

RECEIVED
10 MAY 2011

Submission No. 14

**ANGLICAN AGED CARE SERVICES GROUP
(TRADING AS "BENETAS")**

**RESPONSE TO GUARDIANSHIP CONSULTATION
PAPER**

MAY 2011

General Comments

Overall we support the proposal for new guardianship laws as described in the Consultation Paper. In particular we support the proposed new structure for guardianship laws and the overarching principles applying to these laws.

Also, we wish to our strong support for the promotion of the participation of people with impaired decision making capacity in the decision making processes which affect their lives, and to be involved in the life of the community as much as possible. In this regard substitute decision makers must have a deep understanding of the people with the disabilities in particular their views, beliefs and values, so as to make decisions in accord with what they believe these people would have made had they able to do so, not what they think should be best for the people with the disabilities.

We also support the proposal to integrate the current numerous statutory substitute decision making regimes into one Act so that there is a greater consistency and a clearer understanding of the relevant laws concerning guardianship.

Specific Comments

Terminology

In order to give greater clarity to the meaning of terms used in connection with substitute decision makers it is recommended:

- That "person responsible" be replaced by the term "health decision maker"
- That the term "guardian" be replaced with "adult guardian"
- That the term "administrator" be replaced with "financial guardian" and
- That the same terms are used in relation to the powers of attorney, guardianship and administration such as "enduring adult guardian" and "enduring financial guardian".

Supported Decision Making

We agree with the proposal to introduce four new supported decision making appointments. However in the case of "personally appointed supporters" it needs to be made very clear as to the type of personal information that the person will be able to access. Also it is important that training is provided for people appointed to these roles, and this training could be organised by the Public Advocate.

Personal Appointments

We believe all types of enduring powers should only be able to be activated at the time when the person who made the appointments become incapable, and that the option of appointing an agent under the *Medical Treatment Act* be removed and that people be required to use an enduring guardianship appointment for medical treatment matters.

We also support the proposal that the donor be able to specify that certain people be notified when a power of attorney is activated and that this include a public authority such as the Public Advocate or State Trustees.

Documenting Wishes About the Future

We support the proposal to broaden and clarify the statutory right to make instructional medical directives to provide people with increased certainty that their instructions will be followed. However we believe the current requirement that the person making the directive must be informed about the nature of any existing health condition should be retained.

VCAT Appointments

We support the proposal that disability in its own right should be removed as a criterion to appoint a guardian and that there should be a legal definition of incapacity as well as a set of principles to guide decision making in assessing incapacity.

Guardianship and Administration

We believe there is some confusion about the roles of a guardian and an administrator and in order to address this lack of clarification we support the option that one person can be appointed to undertake both roles, which is known as dual appointment. We also agree with the option to abolish plenary guardianship orders and include a non-exhaustive list of decision making powers and restrictions in the legislation.

Consent for Residential Care Arrangements

In order to better protect individuals who do not have the capacity to make their own decisions about admission to certain residential care facilities we believe that a new scheme of safeguards along the lines of those put forward under Option C and Option D be adopted. We also believe that the definition of medical treatment should be broadened to include a wider range of procedures.

Responsibility and Accountability

We believe responsibility for making decisions on behalf of another person should always be based on what decision it is believed that person would make, not necessarily on what it is believed is in their best interests. Clearly decision cannot be made which may harm a person but also decisions which may involve some risk or danger should not be automatically ruled out. In our opinion the current laws give too much weighting to protection of the individual rather than what the person may wish to do. Best interests of the person needs to be redefined to focus on what the person may believe is in their best interests. In other words the substitute decision maker needs to "step into the shoes" of the individual and see things from their perspective, beliefs and values as much as possible, not just from their point of view of what is in the best interests of the individual.

We also support the option that civil penalties be introduced for substitute decision makers who abuse their powers and that powers be given to VCAT to order

administrators and financial attorneys to repay funds that have been misused. In addition we support the option that the Public Advocate be able to take civil penalty proceedings against people who have allegedly breached guardianship legislations, as long as there is clear evidence to support these allegations.
