



Dr Rosalie Woodruff MP

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Member for Franklin

Thursday, 27 October 2022

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To whom it may concern,

Thank you for the opportunity to make a submission to the draft *Guardianship and Administration Amendment Bill 2022*.

Gag provisions

It is been put to us that section 86 of the *Guardianship and Administration Act 1995* and section 123 of the *Tasmanian Civil and Administrative Tribunal Act 2020* have the effect of gagging people subject to guardianships from telling their own stories.

This seems to be reminiscent of the issues with section 194K of the *Evidence Act 2001* prior to the introduction of the *Evidence Amendment Bill 2020*. We suggest a similar solution to resolve this concern should be pursued here.

Recommendations:

1. Amendments be drafted in respect of section 86 of the *Guardianship and Administration Act 1995* and section 123 of the *Tasmanian Civil and Administrative Tribunal Act 2020*, to ensure that people subject to guardianship orders are capable of telling their own stories.

Supported decision-making

The introduction of rights-based principles, the shift from a 'best interests' approach toward a 'will and preference' model for decision-making, and requirements to postpone decisions where a person is likely to regain decision-making ability are welcome improvements presented in this draft bill.

However, the absence of a statutory supported decision-making scheme, as recommended by the Tasmanian Law Reform Institute (TLRI) and key stakeholders, is disappointing.

We recognise this bill is presented as one step in a 'staged approach' to the recommendations of the TLRI – and is, in and of itself, quite a weighty amendment bill.

However, we think it is important to acknowledge the pain, suffering and loss of the victims of the guardianship system – and the erosion of trust that has resulted from a four-year delay in advancing the recommendations of the TLRI report.

Given the significant importance of the detail that would be contained in a supported decision-making scheme, we recognise it would not be appropriate to insert it into the final bill without consultation on a draft of these provisions.

If it is the government's intention to progress these matters in a staged approach, then we strongly suggest the Government produce, and consult, on an 'action plan', or similar document.

In order to build trust with the community it is important for people to be able to see what the Government intends to do, and when they intend to do things. At a minimum, the Government should commit to developing and consulting on a legislated supported decision-making scheme, and advise the community on the intended timeframes for achieving it.

Recommendations:

2. The Government should commit to developing and consulting on a legislated supported decision-making scheme, and advise the community on their timeframes.
3. We strongly suggest the Government produce, and consult, on an 'action plan', or similar document, outlining the details and timeframes of their proposed reforms to the guardianship system.

Compensation

The Bugg review into the Public Trustee concluded *“that for 26 years the Public Trustee has genuinely misunderstood the duties of an administrator under section 57.”*

Section 57 sets out a requirement that “an administrator must act at all times in the best interests of the represented person.”

Prior and subsequent to the review, there have been many harrowing stories of people who have experienced trauma and financial loss due to problems with our guardianship and administration system.

It is only right, in our view, that when improper application of the Act has resulted in detriment to a person, that person should be entitled to compensation.

Our understanding is that the Victorian legislation provides for the right to compensation when a loss is suffered as a result of contravention of the Act. This should be included in Tasmania legislation as well.

Recommendations:

4. Amendments be drafted to provide that a court may order a person be compensated when a loss is suffered as a result of contravention of the Act.

Assessment of decision-making ability

The proposed new section 11 in clause 8 sets out that *“A person must not intentionally or recklessly interfere with, or affect, the assessment of another person’s decision-making ability in respect of a decision.”*

The penalty proposed for this is a fine not exceeding 20 penalty units. On current indexed values this is a maximum of \$3,620. In our view, this is an insufficient maximum penalty for an offence that could potentially be malicious, dishonest and significantly harmful in nature – and one which is not accidental or inadvertent.

We also recognise that the current maximum penalties under the act are 20 penalty units. In our view, a broader review of penalties under the act should be considered.

Recommendations:

5. Clause 8, proposed new section 11 should be amended to provide a maximum penalty of at least 100 penalty units, or imprisonment for a term not exceeding 6 months, or both.

6. Consideration be given to reviewing existing penalties in the *Guardianship and Administration Act 1995*.

Tribunal support and representation

We are concerned that 96.4% of people in the Guardianship stream of TasCAT were self-represented.


Given the nature of this stream, it is likely that many of the people appearing before the tribunal will have cognitive impairment to some degree. In these circumstances, high levels of self-representation would not appear to be in the interests of justice.

Advocacy Tasmania is calling for an opt-out scheme for legal aid or advocacy services. This, in our view, has significant merit.

Recommendations:

7. Consideration be given to establishing an opt-out scheme for legal aid or advocacy services in the Guardianship stream of TasCAT.

Yours sincerely,



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