Review of the Guardianship Act 1987

Question Paper 1

My name is Stephanie Travers and I am a 27 year old female who has been extensively involved in Guardianship proceedings. For the purposes of privacy and due to ongoing legal issues surrounding my estate I have named myself but have not referred by name or relationship to any other party involved. I have been given permission by my mother to mention her by title. All other parties will be referred to in gender neutral nouns such as *relative, sibling* etc

I permit the Commission or any other persons knowing my personal details and welcome them contacting me for further information relating to this submission.

As I was unaware this commission was occurring until recently I unfortunately missed the prior Preliminary submission round and I wish to provide some background information for reference in this question paper as well as to reference if future question papers.

I also wish to note that I think that the inability of the commission to notify individual stakeholders (such as current and previous clients of NCAT/Guardianship Tribunal, carers and families impacted by decisions of the tribunal and impacted by this legislation) is quite negligible. As such it has the potential to impact the information gathered by the commission in that is not reflective of the true detrimental nature that the current legislation and its current enforcement has a person on the individual scale. The Commission should be requesting NCAT and other agencies to notify their clients/families/carers to submit both their stories and their recommendations for legislative change.

Advocacy Work

Following my ordeal under this legislation, my mother and I have now taken it upon ourselves to start a grassroots advocacy and practical assistance service for victims of this system. We have now taken part in cases ranging from Mental Health Tribunals to Supreme Court Appeals. The cases we have encountered encompass not only this Act, but also the Mental Health and NSW Trustee and Guardian Acts of which whose interactions will be explored in later question papers. We have also interacted with various individuals on an intimate level via social media where we have heard testimony from people not only from NSW but from around Australia.

I think in light of the information that I have heard from individual persons trapped in this system, that should the Law Reform Commission make substantial, relevant and proportionate recommendations to change this legislation, a significant political lobbying/awareness strategy should be adopted by the appropriate community organisations. This will ensure that any new proposed bill be enacted swiftly and successfully through parliament. If not, this commission runs the risk of being a mere symbolic gesture. We run the risk of being in a similar position to Victoria on that front. This will do little to advocate for the rights of those persons caught up in the now defunct NSW Guardianship system.

BACKGROUND

(Acting as Preliminary Submission)

My Guardianship experience began when I was 15 years old in 2005 before I was to turn 18 and inherit a sum of compensation monies from a car accident in 1999. At that time my mother was concerned that I would be open for exploitation from *relative* who suffered from Gambling issues.

I have a disability called Spina Bifida which I was born with and at that time could walk, was completing my HSC, had no learning difficulties, and had no communication difficulties or other behavioural conditions that would impair my reasoning. At the time of the hearings I was a voluntary inpatient in a private psychiatric facility for eating disorders and general depression. I was not working, I had never handled a large sum of money, I had never lived alone, and I could not drive but was otherwise fairly independent.

In these proceedings in 2006 under the old Guardianship tribunal, I was given ample notice of the hearing, was allowed to view submissions, was allowed to prepare my own submissions, had my own doctors prepare reports, my own doctors were called and questioned by the tribunal and medical evidence was paramount to the proceedings. I ultimately retained management of my own estate and was deemed to have capacity to do so at the age of 18.

This case then went on to the Administrative Decisions Tribunal where I was deemed to have capacity to manage my finances.

By 2010 I had attended University for 2.5 years studying arts/law on Commonwealth Scholarship and was on the Dean's Merit List twice. However by this time I was living with *relative and spouse* who convinced me to leave university and to invest in their business. I subsequently was taken advantage of to buy the entire business from them, with them obtaining ¾ of my compensation monies. I did however manage this business to the best of my ability and by 2013 and aged 25 I owned my own business employing 10 employees and used the remainder of my compensation monies to obtain a mortgage and buy my own house.

By 2013 I was working in a physically demanding job with Spina Bifida and being unable to handle the work due to the pain I was experiencing from a tethered spinal cord which needed surgery. I confided in my family that I was not coping and wished to seek treatment for a break. I voluntarily admitted myself again, as I had when I was younger, to psychiatric units for treatment and put in a full time manager to run my business.

On December 28 2013 an application was made by my *sibling* on behest of *relative* to financially take control of my business. This application was made 2 days prior to the start of the new NCAT Guardianship system and I believe to the best of my knowledge that I was the first and thus the test case for the tribunal under the new *Civil and Administrative Act 2013 (NSW)*. My experience with the NCAT system from this moment forward was the most traumatic, unfair and discriminating experiences of my life and has caused irrevocable damage to my mental health, personal relationships, career and future financial prospects.

I was notified of my tribunal date 3 days prior to the hearing. I was interstate in Canberra at the time staying with a *non-relative,* had no access to any medical or business documents, nor could I find a way of attending the hearing in person with that little notice. I notified my NCAT tribunal officer that I wished to postpone the hearing and seek legal advice. I also submitted 25 pages of testimony and evidence on the day before the tribunal via email. I did not receive any of the documents from the initial applications until 2 days after the hearing when they arrived at my interstate address. The tribunal called me on the phone, they denied me a postponement, they

denied me legal counsel, and they had not read my submission and had in fact not been given it. They took a 10 minute break to search for it, then stated it was too long to address within the allocated hearing time. On only hearsay evidence and without any medical evidence, on a 15 minute phone while I was interstate, I lost the rights to financially manage my business. My *sibling* was given a 3 month interim order to handle my business affairs.

During this time my *sibling* refused to continue to pay me a business salary therefore rendering me without an income. They rented my house out and I moved in them and *partner* where I waited until there was a place in a residential rehabilitation facility. My *sibling* had to buy my medication which they kept locked away from me, put my car into lock up as it was a business vehicle so I could no longer drive or be independent and took all my credit and debit cards from me (as the majority were in the business name). While I was not under a Guardianship or under a personal financial management order, I was ultimately under their total control without the income from my business asset. This financial dependence was ultimately used against me as I was forced to agree to go to treatment or I would not be given back my estate. After agreeing to this I voluntarily entered another treatment facility, during which time my *sibling* scheduled the next hearing without my knowledge. I was given 5 days notice of this hearing but since I was in treatment I again could not attend this hearing. I was phoned by the tribunal on the day where I again sought for the proceedings to be postponed so that I could seek legal advice. This was ignored and this time my full estate my handed over for financial management for another interim order of 6 months.

In these proceedings the “best interests” proposition was the only reason given for the interim orders. At no time was any medical professional consulted as to my capacity to handle my financial estate. As there were also references to “financial recklessness” as the basis of the best interest’s proposition, I should also note that at no time was any documentary financial evidence or bank statement supplied.

During being on now 6 months of interim orders I completed treatment and returned to work. My *sibling* then decided that I was recovering well and was now able to take over my affairs now that they would be going overseas to Rio for the football World Cup with *partner*. They wrote to the tribunal asking for the orders to be revoked and wrote a supporting letter of recommendation. I also wrote to the tribunal requesting a hearing for the revocation of the orders. Both my *sibling* and I did not hear from the tribunal prior to her leaving for overseas and so I was put back in control of the estate unofficially after waiting 6 weeks for the tribunal to get back to us. My *sibling* therefore allowed *relative* to assist in helping me run the business while they were away as we had not heard from the tribunal.

While my *sibling* was overseas a number of events occurred. Most notably an AVO was taken out prohibiting me from going near *relative’s* residence or near the business residence. This AVO was taken out after allegations I had threatened them on the phone, when I had in fact just demanded the business takings that they were illegally taking at close of business each day from the manager when I was not there. I was now not only forbidden to handle the financial affairs of my business, meaning no income or livelihood, but now I could not even attend the premises of my own business to assure it was running smoothly under the manager. I also discovered amidst of all these events that my business was being poorly financially managed, that bills were not being paid and that takings were going missing. Whilst the business was earning the same monies that had sustained it for the previous 5 years without any line of credit, it was now somehow falling into debt. I told my *sibling* that they would ultimately be responsible for the financial mismanagement of my estate and that prior to any orders I had never missed any mortgage payments, that the business was viable and that it had never had been in the position it was in.

After vocally expressing my desire to take legal action against both my *sibling and relative, sibling* put on an emergency tribunal to remove herself as interim financial manager. I was given 2 days notice for this tribunal. I asked for an immediate postponement, and for the third time expressed my desire to seek legal advice prior to the hearing. I could not attend the hearing as I was sick and was admitted to hospital the evening of the hearing with a kidney infection. I was arrested in emergency for the AVO at this time, which had been taken out THE DAY my *sibling* applied for the emergency tribunal to revoke their management. The AVO was used as leverage at the tribunal to prove that I was not of sound mind to responsibly handle my estate and, without any conviction or court granting of AVO, my estate was handed to the NSW Trustee and Guardian for the remainder of the still INTERIM order which had 2 months to go. At no time did *relative* make ANY application to handle my affairs or take responsibility for my estate.

Two weeks later *relative* contacted the Intake Officer at the NSW Trustee and Guardian. They convinced the Intake Officer that they had a buyer for the business, that selling the business was in my best interests, and that they would take care of the sale. Without consulting me or asking for my opinion or my desire to sell my asset, the Assistant Intake Officer (NOT Client Services Officer), made *relative* the Director of my company and allowed them to take over the business. By now it was August and the Interim Order has 1 month left.

Come September 2013 I brought my mother in to fix the mess that my other family members had created. She had previously been sick and I had not told her the full extent of the problem. By this time I was forbidden to attend my business, *relative* was the Director of my company, my business bank accounts were closed, I was getting no income or benefits and was now homeless as the public trustee kept my own house tenanted.

We went to a lawyer and prepared an Enduring Power of Attorney which the lawyer agreed I had the capacity to sign. My mother also made an application to the Tribunal to revoke all orders.

In the September proceedings after 9 months of interim orders, the legal member refused to address my concerns that my personal estate was being poorly managed and my own welfare was compromised because of this order. He stated “we are not here to discuss that today.” The only thing the tribunal discussed was the sale of my assets, my business. It seemed during this tribunal that no-one cared about my welfare at all during this hearing. We were frequently told, “We don’t have enough time today” to discuss the revocation application and the only topic the tribunal was willing to discuss was the sale of the business. My mother stated she wished to keep the asset and take over the management herself to get the estate out of debt and provide for me financially. I agreed that I had voluntarily given her Power of Attorney to do so. I stipulated I was AGAINST *relative’s* involvement in this sale.

The hearing was finished half way through proceedings, my personal welfare was never discussed and the tribunal made a decision to make further interim orders for 3 months.

The next week my mother, as Power of Attorney, made an application to the Supreme Court of NSW for an injunction on the sale of the property and for the financial management orders to be revoked. The application was originally heard under Chief Justice Bergin in the Equity Division. She allowed me the capacity to make my own application, noted and acknowledged the appointment of my mother as Power of Attorney, added NCAT as a party to the proceedings in relation to revoking the financial management orders and also noted my desire to investigate the sale of the business through a forensic accountant who attended court with my mother and I. The case was sent to the Protective Jurisdiction for further directions.

In those proceedings Justice Lindsay ordered the NSW Trustee liaise with myself and my forensic accountant in respect to the sale. He also suspended my mother's Power of Attorney as under the current Act apparently my appointment of her was subordinate to any financial management order.

The NSW Trustee ultimately did not investigate, instead on the day he signed his Affidavit, the original Assistant intake officer that had made my *relative* the Director of the company, stood down from his position. I was left with no person in charge of my estate and no person to liaise with in an investigative capacity.

Justice Lindsay was next falsely told the contracts had been exchanged, and so to avoid including a third party buyer in the proceedings of which I could be liable for damages, he had no option but to allow the sale to proceed at this point. I had gone to the Supreme Court too late to stop the sale.

Justice Lindsay could also not make a determination in relation to my capacity because a determination had not been made by NCAT in the first place, I was still under INTERIM orders relating to **financial management only** and a determination of capacity was in fact not the primary issue. It seems that in this instance the tribunal had found a loophole to hold my estate for **indeterminate interim periods of time** under the best interests' category.

By the November hearing after the 3 month interim order allowing the sale, I had attended the Mental Health Advocacy Centre and was awarded through the legal aid service there a pro bono solicitor for the tribunal proceedings. The November hearing could not proceed because the lawyer had to be granted "permission" to be part of the proceedings. The tribunal was also in uncharted territory as *relative* had removed himself as Director the day the business sold causing disarray in the proceedings and huge legal consequences (a matter to be investigated). Again, my estate was committed for **another interim period** of 3 months to now allow the solicitor to be involved in proceedings.

My entire financial estate still remained under the NSW Trustee. The Trustee was provided no accounts and no reconciliation and bills were left unpaid. To my knowledge they have never seen or provided any contract of sale or copies of any other documentation relating to the sale. I was left with less than half the sale amount with no record or proof of where the other tens of thousands of dollars had gone. Records or account of the 12 months of turnover is also missing with the Trustee never receiving any monies from *relative*.

In February 2014, just over one year after the initial Interim Financial management order had been made; I was granted back my rights the same way I lost them, after a 16 minute and 45 second phone call. In one year I had undergone 5 tribunals, overseen by 12 different tribunal members, and dealt with 5 different liaison officers. I had submitted over 50 pages of testimony that was never read, listed 6 persons who were never called and not one doctor ever gave oral evidence. My estate was handed back because I had finally been allowed a solicitor.

As I stated at the beginning of this Background statement, at the age of 18, when I was mentally unwell to the same degree as I was in this instance, but had no life or work experience to deal with my compensation monies responsibly, it baffles me why it was not in my best interests to ensure I was protected from the exploitation I ultimately suffered at the hands of *relative and spouse*. If the tribunal, with no evidence, handed my estate over at age 25, why with a mountain of evidence did they not commit it to either my mother or the trustee to protect back when I was 18? The biggest problem here seems to be a lack of consistency in the workings of the tribunal, poor standard of evidence, lack of burden of proof in proceedings and the lottery of which tribunal members you get and their knowledge base. At age 18 I was given the benefit of the doubt when I

probably was in fact probably most vulnerable for financial exploitation. When I wasn't at risk of financial exploitation, after years of responsible fiscal practice, I was condemned and discriminated against based on hearsay evidence.

This is also the example of how *relative* circumvented the normal Guardianship system to ultimately get control of my biggest asset, my business, through merely convincing a poorly trained Intake Officer at the Trustee that he would take care of everything.

If a person does not seek to have legal responsibility, and does not offer themselves up to be in a supervisory or caring capacity for the person in a guardianship setting, they should not be given the assets through any other manner to avoid legal culpability. This is a loophole that needs to be addressed. The trustee should only be given the persons estate in the absence of any other suitable person and in that case then the trustee should be employing neutral third parties to then manage the asset in its protective capacity not dispose of it. Employing family members or other persons who showed no interest in taking legal responsibility in the Guardianship setting is not on.

I subsequently had spinal surgery to alleviate the pain I was in due to my tethered Spinal Cord and after 4 failed surgeries am still physically unwell. Subsequently, as I have no income or monies left from my asset, I cannot afford the spinal reconstructive surgery I now need to have.

I have attempted to answer all questions on this paper however as some answers overlap or are not applicable to my knowledge or opinion some questions have not been answered. I will reserve the right to include them at a later date should the need arise, such as in the last paper where any other issues can be addressed and the main issues identified by myself are finalized.

3. The concept of "capacity"

Question 3.1: Elaboration of decision-making capacity

(1) Should the Guardianship Act provide further detail to explain what is involved in having, or not having, decision-making capacity?

(2) If the Guardianship Act were to provide further detail to explain what is involved in having, or not having, decision-making capacity, how should this be done?

The current statutory framework surrounding decision-making capacity in NSW seems to be an abstract legal concept that is often difficult for not only the individual, but for their carers', the community, legal professionals and tribunal members alike to comprehensively understand and adopt in a way which provides any degree of certainty and continuity. On this point it seems that a statute must provide a criterion to be adapted in a clearer and understandable manner not only for the community but for those implementing the legislation to ensure continuity across cases.

Question 3.2: Disability and decision-making capacity

How, if at all, should a person's disability be linked to the question of his or her decision-making capacity?

Under the current definition, with its vague criteria, it seems that the concept of "capacity" is being overarched by a mere diagnosis of disorder or disability. These diagnoses may or may not have attached to it an element of decision making impairment. Even if the diagnosis in its text book definition of the disability cites a decision making or reasoning impairment it may or may not be the case. It must be noted that a diagnosis of a disorder itself does not itself mean the person lacks the capacity to run his or her affairs. Thus without a criteria we run the risk of the stigmatisation and discrimination against certain diagnoses.

Most notably each person's disability whether it is congenital, ongoing, temporary or deteriorating in nature, varies markedly from case to case. One person's experience of brain injury may differ from a person with an injury to the same area of the brain. One person's experience of Cerebral Palsy or Downs Syndrome also differs in the level of impairment both physically and mentally from individual to individual. One persons experience with schizophrenia or dementia differs from another. It is placing persons into categories without probing and gathering appropriate person centric data and evidence (as is often the case in hastily run tribunals), or by a tribunal members previous schema of the disorder, where we run the risk of preconceived ideas about that disability diagnosis reigning over the accurate measurement through evidentiary proof of any actual real impairment that the person actually has.

I disagree with the Governments opinion that removing this would broaden the scope of the Act as mentioned in pt 3.22 of the Question Paper. The tribunal is already making applications of

the Act against persons with unconventional lifestyle choices and other issues contrary to the safeguards in s4 of the Act.

Question 3.3: Defining disability

If a link between disability and incapacity were to be retained, what terminology should be used when describing any disability and how should it be defined?

If we are to retain a link between disability and incapacity the terminology needs to reflect the **extreme circumstances** where a person's case of that diagnosed disability is **so severe as to warrant the stripping of their individual autonomy.** If a mere diagnosis of disability warranted the need to deprive a person's autonomy, 4 million Australians would currently be under one of these orders. **The statute needs to go back to the purpose for which it was drafted,** in protecting the welfare of those with a severe and profound impairment in reasoning and decision making and an inability to protect or provide for one's own safety and welfare. **The disability and the severe and profound reasoning impairment need to be medically proven and documentary evidence submitted.**

This standard would protect a diagnosis only from being the sole basis for the removal of the person's rights. The medical burden must be met here and the diagnostician must stipulate how and why that disability impacts that individual persons reasoning ability directly and not those classes of persons generally.

I would also recommend that this causal standard of disability if kept needs to be the same for both guardianship and financial management orders. To make one order distinct from the other, believing one order is less consequential than the other is naive and will be discussed further on.

Question 3.4: Acknowledging variations in capacity

(1) Should the law acknowledge that decision-making capacity can vary over time and depend on the subject matter of the decision?

(2) How should such acknowledgements be made?

(3) If the definition of decision-making capacity were to include such an acknowledgement, how should it be expressed?

(4) If capacity assessment principles were to include such an acknowledgment, how should it be expressed?

The law must acknowledge that decision making capacity is fluid and matter specific as outlined in many of the Preliminary submissions.

Question 3.5: Should the definitions of decision-making capacity be consistent?

(1) Should the definitions of decision-making capacity within NSW law be aligned for the different alternative decision-making arrangements?

(2) If the definitions of decision-making capacity were to be aligned, how could this be achieved?

I note that many Preliminary Submissions brought up their concerns surrounding the multitude of definitions of decision making capacity throughout the numerous NSW statutes and the confusion and inconsistencies this causes. I think the aim of these reforms should be to affect change in this Act with the aim, if the new legislation is successful and the community feedback is

positive, then to streamline the other Acts accordingly. I think a long term aim could and should be to establish a National Standard such as those measures mentioned in pt 3.49 in England and Wales.

Long term, there needs to be a National Guidelines for Guardianship and a National Public Trust overseeing these orders and those involved answerable to the AFP and Human Rights Commission to avoid abuse and misuse of power over the person.

Question 3.6: Statutory presumption of capacity

Should there be a statutory presumption of capacity?

It is my view that in order to take away a right, one must have a right. If we are planning on taking away a criminals right to freedom of movement we establish through a court of law, beyond a reasonable doubt that a person is guilty of a crime. Therefore overturning a presumption of innocence.

If we are to planning on taking away a person's right to bodily integrity, right to freedom of movement or financial independence then in all fairness, the law must stipulate a statutory presumption of capacity. A burden should therefore have to be met to overturn those rights.

In my opinion, some of the rights removed by Guardianship or financial management are just as traumatising and as consequential as those removed by a Criminal court of law. This is why removal of rights under this Act and others nationwide has been referred to as "civil death."

Question 3.7: What should not lead to a finding that a person lacks capacity

(1) Should capacity assessment principles state what should not lead to a conclusion that a person lacks capacity?

I think that a change to the NSW Act requires a set of principles that defines what should not lead to a conclusion of lacking capacity. I know that the Attorney Generals Toolkit is mentioned in this regard but I will be frank and honest in my assessment on the impact of this toolkit. In my entire experience the toolkit was never referred to by any of the 12 tribunal members I encountered, by any mental health or medical professional I have spoken to since, any other member of tribunal on other cases I worked with or mentioned in any other way shape or form whatsoever. I knew of its existence because of my own research. If the requirements of the toolkit had been statute in my case I would not have lost my rights in the first place. It is because of the absence of these criteria that the tribunal is able **to arbitrarily decide** who is or who is not able to run their affairs.

For example, I do not believe the effects of drug and alcohol should be taken into account as they are a temporary state. I do not believe that allegations of illegal conduct and in particular AVO's should be taken into account as a presumption of violent behaviour. I do not believe a diagnosis should be taken into account on diagnosis alone as explored previously and I do not believe expressing an opinion or expressing anger about the situation should be a determinant either. In my case, one tribunal member noted my "aggressiveness." To this I would like to say, that it is a natural and justified reaction to the circumstances to be angry if the persons personal affairs, finances, businesses and other major life issues were being mismanaged to the detriment of their physical and mental wellbeing.

(2) If capacity assessment principles were to include such statements, how should they be expressed?

Points 3.60 and 3.63 are vital additions to the Act.

Question 3.8: The relevance of support and assistance to assessing capacity

(1) Should the availability of appropriate support and assistance be relevant to assessing capacity?

(2) If the availability of such support and assistance were to be relevant, how should this be reflected in the law?

Question 3.9: Professional assistance in assessing capacity

(1) Should special provision be made in NSW law for professional assistance to be available for those who must assess a person's decision-making capacity?

(2) How should such a provision be framed?

Point 3.76 in Question Paper 1 suggests that the NSW Tribunal currently uses the rules of natural justice as it sees fit. It seems that the rules of natural justice, in a tribunal system that is under-resourced and at times run with haste, is often undermined by the reliance on hearsay testimony. The principles of natural justice are a good idea in theory if the tribunal seeks evidence on both sides of the argument, and takes time to adequately assess each case and the intricacies of each individual's circumstances. Sadly this does not seem to be the experience of myself or of the many other person's I have spoken with. We have even seen recently where Justice Lindsay of the Protective Jurisdiction of the Supreme Court has himself denied an individual of procedural fairness by not relying on a professional testimony that was in favour of the individual retaining his legal capacity. (See IA v TA [2016] NSWSC)

I think when we are talking about the rights of a disabled person to have a fair and adequate assessment of their capacity; a capacity assessment training and certification system must be adopted. As I outlined in my definition of capacity above, I believe the definition should include a severe and profound reasoning impairment, and this impairment should be assessed and certified by a professional trained to do so. I have seen recently in rehabilitation facilities that before applying for Guardianship of elderly persons with disorders such as dementia, that an on-site neuropsychologist provides an assessment of the individual before any notion of Guardianship or financial management order is sought.

These preliminary assessments should be the first stage of capacity assessment and if the person does not fulfil the assessment criteria then the application should not proceed to the second stage. If the reasoning impairment is not severe enough in the eyes of a professional, then there is no need to drag the person through a **traumatic and distressing Guardianship legal proceeding where there character, lifestyle and private life is exposed to strangers.** By employing this first stage, it would see a reduction in full Guardianship hearings or unsubstantiated applications from making their way to a full hearing setting. Therefore the employment of psychiatrists or neuro-psychologists to make an original forensic assessment would pay for itself in the reduction of cases continued to 3 member tribunals and continued multiple proceedings (and NCAT and ADT appeals in many cases).

Question 3.10: Any other issues?

Are there any other issues you want to raise about decision-making capacity?

4. Other preconditions that must be satisfied

Question 4.1: The need for an order

(1) Should there be a precondition before an order is made that the Tribunal be satisfied that the person is "in need" of an order?

(2) If such a precondition were required, how should it be expressed?

There must be a further legal precondition that the person is in need of an order or an order is in the persons "best interests" however it must exist ALONGSIDE a professionally assessed severe or profound reasoning and decision making impairment. Too often have these two secondary terms, namely the "best interests" and "in need of" notions, been used by applicants to gain financial management of a person or their estate without necessarily meeting the diagnostic or legal criteria of a guardianship order. In my case my family members were backed by a legal professional versed in Guardianship laws and were actually given the advice on how to circumvent the tribunal system to gain financial management only. I believe there are many legal professionals who are taking advantage of this system and these current vague and subjective notions that can apply for financial management orders in the absence of a finding of incapacity.

Question 4.2: A best interests precondition

(1) Should there be a precondition before an order is made that the Tribunal be satisfied that the order is in the person's "best interests"?

(2) If such a precondition were required, how should it be expressed?

(3) What other precondition could be adopted in place of the "best interests" standard?

As above, a "best interests" notion is a vague, general and very subjective idea that is open to be used, abused or misappropriated by persons wishing to get financial control over a person. I do agree sometimes this precondition can exist in tandem with a finding of incapacity under a rigorous assessment process, and this system **must be aligned with the person's opinions, wishes and beliefs**. I do not believe a "best interests" precondition could or should be the sole precondition for **any** order and **I do not think it would ever be in anyone's "best interests" to lose their rights in a substitute decision making framework.**

Question 4.3: Should the preconditions be more closely aligned?

(1) Should the preconditions for different alternative decision-making orders or appointments in NSW be more closely aligned?

(2) If so, in relation to what orders or appointments and in what way?

As stated above the preconditions should be the same for both orders. It is naive to believe that a person cares about a person's welfare if they only wish to care for the person financially. And it is naive to think that a person's welfare is not impacted by being controlled financially. All preconditions, be it a capacity assessment, best interests, in need of an order should aligned for ALL orders, interim or not and should be a **last resort at all times**. All other alternative should have been explored or investigated thoroughly, giving adequate time and consideration to all parties and all issues unique to each individual case. Interim orders should be ceased. Other

orders should not be the **default position** and should exist not in a substitute decision making capacity but a new **supported decision making framework** of which models will be explored in the next question paper. An order should be **matter specific, decision specific, topic specific** and that should be outlined in the language of the order. **Therefore the committing of whole estates or whole persons should be stopped under a new framework.**

Question 4.4: Any other issues?

Are there any other issues you want to raise about the preconditions for alternative decision-making arrangements?

5. Other factors that should be taken into account

Question 5.1: What factors should be taken into account?

(1) What considerations should the Tribunal take into account when making a decision in relation to: (a) a guardianship order (b)a financial management order?

(2) Should they be the same for all orders?

(3) Are there any other issues you want to raise about the factors to be taken into account when making an order?

Please take into account my background story in consideration of other factors.

Thank you for consulting my submission and I look forward to further involvement in this law reform process.