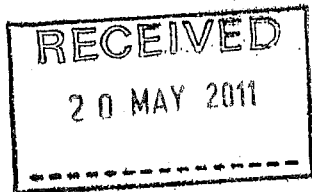


19 May 2011



Submission No. 42a

Submission to the Victorian Law Reform Commission Guardianship Consultation Paper

To whom it may concern:

INTRODUCTION

I make this submission in light of my personal experiences involving my mother, and the Office of the Public Advocate (OPA). My mother's care was taken over from us by the Office of the Public Advocate as a result of a VCAT hearing in September 2010. Since being in under the guardianship of the OPA, my mother's health deteriorated rapidly, ultimately resulting in her death on 4 May 2011. I strongly believe the current guardianship system that are administered through the OPA contain significant flaws.

I will answer questions relevant to my experiences with and make some general statements related to the procedures and activities of the OPA.

PART 3: SUPPORTED DECISION MAKING

Chapter 7.4

I strongly agree with this concept, if mum's decision were encouraged and supported by her Guardian and taken the time to talk and listen to mum undoubtedly she knew where she wanted to be and where she felt at home, her wishes should have been implemented and respected as it's a person's basic human right to choose where they feel most happy live, sadly in my mother's case due to Guardian having so much power was dismissed. Without this basic acknowledgment of a person's human rights an OPA Guardian abuse powers which caused my mother to suffer psychologically through isolation and feelings of abandonment. Supported Decision Making is beneficial for the person/patient regardless of how what disability people may have they know where they are most happy when they can make their own decisions for themselves.

PART 4: PERSONAL APPOINTMENTS

The submission in recognising "personal appointments" is a step closer to understanding that people of my mother and fathers generation of European background didn't have a complicated legalistic approach to life. Their values were based on tradition where their child becomes the "person appointed". If the submission recognised and acknowledges it as binding and valid as a equal value to a formal modern document like power of attorney, enduring power of attorney etc. It would be better than having VCAT which under the current system disregarded my sister who was the dedicated parents (mum) carer of 20 years even though it was acknowledged and demonstrated by proof that she dedicated her life to being a carer for her aging parents in the VCAT hearing. It would take away the vulnerability of people of my parents generation under the current system are left exposed and unprotected by VCAT which are beauracratc and far removed from the simple existence and value system of my parents generation which dismissed mums "personal appointed person" unfortunately left her vulnerable and exposed for exploitation in the hands of a VCAT and VCAT appointed Guardian through the Office of Public Advocate.

PART 6: STATUTORY APPOINTMENTS

CHAPTER 15: INFORMAL ASSISTANCE – ADMISSION TO CARE

Consent for residential care arrangements

Question 74: There should be specific laws about people being admitted to and remaining in residential care facilities in situations where they do not have capacity to consent to those living arrangements but are not objecting to them. My mother's situation fell into this category. While she did not actively object to being placed in care, she did not fully understand what was going happening to her and did not have the capacity to consent.

Question 75: Option E would be a positive improvement to the current system, as it will provide a number of safeguards to prevent abuse of power due to a guardian's inability to investigate all

options available. I firmly believe my mother's rapid deterioration was due in large part to the guardian's hasty decision to place my mother in residential care. In the residential care my mother health and psychological deterioration was rapid and she suffered injuries that ultimately led to her emergency hospitalisation suffering fatal head injuries resulting from the "lifestyle" decisions her OPA appointed Guardian made without considering mum's clear wishes with regard to where she wanted to live but Guardian rejected and ordered her in a nursing home against her wishes.

PART 7: RESPONSIBILITY AND ACCOUNTABILITY UNDER THE LAW

CHAPTER 17: RESPONSIBILITIES

I have chosen not to address specific questions in this instance, as the biggest issue I have had with the OPA is the lack of accountability in their decision-making and have made representations of this kind directly to the OPA and the Victorian Attorney-General's office.

I do not believe there are currently adequate safeguards and accountability mechanisms within the OPA relating to guardianship. My mother's wishes were dismissed and completely disregarded when the guardian made decisions relating to her residential and medical care and general well-being.

There was confusion between the guardian and myself pertaining to my mother's medical care. On one occasion I was told by the guardian that the family would be responsible for my mother's day to day care such as doctor's appointments, however when my mother was admitted to hospital, the family were not allowed to see her medical records. This system needs to be reformed to avoid such confusion and allow family members and those with a genuine interest to be part of decision-making processes involving health and medical care.

MERITS REVIEW OF DECISIONS OF GUARDIANS AND ADMINISTRATORS

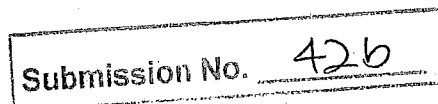
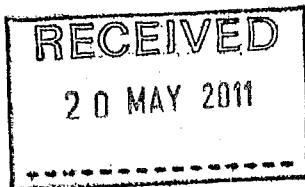
Question 111: I strongly support the implementation of laws that will permit merits review of decisions made by the OPA. The current system of having no review procedures is unacceptable and provides no accountability measures and the possibility of abuse of power of OPA guardians.

CONCLUSION

My submissions are based on my personal experiences with the OPA. As can be deduced from my statements, I sincerely feel that the current legislative framework regarding accountability and responsibility for decision-making at the OPA is inadequate. It has been difficult to keep my submission clear and concise – there are many other recommendations I could make based on my experiences of the last nine months with the system. I trust that the feedback I have provided will be used in a constructive manner in the hope that the procedures and events that caused my family much grief and distress will be avoided in the future.

Yours sincerely,

HELEN SIOMOS



Guardianship Review – Consultation Paper Consultation

Submission

From: Helen Siomos

Date of submission: 20 May 2011

Helen said the following:

Background:

- Matter involves Helen's mother, for whom VCAT appointed OPA as guardian.

Major concerns:

- VCAT and OPA have too much power
- VCAT does not listen to what the person wants
- OPA is unaccountable and non-transparent as guardian
- OPA guardians are too removed from the person they're representing
- There needs to be an independent body – independent of both VCAT and OPA – who can oversee their work, who families can go to with complaints, and who can hold OPA guardians more accountable and where found negligent or being restrictive and harming patient by decisions made for patient against what the person wants then look at a quick process to remove OPA Guardian to relinquish responsibility/hold over patient/person.

Issues:

VCAT hearing

- Mother did not get proper representation at VCAT. The (magistrate) member asked her who she wanted to look after her, but they took no notice of her when she said she wanted one of her daughters to do that. VCAT also disregarded other daughter × who was on the application applying joint Guardian of mother. VCAT failed to disclose

reason why didn't accept Helen to do this, and appointed OPA as guardian. Helen's mother did not want OPA as her guardian.

- VCAT Magistrates need to be made to disclose reason why they reject an application and the grounds for which they do this should be of a proper basis.
- Helen's mother was not included. The process was too formal and not inclusive.
- An interpreter was at the hearing but did not always interpret what Helen's mother said.
- Both VCAT and OPA fail to understand the least restrictive alternative – their decisions are too restrictive.

VCAT should be required, at the hearing, to explain to people what their rights are if they are not happy with OPA's decisions as guardian. Where and what avenues available for people to get decision over-turned and what time limits they have and a Legal Support centre be set up available at/after the Hearing to advise avenues available to re-hear or remove decision VCAT handed down and remove OPA Guardian

- VCAT should tell the person and family and ask them if they want an OPA Guardian or family member to be their guardian and this decision should be binding to respect the person's wishes, at present VCAT disregards persons wishes as current system does not represent person that VCAT and OPA Guardian take control over.
- The process needs to be less formal and they need to take more notice of what the person says. They should never just disregard what the person says. A more informal discussion outside of the hearing, involving the family and the person themselves, would be much more likely to produce a better outcome.
- VCAT hearings should make transparent applications.
- VCAT process and hearings should remove AGED CARE WORKERS AND SOCIAL WORKERS from having too much input as they are the instrument that work towards getting people handed over to VCAT they are secret spy's that aren't there to represent an elderly persons views they are providing their own views forward which VCAT shouldn't take into account as this is discarding the elderly persons rights and opinions.
- AGED CARE WORKERS and SOCIAL WORKERS and VCAT and OPA Guardians attitude and way they operate currently are disobeying a person's Human Rights by discrediting a person's wishes because of disability e.g.; dementia, and ignore a person wishes.
- Even people with dementia or a disability still shouldn't be treated as not having capacity, a person should have the right to choose for themselves

where they want to live and no OPA Guardian should have the power to overrule a person's wishes as has happened with my mother.

- A mediation or discussion process prior to VCAT and where possible aim to inform and prevent people going to VCAT. This mediation or discussion meeting should also most importantly explain if an OPA Guardian is appointed explain what powers and responsibilities they have (e.g. something like a job description) to be provided to family to go away and really think about whether they want a potential stranger taking over control and every single facets of a person's existence. If people are made aware of the consequences so as if there is non satisfactory performance, remove them from the job.

OPA as guardian

- OPA has no cultural awareness for the role, and no respect for Helen's mother, her cultural traditions, or her age.
- The guardian is too removed – OPA and their guardians have too much power and this should be stopped. They are too distant from the person, and are not aware of the harm and injury being done to the person they are representing. The OPA guardian consented to Helen's mother's admission to a nursing home in which she then suffered some life threatening injuries and caused mother to deteriorate drastically under the OPA Guardianship.
- Helen's mother kept wanting to come home from the facility but the guardian kept stalling on this decision – leading to her becoming more distressed, and having another fall.
- What are they guarding if the person continues to be harmed?
- All that the guardian did was refuse Helen access to medical information, which left the family powerless to deal with the guardian's negligent decisions. It is unacceptable that the guardian has total control over decisions but cannot be called to account. Information is either censored or not passed onto family at all.
- OPA might have too much workload, but it's wrong that the person then has to suffer because of this – they should relinquish their role if they can't do their job properly.
- Helen felt that the OPA guardian's access to information about the family was unreasonable.
- Another family member who had conflict with the OPA guardian felt threatened and bullied by some of her contact the guardian.

- Guardians should be made to check up on the person – do it regularly, check that the decisions they have made are what the person still wants – you can't just dump someone in a nursing home and forget about them.

Accountability and transparency

- OPA is too unaccountable. No one wants to listen to you when you want to complain about OPA, or about VCAT. Currently there is no avenue of redress for bad performance or conduct that is not in the best interest of the patient/client and where they act in a very restrictive manner that causes harm, distress and deterioration and abuse of a person's basic human right taken away by OPA Guardian making "lifestyle" decisions against the patient's wishes.
- The OPA files should be more accessible. Their decision-making should be more transparent files should be open made available.
- Guardians should not have so much power. There is urgency and a need be a more independent body to go to when you are not happy with what the guardian is doing. OPA is not independent and they are too closely tied up with VCAT. In many cases VCAT appointed OPA guardians are not even needed. They should always work more closely with the family to make sure the family approves of OPA Guardians decisions are in agreeable with the person.
- OPA Guardian powers need to be stripped away from them. Currently they abuse their position and powers because their powers are too broad without boundaries.
- Helen felt that the OPA guardian's access to information about the family was unreasonable, and included accessing and using information (of a medical nature relating to a persons hospital records) about a person not represented by the guardian without their permission or knowledge of the degree and intention behind the information that was being gathered.
This medical information gathered was then used against the person by the OPA Guardian making a decision to place/keep the elderly mother in a nursing home.
- This resulted in OPA Guardian preventing or lacking interest in looking at other options available to assist and facilitate the elderly mother to move back into her own home.
- Stop the powers OPA Guardian have to not allow breaches of privacy happening. Where OPA Guardian found to gone too breaching peoples privacy, they should be instantly dismissed.

- A dispute resolution centre to be set where problems with OPA Guardians conduct and decision can be reviewed and over-ruled if they don't comply with person's wishes and not acting in best interest of patient. This body or board should be separate and independent from OPA and VCAT where family who are in daily contact are seen as the better choice makers for their beloved family member not a stranger.
- OPA Guardian need to show their qualifications, background, should be chosen by family no VCAT as matches presently are non representative of the patient. In mums case the Guardian didn't come from the same background, age, religious beliefs, culture understanding and yet they are appointed unsuitably as Guardians which they don't properly represent the person.

