Submission No. 15

Ombudsman Victoria

10 May 2011

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Professor Neil Rees
Chairperson
Victorian Law Reform Commission
DX 144 Melbourne VIC

Dear Professor Rees

Thank you for the opportunity to comment on the consultation paper concerning your reference from the Attorney-General to review and report on the desirability of changes to the *Guardianship and Administration Act 1986*.

I receive a number of complaints each year about the administration of the Guardianship and Administration Act. For example, in 2010 I received 230 complaints regarding State Trustees Limited and 47 complaints regarding the Office of the Public Advocate. Most matters are resolved quickly and informally with the cooperation of the two agencies.

The *Ombudsman Act 1973* provides me with considerable power to investigate matters where I have concerns regarding the services being provided to a vulnerable person. My recent report *Ombudsman Investigation – Assault of a Disability Services client by Department of Human Services staff* is an example of such an investigation (see report at www.ombudsman.vic.gov.au).

The consultation paper deals with a variety of issues that arise when a substitute decision-maker is appointed to act on behalf of a person who cannot take responsibility for his or her own affairs. I am pleased that the consultation paper examines how the accountability framework for these sensitive matters should be constructed.

I note that you have received a variety of views regarding whether the Victorian Civil & Administrative Tribunal (the Tribunal) should be able to review the merit of individual decisions made by the Public Advocate and State Trustees Limited.

While the Public Advocate supports merits review, I note that State Trustees Limited and the Law Institute of Victoria are concerned regarding the implications of your proposals. Their concerns include the potential for such a process to increase the workload for the Tribunal, delay the handling of matters, the expense of responding to applications and the potential for adverse consequences for third parties.

In my view many of these concerns could be addressed by your proposals to the Attorney-General recognising the role of my office. New legislative arrangements should avoid diverting matters which are currently resolved quickly and informally through my office into an adversarial process. Any new legislation should be cognisant of the difficulties that applicants with impaired cognitive abilities may experience if they are required to address their concerns through an adversarial process.

The consultation paper proposes that prospective applicants to the Tribunal are to have exhausted the internal grievance procedures of State Trustees Limited or the Office of the Public Advocate before the Tribunal will accept their application for review. These agencies should be subject to an obligation to inform a complainant that, upon the conclusion of an internal grievance process, they may complain to me. This would be a similar approach to that taken in section 27(1)(e) of the *Freedom of Information Act 1982* in respect to a document that has been lost or does not exist.

This approach would address many of the concerns expressed about the introduction of a merit review process. Encouraging complainants to approach my office may resolve a number of matters without the need for an application to the Tribunal. This is likely to resolve matters in a more timely fashion and at less expense than would be incurred should Tribunal proceedings be initiated. The confidential manner in which I investigate complaints would also be appropriate considering the difficulties that vulnerable members of the community may experience in pursuing their concerns through litigation.

If your staff would like to discuss this matter they are welcome to contact Mr Stephen Mumford, my Director of Investigations,

G E Brouwer
OMBUDSMAN