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M Dalton

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To law.reform@lawreform.vic.gov.au

cc

Subject Response to Guardianship Consultation Paper

Response to the Guardianship Consultation Paper 2011

I certainly support the idea of maximizing participation in decision-making, and many of the broad recommendations and ideas sound very positive. I suppose, though, what I don't get, is a sense of how all this applies to the situation facing parents of an adult with decision-making incapacity.

In this respect It was a bit of a concern that the meeting did not cover any new ground - simply going over the huge problems facing parent carers in particular. The process so far does not seem to have really faced these issues - which were raised very clearly in the initial discussions. It would be unfair to say that there was wide consultation if the specific concerns of that consultation were not addressed. Apart from raising the idea of the co-decision maker, and acknowledging that everyone hates VCAT, it was difficult to feel that much progress has been made in taking steps to address the guardianship needs of parents of adults with life-long decision-making incapacities.

Solving the complex guardianship issues with a broad brush will probably lead to some people missing out on the reforms needed - my impression is that the specific issues of parents of adults with life-long incapacities are being subsumed within broader guardianship issues - such as the supervision of adult children with guardianship of their aging parents. The issues are very different and it isn't clear that the differences are recognized as such.

The idea of the co-decision maker has possibilities, but the danger is that without having the idea being firmed up considerably, it will just be a sop to the disabled and their carers; pretending that there is a process in place by which some decisions can be made. Without any legal standing parents and their disabled children are still vulnerable to un-ethical bureaucrats and medicos whose interests are elsewhere - as is the case now. Co-decision makers must have a legal standing which insists on their right to be a part of decisions made, and that needs to be emphasized.

How a co-decision maker is registered is really important too. If the present VCAT system was to be replicated then it will be a waste of effort. Without a panel with sensibility to the issues of disability then the present unfortunate situation will be repeated.

It is a real puzzle that there is no evidence available as to the percentage of parents who, anecdotally, are supposed to be misusing their child's pension entitlements, and that on the basis of this untested supposition all parents with adult children with decision-making impairment are put through unnecessary bureaucratic hoops, treated suspiciously and shown little respect. It would be a pity if the negativity of this untested assumption clouded any recommendations of these consultations and led to processes - such as those at present -

which are unnecessarily complicated and burdensome.

I hope the call has been clearly noted that parents of adult children with life-long decision making disabilities want and need a simpler system of being able to act for their children. In these cases ample evidence pre-exists as to a child's situation, and it is a waste of everyone's time and money that accountability of parental performance is undertaken by members of the legal and accounting professions who have no experience of, nor apparent interest in, the life-long commitment of parents to the huge issues and concerns facing them as parents of disabled children.

Finally, and most importantly, I have no sense that the Consultation Paper has acknowledged that many adults with a decision-making incapacity have no legal standing; they cannot make decisions for themselves because they are intellectually disabled, they cannot appoint a guardian because they cannot make a decision, and they cannot have a guardian because they are over eighteen. I would have thought that acknowledging and addressing this absurdity would have been a central concern of the Consultation Paper as this lack of legal standing is clearly a central source of the anxiety, anger and frustration that parents of disabled adults feel, and under which they have to labour. Simply acknowledging this fact might be an important step in the right direction.

Yours Sincerely

Michael Dalton