To: NSW Law Reform Commission
From: Bridgette Pace – unrestricted
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Questions – The role of guardians and financial managers

Question 2:1 Who can be an enduring guardian?

Q. **Who should be eligible to be appointed as an enduring guardian?**

A. Any individual who is a family member or long time trusted friend chosen by the donor as long as two independent witnesses can attest that the donor has executed the document of his/her own free will and does not appear to have been coerced, manipulated, intimidated and/or subjected to undue influence by any party when appointing the nominated person as enduring guardian.

The donor must also fully understand the import of such a document and the role of the enduring guardian including being advised that the document can be revoked by the donor at any time if he/she is dissatisfied with the conduct of the enduring guardian. The document should only be prepared by an independent lawyer who must rigorously follow all the directions of the law society. Considerable reform in the ways these documents are being prepared and executed is required. Safeguards should also be incorporated in the law such as requiring the document to be registered and the appropriate authority advised when it is being revoked.

Unfortunately, when the Tribunal appoints the Public Guardian, no such safeguards or protections for the vulnerable person are given as public guardianship is an imposed tribunal order. In the case of the appointment of a private financial manager, the Tribunal again fails the protected person because it is not an investigative body bound by rules of evidence nor is it's role to establish the truth. As a result, this Clayton's Court not only enables a seasoned predator to manipulate the system to achieve its own agenda but also provides an easy pathway for predators to do so.

Q. **Who should be ineligible to be appointed as an enduring guardian?**

A.
(a) Nursing home proprietors, group home owners and the like.
(b) Service providers of aged care services, disability services, commercially engaged carers, social workers etc.
(c) Public Guardian
(d) Bank personnel
(d) Commercial entities
(e) Accountants – unless family member
(f) Lawyers - unless family member
(g) A bankrupt or a discharged bankrupt
(h) Anyone with a criminal record
(I) Strangers who know anything about them.

Question 2:2 Who can be a tribunal-appointed guardian?

Q. **What should the Tribunal consider when deciding whether to appoint a particular person as a guardian?**

A. I do not believe that the Tribunal should appoint a guardian and I do not believe that plenary guardianship is warranted nor should it exist in today's society. I am also concerned that the Tribunal will retain its bias and blur the lines between "support" and "substitute" and continue to push the default button for plenary guardianship.

Therefore, I believe that mainstream mechanisms of supports available in the community are sufficient to abolish the need for any formal guardianship order. A recognised "person responsible" can carry out this role which can be for an indefinite period. A Tribunal appointed guardian is usually only for a specified term and needs to be reaffirmed by the Tribunal This is an unnecessary and onerous task on a "person responsible". I have no faith in Guardianship Tribunals or its decisions and being under guardianship deprives a disabled person from equal justice before the law. Under guardianship, the Police cannot intervene. If not under guardianship they can, if abuse and exploitation is happening. In any event, I believe the following should be disallowed from obtain guardianship over a disabled person -

A.
(a) Nursing home proprietors
(b) Service providers of aged care services, disability services, commercially engaged carers, social workers etc.

(c) Public Guardian
(d) Bank personnel
(d) Commercial entities
(e) Accountants)
(f) Lawyers
(g) A bankrupt or a discharged bankrupt
(h) Anyone with a criminal record
(I) Strangers

Question 2:3 When should the Public Guardian be appointed?

Q. **Should the Tribunal be able to appoint the Public Guardian? If so, when should it occur?**

A. No and Never

Q. **Should there be any limits to the Tribunal's ability to appoint the Public Guardian?**

A. The Tribunal has a long history of bias towards plenary guardianship orders and abuses every principle, guideline and mandate it is obliged to follow and, therefore, I do not believe that the Tribunal should be vested with any legal right to make guardianship orders of any kind. This draconian regime must be abolished. The principle of "**last resort"** does not work as the Tribunal uses it as its default button for guardianship orders and it does so with impunity.

Question 2:4 Should community volunteers be able to act as guardians?

Q. **What could be the benefits and disadvantages of a community guardianship program?**

A. Benefits:
- "Voluntary" means no conflict of interest or vested interest for financial gain etc.;
- scrutiny by other members within the community hence more transparency & accountability;
- opportunity for networking with other colleagues and obtain advice and other options should difficulties with client arise;
- access to wider knowledge of additional supports available for client;
- ability to match client with more compatible and suitable volunteer;
- decisions not constrained by cookie cutter, bureaucratic mindset and red tape;
- no legal control over client hence no abuse of power;
- familiarity with local community and available services etc;
- wishes and preferences respected;
- to make choices of when, where and how supports provided;
- avoids the round robin circus of different guardians who have no intimate or personal understanding of the client's nature, personality, needs, background etc.
- supports provided in a timely manner, and
- case workers work on a one-to-one basis with their clients and in teams so that a seamless hand-over can occur if the disabled person's dedicated case worker is unavailable for any reason.
- cultural differences respected and appropriate cultural supports provided.

Disadvantages:
- "volunteers" may not be available for set hours;
- may not be enough volunteers;
- robust security and background checks may not be undertaken of the volunteers;
- volunteers, as support persons, may only be able to offer only a few hours of work per week;
- volunteers may not be prepared to work the required hours without remuneration.

Q. **Should NSW introduce a community guardianship program?**

A. Yes. I presume this is an informal guardianship program which, hopefully, is intended to replace substitute decision making in particular and guardianship in general. Without a carefully designed and thoughtful support program model in place, that description is simply a veiled form of substitution decision making.

Q. **If NSW does introduce a community guardianship program -**
(a) who should be able to be a community guardian?
(b) how should community guardians be appointed?
(c) who should recruit, train and supervise the community guardians?

A. (a) any individuals who have a comprehensive "hands on" background and experience of attending to the needs of a disabled or vulnerable person, e.g. it could be a past family carer or trusted friend who's loved one has died; a person who has the appropriate temperament, disposition, qualities and common sense personality required in the area of disability. It does not have to be a nurse or a tertiary qualified person or in the medical field as it will not be their role to make medical decisions nor does it guarantee that they will have the necessary sensibilities required to provide caring and common sense supports.

(b) normal recruitment channels, but with interviews being conducted by a panel of three people who have some background experience in the area of disability;

(c) The manager appointed to manage the community guardianship centre must be on the interview panel ;

(d) The community guardianship program should have a manager and a supervisor. The focus would not be empire building as it is in the Public Trustee, but in providing a caring, practical and effective community program for those in need – a friendly, supportive, competent and effective service . In essence, these community guardianship centres would be satellite offices and dotted around the Local Government areas. They must not operate with the bureaucratic red tape and inefficiencies that currently abound within the Guardianship Tribunal, Public Trustee and Public Guardian.

- The case workers will provide the supports, and manage a certain number of cases for which they are responsible, and work in teams.
- It would also be the manager's role to understand the nature and needs of the clients and ensure that there is a "good fit" between the client and the case workers.
- The manger should also ensure that monthly meetings take place, one Level at a time, so that the case workers can report on their progress and discuss any issues that arise. The manager's role would also be to ensure that the case load is not too heavy stretching the capabilities of the case worker and that the delivery of the support services are not being compromised.
- If certain issues arise which need particular attention, and it not within the expertise of the manager or supervisor, then the manager would bring in a trained expert to provide an instructive and comprehensive blueprint to address and resolve the problem. e.g. a behavioural nurse who can advise and inform the case workers how to deal with difficult client behaviours, or a Govt. representative who is abreast of all the govt. packages or funding available to their clientele.

Providing supports is not rocket science. You just need a humanitarian heart, dedication, excellent organisational skills, common sense and intelligence! And carefully chosen permanent support staff with the appropriate skills set are a necessity.

There could be three levels of case workers:

(i) **basic support - Level 1:**
arranging doctors appointments and transport, checking up with regular phone calls, organising shopping, meals on wheels , arranging for companionship services or outings, or any day to day needs for which the client requires friendly support;

(ii) **medium support – Level 2**
arranging for community nurses to check on wound management, home care, mobility aids and needs etc., doctor's home visits etc. Help with maintenance needs, organising trades for home repairs, making sure any other supports the client requires are made available in a timely manner and regular follow-ups;

(iii) **high support – Level 3 :**
assisting not only the client but the in-home family/friend carer in negotiating home care, advising on consumer directed care packages, navigating the care provider system, ensuring that the carer has a break and the client is in safe hands whilst carer is taking break, advising of what medical, mobility and other associated services including legal services and government funding and programs are available for the benefit of the client's wellbeing and also the carer. Making sure any other supports the client requires are made available in a timely manner and that there are regular follow-ups.

(iv) There should also be an experienced accounting person and qualified accountant who can assist and give advice on any day to day financial matters or, if more complex, seek appropriate experts in the field on behalf of the client.

Question 2:5 Who can be a private manager?

Q. **What should the Tribunal consider when deciding whether to appoint a particular person as a private manager?**

A. Again – I do not believe that the Guardianship Tribunal should be deciding this because they are not bound by rules of evidence nor is it their role to ascertain the truth. Therefore, how can a they ascertain whether the vulnerable person is being manipulated by a predatory "friend", be it a lawyer, accountant, family member or whomever.

I believe that a trusted family member or friend who has been managing the person's financial affairs should remain so unless it is proven that there is wrongdoing. If there is, then it should be a police matter and if there is no one willing or able to assist by taking over that role, then there should be a special branch of the community guardianship program that specialises in financial management which can take over that role, albeit informally.

The staff engaged in that department would undergo the same recruitment process as for the community guardianship program. The staff should also be fully conversant with the consumer directed care packages and comply with the client's will and preferences and allow the person to spend some of the funds on items or outings etc. that improve the person's quality of life but, of course, within budget. For small estates, the staff should have bookkeeping abilities and be able to manage the person's income and expenses, including paying bills in a timely manner. For more complex matters, there should also be a qualified accountant who has a sound business background. The community guardianship centre should also undergo an independent annual audit.

Q. **Should the Guardianship Act include detailed eligibility criteria for private managers or is the current "suitable person" sufficient?**

A. In general, family members or trusted friends provide the support and the eligibility criteria should be expanded to include "suitable trusted family member or trusted friend". The Guardianship Act cannot cover every circumstances nor should it try to do so. If there is evidence of wrongdoing, then the perpetrator should be prosecuted with the full force of the law as in any other case of fraud, misappropriation etc.

The fiasco of the "Surety Bond" and it's proposed imposition on private managers by the Public Trustee is nothing other than a shameful manoeuvre of "no care and no responsibility" which speaks for itself and the calibre of the Public Trustee's decision making and financial management generally.

Q. **What are the benefits and disadvantages of appointing private corporations to act as financial managers?**

A. Private corporations have the advantage of expertise in the financial markets as opposed to ordinary private individuals who generally do not. They can offer higher returns on investments.

The disadvantages (samples below), however, appear to far outweigh the advantages that private corporations offer. Disabled and vulnerable clients general want security and simplicity and a reasonable return on investment. They are not chasing the almighty dollar. Corporation disadvantages -

- lack of personalised contact
- charge high administrative and other fees
- "fine print" which catches out and disadvantages naive investors
- risk takers
- bureaucratic red tape
- no control for stakeholder
- untimely responses
- call centres
- can become bankrupt

Q. **Should the Tribunal be able to appoint a corporation to be a private manger? If so, under what circumstances should this occur?**

A. No, it should not. They are not experts in the field in order to make such appointments and the Public Trustee's record of investment is abysmal. Further, the fees incurred are high and the Public Trustee still takes

its own fee. All this will do is diminish the estate even more. Corporation do not have a person centred approach to its investments. The stakeholders are simply random investors.

Question 2.6: Should the NSW Trustee be appointed only as a last resort?

Q. **Should the Guardianship Act state explicitly that the Tribunal can only appoint the NSW Trustee as a last resort?**

A. **Firstly**, substitute decision making should be abolished. The UNCRPD and the Act already set out the principles and guidelines for which a person may be placed under plenary guardianship "as a last resort". Whether it is made explicit or not, the Tribunal will find a way around it by some other flaw or anomaly in certain Sections and Clauses of the Act. The Tribunal already abuses its mandate to follow those principles and guidelines nor does it operate in the spirit of the Act. To suggest that the Tribunal can only appoint the NSW Trustee as a last resort if it is explicitly stated in the Act, is unrealistic. The Tribunals will use their review or NCAT "mates" to ensure that their decisions are upheld. For aeons the Tribunal has systematically placed disabled persons under plenary guardianship in breach of the rules, mandates and policies and in direct defiance of the spirit and intent of the Act and with total impunity.

If law reformers will not recommend the abolition of substitute decision making, then one would consider something along the lines "*in the case where the vulnerable person has absolutely no family or friends to provide supports and there is proven evidence of financial exploitation*" AND, by statute, there are legal punishments and remedies levied against the Tribunal for failure to comply, then including the above explicit conditions would seem necessary.

Nonetheless, I do believe that making "explicit principles" is a waste of time unless it is mandated by statute. Abuse of the UNCRPD's Principles and Guidelines is sufficient evidence of that. The Guardianship Tribunal should be disbanded in totality and plenary guardianship relegated to the annals of history.

Secondly, The UNCRPD and also the Guardianship Act have stated that a Public Trustee can only be appointed in cases of last resort – has anything of any real consequence changed since Australia became a signatory to the Convention? The obvious answer is No.

Thirdly, although the Guardianship Act states that imposition of financial management must only be a case of last resort, and has provided guidelines in this regard, it still leaves the door open for the Tribunal's "*interpretation " or "opinion*" to override the principles and guidelines of *"last resort"*. Therefore, I reiterate that I have no faith in the Tribunal or the ability of the Guardianship Act to prevent the Tribunal and its cohorts from manipulating the system and utilising every loophole in order to achieve financial management for the Public Trustee.

Question 2:7 Should the Act include a succession planning mechanism?

Q 1 Should the Guardianship Act allow relatives, friends and others to express their views on who should be a person's guardian or financial manager in the future?

A1 No. No Clause should be predicated on "future" or "hypothetical" circumstances. In any event, if supports are available why would anyone want or need the Guardianship Act to do so

I believe the Act should be totally redrafted and its paternalistic bent removed. On that basis, the answer to the question of whether the Act should include a succession planning mechanism is - NO.

Q2 **What could be the benefits and disadvantages of such a succession planning mechanism?**

A2 I do not believe there should be a succession planning mechanism included in the Act. It will only serve another means of retaining a stranglehold on the disabled person.

Q3 **When deciding who to appoint, should the Tribunal be required to give effect to the wishes expressed in the succession planning statement?**

A3 If the Act is not radically reformed (preferably thrown out) and a succession planning statement becomes a requirement, then there is no question that the wishes (of the disabled person) expressed in such a document should prevail.

To be frank -

- the law reform commission should be adopting a paradigm shift away from paternalistic models and not expend its time and energies mulling over a broken, damaged and draconian system.
- Treating people with disabilities as "objects" to be managed and controlled by formally substitute decision makers must stop and has no place in any civil society;
- A comprehensive system of informal supports will ensure that people with disabilities will be honoured and respected as individuals since they do not "control" them but only offer support when they request it;.
- A system of informal supports will restore the voice, power and authority of disabled persons by forging pathways to independent living and community participation.
- We do not need the Guardianship Act to override a human being's personhood, wishes or freedoms.

Question 3. What powers and functions should guardians and financial managers have

Question 3:1 What powers and functions should enduring guardians have?

Q. **Should the Guardianship Act contain a more detailed list of the powers and functions that an adult can grant to an enduring guardian. If so, what should be included on this list.**

A. No. A person is required to be of sound mind before they can legally execute a Power of Attorney and Enduring Guardianship. Therefore, it follows that they can choose whatever function they like to empower the enduring guardian ON THE PROVISO that all Powers of Attorney and Enduring Guardianship instruments MUST be prepared by a lawyer who clearly explains to the donor BEFORE it is executed, the ramifications and possible outcomes of those powers vested in the enduring guardian.

Q. **Should the Guardianship Act contain a list of the powers and functions that an adult cannot grant to an enduring guardian? If so, what should be included in this list?**

A. See above.

Question 3:2 Should the Tribunal be able to make plenary orders?

Q. **What are the benefits and disadvantages of allowing the Tribunal to make plenary orders?**

A. No advantage and every disadvantage. Plenary orders should be totally abolished and have no place in a civil and just society.

Q. **Should the Guardianship Act -**
(a) continue to enable the Tribunal to make plenary orders

A. (a) Absolutely not.

Q. (b) Require the Tribunal to specify a guardian's powers and functions in each guardianship order, or include some other arrangement for granting powers?

A. (b) I do not agree with plenary guardianship or guardianship at all. I believe the system should be abolished and replaced by an informal community guardianship support service.

Question 3:3 What powers and functions should tribunal appointed guardians have?

Q. **Should the Guardianship Act list the powers and functions that the Tribunal can grant to a guardian? If so, what should be included in this list?**

A. No. A "person responsible " is a legally recognised status but, unfortunately, very few people, including professionals, know about it. In view of the " person responsible" legal status, there is no need to have a tribunal appointed guardian. If the law recognised fraud, abuse and exploitation of a disabled person, just as it does for other unimpaired citizens, then I do not see why it is necessary for a tribunal to be appointed as guardian. Having a publicly appointed guardian prevents from the Police intervening - the Guardian has the total authority and the disabled person has none.

If there are concerns, the informal community support guardianship scheme would be the first point of contact and would be able to direct the matter to the Police or other appropriate authorities. But if a person is under guardianship no one, including the Police, is willing or able to get involved. Also, if the much anticipated creation of fully independent and arms length Public Advocacy Centre actually materialises, it would be

authorised to investigate and, if there is evidence of wrongdoing, prosecute the perpetrator on behalf of the disabled person.

Question 3:4 Are there any powers and functions that guardians should not be able to have?

Q. Should the Guardianship Act contain a list of powers and functions that the guardians should not be able to have?

A. Yes.

- The Public Guardian must not override the wills and preferences of the disabled person.
- The Public Guardian must not dictate to or interfere in the disabled person's day to day life unless there is evidence of abuse and exploitation and a need for intervention; as it stands, the Public Guardian cannot involve the Police so what is the point of them being there at all;
- The Public Guardian must not be able to force the disabled person from their own home or dictate where or with who they should reside;
- The Public Guardian must not have any medical function;
- The Public Guardian must not interfere with the vulnerable person's right to obtain legal services;
- The Guardian or Public Trustee must not have the right to sell a person's home without their consent.

In short, the Guardianship Act should be thrown out and rewritten with legal safeguards and legal protections in place to protect to disabled and vulnerable person from any perpetrator, whether an individual or institution, or government body.

Question 3:5 What powers and functions should financial managers have?

Q. (1) What are the benefits and disadvantages of keeping the roles of guardians and financial managers separate?

(2) What are the benefits and disadvantages of combining the roles of guardians and financial managers?

(3) Should the roles of the tribunal appointed guardians and financial managers remain separate?

A. (1), (2) and (3)

The current model of separation between the two is dysfunctional and counter productive and only serves to confirm that the system needs to be completely overhauled. A vulnerable persons needs should be managed as a whole. The round robin circus of anonymous Public Guardians who usually have never met the vulnerable person or understands their needs, can make the decision of what a vulnerable person may or may not purchase. The Public Trustee relies on the Public Guardian's recommendation

For example, the vulnerable person may request to buy a mobility aid which is clearly needed but has to go through not only the Public Guardian but also through the Public Trustee. This is time consuming and frustrating as decisions are never made in a timely manner and require an enormous of unnecessary bureaucratic red tape before a decision is made.

A Public Guardian may only agree to the purchase of a certain type of car which is not suitable for the needs of the vulnerable person who is in a wheelchair. The Public Trustee will be guided by the Public Guardian and only release funds for the purchase of the car specified by the Public Guardian. That car is purchased, the wheelchair does not fit in the car and the car has to be sold – usually at a loss. The stress, frustration not to mention the economic loss could have been avoided if there was NO Public Guardian or Public Trustee involved. Eventually the appropriate car is purchased and the cavalier attitude of the Public Guardian remains unapologetically intact.

Instead, by having an informal community support guardian, the case officer will have met and know the person, have had a number of personal interactions, understand their needs and make a common sense decision to assist them in purchasing the appropriate vehicle.

Again, the need to dispense with Public Guardians and Public Trustees in favour of informal support networks is obvious. Individuals are unique – they are not products or objects – which are dealt with in a commercial environment. Vulnerable and disabled persons need a hands-on humane approach to support them as and when required. They do not need an impenetrable bureaucracy that fails to act in accordance with its mandate and certainly does not take a "person centred" approach to the protected person.

4. What decision making principles should guardians and financial managers observe?

Question 4:1 What decision making principles should guardians and financial managers observe?

Q. What decision making principles should guardians and financial managers observe?

A. The first mistake is not enshrining the UNCRPD's "principles and guidelines" into domestic law by statute. "Principles" and "guidelines" are worthless without legal standing and, without legal remedies, the Public Guardian and Public Trustee will continue with their abuses and "observation" of these principles and guidelines serves will serve only as lip service in the propaganda and spin in which these organisations excel.

There is no doubt that the human rights abuses will continue to flourish and the devastation visited upon the disabled person, the families and trusted friends will remain the sorry legacy of these institutions unless and until a paradigm shift occurs in the way the Guardianship Act operates.

Informal guardians and informal managers can be prosecuted if they abuse and financially exploit the disabled person. The Tribunal and its cohorts cannot.

In Sweden, individuals with disabilities can request a personal ombudsman who works only for that person and abides by his/her will and preferences. Ombudsmen are funded by the municipality. Personal ombudsmen often work in teams, trading shifts, including evenings and weekends. Notably, there is little bureaucracy behind the program; anyone who requests a personal ombudsman can get one. The process does not require an assessment of capacity before support is provided.

This program has been operating since 2000 and is working very successfully.

Sweden no longer provides for plenary guardianship but permits a partial guardianship as a last resort. Its tiered system provides for a court appointed tutor (a "God man"), often a friend or family member, who acts with the person's consent and a trustee ("forvaltare") who, like a guardian can make decisions for the person on financial and personal welfare matters and is required to follow a "best interest" approach.

Seventeen years after Sweden's humane, practical and common-sense approach, Australia is still rehashing an outdated, draconian and abusive regime. When will the "bright light" of reason finally shine on our Guardianship regime?

May I respectfully suggest that The ALRC and the NSW Law Reform Commission should stop trying to fix a broken system and recommend a more humane approach like Sweden or other forward thinking countries which respects and upholds the human rights of vulnerable and disabled persons. Paternalism has no place in today's world. It is all controlling and abusive. Informal networks of supports for disabled persons is what must replace the guardianship regime.

Internationally, there is great shift towards providing informal supports and this model is strongly encouraged. Accessing support networks is central to the recognition of being equal and full citizens before the law. It is only under the most extraordinary of circumstances, in certain countries, that the legal rights of persons with intellectual disabilities to make their own decisions can be lawfully interrupted. In Australia it is the opposite.

Q.4.2 Should Guardians and Financial Managers be required to give effect to a person's will and preferences".

Q (1) What are the advantages and disadvantages of the current emphasis on "welfare and interests" in the Guardianship Act's general principles?

A. (1) As stated above, unless "principles" and "guidelines" as outlined in the UNCRPD, are legislated by statute and incorporated into domestic law, there will be no protections or safeguards for abuses against disabled by perpetrators of all persuasions. So I do not see the point in stating the obvious that a person's will and preferences are paramount and must not be abused.
In any event, I am resolutely against substitute decision making and this question is for me, redundant.

Q. (2) Should "welfare and interests" continue to be the "paramount consideration" for guardians and financial managers.

A. (2) Again, I do not believe in ANY system that encourages and retains substitute decision making. A play on words, as suggested above, does not protect disabled persons from abuses within this draconian system. It serves only to be "*seen to do something"* when in fact it is "*doing nothing*".

Q. (3) What could be the benefits and disadvantages of requiring guardians and financial managers to give effect to a person's will and preferences?

A. (3) Why should a person's will and preferences be in question when it is their basic human rights to live their lives in accordance with their will and preferences in the first place?

Q. (4) Should guardians and financial managers be required to give effect to a person's will and preferences?

A. (4) Disabled persons are not criminals. Incarceration legally deprives criminals of their wills and preferences but they still have human rights.

Advocates for people with disabilities are fully aware, especially in matters concerning mental disabilities, that these disabled persons are the most ignored groups when it comes to protection through law.

There has been a long and tawdry history in Australia of regarding them as a separate class, with separate and lesser human rights. Question 4. illustrates this point by the mere fact that this question is being asked. An individual's apparent or presumed incapacity is the standard justification by Australian government authorities impose substitute decision making – and this is profoundly and manifestly wrong!

I thank the NSW Law Reform Commission for the opportunity to make this submission. This is a propitious time for the Commission and its cohorts to join with and embrace the views of victims of the guardianship regime and acknowledge that major fundamental changes to guardianship laws are not only necessary but greatly overdue .

A new model of guardianship for disabled persons should be constructed and structured to encourage and promote independence, equality, freedom and dignity of people with disabilities, especially cognitive disabilities.

A new model of supports, be it an informal community guardianship system or a similar model adopted by Sweden, as illustrated above, is the only way that safeguards and protections for disabled persons can operate.

There are enough worldwide examples of supportive models from which Australia can formulate an effective and robust support system for disabled people. Rethinking personhood and charting new directions in domestic law with regard to legal capacity is greatly overdue. Under no circumstances should anyone be arbitrarily denied their basic human freedoms and denied possession of their property and estates.

Further, the establishment of a totally independent Public Advocate Commission which has the legal power and authority to investigate, pursue and prosecute those of all persuasions (including government authorities) which perpetrate abuse, neglect, violation of human rights and exploitation upon the most marginalised and disenfranchised in our society must occur, sooner rather than later – people under formal guardianship orders and plenary guardianship , in particular, have suffered and waited long enough.
