



16<sup>th</sup> March 2016

The Law Reform Commission  
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Dear Commission

Re: Review of the Guardianship Act 1987 (NSW) preliminary submissions

I am writing as the Director of Rehabilitation and Pain Medicine at St Vincent's Hospital, Darlinghurst together with the Senior Social Worker who works within my department. We are writing with respect to our combined experience of engagement with the Guardianship Board of NSW for patients with limited capacity over the last 25 years. We have noted a disturbing trend of inefficiency, unresponsiveness and under resourcing of the Guardianship Board of NSW. This has led us to a sense of nihilism regarding engagement with them and an understanding any process to undertake guardianship for patients with incapacity will take such a prolonged length of time it should be avoided in all possible circumstances.

In particular our experiences noticed:

1. The unresponsiveness of the Guardianship Board of NSW to applications of patients who are being treated in our hospital. It is a rule of thumb in our professional circles that the guardianship board does not see a high level of risk of those patients being kept in public hospitals as their housing and immediate needs are satisfied in the interim. Unfortunately this puts the hospital system that we work in, under enormous pressure with respect to access for new patients, whose beds are blocked by those with incapacity waiting for guardianship hearings to establish decision makers for their future accommodation. In our experience the average length of time from an application to an initial hearing is between 8 – 12 weeks. During this period the patient is kept within the hospital. The first hearing if it is successful will appoint a guardian and that guardian will not take up their role for between 3 – 4 weeks. Following that period their engagement with the patient's case and decision making regarding housing or care can take a further 4 weeks. In our experience it takes approximately 3 months before a patient with significant incapacity has a guardian who will be able to make decisions regarding their housing.
2. It is clear to us that over the past 15 years the guardianship board of NSW has become significantly under resourced, their ability to return calls in a timely manner has significantly deteriorated. It is usual practice that a call will be made to the board, a

message left and a return call from the board will not be made for up to 1 – 2 weeks after the message has been left. This means our ability to communicate with families and with hospital administrators is severely impaired.

3. The processing of requests for guardianship is lengthy, convoluted and unnecessarily complex. It is our experience, that many incapacitated patients, in hospitals become significantly distressed when they receive paperwork from the Guardianship Board this in turn utilises significant amount of staff time as they are required to explain to patients why they have received the paperwork. The guardianship board take no role in this matter.
4. The actual hearings often require the patient to be out of the hospital for a large amount of time involving significant resources from the hospital for the patient to attend. It is clear to us that the Guardianship Board of NSW does not utilise modern technology as often as it could nor are they mobile or able to move the hearings to the beds of very infirmed patients

Our experience of accessing emergency hearings have also revealed significant deficiencies, the wait for an assessment or hearing for a patient in significant risk is variable. On some occasions it can occur immediately via the telephone on other occasions we wait 1-2 weeks. This is obviously inadequate for patients who are at risk of self-harm or absconding from the hospital.

Our experience is that the Guardianship Board is not sufficiently prepared or equipped to handle cases of elder abuse. In the past we have found that these were significantly poorly managed and was so delayed that the relatives of the patients had adequate time to change their engagement with the patients so that evidence could be “lost” or “doctored” or minimized and police were often ill-equipped to handle these situations.

It also has struck us that the community member on the guardianship board often has a poor understanding of the health care system.

Guardianship board applications are known in NSW hospital as being notoriously prolonged such that there are significant amounts of gaming taking place to try and obtain earlier hearings.

These involve:

1. A stretching of the concept of risk to the patients so that the patient’s cases can be presented indicating them to be at a much higher risk than they actually are.
2. Detailing risk relating to the safety of the staff at the hospital as many patients with incapacity and dementia will often be aggressive.
3. The safety of patient’s ongoing care is not taken into consideration such as in cases of significant dementia. On many occasions, it is safer to rehouse patients once rather than having them get used to one set of living arrangements (the hospital) over months only for that living arrangement to be necessarily changed once the guardian is appointed. This process exposes the patient to the trauma of being institutionalized twice.
4. The impact on a patients wellbeing or having to live in an inappropriate setting such as an acute hospital, exposed to other patients with significant illnesses and life threatening conditions is not often taken into consideration by the Guardianship Board who make little effort to speed up their processing.

In our opinion we recommended a number of changes to the processes of the guardianship board and we hope that the legal reform process may shed light on regulations to promote these recommendations;

1. Greater use of technology so that patients can be assessed without having to attend a hearing.
2. The guardianship board be more mobile and there would be more hearings held in hospitals.
3. The process of guardianship board application be faster and be completed from application to the guardian making the decision on behalf of the patient within 4 weeks.
4. Case manager should be considered in situations where staff and hospital are at risk.

Finally it is clear to us that the situation of the public hospital and the demands under which public hospitals are at are not taken into consideration by the Guardianship Board of NSW and that the category of providing guardians to patients in hospitals is not seen as in a high enough priority with respect to other applications.

We wish you well in your process of reviewing the Guardianship Act 1987 (NSW) and we hope that our preliminary submissions may be taken into consideration.

We look forward to further contact from you

Yours sincerely

Ms Colquhoun



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