



Submission to the Queensland Parliament's Legal Affairs and Community Safety Committee, regarding the Guardianship and Other Legislation Amendment Bill 2017

October 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. ADA Australia also receives funding under the National Aged Care Advocacy Program (NACAP) to provide advocacy services to users of Commonwealth funded aged care services. ADA Australia has established a Guardianship Advocacy Service to support people with a disability and people aged over 65 years, to express their views and wishes at QCAT 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 Response the Guardianship and Administration and Other Legislation Amendment Bill 2017

In general, ADA Australia supports the objectives and amendments proposed in the Bill. If passed through Parliament, it is believed that these amendments will provide adults with impaired capacity with more choice and less restrictive options whilst safeguarding their rights. The proposed amendments will also bring Queensland a step closer to achieving our obligations under the UN Conventions on the Rights of Persons with Disabilities.

ADA Australia requests that the Legal Affairs and Community Safety Committee give consideration to the following recommendations:

Clause 7, page 10, lines 1-7

ADA Australia notes that the Tribunal has historically viewed its jurisdiction as only being enlivened when a person has impaired capacity, even though the Tribunal clearly had the function of issuing a declaration of capacity.

For example, QCAT Member, Les Clarkson made the following comment in regard to BH 2012 QCAT

“[22] One of the underpinning philosophies of the Act concerns the Tribunal’s protective jurisdiction in relation to adults with impaired capacity. It is fundamental to the purpose of the Act, and the Tribunal’s functions outlined in s 81(1) are referable exclusively to adults with impaired capacity.”

ADA Australia also considers the issue of jurisdiction (as has historically been the case) to be important in relation to compensation for attorneys.

ADA Australia recommends that tribunals be authorised to make orders for compensation if the person has regained or retained capacity.

For example, if “Amelia’s” attorneys sold her car and kept the money from the sale, whilst she was ill in hospital following a stroke, then subsequently regained capacity and revoked her attorneys, Amelia should be able to pursue a compensation order in QCAT, and not be required to seek redress via Supreme Court application.

Clause 17, page 24, lines 15 -18

ADA Australia recommends that all aspects of Section 12 to be applied in the review process. E.g. establishing capacity or impaired capacity, need for a decision maker and appropriateness of decision maker.

ADA Australia also suggests that it is necessary for consideration to be given to the adequacy of informal supports at review. In ADA Australia’s experience, informal supports can play an important role and eliminate the need for formal appointments.

Clause 25, page 29, lines 23-24

ADA Australia recommends the proposed wording be amended to read:

(2A) Also, subsection (1) applies even if the appointee’s appointment has ended or the person has regained or retained capacity.

ADA Australia has recommended the inclusion of the wording “or the person has regained or retained capacity” because the loss of capacity is not required to enliven the compensation jurisdiction.

Clause 30, page 35, lines 19-28

ADA Australia recommends that a point (c) be inserted into amended Section 81 (1A). The proposed insertion would draw on the safeguarding rights and interests of adults principals included in the Guardianship and Administration Act 1990 (WA) s. 4.2 which states

“The primary concern of the State Administrative Tribunal shall be the best interests of any represented person, or of a person in respect of whom an application is made.”

This would allow QCAT to consider compensation order applications irrespective of the capacity of the principal.

Clause 34, page 38-39

ADA Australia is concerned that the adult is often not included in or notified of hearings regarding Interim orders.

ADA Australia recommends that the Tribunal be required to apply Section 81 (1A) (A) when considering interim applications and issuing interim orders.

Clause 41, page 44, lines 4-10

ADA Australia recommends that the Guidelines to assist in assessments of capacity include information and advice on when an attorney under an Enduring Power of Attorney can act or cease acting.

For example, considering Section 33 (5) of the Powers of Attorney Act, 1998 (Qld), the certificate required should list relevant matters outlined in Schedule 2 of the Act. If a person has a short term or fluctuating disorder, the certificate should recommend a review date for capacity re-assessment.

Clause 41, page 45, lines 1-3

ADA Australia recommends the proposed wording be amended to read:

(iv) another person the public trustee considers appropriate to exercise the power.

ADA Australia suggests the removal of the wording “appropriately qualified” so that the public trustee can delegate the power to the person themselves. In ADA Australia’s experience, this practice already occurs, but is not necessarily supported by the legislation.

Mental Health Act 2016 (Qld)

ADA Australia recommends that consideration be given to an additional clause similar to Section 53 of the Mental Health Act, 2016 (Qld) which stipulates

In deciding the nature and extent of the treatment and care to be provided to the person under the treatment authority, the authorised doctor must –

- *a) discuss the treatment and care to be provided with the person; and*
- *b) have regard to the views, wishes and preferences of the person, to the extent they can be expressed, including, for example, in an advanced health directive.*

ADA Australia suggests that a clause of this nature, be applied to Advanced Health Directives, Enduring Powers of Attorney. This requires health professionals and service providers to have regard to written views, wishes and preferences of the adult, as expressed in Enduring Documents.

Contact ADA Australia

Should you have any queries regarding the content of this submission, please do not hesitate in contacting the following ADA Australia representatives:

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