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Submission No. 30

Victorian Law Reform Commission: Guardianship

This submission is made in the spirit of transparency with a view to give insight into the grass roots issues that face this NGO package care provider. It is also to give a voice to the aged in our community who endure various forms of abuse but fall through all the gaps and for the 'service providers' who can sit between a rock and a hard place.

This submission is not made to cast aspersions on restrictive, inflexible and depersonalised systems but to promote a culture of honesty and purposeful dialogue that could actually lead to creative and innovative solutions to extremely complex situations.

I am recommending a change in the Act which allows for '**exceptional circumstances**'.

We all know that we cannot fix all problems and allow for every contingency, therefore one way to remedy this is to allow for it, i.e., we are mistaken if we believe we can work effectively within the current system. There is a dire need to have alternatives and this 'snapshot' may best illustrate some of the issues that have to be faced;

- Duty of care to clients who are in the care of those who have their own agendas running;
- Strong suspicion of forms of abuse when there is no actual proof and no way of getting it due to a number of circumstances;
- Inability to engage other providers because a person does not, strictly speaking, meet their eligibility criteria or who cannot be seen without the person or their NOK consent;
- Simply unable to establish whether a person is competent or not, as well as the client and or NOK not giving permission for any screening to be done;
- The NOK has criminal affiliations, eg drug related or member of a bikie gang and threatens the safety of their 'loved one' or staff who are involved;
- Currently, an application cannot be made to VCAT anonymously with a guarantee that the applicant does not have to attend the hearing, ie for concerns about their personal safety;
- What provisions could be made to ensure the safety of a person who is living with a potentially violent 'carer' when an application to VCAT has been made and there is a time lag; (note; This may be interpreted as infringing on the rights of the individual but this view is misconceived

when a person clearly does not have any rights in his/her own home; eg no voice to say what s/he wants because of fear of retribution and punishment from the 'carer'.

These are 'real life' experiences which we have faced (but I have chosen not to give specific case examples due to the risk of identifying specific clients). Yes, we are absolutely clear we do not want to take away an individual's rights but in some '**exceptional circumstances**' we know that an individual cannot exercise their own rights.

Nor does this mean that we make the 'law' heavy handed. (Although an objective debate is needed in this review as to whether to follow the lead of 'Protective Services' and to actually remove a person who is at risk from his/her 'carers'. This of course, leads to many other questions and predicaments).

But it does mean we desperately need mechanisms in place when all other avenues fail because if we do not have this, some individuals who do not have 'capacity' will continue to live in abusive situations. Notwithstanding, this 'fall back position' is only an option when there is a thoroughly investigated body of evidence, as well as consults with relevant providers, eg ACAS, APMHT, geriatrician, etc. (this process would need to be more formalised).

(It is worth noting, that it is anticipated that the issues discussed so far will be more apparent as the Consumer Directed Packages/CDP increase).

In summary, the review of Guardianship could include a debate about 'complex, individual realities that packaged care and other providers are grappling with in an environment of public intolerance for elder abuse. This includes the juxtaposition between 'duty of care' and 'rights of individuals' which sometimes translates to 'complete disempowerment' to do anything at all. That is, in reality individuals can fall through the 'legal cracks' as there is no mechanism to enlist to carry matters further in the community if the 'clients carer' will not allow investigations. This compounds further when there is demonstrated personal risk to the 'client' and to any staff entering the home or indeed who could be sort out in the community for retribution.

So by an awareness of the contradictions 'out there' there is a need to be able to impart and share pertinent information within the community sector in the "promotion of the principle of transparency", eg I. k in the Guardianship/ Terms of Reference.

This could include a process whereby a pre VCAT application could be made available that includes a less restrictive definition of 'capacity'. There needs to be an acknowledgement of the breadth and scope of 'dementia/BPSD' in all

its manifestations eg. denial, lack of insight and in fact when there is no actual diagnosis and an inability to get one.

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