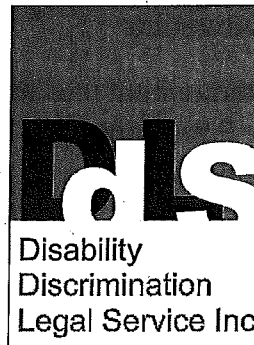


Submission No. 56



Submission on the Victorian Law Reform Commission's Guardianship Consultation Paper- ("the Consultation Paper").

20 May 2011

The Disability Discrimination Legal Service Inc ("DDLS") is an independent, community organisation that supports individuals in disability discrimination matters. It is a not-for-profit association that provides free support to persons with disabilities. The DDLS also provides community legal education and undertakes law and policy reform projects in the areas of disability discrimination.

A committee of volunteers manages the DDLS. The DDLS Management Committee is comprised of persons with disabilities, and those that work within the disability sector. In addition to this, the DDLS's work is supported by the efforts of volunteers, some of whom also have disabilities.

The DDLS is an active member of the community legal sector, particularly in respect of matters concerning people with disabilities. It is a member of the Federation of Community Legal Centres, and is primarily funded by the Federal Attorney General's office.

Overview

The DDLS welcomes the review of the Guardianship and Administration Act ("the Act"). The DDLS has expertise in working with people with disabilities, however is not expert in all areas raised for comment, and has responded accordingly.

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Question 1- General

Role of the Office of the Public Advocate

There are a number of proposals throughout the Consultation Paper that suggest an expanded role for the Office of the Public Advocate. We understand why the Office of the Public Advocate is the natural organisation to be more involved in matters relating to guardianship. However there also need to be safeguards relating to that organisation in the interests of represented person is. See the Case Study at the end of this document for our general views in relation to this.

Victorian Civil and Administration Tribunal

In the 2009 President's Review of VCAT a number of organisations expressed their concern in relation to their perception of serious shortcomings in VCAT's ability to properly deal with the issues facing people with disabilities. It is our belief that VCAT members chosen/volunteering for the guardianship and administration list should be appointed to these positions only after training around disability issues and human rights.

Funding for access to lawyers must be provided for people the subject of guardianship applications. Many of the applications for guardianship are made by DHS, particularly when issues arise where strong advocacy is taking place against the DHS itself. DHS can afford legal assistance to support their case. It is only proper that people with disabilities are provided with the resources to participate in a legal case on the same footing.

State Trustees

DDLS receives many calls from people wishing to complain about State Trustees. While we cannot assist them, it is clear that there is a significant level of concern by people with disabilities regarding their relationship with State Trustees. It is not clear whether the staff who work at State Trustees have training in the rights of people with disabilities. Assuming they may not, similar training as proposed for VCAT members is recommended.

Individual guardians and administrators

Individuals appointed to the position of guardian or administrator should be required to have personal or professional life experience in the area of people with disabilities broadly, or of the individual with a disability in particular.

Question 2 - agree

Question 3 - agree

Question 4 - a global endorsement of the rights enumerated in the UN Convention on the Rights of Persons with Disabilities may be useful in the general principles

Question 10 - advocacy agencies for people with disabilities are well placed to organise education about guardianship laws. Resources should be set aside, and education could organise through the Victorian Disability Advocacy Network.

Question 14 - agreed

Question 15 - agree with proposed roles, however we are assuming that these roles will replace the current role of guardian rather than "collect" more people with disabilities subject to restriction

Question 17 - agree

Question 19 - any volunteer support program should require minimum relevant experience and compulsory training. Other volunteer programs have been shown to attract well-meaning people with time on their hands who do not necessarily have the skills to perform the relevant role.

Question 20 - agree

Question 22 - a program such as the Community Visitor program could be useful as a safeguard, however our comments to question 19 apply

Question 24 - yes

Question 25 - yes

Question 28 - yes

Question 34 - yes

Question 35 - yes

Question 37 - yes

Question 39 - yes

Question 41 - binding

Question 43 - yes. VCAT could perform this role with the reservations expressed above under question one.

Question 50 - yes

Question 51 - both options A and B are an improvement

Question 52 - agree

- Question 55 -** support option B
- Question 56 -** powers of each need to be clarified in legislation. Consultation is mandatory.
- Question 57 -** yes
- Question 58 -** yes
- Question 62 -** no
- Question 65 -** no
- Question 66 -** an administrator, Guardian, or third-party endorsed by the administrator or guardian (and of course hopefully the person with a disability) should be able to conduct litigation on behalf of the represented person. However the issue of costs must be decided upon. The risk of costs certainly does dissuade people from acting as Litigation Guardian and this leaves the represented person in limbo without any legally enforceable rights. At the very least, costs should be borne by the person with a disability, rather than the litigation Guardian. For example, access to Federal discrimination law is currently limited for represented persons due to the risk of costs. This is one of the most relevant Australian laws for people with disabilities.
- Question 67 -** no
- Question 68 -** it is not clear what is meant by the use of the word "force". If it is to mean physical force, then the answer is no, just as it should be illegal to use physical force on any other person.
- Question 73 -** additional measures for scrutinising decisions are welcome. However it is unclear as to who would scrutinise the decisions made by the Office of the Public Advocate.
- Question 74 -** yes
- Question 75 -** yes
- Question 82-** no
- Question 83-** no
- Question 84 -** yes
- Question 85-** yes
- Question 87-** yes
- Question 89-** yes

- Question 92- yes
- Question 93- yes
- Question 94 - yes
- Question 99 - yes
- Question 100 - yes
- Question 102 - yes
- Question 103- yes
- Question 111- yes
- Question 117- yes
- Question 118-121 While it may be appropriate for OPA to perform this function, there is no indication as to who should monitor OPA.
- Question 123- yes
- Question 124- yes
- Question 125- yes
- Question 135- yes
- Question 137- yes
- Question 138- yes
- Question 139- yes
- Question 140- two years
- Question 141- no
- Question 145- yes
- Question 146- yes
- Question 148- yes
- Question 150- yes
- Question 152- require them to attend
- Question 156- no. The DDLS is not in favour of restrictive interventions and certainly do not believe that it should be widened to include any other group.

Question 157- if option B were to result in improved mental health laws then this would be our preferred option. However expanding the number of people that can make a decision is more non-consensual psychiatric treatment is not the preferred outcome.

Please feel free to contact us for any further information.

Julie Phillips

Manager

Before awarding more guardianship powers to the Office of Public Advocate ("OPA"), it is important to consider recent cases in which they have been responsible themselves for decision-making on behalf of people with disabilities.

There are assumptions that due to the nature of OPA's work that they are knowledgeable on the rights of people with disabilities and are capable of making decisions in their best interests. We wish to challenge that notion and suggest that a more intense training program is required for any staff member of OPA performing the role of guardian.

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