

Guardianship.

The G&A Act (Guardianship and Administration Board act) does not work well. Many of the people appointed to hear the applications and those in the Office of the Public Advocate (OPA) make valued judgements and are not in touch with the person's personal circumstances when they make their decisions.

They often make decisions which are not in the best interests of the Represented Person (RP). For example, the people hearing my sister's matter decided that she did not need a plenary guardian. She was able to make decisions for herself. Given that she had been assessed as having the intellectual capacity of the 3-5 year old, this was ludicrous.

She was living in a government house and this left my sister in a situation where de-facto guardians were making decisions. For example, how my sister got around (they organised a taxi card for her and I paid the bill and this card was abused) what day program she would attend (No notice was taken that she did not like the program) what she would eat, what she would wear, how her clothes would be washed, how her incontinence allowance was spent (They bought soap products for the whole house with this allowance) what friends she would have, who she would associate with, what doctors she would see, that they would attend doctors appointments and not the family member, and what time her relative was allowed to visit and how much notice she had to give before she arrived, and what time exactly my sister would be returned.

They even decided she could not go to Church because if they were doing something else it was not convenient for me to return her to this house (they called it a home!) after church. This was at a time when I was working weekends and could not have my sister all day. So in fact the G&A Act and people appointed, made my sister's life hell and mine even worse. They did everything in their power to sever existing family relationships. They deliberately disempowered the family in favour of a "friendly bureaucracy" who made all decisions. The OPA supported this stance.

This was completely foreign to me as a family member who believed that I had a God given right to care for my sister. ("He that does not provide for his family is worse than an unbeliever.") My sister's wishes in all of this were completely forgotten. In fact she was brainwashed to say she wanted to live at this government house. This is the restriction she had and she was scared to differ. These de-facto guardians changed all the time and made decisions without knowing my sister.

The law is a bureaucratic nightmare. Who wants to be dragged before a Court with regards to a guardianship matter? Why should one be judged as guilty until they prove their innocence? The removal of Section 10 that the rules of natural justice must apply; a retrograde step! This left one guilty until proven innocent. Why does the Guardianship List (GAB) have an anti family agenda when 93% of people with disabilities live in the family home forever? They can't get accommodation out of their home. They are never afforded the rights other people have and take for granted.

This law and this Act should be repealed. Things could be improved by making it more personal so that people with disabilities and their families are known to the person who makes the decisions. I would recommend an increase in the size of the local community policing squad

to take over this role. They would be in the person's local community. They would be near where they live and they would know the person and their family. Hearings could be local at local police stations and local CPA's could be in charge of reviewing audits done by family members who were managing finances. This would give the person with the disability the right to access the same services everyone else can access. Why should they be forced to use State Trustees to manage their finances? Why should governments dictate audits and reviews and dictate costs to do these audits. These costs are far too expensive and are around \$300 a year by the time the GAB and State Trustees, who both charge, are finished. My local CPA is much cheaper. If no administrator can be found from the family, then and only then, should State Trustees be used as a last resort. But families should not be forced by government to do reviews and then forced to pay for a government requirement.

I do not think it is up to law makers or the GAB to educate people about the Act. There is a limit to what governments can and can't do and if a person is interested they can find out for themselves about the Act. Governments should not try to assume every area of responsibility for the community. We are over legislated and over-governed as it is.

Developments in policy and practices are not a matter for the GAB. It is high time they were wound down and that once a person is appointed a plenary guardian they should not be reviewed every year. They should remain the guardian. Imagine the stress of the reviews to these poor families. If they have done something wrong then this is different. But an annual review for no reason is a disgrace and tantamount to persecution of the families.

People with age related disabilities and people with acquired brain injuries should be treated no differently from any other person. They also want to stay in close contact with their families and should have this basic human right. The Community Policing Squad a much better and cheaper option.

6. To rely on lack of "capacity" and "vulnerability" would widen the scope enormously. Families are probably better to deal with these issues in an informal way. Sometimes it is better for these people to have the independence they want and to make mistakes that other areas of the law can handle. It is acknowledged that some families are bad families but if they are financial administrators it makes not difference. If they decide to be dishonest and spend the money no order will stop them. We are reliant on people having honest families. You can not penalise the majority who are good families because of a very few bad families. The majority are constantly out of pocket for the person with the disability.
7. The best way to establish this is by a psychological report or an assessment. This is used in aged care currently, very successfully, and could be extended to encompass anyone where there was any doubt about capacity.
8. "Best Interests" is a bad term. It depends from what side of the fence you are on what you think a person's best interests are. As said before often the "best interests" are to keep people in jobs, as at the OPA. What was in my sister's best interests according to me was completely the opposite of what the bureaucrats thought and they were only interested in promoting work for themselves and maintaining their control over the person with the disability no matter what. My sister's file is just one disaster after another and it is clear by reading it that the bureaucrats wanted to be in total control and exclude me. In fact at one stage the OPA banned me from seeing my sister. And I just adored her. Can you imagine how this felt? I had looked after my sister all her life from a tiny child. I helped wash her in the bath and feed her. In fact she eventually came home despite the OPA trying to stop her

and she had five good years before she died, accessing the community, developing her skills base, and getting to know all sorts of people and becoming part of the Church family. She loved life and to deny her this for so long was just cruel.

9. Sometimes the person needs the "Dignity of reasonable risk."
10. At all times a guardian should be consulting with the person with the disability to ensure they are doing what this person wants. To watch for signs they may be unhappy or that they don't want to do an activity they are scheduled to do. One exception is food, where the health of the person is in jeopardy.
11. With a person like my sister who had a dual disability it was important that she had a plenary guardian who was available to make decisions in every area of her life on an ongoing basis. To be dragged before the VCAT for a review of this appointment all the time was abusive. I felt we were persecuted because of my sister's disability. I believe I have been discriminated against in the VCAT regarding other matters because of my insistence on my right to remain my sister's plenary guardian. My privacy has also been breached at the VCAT because members have discussed me in the "halls" of the VCAT. I rang VCAT about a building matter and the receptionist transferred me to the Guardianship Board mid sentence. My sister had been dead for 5 months. To this date His Honour Mr Justice Bell refuses to address my concerns.
12. We do have two types of substitute decision makers. We currently have plenary guardians (The same rights as parents) and limited guardianship which may be guardianship over one or more areas of life. We also have a third guardianship which is financial administration. I believe that there should have been provision for someone like myself to be appointed plenary guardian which should have included financial administration. It is incongruous to have a different financial administrator and guardian. It just does not work. Who decides how the money is spent? In other Countries, if a person does not reach intellectual maturity by the age of 18, the parents automatically remain the guardians. This is how it should be here. It is a much fairer system it acknowledges families and it is a much cheaper option.
13. Plenary guardianship and administration orders should be retained for life unless the appointed person withdraws. If a person can make a decision about one area of life it usually follows they are best to make decisions about all areas of life in consultation with the person with the disability
14. Yes, I believe financial administrators should have the right to give money away and to buy gifts with a RP's money. It is not right to force a person with a disability into a position where they can not reciprocate or give when someone or a hospital has provided good care for them. Others have the right to give; why not a person with a disability? I can not think of any decisions a substitute decision maker should not make. At all times, all decisions I made for my sister were decisions I would make for myself if I were in her situation.
15. Supported decision making is a problem that currently exists. Ask anyone who has had the misfortune to be a shared guardian with someone at the OPA! It is not appropriate for more than one person to be making decisions for a person with a disability. There should be no supported decision making. If a person can not be found to make decisions then an alternative is the unfortunate consequence.
16. This is fanciful. Can you imagine how busy they would be, being involved in decision making? I know they would relish this role because they love interfering and being authoritarian. I know of one case where they promoted a family fight, I witnessed this personally. There is just not the time or the resources. The members do not have the ability they are not qualified. There is enough interference in the community now. The Department of Human Services get the day programs to monitor relatives and there are all sorts of problems in the system currently. Often this spying is done simply because they have

- decided that a person with a disability should not live with their sister as in my case. I was the plenary guardian and DHS had asked for a review of guardianship simply because my sister wanted to come home and I had decided to bring her home. It is bureaucracy gone mad! They made an application in April 2003 after I decided to bring my sister home in March 2003 after a VCAT matter requesting staff rosters relating to theft, where staff had made defamatory statements about me at the VCAT which were untrue. David Sykes OPA wrote a paper called "Choice is not an Option." This details how and criticism of a CRU (Community Residential Unit) is taken as a personal insult by staff and that they become defensive. In this environment no changes for the better can be made. I knew then my sister could not longer live at this house as staff were facilitating DHS and abandoning my relationship with my sister. The DHS application accused me of a reactionary decision!
17. VCAT should not have the power to deal with abuse. This is best handled by the police and the legal system via other avenues. The current members of the GAB are not properly qualified to deal with punishment. They are mostly convenors with no legal qualifications.
 18. There needs to be a clear understanding in legislation of when the Public Advocate is acting as a guardian and when he is acting as an advocate.
 19. There needs to be an avenue of appeal to anyone who has applied for guardianship and been refused; without going to the Supreme Court.
 20. A person who is 17 years old legally has parents to make decisions for them unless they are a Ward of the State.
 21. Currently there is no privacy for people with disabilities and their families. This has been recognised by families for a long while. I think I have said in the past that there is an incestuous relationship between the GAB the OPA and State Trustees and the Department of Human Services and any other involved bureaucracy. I do not know how you can overcome this. This is not acceptable but it is a fact. There is NO privacy for families. There is discussion about families by these people all the time. I have personal experience of this and can give testimony to the Law Reform Commission.
 22. The term guardian is well known and any changes would cloud the matter. My main objective to "Person responsible" is that no one in authority has any idea of the concept and one would have to carry the Act around with them and show it to everyone before one was listened to as the nearest next of kin.
 23. Yes. I think they work effectively. The problem stems from the members of the GAB not understanding the Medical Treatment Act. At a guardianship board conference a question was asked about a man who had gangrene of the leg. That the wife had refused amputation and the GAB said they would force this man to have the operation. I objected strongly and said this woman had the right to refuse under the Medical Treatment Act. She clearly was an elderly carer and this may have meant separation for them. It was her right to refuse. She was his wife and could make this decision. The GAB clearly did not understand this.
 24. I do not think it is fitting to cloud these issues. The GAB do not have any expertise to deal with this. In fact none of the medical guardians at the OPA have any medical qualifications. I think it is best to leave medical issues to the Medical Treatment Act and refer to this in the GAB Act. Don't cloud the issue. We need to give people with disabilities the same rights as others in the community via family guardians.
 25. At this moment I think they work together. I think there would be a revolt if the aged population was forced into a GAB situation.
 26. I see this as an issue apart from the GAB Act. This is just clouding the situation
 27. Their role should continue as with any other person with a disability. Naturally they are constrained by Court outcomes.

28. Yes these Acts should be separate. However it is imperative that guardians make all decisions about treatment and that this is not left up to a psychiatrist who may never have seen the person with the disability before and who does not know what is normal behaviour and what is abnormal behaviour. It is dangerous to have a psychiatrist making these decisions. These Acts can refer to each other.
29. There should be no overlapping except that the power of a guardian should not be overridden by a psychiatrist.
30. Guardians should be making decisions about all treatment for the person for whom they are guardian. This can be done in consultation with a psychiatrist. There must be separate beds for people with dual disabilities. It is NOT appropriate to put them into main stream facilities. They need to have Mental Retardation nurses working with the psych nurses. Psych nurses should know that because these people can't do their own washing they need to give it to the family as in other hospital situations. They have never done this with my sister and all her clothing disappeared. MY sister's death is the result of her being dumped in a psych ward to get rid of a surgical problem. At the time of this admission she was in need of an urgent surgical bed.
31. I believe the law is clear but unfortunately the families of people affected are not clear. I would believe that Guardianship is a separate issue because this order is to affect medical treatment and not about guardianship.
32. This may be a matter for the Courts and currently a Magistrates List is before Parliament. The naming of this list is under question. The separation of people with disabilities and people with Mental Health Issues is being sought. This matter would not be a guardianship matter. Appointing a guardian is not going to help. Incarceration may be the only answer and I don't believe anyone should be incarcerated to protect the public or themselves without a Court order. The guardianship list should not be involved. A social worker could take this to a court. If this is pre-empting what may occur then nothing can be done until something happens.

Many relatives have experienced being threatened by people in power that they would get an alternative guardian appointed. This threat is often used against a relative who is advocating strongly for the person with the disability. I can testify as to other people who have experienced this. So to disempower a strong advocate a threat to appoint an alternative guardian is commonly used. In my case, advocating for my sister, I was threatened by a doctor in casualty that he would seek an alternative guardian. I have spoken to many parents and relatives who have been threatened this way. It is a disgrace that the GAB and OPA would be used as a threat against a strong family advocate. It caused me to become completely demoralised. I was afraid to return to the hospital.

Lastly I want to say that this Act should be repealed. It does more damage than good.

