

14 May 2010

Professor Neil Rees  
Chairperson  
Victorian Law Reform Commission  
GPO Box 4637  
MELBOURNE VIC 3001

Email: [law.reform@lawreform.vic.gov.au](mailto:law.reform@lawreform.vic.gov.au)

Dear Professor Rees

**Re: Response to the *Guardianship Information Paper***

Thank you for inviting Royal College of Nursing, Australia (RCNA) to participate in the review of the *Guardianship and Administration Act 1986 (Vic) (G&A Act)*, as undertaken by the Victorian Law Reform Commission (the Commission). At this stage in the consultation process, RCNA is pleased to provide the following general comments in response to the *Guardianship Information Paper*. This response is drawn from feedback received from RCNA members with expertise in legal and ethical issues, particularly in Victoria.

RCNA is the peak national professional organisation for nurses in Australia. RCNA represents nursing across all areas of practice throughout Australia. RCNA has members in all states and territories of Australia, and internationally. A not-for-profit organisation, RCNA provides a voice for nursing by speaking out on health issues that affect nurses and the community. With representation on government committees and health advisory bodies, RCNA is recognised as a key centre of influence in the health policy arena in Australia. When health policy decisions are made, RCNA presents a professional nursing perspective, independent of political allegiance.

RCNA maintains an ongoing interest in this consultation process and looks forward to staying abreast of further developments regarding the G&A Act review.

Please do not hesitate to contact me if you have any questions regarding the attached submission.

Sincerely

Adj. Professor Margaret McLeod FRCNA  
Acting Chief Executive Officer

## Guardianship Information Paper consultation

### General comments

RCNA sought feedback from our ethics and legal issues network members as well as from expert members in Victoria for inclusion in this submission. The following comments in response to the guardianship and administration issues raised in the *Guardianship Information Paper* have been provided by nurses with experience and expertise in these aspects of the health sector.

#### In relation to questions 3 and 5

Generally, RCNA members are concerned that there is an overall lack of knowledge and understanding about guardianship within both the general and health professional communities.

- Members believe that there is a need for a major education strategy in regard to guardianship laws, powers of attorney laws and medical treatment as these matters are somewhat interrelated and have the potential to overlap.

RCNA is advised that when the guardianship laws were designed in 1986, the focus was on intellectual disability, however, people with acquired brain injuries, dementia and mental illnesses currently make use of guardianship and administration to a great extent. Members note that this situation may justify a review of who is most in need of guardianship and administration and the establishment of a broad set of criteria to reflect these findings.

- In regard to people who utilise guardianship and administration due to age related disabilities, RCNA members note that the autonomy of these individuals could be better preserved if they are able to consider their lifestyle, finance and medical decision-making options while they still have the capacity to do so.
  - Members note that language in the guardianship laws should be simplified and the process made comprehensible for the community to enable this possibility.
  - If used to its full extent, this process could eventually also reduce the number of people needing guardianship powers.

#### In relation to question 7

Members believe that the determination process of a person's capacity for 'decision-making' is a complex one, as this concept is difficult to specify and even more challenging to properly assess.

- Within the assessment process, members note that it is important for consultation to occur with the individual, the nominated family members and a health professional before a final decision is reached.

#### In relation to questions 8 and 12

In regard to different types of decision-makers for financial and personal decisions, RCNA members are of the opinion that different decision-makers should be allowed, as should the ability for one person to have a range of different powers (financial, medical and lifestyle), if deemed appropriate. However, RCNA members do hold some stipulations for the guardian or administrator:

- The age of the person appointed to be a guardian or administrator needs to be consistent with other age-related appointments, specifically the Powers of Attorney.

- RCNA members are concerned that the potential guardian or administrator could be interested in a financial gain as a result of their power and recommend that potential substitute decision-makers be tested to ensure they have the skills and experience to truly represent the best interest of the individual needing assistance.

#### In relation to questions 22 and 25

The RCNA membership suggests that there should be a consistent set of definitions across the guardianship and Powers of Attorney laws in order to enhance community and health professional understanding.

- Currently, there is no definition in the Information Paper glossary of the word 'disability.' RCNA acknowledges that the Victorian Law Reform Commission (the Commission) has presented several working and legal definitions of the term (Chapter 2: 2.27 and footnote 93 and Chapter 3: 3.59), but perceives that the inclusion of differing definitions could hinder general comprehension within the community.
- Also, the interchanging use of words such as 'competence', 'cognitive capacity' and 'decision-making capability', members argue, can create confusion and make the laws more difficult to comprehend.
- RCNA members note that the terminology 'guardian' and 'administrator', which both refer to appointments made by the Victorian Civil and Administrative Tribunal (VCAT), could be confused with the term 'enduring guardian' within the Powers of Attorney laws.
  - RCNA members are concerned that the current use of these two VCAT terms does not accurately reflect the roles that these two powers have.

#### Contact details

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