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**GUARDIANSHIP LAW REVIEW**  
**Spectrum MRC's response to Consultation Questions**



Spectrum Migrant Resource Centre (Spectrum MRC) welcomes the invitation to respond to the Guardianship Law enquiry.

Spectrum MRC is a not-for-profit community organisation working to assist generations of migrants and refugees to successfully settle and reach their full potential in Australia. The organisation was initially established in 1980 to provide settlement services for migrants and refugees living in the North- West Metropolitan Region of Melbourne. As service demand has expanded, Spectrum MRC has responded by offering support reaching widely across Melbourne, including specific project areas which have statewide reach. The scope of our services includes:

- Influencing society to build more inclusive communities;
- Delivering culturally appropriate and responsive settlement & family services;
- Making immigration advice affordable for individuals and employers;
- Empowering communities to identify and address settlement challenges;
- Providing culturally-tailored, hands-on & job-focused training;
- Transitioning jobseekers into sustainable employment;
- Assisting ageing migrants and people with a disability to participate in life at home and in the community.

All Spectrum MRC activities are client-driven with a focus to support newcomers in their transition to the Australian society. The organisation aims to foster economic and social inclusion at the onset of clients' arrival.

Spectrum MRC's specific interest in the review of the Guardianship Laws relates to our organisation's work supporting people with a disability and, their families, from culturally and linguistically diverse (CALD) backgrounds. Spectrum MRC's disability program focuses on supporting careers, many of whom are elderly, through the provision of both in-home respite and social support groups such as sport, recreation and outings.

Spectrum MRC's interaction with the current Guardianship Laws has not been extensive, consequently comment will be made in response to questions Spectrum MRC feels are most relevant to our experience. Spectrum MRC would like to preface this submission by stating that our experience has indicated that discussions about guardianship, substitute decision makers and administrators are sensitive topics for the clients we work with, their carers and their families. Through Spectrum MRC's future planning sessions with families to think about the needs of the person in their care with a disability, guardianship will be broached sensitively. Also, aside from the emotionally and personal difficulties associated with discussing these laws, Spectrum MRC has found that general awareness about the law is inadequate as the specifics of the law can be technical and confusing to carers and clients' families from CALD backgrounds.

### **GENERAL QUESTIONS**

1. *We would like to hear your views about:*

- what parts of the law work well?*
- what parts of the law don't work well and why?*
- your ideas to improve the law.*

2. *Is a system of guardianship and administration the best way to ensure the needs of people with impaired decision-making ability are met and their rights are protected? What other approaches might better achieve these goals?*

**3. Is there an adequate understanding of guardianship laws in the community?  
What could be done to improve this?**

From Spectrum MRC's experience, there is limited understanding of the need for guardianship among CALD families caring for a person with a disability. This could be for a range of reasons- lack of awareness that guardianship or administration are necessary, other life stresses taking priority for families – including depression and strained family relationships, fear around the complexity and formality of the system, a belief that informal arrangements are acceptable or preferable alternatives, fear and anger that power will be taken away from the carer and family. These specific reasons augment the endemic barriers faced by CALD communities; language and literacy barriers and the accessibility (including access point) of user friendly information for our clients.

Spectrum MRC believes that one on one discussions with carers and families of clients with a disability is the best approach, following the identification of a need for guardianship during planning. Such discussions about the purpose and meaning of the laws could be best delivered where the relationships of trust already exist – through existing services involved with the family; day programs, council support services, respite service providers etc... The staff would either require specific training or be able to arrange broader information sessions, either through community educators from Department of Human Services / Office of the Public Advocate or through service providers involved in future planning for clients. Finally, the information provision needs to be occur in a sensitive and respectful way, one that acknowledges the value and importance of the carer.

4. How should developments in policies and practices for people with disabilities be reflected in guardianship and administration laws?

Relying on a definition of capacity.

5. People with age-related disabilities and acquired brain injuries are now the main users of guardianship and administration. Do you think the system needs to change to reflect this situation and prepare for the future? If so how should it change?

**DISABILITY**

**6. Should it be necessary for a person to have a 'disability' before a guardian or administrator is appointed, or is it preferable to rely on concepts such as lack of 'capacity' or 'vulnerability'?**

Spectrum MRC believes that it is important to rely on concepts such as 'capacity' and 'vulnerability' when making decisions about guardianship, as being registered as having a disability does not automatically imply the need for a guardian. Further, the Disability Act suggests that there are methods of involving people whose capacity is limited in planning supports for themselves (compic, Easy English etc...). If there is an approach of self-directed funding for service provision, why not for the financial, legal and medical matters of guardianship and administration?

Medical practitioners and service providers working closely in case management roles to develop client plans will be best positioned to be able to contribute to 'capacity' and 'vulnerability' assessments. Spectrum MRC is of the belief that there needs to be a consistent approach between a client's 'plans' (ie Person-Centred Plans) and decisions around guardianship. If the question of guardianship is discussed often with clients, key service providers working with the client, and their families and carers, then provisions can be made early during the planning process. This ensures that thinking about guardianship is not left until there is a need for the law to be enacted in challenging times. Future planning and the incorporation of guardianship discussions is essential to ensure best outcomes for clients with a disability.

***7. What are the best ways of assessing whether a person's decision-making capacity is impaired?***

Spectrum MRC believes that VCAT and the Office of the Public Advocate should continue to assist in the assessment of a person's decision – making capacity but, as mentioned above, client case management plans also need to be considered as do the views of key service providers, medical professionals, family and carers.

**DISABILITY ACT**

*31. Is the law clear about when to seek a Supervised Treatment Order and when to seek a guardianship order?*

*32. What do you think is the best legislative approach for people who are a serious risk to themselves or others but are not covered by the involuntary treatment provisions of the Mental Health Act 1986, or the compulsory treatment provisions of the Disability Act 2006?*

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