

9 February 2018

Ms Erin Gough
NSW Department of Justice
Level 3, Henry Deane Building
20 Lee Street
SYDNEY NSW 2001

By email to: nsw_lrc@justice.nsw.gov.au

Dear Ms Gough

Re: Review of the Guardianship Act 1987 (NSW)

The NSW Branch of the Royal Australian and New Zealand College of Psychiatrists (RANZCP NSW Branch) has welcomed the opportunity to provide input into the set of proposals by the NSW Law Reform Commission to review the *Guardianship Act 1987* (NSW; the Act). We understand that at the conclusion of the review, the resulting proposals will inform the development of the Assisted Decision-Making Act to replace the current Act.

The RANZCP supports the purpose of this review to align NSW legislation with contemporary understandings of disability including developments in human rights law, as reflected in the United Nations *Convention on the Rights of Persons with Disabilities*, as well as the shift towards person-centred and recovery-oriented care which is facilitated through supported decision making.

During the previous 2 years, the NSW Branch has comprehensively reviewed Question Paper 1: *Preconditions for alternative decision-making arrangements*; and

- [New South Wales Branch submission to the NSW Department of Justice on the Review of the Guardianship Act 1987](#)

Question Paper 2: *Decision-making models* and Question Paper 3: *The role of guardian and financial managers*

- [New South Wales Branch submission to the NSW Department of Justice on the Review of the Guardianship Act 1987 \(NSW\): Question Papers 2 and 3](#)

The NSW Branch is pleased to note that the latest draft set of proposals reflects our feedback, in particular:

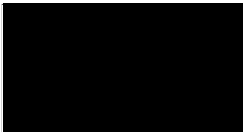
- A move towards simpler, more streamlined provisions.
- Recognition of the right to autonomy and the importance of giving effect to a person's will and preferences wherever possible.
- A new definition of 'decision-making ability' to replace unclear definitions of 'capacity' under the current Act. As previously noted, decision-making ability can

vary depending on the circumstances, be specific to a decision being made and may change over time. Importantly for people with a serious mental illness, cognitive ability can fluctuate significantly over a short period of time. Also, in an unsettling situation an individual's presentation may not provide a reliable indicator of their actual cognitive capacity. We are pleased that the draft proposals reflect these complexities and include principles to guide assessment of decision-making ability.

- Strengthening of the safeguards applying to enduring representational agreements and representation orders.
- Introduction of new advocacy and investigative functions, to be performed by a Public Advocate.
- Alignment in definitions between the new Act and the National Disability Insurance Scheme's statutory framework.
- The inclusion of additional principles when the person in need of decision-making assistance is an Aboriginal person or Torres Strait Islander, to allow consideration of unique cultural perspectives, kinship systems and systemic disadvantage. It also reflects the over-representation of Aboriginal people and Torres Strait Islanders in parts of the guardianship system.

If you would like to discuss any aspect of our submission further, please contact Ms Penny Adams, Policy and Advocacy Advisor [REDACTED]

Yours sincerely



Dr Gary Galambos
Chair, RANZCP NSW Branch Committee