

**ANGLICAN AGED CARE SERVICES GROUP  
(TRADING AS "BENETAS")**

**RESPONSE TO REVIEW OF VICTORIA'S  
GUARDIANSHIP LAWS**

**MAY 2010**

# **Response to Review of Guardianship and Administration Act 1986**

## **General Comments**

Overall it is believed that the current principles regarding protection of vulnerable people are vitally important and seem to be well covered in the present legislation. It is also our position that the current system of guardianship and administration, in principle, is the best way to ensure the needs of vulnerable people are met and their rights protected. However we believe there are better ways that this system can work in practice, which will be mentioned later in our response.

At present there seems to be a fragmentation of the system with people confused over what section they should be accessing. Also it is a complex system with a great deal of paper work required to fully initiate processes to invoke guardianship laws, and it is a lengthy process which takes a great deal of time to access. The system needs to be streamlined with a minimum of "red tape".

It is important that there is a greater integration of the system so that people with different types of disabilities and disorders across the age range have access to the same type of supports and assistance. In other words people who may not have a specific disability, but are particularly vulnerable or have little capacity to organise their own affairs, should be able to access the same services as do those with a recognised disability.

## **Specific Comments**

### **Enduring Power of Attorney(Financial)**

The current wording of the Act indicates that the power of attorney comes into effect as soon as the appointment is made, unless otherwise indicated by the person making the appointment. This means unless the person making the appointment says something the power of attorney automatically comes into effect. This is in contrast to the other enduring powers which state that they only come into effect when the person who made the appointment loses capacity. The enduring power of attorney needs to be changed to bring it into line with the other enduring powers with the emphasis on losing capacity not on the person making the appointment having to say something.

### **Disability:**

The basis for declaring a person to be not able to make reasonable decisions needs to be carefully considered. This type of assessment should not be made just by a single professional (eg doctor) using a specific tool or instrument. It also needs to take into account the wishes of the person being assessed (as much as they are able to do this), the information provided by carers/families, any staff with whom the person under assessment is involved and any other person who can provide relevant information on the person being assessed. While this type of assessment may be long and rather complex, we believe it is essential to get a reasonably accurate picture of a person's decision making capabilities and their wishes.

### Best Interest

We believe it is essential that every effort is made to identify the represented person's wishes and to follow them as much as possible. This may mean bringing in other people whom the represented person knows and trusts to act as a type of intermediary in the conversation.

### Substitute Decision-Making

In our opinion there is a need to continue the substitute decision-making laws but there needs to be only one decision maker. The current system of two types of decision-makers is clumsy and leads to real difficulties where guardianship and administration are managed by separate people/organisations. Also it is not always easy to completely separate the areas for financial, lifestyle and personal decisions and differences can arise between a guardian and an administrator.

### Review

There needs to be a legal process for reviewing individual decisions made by guardians and administrators. Sometimes decisions are made without full knowledge of the facts which can severely distress the represented person. A review of such decisions should be requested by the person represented or a close relative/friend who has a trusting relationship with the person represented. These requests for a review, and the review itself, should be the responsibility of VCAT.

### Enduring Powers

People appointing a representative with enduring powers often wish to make advance directives, particularly in relation to medical treatment concerning end of life such as resuscitation, and it is important that these wishes be followed as much as possible. Consequently people in enduring powers should be given authority to make certain advance directives legal.

### Mental Health Act

As mention above the whole system needs to be streamlined and consolidated as much as possible. As a result there should be just the one same pathway for all people regarded as being unable to make decisions, and this includes people covered by the Mental Health Act. Mental Health laws in regard to guardianship should come under the Guardianship and Administration Act so that there is one set of laws. In the same way guardians should be given some powers relevant to the Mental Health Act and be able to consent to psychiatric treatment in certain circumstances, which need to be clearly defined, such as a need for urgent treatment.

### Training/Support for Representatives

We are concerned that well meaning people who take on the roles of guardians and administrators are not fully equipped to deal with the role and need support, and in particular training. It is suggested that a training scheme be set up which would equip new guardians and administrators with the necessary skills to perform their role as

required. Also an outreach program should be developed so that guardians and administrators can be given proper support. These schemes could be funded by a combination of Government investment and user pays.

### Public Awareness

In our experience the general public has little, if any, knowledge of the whole system of guardianship and administration and so when a person needs to use the system they are in complete ignorance of what to do to access the system. There is a real need for a public awareness program particularly in relation to the rapidly increasing number of older people with disorders such as dementia. People need to be informed about the role of guardians and administrators, how to access the system and other relevant information. Such an awareness programs means more than just sending out some brochures to agencies, but wide media coverage.

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