



Submission No. 62



Free legal advice | Law reform | Community legal education | Community development | Drug outreach lawyer

30th May 2011

The Victorian Law Reform Commission
Review of Victoria's Guardianship and Administration Laws
P.O Box 4637
GPO Melbourne Vic 3001

Dear Sir / Madam,

Re: VLRC Review of Victoria's Guardianship and Administration Laws

St Kilda Legal Service welcomes the opportunity to contribute to the review of Victoria's Guardianship and Administration laws.

St Kilda Legal Service provides free and accessible legal services to members of the community within the Cities of Port Phillip, Bayside, Stonnington and parts of Glen Eira. The Legal Service is committed to redressing inequalities within the legal system through casework, legal education, community development and law reform activities. The Legal Service conducts a night service three nights a week, staffed entirely by volunteer lawyers, and employs an administrator, a casework lawyer, a community legal education lawyer, a volunteer coordinator and a community drug outreach lawyer.

The Legal Service is co-located with other community agencies at the St. Kilda Community Centre. The Centre offers a range of programs that provide support and assistance to some of the most marginalised people within our community. St.Kilda Community Centre programs provide emergency relief, including provision of food, financial counselling, No Interest Loans (NILs), recreational activities, including art groups for people with disabilities or who are isolated, support for rooming house residents and public tenants. St. Kilda Drop In, also co-located at the Centre, provides meals and support for people with a mental illness.

St. Kilda Legal Service is a generalist community legal centre that provides legal advice and casework assistance with a broad range of legal issues, and often sees vulnerable clients with legal matters associated with poverty, drug addiction, mental illness and homelessness. In the last couple of years St. Kilda Legal Service has seen just over 40 clients for advice or casework relating to matters of powers of attorney, guardianship and administration.

As we have previously indicated to the Commission, following the release of the information paper last year, the primary issue reported by clients relates to the area of Administration, and specifically, to where an administrator has been appointed, generally the State Trustees. Therefore, we will focus on just a few key areas of the consultation paper relevant to Administration and the experiences of our clients - mainly chapter 7 with respect to supported decision making for financial decisions.

Chapter 7: Supported Decision Making for financial decisions

Q 14. Do you agree with the Commission's proposal to introduce new supported decision-making arrangements?

Q 20. Should supporter or co-decision-maker arrangements apply to financial matters, or be limited to personal decision making?

Any mechanism that provides additional support for people with impaired decision making capacity to make and implement their own financial decisions and continue to participate in community life would be welcomed by SKLS. Supported decision making could overcome the frustration many clients feel of being unable to access their funds for items they believe are necessities, if they were able to participate in the decision making process and are required to consent to the decision made.

Clients of the Legal Service have reported difficulties in accessing funds for items they view as basic necessities, such as clothing & shoes, despite having savings that could be used to make these purchases. While section 49 of the *Guardianship and Administration Act 1986* (Vic) requires the administrator to, "... tak[e] into account as far as possible the wishes of the represented person" the experiences and perception of at least some represented persons whom have sought advice and assistance from the Legal Service suggests that this is not always occurring. Its not uncommon for St. Kilda Legal Service to advocate for clients by writing to State Trustees requesting financial statements and advising that clients wish to gain access to money being held for them. As one client, who was seeking access to all of her fortnightly Centrelink payment, stated she just "*wants to be free of State Trustees*".

A new option of supported decision-making arrangements would provide a practical alternative to substitute decision making, particularly for those people who are isolated and don't have the support of family members to assist them in an informal way.

In Victoria, the Office of the Child Safety Commissioner has a Statutory Declaration for Informal Relative Carers to help recognize the status of informal carers' of children where their parents are unable to raise their children. This role is usually undertaken informally by relatives, and the statutory declaration is intended to improve access to information and services they require when they have children in their care. This is similar to the proposal of having what might currently be an informal supporter, who is likely to be a family member, given some recognition and enabling them to access information and services to be able to assist and support a person with impaired decision making capacity.

Currently, even if there are family members willing and able to support a person in financial decision making it's not always so simple, they may still need to have the matter heard in the Victorian Civil and Administrative Tribunal (VCAT)

guardianship list. St. Kilda Legal Service has seen cases where the person with impaired decision making capacity has wanted to appoint a close relative as an administrator or assign a power of attorney to a close relative and has had to attend a hearing at VCAT guardianship list because the application was initiated by State Trustees or a hospital social worker or psychologist, and in one instance was even told that "*it was out of their control*".

Likewise, even where there are family members willing to support and assist a person in financial decision making they do not always have the abilities and skills to be capable of complying with the accounting requirements, such as lodging financial statements, plans, and accounts by Administrators for examination with VCAT. This has particularly been the case for St. Kilda Legal Service clients from culturally and linguistically diverse backgrounds, that are non-English speaking and not literate in English. However, these family members would be much more likely to be able to undertake the role of a 'supporter', if there was on-going training provided and a support program.

It can't be underestimated the value of promoting and enhancing personal autonomy and dignity of people with impaired capacity by enabling them to participate in making decisions that affect their lives. Many St. Kilda Legal Service clients who have their funds administered by the State Trustees do not even know the name of their administrator. If 'supporters' are able to establish a relationship with the supported person, then they will be in a much better position to know the wishes and the everyday living needs and circumstances of the supported person.

Q 19. Should the Public Advocate establish and coordinate a volunteer support program to assist people who do not have family or friends willing and able to take on these roles?

As proposed in the consultation paper there needs to be a body responsible for establishing, training and co-ordinating a support program for those people without the support of family or friends. However, as noted at 7.63 of the consultation paper, community and/or government organizations will need to step in to provide support networks for people without family support, rather than volunteers.

As raised in the consultation paper, there will need to be safeguards put in place to protect vulnerable people from financial abuse, neglect, exploitation or undue influence. There will also need to be guiding principles & guidelines to assist supporters in the role. As suggested the Public Advocate may be well placed to play a role in registering, overseeing, reviewing and monitoring supported decision-making agreements.

However, the role of the Public Advocate needs to be clear. The office should not be supporting people with impaired decision making capacity while also providing training, guidance and co-ordination of supporters. These roles should be undertaken by separate bodies to avoid any real or perceived conflicts of interest. Likewise, any new powers to investigate allegations of abuse or misuse of the role of a supporter need to be exercised by an independent body to avoid conflicts of interest.

Chapter 17: Responsibilities
Communication with represented people

As outlined above it's quite common for St. Kilda Legal Service to advocate for represented people dealing with State Trustees, and this is often due to lack of consultation and communication with the represented person, with reasons for decisions not properly explained, as noted on p 317 of the consultation paper. Also, many of our clients whose funds are administered by State Trustees have a mental illness. Therefore, St. Kilda Legal Service would support the training of administrators around mental health issues, as mentioned at 17.53 of the consultation paper.

St. Kilda Legal Service supports the submission made by the Federation of Community Legal Centres.

The Legal Service looks forward to the release of the Commission's final report later this year. For any queries in relation to the above, please contact Jacinta Maloney

Yours faithfully,

Jacinta Maloney,
Community Lawyer