



Submission to the Australian Law Council's Justice Project, People with Disability Discussion Paper

September 2017

About Aged and Disability Advocacy Australia

Aged and Disability Advocacy (ADA) Australia is a not-for-profit, independent, community based advocacy and education service with more than 25 years' experience in supporting and improving the wellbeing of older people and people with disability.

ADA Australia provides advocacy support to recipients of Queensland Community Care Services and Commonwealth funded aged care services. ADA Australia is a member of the Older Persons Advocacy Network (OPAN) and receives funding under the National Aged Care Advocacy Program (NACAP) to deliver advocacy, information and education services. ADA Australia also has an established Guardianship Advocacy Service which supports people with a decision-making disability and people aged over 65 years, to express their views, wishes and preferences at QCAT and in relation to guardianship, administration and Enduring Power of Attorney matters.

Headquartered in Brisbane, ADA Australia has regional offices in Cairns, Townsville, Mackay, Rockhampton, Hervey Bay, Toowoomba, and the Gold Coast and is active in providing advocacy services in metropolitan, regional, rural and remote communities across Queensland.

ADA Australia's Guardianship Team

ADA Australia's Guardianship Team was established in 2007 with funding support from the Queensland Department of Justice and Attorney-General. The Guardianship Team offers eligible clients free tribunal support and advocacy services including assistance to complete and lodge new applications and negotiations with formal decision makers.

Clients eligible for this service include people with disability and people aged over 65 years, who may or may not have questionable capacity, associated with a cognitive disability, dementia and/or mental illness and who are:

- Experiencing financial abuse, including the withholding of pensions etc

- Being socially isolated by an abuser, including removal from health and community care services, friends and supports known to the adult or abuser instructing service provider to only follow their orders.
- Subject to controlling and demanding behaviours.

Clients of the Guardianship Team often experience multiple forms of disadvantage. While the core client groups for this service are people with a disability or mental illness and older people, clients may also have low education levels, be financially disadvantaged or abused, unemployed, experiencing or at risk of family violence, living in rural and remote locations, Culturally and Linguistically Diverse (CALD), or Indigenous.

As a result, the barriers faced by clients of the Guardianship Team can be complex and numerous. Common barriers experienced by clients of the Guardianship Team include:

- **Isolation:** Clients can be kept isolated by the perpetrator of abuse, who could also be their decision maker (EPOA or guardian). Clients may have restricted access to mail and telephone or have their phone calls monitored. Therefore, access to this isolated client group is difficult
- **Financial:** Clients often associate accessing advice and support with a cost and assume that they do not have the necessary funds required to access support services. In many cases clients do not have access to their personal funds.
- **Education:** There is a lack of community understanding about possible avenues for resolution. There is also a perception that if a formal decision maker is in place, they can no longer participate in decisions that affect them. In these instances, people are viewed as “legally dead” and become non-citizens.
- **Interpersonal:** Clients may have concerns about damaging relationships through the process of engaging legal and support services. This concern is most prevalent when family members are involved or when the client is dependent on their decision maker for other practical supports. ADAA has found that non-adversarial approaches, such as mediation and education, are key to maintaining supportive relationships and reducing conflict and preventing escalation of legal problems.

The Guardianship Team aims to be flexible in responding to the unique needs of clients, offering face to face, outreach supports with access to ADAA’s specialist advocates (CALD, ATSI, LGBTI) where appropriate.

The Guardianship Team currently receives internal referrals from ADA Australia’s NACAP service, as well as externally from Community Legal Centres, Caxton Legal/Seniors Legal and Support Service (SLASS), Queensland Advocacy Incorporated (QAI), Legal Aid Queensland, The Advocacy and Support Centre (TASC), Carers Queensland, the Elder Abuse Prevention Unit and LawRight.

ADA Australia also has established formal referral pathways with both QCAT and Office of the Public Guardian, a Memorandum of Understanding (MOU) with Redbourne Health Services to receive referrals through the Queensland Police Service (QPS), a MOU with Supportlink to receive referrals through the Queensland Ambulance Service and have also established direct referral pathways with the QPS Family Violence Prevention and Vulnerable Persons Unit.

The Team have developed a range of innovative resources to educate both individuals and health and aged care professionals on how to recognise and assist in preventing the abuse of vulnerable people who are subject to guardianship, administration and EPOAs. These resources include

- a video titled [How to Act Appropriately as an Attorney under an Enduring Power of Attorney \(EPOA\) in Queensland](#). This video is a great tool for aged care service providers to use to educate both consumers and staff.
- fact sheets on [Duties and Responsibilities as an Attorney under an EPOA in Qld and The General Principles and Health Care Principles](#)
- A [Flowchart and Intake resource](#) was developed for aged care service providers to assist staff to better understand
 - The making of an EPOA
 - Using and EPOA
 - Actions of an Attorney

These resources were officially launched by the Attorney-General of Queensland and are referred to as a useful resource on both the Queensland Government website and Legal Aid Queensland's website.

[ADA Australia response to priorities for discussion](#)

5. The Council of Chief Justices of Australia could consider establishing a judicial leadership body, such as a Judicial Council on Disability, modelled on the Judicial Council on Cultural Diversity, to champion cultural change across the legal profession in regard to disability. It may be beneficial for such a body to work closely with disability advocacy groups in order to effect systemic legislative, social and cultural change.

ADA Australia is supportive of this proposal.

ADA Australia recommends the consideration also be given to the development of a judicial bench book relating to physical, sensory and cognitive disabilities.

The American Bar Association Commission on Law and Ageing, the American Psychological Association and the National College of Probate Judges have worked collaboratively to develop titled [Judicial Determination of Older Adults in Guardianship Proceedings](#), which could be translated to the Australian national context.

The American bench book provides guidance on screening cases, gathering information, conducting hearings, making determinations and ensuring oversight. It also provides a useful glossary of terms. An Australian version could feature national guardianship definitions.

9. Invest in methods to ensure early detection, treatment and support of FASD and other disabilities which can potentially lead to adverse outcomes in the criminal justice system, particularly for Aboriginal and Torres Strait Islander peoples.

ADA Australia supports this proposal.

ADA Australia provides the auspice for the Aboriginal and Torres Strait Islander Disability Network of Queensland (ATSIDNQ). The ATSIDNQ is a growing network of over 700 Aboriginal and Torres Strait Islander people with disability, their families, carers and supporters. The Network offers a culturally safe space for members to connect, share and raise awareness of issues they are facing. The Network gives members the opportunity to celebrate their strengths, share their stories and contribute to the conversation about disability in positive ways. The Network employs Indigenous staff who work with members to understand the variety of issues Aboriginal and Torres Strait Islander people with disability face and ensure this information is fed back to government policy makers.

ADA Australia recommends that established networks such as the ATSIDNQ be supported to contribute to developments in this area.

ADA Australia also notes that the roll out of the NDIS should be helpful, provided that Local Area Coordinators are sensitive to cognitive disabilities such as FASD and work with communities to ensure treatments are available and culturally appropriate assistance is provided.

10. Noting that many people with disability require intensive, face-to-face and ongoing assistance, substantial additional funding should be injected into the legal assistance sector to ensure legal assistance services are resourced to assist those with disability, particularly, cognitive, intellectual and psychiatric impairment.

ADA Australia supports this proposal.

ADA recommends a collaborative approach be adopted, with funded legal assistance services inclusive of advocacy services that can support people with impaired capacity to voice their views, wishes and preferences.

ADA Australia notes that Queensland Government has recently provided more funds to people to have their views, wishes and interests represented before the Mental Health Review Tribunal. The Queensland Government has also written casework guidelines to ensure the representation is adequate for addressing people's vulnerabilities. ADA Australia considers this to be a positive development.

11. Continued development of health-justice partnerships and co-location of medical and legal services, including ongoing research and evaluation of existing partnerships.

ADA Australia is fully supportive of the continued development of health-justice partnerships and co-location of medical and legal services.

ADA Australia considers this model to be beneficial to both people with disability and older persons.

12. Invest in community legal education and public awareness raising with regards to disability and dealing with people with disability.

ADA Australia suggests that community legal education for people with disability may be enhanced through collaborative partnerships between the legal, health and community sectors. There are several community based organisations that are already connecting with people with disability on a regular basis and have the potential to significantly increase the reach of community legal education.

13. All persons subject to applications under Guardianship and Administration and Mental Health legislation receive free legal assistance and representation at the first instance hearing or be provided with appropriate supports to represent themselves and that there be funding for disbursements for obtaining medical reports whenever there is an issue about the existence of mental health condition.

ADA Australia supports this proposal.

ADA Australia is aware that some states already provide this support through Legal Aid, but this does not occur in Queensland.

The proposal would be particularly welcomed in cases where there is an issue about a person's decision-making capacity or where people are living in residential care and are unable to access the necessary funds or the assistance of an independent and trusted health professional.

ADA recommends that the consideration also be given to the development of a toolkit for people representing themselves at review hearings.

Contact ADA Australia

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