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Question 2 Commissions draft statement of purpose for new guardianship laws  
Yes

Question 3 - draft general principles for new laws  
Yes

Question 4  
There needs to be the addition of a principle that includes the right to access independent advocacy support when requested whether or not the person has a guardian and a principle that includes the consideration and respect for the role of families and other people who are significant in the person's life.

Question 5 - consolidation of various relevant acts  
Yes as in Option C

Question 7 & 8

7  
Yes  
8  
Yes

Question 11 & 12

11  
Yes  
12  
Yes

Question 14, 15 - supportive decision making mechanisms

14  
Yes

We view supported decision making as the preferred option and would like it formalised as an integral part of the whole 'guardianship' process. We know supported decision making can and does occur informally at the moment and is considered a desirable approach and process by many; nevertheless, it does need formal ratification in any proposed guardianship legislation. Supported decision making is in line with the U.N.

stated Rights of Persons with Disabilities so should be the model on which the new guardianship legislation is based. However, we believe that some of the concerns expressed in the submissions need further consideration as they relate to the practicalities/hurdles of 'formally' engaging supported decision making. Guidance and support for supporters and co-decision makers is vital- otherwise those who informally help now may be reluctant to take on new positions/areas of responsibility and support. Further we believe that supported and co-decision makers should be registered.

15

Yes we agree with all of the proposed roles of supporters and co-decision makers but raise the following questions that may require further exploration and clarification.

Could the supporter and the co-decision maker be the same person?

What would be the process for changing or varying a personal appointment/s?

Question 17, 18 & 19 - role of Public Advocate

17

Yes

18

Yes

19

Yes

Question 20

Yes but the new mechanisms must take into account the need to provide safeguards in relation to financial liability as outlined in 7.112

Question 21

Yes

Question 24 & 25 - succession planning for parents of adult sons or daughters with impaired decision making capacity

24

Yes

25

Yes it should be a factor but must not be binding and should be considered and weighed up against all of the other factors in regard to decisions about future guardianship and administration arrangements

Question 50 - criteria for appointing a guardian

50

Yes Option B

Question 51 - definition of capacity and determination

51

We believe Option A & B are not mutually exclusive and would like to see them incorporated in the new laws. Any new legislation needs to articulate the recognition that people have different ways of communicating and that technological advances both current and future will provide people with opportunities to use different forms of communication. It is imperative that access be provided when needed/requested to the necessary communication aides and support as part of the process for determining capacity.

Question 52 - allowing appointments to be made in anticipation of future needs

52

Yes Option B but we would not want to see this granted automatically once a person turns 18. There needs to be recognition that transitioning and maturing to adulthood and accessing opportunities for learning in the wider community as an adult which may not have been available as a child may change the circumstances in some situations where the person may be capable of making at least some decisions. A more flexible approach within VCAT regarding procedures to address emergency situations in a timely and suitable manner could alleviate the stress and anxiety experienced by parents, family members when faced with the need for some immediate action which is constrained or prevented by the lack of an immediate response. This is often the reason for parents seeking this option.

Question 53 & 54 - closing the gap between child protection and adult guardianship

53

Yes option C

54

Yes – but this could be better addressed if OPA became involved as 11.70 The development of protocols between the relevant government departments would also address this.

Question 55 & 57 - distinction between guardianship & administration

55

Yes Option A

We believe that flexibility of approach is the key here. Dual appointments should generally be the preferred option while recognising that this is not always the most practical or desirable approach to be undertaken. Each case should be determined according to its unique factors. It depends on the situation of the individual and then the skills of the person appointed for the individual - a flexible approach that takes into account, case by case, the most effective and efficient combination of dual/separate roles to meet particular identified needs.

The safeguards that result from having dual appointments should not be overlooked/dismissed lightly but occasionally it may be a better approach to incorporate them. It is important for different appointed persons/bodies to communicate effectively and in a timely manner if there are dual appointments. This is essential if the needs of the person requiring such assistance are to be genuinely and effectively met.

57

Yes Such determinations by VCAT should include consideration and respect for the roles of families and other persons significant in the represented persons' life and the role families can and do play in supporting and assisting their family member to realize their emotional, social, physical and intellectual capacities. However, this needs to be done on a case by case basis, looking at past history and the nature and quality of the relationships between the relevant parties.

Question 58 - 61 - powers of guardians & administrators

58

Yes proposal A (iii)

61

No

Question 74, 75, 76, 74

Yes

75

Yes

76

Yes

We note and are reassured that the safeguard noted in 15.101 would preclude admission under the Disability Services Act 2006 or the Mental Health Act 1996 eg. Institutions

Question 87- 91 - responsibility & accountability

87

Yes – whilst recognizing that people's wishes do change sometimes with time and circumstances. The new strong general principles listed in Chapter 5 should provide with our recommended additions should provide some guidance/clarification/direction

- need to consider persons history – individual needs/wants may change
- flexibility and Common sense need to be considered and inform any decision

88

We believe this issue requires more exploration and would be keen to learn more as the points raised in 17.102 – 17.105 are valid and relevant. Rights are important but consequences are important too, there are often different consequences for people with an intellectual disability. We are reminded of a quote from Errol Cocks 'It's no use dying with your rights on' Risky and bad decision making by people with an intellectual disability is very often due to lack of education or opportunity and life experiences so different to those in the general community.

89

Yes Option C

90

Yes

91  
Yes

Question 92 - conflict of interest  
Yes

Question 93 court would & respect  
Yes

Question 94 & 95 - financial decision making  
94  
Yes

Question 96 - medical decision making  
We acknowledge the decisions may be very challenging but our experience over many years advocating for people with an intellectual disability has shown situations where medical decisions have been made on the basis of the person's disability from a negative view rather than their physical wellbeing and health e.g. the management of menstruation for women with an intellectual disability, decisions about sterilisation, unnecessary dental treatment such as the removal of all teeth, when some should be retained, because of behavior or reaction relating to the processes involved in other preventative measures such as filling and cleaning. We are also reminded of the situation where the medical advice for a patient needing grommets for regular ear infections, was 'what is the use - she is only a Downs.'

Question 97 & 98 - confidentiality  
97  
Yes Option B  
98  
Yes

Question 99 -111 - accountability mechanisms and penalties

Whilst we support the need for transparent accountability in relation to the decisions of all guardians and administrators we believe this should be at no cost to the person required to report on their activities or to the represented person e.g. VCAT fees should be removed, not merely waived in certain circumstances which is the current practice. Further, ways of reporting should be flexible and not onerous.

99  
Yes. 19.54 highlights the need for a registration list.  
100  
Yes  
101  
OPA & VCAT  
102

No

103

Yes

The purpose as well as strengthening accountability responsibilities should also be to provide information for improvement both at the individual and systemic level through the provision of training and support.

104

OPA re conduct of guardians & VCAT financial audits

105

Yes

106

Yes

108

Yes

109

Yes

110

Yes 19.75 and 19.76 could avoid issues related to OPA involvement as raised in 19.77

111

Yes

Question 112 -116 - reviewable decisions

112

Support for the position outlined in 19.93 this could include an independent advocate as a person with a special interest

113

We support the approach outlined in 19.100

114

In considering this issue it should be noted that, in our experience, parents have sometimes been seen as vexatious or 'troublemakers' when they continually raise concerns about issues related to their sons/daughters. There is a need also to consider the role that whistleblowers can and have played in drawing attention to issues warranting investigation

115

No

116

A specialist guardianship review list of VCAT as outlined in 19.114

Question 117 - 122 – expanded Public Advocate role

117

Yes

118

Yes

119

Yes

120

Yes

121

Yes

122

Yes

Question 123 - 125 - advocacy

123

Yes

124

Yes

125

Yes re – 20.8 Re the comment which refers to the Disability Advocacy Resource Unit – the DARU is not a legislated body, its continued existence depends entirely on the priorities whims and decisions both philosophical and then funding of whichever government is in power. Therefore OPA's functions in relation to community advocacy are still necessary.

Question 126 – public guardianship

126

Yes

Question 127 - 128 - private guardianship

127

Yes

128

Yes

Question 130, 131 & 133 - personal and automatic appointments

130

Yes – needs to be registered

131

Yes they should also have a role in providing support and training to these people (See our response to Question 99)

133

Yes

Question 134 reporting to parliament

134

Yes it would be useful if each annual report could comment on action or lack of action taken on issues raised in the previous year's annual report by both OPA, government, and the relevant department.

