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Response to Question Papers 4, 5 and 6 of the NSW Law Reform Commission review of the New South Wales guardianship regime

8 June 2017

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The NSW Young Lawyers Civil Litigation Committee (**Committee**) makes the following submission in response to the Question Papers 4, 5 and 6 of the NSW Law Reform Commission's (**Commission**) review of the New South Wales guardianship regime

NSW Young Lawyers

NSW Young Lawyers is a division of The Law Society of New South Wales (**Law Society**). NSW Young Lawyers supports practitioners in their professional and career development in numerous ways, including by encouraging active participation in its 16 separate committees, each dedicated to particular areas of practice. Membership is automatic for all NSW lawyers (solicitors and barristers) under 36 years and/or in their first five years of practice, as well as law students. NSW Young Lawyers currently has over 15,000 members.

The Committee comprises of a group of over 1400 members and covers all aspects of civil litigation with a focus on advocacy, evidence and procedure in all jurisdictions. Our activities, direction and focus are very much driven by our members, which include barristers, solicitors and law students. The Committee seeks to improve the administration of justice, with an emphasis on advocacy, evidence and procedure.

Preliminary Matters

The below contribution elaborates on various issues that the Committee raised in its Preliminary Submission to the Review.[1] In doing so the Committee has selected specific questions from the Question Papers that relate to the issues that it has raised in previous submissions, rather than address each question posed by the Commission. The Committee has seen and endorses the submissions of the Law Society to each Question Paper. For ease of reference, the Committee has used numbering that corresponds to that used in each Question Paper.

[1] NSW Young Lawyers Civil Litigation Committee, PGA32 to NSW Law Reform Commission, *Review of the Guardianship Act 1987*, 29 March 2016 (**Preliminary Submission**).

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Response to Question Paper 4: Safeguards and Procedures

Question 2.3: Are the powers of the NSW Civil and Administrative Tribunal to review guardian appointment sufficient? If not, what should change?

(1) Should the Guardianship Act provide further detail to explain what is involved in having, or not having, decision-making capacity?
In its submission to Question Paper 1, the Committee noted that before determining whether a person has decision-making capacity, the Tribunal should consider whether the person in question, amongst other things:[2]

1. understands the facts relevant to the decision;
2. can assess the possible consequences of the decision;
3. can understand how the consequences of the decision affect them;
4. can explain the basis of the decision; and
5. is able to communicate the decision, by any means.

The Committee supports the introduction of a clause to the above effect. The Committee does not support a provision defining decision-making capacity in more specific terms, given the wide array of cases brought before the Tribunal and the need to avoid a "one-type-fits-all" approach to assessing a lack of decision-making capacity.

Question 3.2: Time limits for orders

(1) Are the time limits that apply to guardianship orders appropriate? If not, what should change?
The Committee is of the view that the current review requirements for guardianship orders, being a 30-day time limit for temporary orders and a one-year time limit for continuing orders with the option for extension, are appropriate. The Committee notes that a short time period for continuing orders is fundamental to Australia's compliance with its international obligation to treat the removal of liberty as a last resort. In particular, it aligns with the formal declaration Australia has made to the United Nations in respect to the Convention on the Rights of Persons with Disabilities (**CRPD**):[3]

> *Australia declares its understanding that the Convention allows for fully supported or substituted decision-making arrangements, which provide for decisions to be made on behalf of a person, only where such arrangements are necessary, as a last resort and subject to safeguards.*

(2) Should time limits apply to financial management orders? If so, what should these time limits be?
The Committee supports the unification of the orders for guardianship and financial management, as discussed below in response to question 7.1. To that end, the Committee also endorses the unification of the time limits on both types of orders, or at a minimum, the creation of an automatic review period, as proposed

[2] NSW Young Lawyers Civil Litigation Committee, GA27 to NSW Law Reform Commission, *Review of the Guardianship Act 1987*, 28 October 2016 (**QP1 Submission**).
[3] *Convention on the Rights of Persons with Disabilities*, New York, signed 30 March 2007 (entered into force 3 May 2008); note Australia's declaration.

by the Law Society.[4] As discussed in the Committee's Preliminary Submission and response to Question Paper 1, it is arguably inconsistent with Australia's obligations under the CRPD that there are differing threshold requirements for the making of guardianship and financial management orders. Both types of orders involve a serious infringement on the liberty of a person and it is the Committee's view that the threshold requirements should be unified. Similarly, the Committee submits that time limits that apply to both should be unified.

Question 3.4: When orders can be reviewed

(1) What changes, if any, should be made to the process for reviewing guardianship orders?
The Committee supports the retention of the current review process for guardianship orders. We note that this view is also endorsed by the Law Society.[5]

(2) Should the NSW Civil and Administrative Tribunal be required to review financial management orders regularly?
The Committee has previously supported the addition of an automatic review period to financial management orders.[6] The Committee noted that although an application can be made by a person to request a review, it is not always the case that a protected person will have a support person advocating for their rights. The Committee submitted that a new review clause should be added to the Guardianship Act to ensure a mandatory review process is in place. The Committee elaborates on that position in itsour response to question 3.4(3) below.

(3) What other changes, if any, should be made to the process for reviewing financial management orders?
The Committee supports the unification of the review process that applies to guardianship and financial management orders. For the avoidance of doubt, the Committee supports, at a minimum, the addition of a one-year review clause to financial management orders, similar to the review period that currently applies to continuing guardianship orders. In the alternative, the Committee supports a requirement that the Tribunal introduce a review period to each financial management order, at its convenience.

However, the Committee is also mindful that:

1. the majority of persons subject to guardianship and/or financial management orders are above the age of 65;[7] and
2. over 40% of persons subject to guardianship and/or financial management orders are subject to a progressive disease – dementia – with limited prospects of significant cognitive recovery with age.[8]

In light of the above, the Committee accepts that in limited situations, it is neither in the interests of the protected person nor the interests of an effective guardianship regime to subject guardianship and/or financial management orders to repeated review where that protected person is unlikely to ever recover decision-making capacity. With this in mind, the Committee suggests that any requirement for review in the

[4] Law Society of New South Wales, Submission to NSW Law Reform Commission, *Review of the Guardianship Act 1987*, 31 May 2017, p 3.
[5] Law Society of New South Wales, Submission to NSW Law Reform Commission for QP4, *Review of the Guardianship Act 1987*, 31 May 2017, 4.
[6] Preliminary Submission, p 8.
[7] NSW Civil and Administrative Tribunal Annual Report 2015-16, p 41.
[8] NSW Civil and Administrative Tribunal Annual Report 2015-16, p 41.

new statutory framework be curbed with a limited ability for the Tribunal to avoid review obligations where it is satisfied, beyond doubt, that the protected person has no reasonable prospect of recovery.

Question 3.5: Reviewing a guardianship order

(1) What factors should the NSW Civil and Administrative Tribunal consider when reviewing a guardianship order?
The Committee believes that the Tribunal should consider, at a minimum, whether:

- there is an ongoing need for a guardianship arrangement to be in place;
- there has been a change, either substantial or minor, in the physical or mental state of the protected person;
- the order is in place as a method of last resort; and
- there are alternative support arrangements which may negate the need for an order.

(2) Should these factors be set out in the Guardianship Act 1987 (NSW)?
The Committee supports the inclusion of the above set of factors in the Guardianship Act in the form of an additional section. Further, the Committee supports the application of the above set of factors to guardianship orders and financial management orders equally if the Commission decides to retain both arrangements in their current form. However, the Committee notes the comments of the Law Society that the s 4 general principles already sufficiently deal with these matters. The Committee agrees that the above matters are largely covered by s 4, but notes that there may be merit in outlining these considerations in further detail.

Question 5.1: A statement of duties and responsibilities

(1) Should the Guardianship Act 1987 (NSW) and/or the NSW Trustee and Guardian Act 2009 (NSW) include a statement of the duties and responsibilities of guardians and financial managers?
The Committee has previously endorsed the introduction of a statutory Code of Conduct for guardians and financial managers into the Guardianship Act and continues to support such a proposal. We refer the Commission to our previous comments on the matter.[9]

(2) If so:
(a) what duties and responsibilities should be listed in this statement?
The Committee is of the view that the Code of Conduct could clarify the fundamental responsibilities of a guardian, including but not limited to:[10]

- the relationship between the guardian and the protected person, including a requirement imposed on the guardian to be familiar with the personal circumstances of the protected person;
- the obligation placed on the guardian to consult with, and obtain instructions from, the protected person, where this is practical; and

[9] Preliminary Submission, p 7.
[10] Preliminary Submission, p 7.

- the obligation placed on the guardian to request a review of a guardianship order where they form the view that the protected person has legal capacity.

By way of comparison, the Committee refers to s 4 of the *Guardianship and Management of Property Act 1991* (ACT), which outlines the responsibilities of a guardian, *inter alia*, as including the following:

1. the protected person's wishes, as far as they can be worked out, must be given effect to, unless making the decision in accordance with the wishes is likely to significantly adversely affect the protected person's interests;
2. if giving effect to the protected person's wishes is likely to significantly adversely affect the person's interests—the decision-maker must give effect to the protected person's wishes as far as possible without significantly adversely affecting the protected person's interests;
3. if the protected person's wishes cannot be given effect to at all—the interests of the protected person must be promoted;
4. the protected person's life (including the person's lifestyle) must be interfered with to the smallest extent necessary;
5. the protected person must be encouraged to look after himself or herself as far as possible;
6. the protected person must be encouraged to live in the general community, and take part in community activities, as far as possible.

The Committee currently sees no reason why the above principles cannot be included in the Code of Conduct for NSW guardians and financial managers, in a similar form.

(b) should guardians and financial managers be required to sign an undertaking to comply with these duties and responsibilities?
The Committee in principle supports the requirement that a guardian or financial manager sign an undertaking to comply with their duties and responsibilities. This would be further necessary if a Code of Conduct were to be included in the legislation, and if the Commission determines that it is appropriate to include a civil penalty provision for breach of a guardian or financial manager's duties and responsibilities.

(c) what should happen if guardians and financial managers fail to observe these duties and responsibilities?
At present, the Committee does not have a view on this matter. However, the Committee notes the risk in introducing a civil penalty for failure to abide by the statutory responsibilities of a guardian, as suggested in the Question Paper. The Committee notes in particular that the introduction of civil penalties may be a significant deterrent to persons who may otherwise consent to being appointed as guardian or financial manager to a protected person. The unintended consequence may be an increase in the burden on private agencies and the NSW Trustee and Guardian, especially if a civil penalty is linked to more generalised responsibilities. If a civil penalty is to be introduced, the Committee would encourage the Commission to link the penalty to a clearly defined threshold of duties that are said to have been abrogated.

Question 7.1: Should the Guardianship Act 1987 (NSW) empower the Public Guardian or an advocate to assist people with disability who are not under guardianship?

The Committee has previously endorsed the introduction of a Public Advocate in NSW.[11] This recommendation follows a line of recommendations in NSW, particularly the NSW Parliament's *Inquiry into Substitute Decision-Making for People Lacking Capacity* in 2010, and a general trend towards the introduction of public advocate bodies in other states and territories. The Committee elaborates further on how a Public Advocate could "assist" persons with disability who are not subject to guardianship in its response to question 7.2 below.

The Committee takes this opportunity to note its primary concern that the empowerment of a Public Advocate with broad-based powers to assist persons with disability may be open to significant abuse. The Committee notes that unnecessary or frivolous third party intervention is contrary to maintaining an individual's freedom of decision and action.[12] The Committee suggests that the Commission be mindful of these potential issues with broad-based Public Advocate powers.

Question 7.2: What, if any, forms of systemic advocacy should the Guardianship Act 1987 (NSW) empower the Public Guardian or a public advocate to undertake?

The Committee supports the introduction of an independent Public Advocate with the following statutory powers and duties:

1. A **policy development role** whereby the Public Advocate would identify areas of needed reform to the guardianship regime and assist the Department of Justice in tailoring the relevant guardianship regulations;
2. An **information gathering role** whereby the Public Advocate would be provided with the statutory power to obtain information from all relevant government departments, including the Public Guardian and NSW Trustee & Guardian;
3. A **reporting role** whereby the Public Advocate would provide regular reporting on the guardianship regime by reference to key performance criteria, including by reference the CRPD where appropriate;
4. A **notification role** whereby the Public Advocate would showcase anonymised cases where guardians and/or financial managers have been suspended by the Tribunal for breach of the Code of Conduct (see the Committee's response to question 5.1);
5. A **systems advocacy role** whereby the Public Advocate would oversee the improvement of processes within the Public Guardian, NSW Trustee and Guardian and other relevant agencies, to improve outcomes for protected persons;[13] and
6. A **whistleblower role** whereby the Public Advocate facilitates confidential submissions from persons who have a genuine concern for the welfare of a protected person and believe that

[11] Preliminary Submission, p 2.
[12] *Guardianship Act 1987* (NSW), s 4(b).
[13] See, for example, the current systems advocacy role of the Queensland Office of the Public Advocate.

> unlawful conduct is occurring in respect to that person, complete with a protection from liability for such persons similar to that found in Part 9.4AAA of the *Corporations Act 2001* (Cth).

Question 7.3: Should the Guardianship Act 1987 (NSW) empower the Public Guardian or a public advocate to investigate the need for a guardian?

The Committee generally supports the empowerment of a Public Advocate to investigate the need for a guardian in limited circumstances. However, the Committee notes its hesitation to support a proposal that will allow intrusive powers of investigation over vulnerable persons. It is suggested that if such a power were to be introduced, it should be limited to situations where the Tribunal is unable to satisfy itself that a person does or does not lack decision-making capacity.

Question 7.8: Should NSW establish a separate office of the "Public Advocate"? If so, what functions should be given to this office-holder?

The Committee is mindful that if a body with advocacy functions were to be introduced in NSW, it would need to be institutionally separate from both the Public Guardian and the NSW Trustee and Guardian in order to avoid conflicts that may arise in the exercise of its functions. For example, conflicts may arise where such an agency is tasked with scrutinising and reporting on the operations of the Public Guardian. The Committee acknowledges that the NSW Trustee and Guardian has endorsed turning the Public Guardian into a body with public advocacy functions.[14] While it is understandable that this position has been taken given the potential overlap in the functions of the two bodies, it is the Committee's view that if a Public Advocate were to be introduced, it would need to be independent of the Public Guardian to avoid potential conflict in its duties.

The Committee further supports the independence of a Public Advocate from executive government and the relevant Minister. In doing so, the Committee refers to s 21(2) of the Guardianship and Administration Act 1993 (SA) which provides:

> *In performing his or her functions the Public Advocate is not subject to the control or direction of the Minister.*

The utility of such a provision is clear. Its inclusion would ensure the institutional separation of the Public Advocate from the Minister, to the extent that it is necessary to carry out its independent functions.

[14] NSW Trustee & Guardian, PGA50 to NSW Law Reform Commission, *Review of the Guardianship Act 1987*, 6 April 2016, p 13.

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Responses to Question Paper 5: Medical and Dental Treatment and Restrictive Practices

Question 2.1: "Incapable of giving consent"

(1) Is the definition of a person "incapable of giving consent to the carrying out of medical or dental treatment" in s 33(2) of the Guardianship Act 1987 (NSW) appropriate? If not, what should the definition be?
Despite the absence of precedent determining how s 33(2) should be construed, the Committee is of the view that the definition is appropriate given its flexibility and the case-by-case approach taken by the Tribunal to both the individual's capability and the nature of treatment. The Committee also notes its endorsement of the Law Society's definitional amendments in response to question 2.1.[15] In particular, the Committee endorses the replacement of subsection 33(2)(b) with the phrase "weighing up the choices to be considered".

The Committee notes the problems with this provision in practice. As Barry and Sage-Jacobson have noted, while medical professionals were generally aware of the legal standards in the Guardianship Act, junior staff are more likely to find an individual as "incapable" if the individual had come to a decision that contradicted their clinical recommendation.[16] Hence, the practical operation of s 33(2), while legally sound, may in itself be an avenue for elder abuse and mistreatment.[17] The Commission should be mindful of this when drafting any adjusted provision.

(2) Should the definition used to determine if someone is capable of consenting to medical or dental treatment align with the definitions of capacity and incapacity found elsewhere in the Guardianship Act 1987 (NSW)? If so, how could we achieve this?
As a general principle, the Committee supports aligning the definitions used to determine capacity to consent to medical or dental treatment and other areas of capacity in the Guardianship Act. We note that this view has also been endorsed by the Law Society.[18]

Question 4.1: Special treatment

(1) Is the definition of special treatment appropriate? Should anything be added? Should anything be taken out?
Special treatment includes the list of procedures in s 33 of the Guardianship Act and cl 9 of the Guardianship Regulation 2016 (NSW). In respect to s 33(a) (the definition of "special treatment"), the Committee suggests that the definition be amended to consider recent scientific advances in sexual reassignment surgery. In many cases, stage 1 (hormone replacement) is a reversible stage, and its inclusion in the definition of "special treatment" should therefore be reviewed. There have been a number of reported decisions in the Family Court involving minors with gender dysphoria who are required to litigate in order to obtain consent

[15] Law Society of New South Wales, Submission to NSW Law Reform Commission for QP5, *Review of the Guardianship Act 1987*, 31 May 2017, p 2.
[16] Lisa Barry & Susannah Sage-Jacobson, 'Human Rights, Older People and Decision Making in Australia' (2015) 9 *Elder Law Review* 1, 8.
[17] Ibid, 8.
[18] Law Society of New South Wales, Submission to NSW Law Reform Commission for QP5, *Review of the Guardianship Act 1987*, 31 May 2017, 2.

for stage 1 treatment, causing further anxiety on the individual and their support members.[19] Those matters clarified the application of s 67ZC of the *Family Law Act 1975* (Cth) to the authorisation of stage 1 and 2 procedures for sexual reassignment. The Committee's view is that these decisions have not yet been properly clarified under the equivalent NSW statute and are areas warranting reform.

(2) Who should be able to consent to special treatment and in what circumstances?
The Tribunal is presently the only body that can consent to special treatment.[20] While the Tribunal is an appropriate body to make such a decision, the Committee notes that time-critical medical intervention (in the form of procedures that fall within the classification of "special treatment") may mean that the delay of making an application to the Tribunal would not reasonably be considered acting in the "best interests" of the person. In situations that do not give rise to a medical emergency, the Committee supports retaining the current arrangements whereby the Tribunal is the only body that can consent to special medical treatment in the absence of decision-making capacity.

In situations giving rise to a medical emergency, the Committee notes that the Guardianship Act already provides that special medical treatment can be undertaken by a medical practitioner without consent. However, the Committee is supportive of measures that give a person responsible or a guardian the right to consent to special medical treatment, to provide greater comfort to the medical practitioner responsible for the emergency treatment.

(3) How should a patient's objection be taken into account?
In line with the principles enshrined in s 4 of the Guardianship Act, a patient's objection should be a primary consideration in the Tribunal's determination.[21] The Committee believes that the current provision in s 46(4) remains vague. It is couched in subjective terms and provides little comfort for medical professionals in situations where a patient's objection may conflict directly with express instructions by a person responsible for their decision-making. This type of conflict was discussed by his Honour Justice McDougall in *Hunter and New England Area Health Service v A*. At [17] he noted:[22]

> *It is in general clear that, whenever there is a conflict between a capable adult's exercise of the right of self-determination and the State's interest in preserving life, the right of the individual must prevail.*

This view followed the long-established common law principle that where there is doubt over a person's preference for medical treatment, "that doubt falls to be resolved in favour of the preservation of life"[23] and is reflected, to an extent, in the current s 46(4). The Committee sees no reason why that principle should be departed from in the new regime. However, the Committee notes the ambiguity associated with the provision's current wording, including the use of the wording "minimal or no understanding" [emphasis added] and "the distress is likely to be reasonably tolerable and only transitory". Both of these phrases import significant ambiguity. It is the view of the Committee that the Commission should at least consider

[19] See, for example, *Re Sam & Terry (Gender Gysphoria)* [2013] FamCA 563 (Murphy J); *Re Jamie* [2013] FamCAFC 110 where Strickland J stated that treatment for Stage 1 would not fall within the category of cases which the High Court was considering in *Re Marion*.
[20] *Guardianship Act 1987* (NSW), s 36.
[21] *Guardianship Act 1987* (NSW) s 4.
[22] *Hunter and New England Area Health Service v A* [2009] NSWSC 761 (6 August 2009), at 17.
[23] *Re T* [1992] EWCA Civ 18; [1993] Fam 95, at 112.

(4) In what circumstances could special treatment be carried out without consent?
The current provisions in the Guardianship Act allow for special medical treatment procedures to be carried out where the medical professional forms a view that the treatment is necessary to save the person's life or prevent serious damage to the person's health or where the Tribunal consents to the treatment.[24] The Committee sees no reason why the current requirements should be changed for special medical treatment.

Question 4.10: Consent for sterilisation

(1) Who, if anyone, should have the power to consent to a sterilisation procedure?
The Committee believes that current arrangements for consent to sterilisation in NSW are appropriate, given the Tribunal's role in exercising the *parens patriae* jurisdiction of the state. The Committee further supports retaining the current requirement that a guardian must have prior authorisation of the Tribunal to consent to the procedure.[25]

(2) In what ways, if any, could the Guardianship Act 1987 (NSW) better uphold the right of people without decision-making capacity to participate in a decision about sterilisation?
The Committee endorses the proposal of the Australian Senate Community Affairs References Committee report entitled "Involuntary or Coerced Sterilisation of People with Disabilities in Australia" which recommended that a ban be imposed on sterilisation of persons who are likely to develop a capacity to consent in the future.[26] The Committee views this as the key reform necessary to ensure a person lacking decision-making capacity can be later included in any decision about sterilisation.

Question 4.11: What matters should the NSW Civil and Administrative Tribunal be satisfied of before making a decision about sterilisation?

In order for the Tribunal to give consent to a sterilisation procedure (classified as "special medical treatment"), it must be satisfied that the procedure is the "most appropriate form of treatment" and that it is:[27]

(a) necessary to save the person's life; or
(b) necessary to prevent serious damage to the patient's health.

The Committee believes the above protections as satisfactory. The protections could be improved by including a requirement that the Tribunal consult, where possible, with persons who have a "genuine concern" about the welfare of the person subject to the sterilisation order, including close relatives and next of kin. As above, the Committee would also like to see an additional requirement that the Tribunal be satisfied that a person is not likely to develop a capacity to consent in the future, or in the alternative and at a minimum, a requirement that the Tribunal consider this factor.

[24] *Guardianship Act 1987*, ss 36 and 37.
[25] *Guardianship Act 1987* (NSW), s 45A.
[26] Community Affairs References Committee, Australian Senate, *Involuntary or Coerced Sterilisation of People with Disabilities in Australia* (2013) rec 6, rec 7, rec 11.
[27] *Guardianship Act 1987* (NSW), s 45.

As the Committee has previously made clear, the inconsistencies between state, territory and federal legislation and common law requirements in respect to sterilisation decisions is wholly unsatisfactory and arguably inconsistent with Australia's obligations under the CRPD given the widely divergent treatment of persons subject to sterilisation procedure.[28] However, it is accepted that review of this area is outside of the scope of the Commission's current terms of reference.

Question 4.12: Matters that should be taken into account in sterilisation decisions

(1) Is there anything the NSW Civil and Administrative Tribunal should not take into account when deciding about sterilisation?
The Committee does not support limiting the factors that the Tribunal can take into account when making a decision about a sterilisation procedure.

Responses to Question Paper 5: Medical and Dental Treatment and Restrictive Practices

Question 2.1: Objectives, principles and language

What, if anything, should be included in a list of statutory objects to guide the interpretation of guardianship law?
The Committee believes that this section is conveniently interchangeable with the existing s 4 of the Guardianship Act that outlines the "general principles" to be observed by anyone exercising functions under the statute. The Committee acknowledges that s 4(2) of the *Guardianship and Administration Act 1986* (Vic) (**GAA**) appears to be worded in such a way that the principles more holistically inform the interpretation of the GAA. The Committee notes in particular that the provision more appropriately includes "discretions" and "jurisdiction" under the GAA. In light of this, the Committee suggests that it consider broadening the current "general principles" section of the Guardianship Act to include wording to similar effect.

Question 2.2: General principles

(1) What should be included in a list of general principles to guide those who do anything under guardianship law?
The Committee endorses the proposals put forward by the Law Society that capacity assessment principles should be included in the "general principles" section of the Guardianship Act. The Committee further suggests that, as is the case in the *Disability Inclusion Act 2014* (NSW), the general principles include an interpretation clause to the effect that, where possible, the Guardianship Act should be interpreted in such a way that it coincides with the CRPD purpose and principles.

[28] Preliminary Submission, p 8.

(2) Should there be multiple statements of principles that are tailored to particular decision-making situations? What are those situations and what principles should be included?
The Committee supports a uniform "general principles" section to guide all decisions made under the Guardianship Act rather than specific-purpose sections. It is the Committee's view that these principles can be dealt with at a higher level of generality.

Question 7.1: A single order for guardianship and financial management

(1) Should there continue to be separate orders for guardianship and financial management?
The Committee has previously supported the unification of guardianship and financial management orders into a single type of order.[29] This proposal is discussed further below.

(2) What arrangements would be required if a single order were to cover both personal and financial decisions?
The Committee suggests that such an order could operate by reference to category of decision-making. For example, the Commission should consider a proposal that allows the Tribunal to tailor an order to suit the particular needs of the protected person (by prescribing that the order be for medical, financial, property or other life decisions). By allowing the Tribunal to customise guardianship orders in this way, it is envisioned that the Tribunal will have the flexibility to adapt to unforeseen decision-making circumstances. We refer in particular to paragraph 7.8 of Question Paper 6 that describes a situation where:[30]

> *…particular decisions may involve both guardians and financial managers. For example, a decision about where a person lives may also require a decision about the financial arrangements necessary to implement that decision. Indeed, many decisions about financial arrangements will have financial implications.*

Allowing the Tribunal to further tailor orders in situations like the above will streamline the application process, including by reducing the complexity of the process for self-represented persons.

[29] QP1 Submission, p 7.
[30] NSW Law Reform Commission, Question Paper 6, *Review of the Guardianship Act 1987*, p 40.

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Concluding Comments

NSW Young Lawyers and the Committee thank you for the opportunity to make this submission. If you have any queries or require further submissions please contact the undersigned at your convenience.

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