as support any need for necessary investigations into systemic issues as it provides a platform to collate and analyse data identifying any concerning trends. Specifying this clearly in the legislation will make it easily accessible to any groups needing to refer to the legislation.

Recommendations

- 1) Much like the specific nature of section 1.10 addressing the needs of Aboriginal and Torres Strait Islander (ATSI) people, the legislation should include a similar focus dedicated to the considerations required for culturally and linguistically diverse (CALD) people.
- 2) Make specific mention to the critical need of any public representative providing advocacy services to have full statutory and administrative independence.
- 3) Regarding the proposed Advocacy and Investigative functions, as is the case in Guardianship and Administration Act 1993 SA sections 20 and 24 we recommend both outlining strict reporting requirements and an assurance that with administrative independence, the public representative will be employing its own staff.

- 4) Section 9.1 (3)(i) should be omitted as this function should not fall under the scope of a Public Advocate and should instead be performed by community advocates.
- 5) Section 9.1 (3)(g) may pose a conflict of interest for a Public Advocate investigating the need for support or representation order. This should instead be performed by Tribunal staff.
- 6) The need for rigorous reporting should be outlined in any revised legislation, not excluding in any provisions on restrictive practises. Consultations conducted with MDAA staff and consumers identified a need for a greater focus on reporting guidelines. Currently, we have received reports where individuals under guardianship orders wishing to make a complaint against experienced abuse cannot effectively follow through because incidents have not been recorded. If no strict and specific processes are in place, it becomes increasingly difficult for individuals to pursue incidences of abuse with language and cultural differences adding an additional barrier to this.
- 7) We recommend greater clarity on investigative functions of external organisations such as the NSW and Commonwealth Ombudsman. Our CALD consumers have reported feeling like they are constantly passed on from one office to the other and are not clear on the roles of other organisations.
- 8) We strongly suggest a comprehensive engagement strategy to ensure CALD/NESB individuals and communities are aware of any changes and fully understand any new components and language in the revised legislation.