

The Shopfront

YOUTH LEGAL CENTRE

NSW Law Reform Commission
via email:
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12 May 2017

Review of the *Guardianship Act 1987*: Question Paper 6: Remaining Issues

1 Introduction

We are writing to you in response to the review of the *Guardianship Act* and whether it is desirable to make changes to that Act.

We are a legal service that assists vulnerable young people. Although not many of our clients have been subject to guardianship orders under the *Guardianship Act*, we have had clients who have been subjected to financial management orders.

In our experience these clients have been unhappy with the current form of financial management orders, stating that they feel that they have lost control over their affairs and need to effectively *beg* the officer assigned to their case for any small expense, which is humiliating.

We consider that it is important that any proposed changes to the *Guardianship Act* take into account the needs and expectations of this very vulnerable group in our community.

Therefore rather than addressing the specific questions raised in the Question Papers, we propose to provide submissions relating to the challenges and obstacles particular to our client group.

2 About the Shopfront Youth Legal Centre

The Shopfront Youth Legal Centre is a free legal service for homeless and disadvantaged young people aged 25 and under. The Shopfront has been operating since 1993 and is a joint project of the law firm Herbert Smith Freehills, Mission Australia and the Salvation Army.

The Shopfront represents and advises young people on a range of legal issues, with a particular emphasis on criminal law. Most of the young people we assist as criminal defendants are also victims of abuse with unresolved trauma. We also assist our clients to pursue victims' compensation claims, in particular claims for domestic violence and sexual assault, which in the main relate to their history of child abuse.

The Shopfront's clients come from a range of cultural backgrounds, including a sizeable number of indigenous young people. Common to most of our clients is the experience of homelessness: most have been forced to leave home due to abuse, neglect, domestic violence or extreme family dysfunction. This leaves them extremely vulnerable and traumatised and unable to protect themselves. Moreover, most of our clients have limited formal education and therefore lack adequate literacy, numeracy and vocational skills. A

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substantial proportion also have a serious mental health problem or an intellectual disability, often co-existing with a substance abuse problem. These young people have difficulty successfully navigating the different bureaucracies related to housing, health care and income support, in addition to managing their legal issues.

3 General comments on the *Guardianship Act* as applied to our client group

3.1 Decision-making

(a) Introduction

Although many of our clients described above could possibly benefit from some form of assistance in making decisions, it is our experience that the current system under the *Guardianship Act* is not appropriate to address their needs and concerns.

It seems from the models described in Question Paper 2 that if supported decision-making (as defined in that Question Paper) was adopted in New South Wales, then it would provide a more attractive option to assist these young people.

We therefore endorse the concept of adding a form of supported decision-making model to the guardianship regime, so long as such a scheme is properly regulated, supervised and funded appropriately. We note the references to a co-decision-making model and that it is treated as a type of supported decision-making model with more limited autonomy. Therefore many of our comments apply to this proposed model as well.

(b) Disempowerment

Most of our clients have experienced disempowerment throughout their lives.

Many have been placed under the parental responsibility of the Minister from a young age. As a result of homelessness, personal circumstances and/or abuse and trauma, most of our clients have been caught up in the criminal justice system and subject to supervision, control orders and/or imprisonment.

For many of our clients, the people who were given the power to make decisions for them during their childhood and adolescence (either by court order or other means) have not always acted in their best interests and for the most part have ignored the young person's expressed wishes.

Many of our clients suffer from intellectual disabilities or serious mental health issues (and in a few cases brain injuries) that may impact in some way on their capacity to make appropriate decisions. If they are fortunate, they have a case worker or other social work support, but this is dependent on funding and availability of services, and the quality of support does vary a lot.

Some of these vulnerable young people who have been made the subject of guardianship orders or financial management orders have reported that they found the process of having a stranger making decisions for them, particularly in relation to their day-to-day living, humiliating.

Further, our observation is that the persons appointed to manage these clients' affairs, particularly financial managers, are not adequately equipped to deal with the complex needs of this vulnerable client group.

As stated above, although not many of our clients have been subject to guardianship orders, any further loss of autonomy or decision-making power, in the context of a lifetime of control by government or court appointed strangers, could be extremely distressing. We consider that if they require assistance in decision-making then it should be done in a manner that continues to treat them and their individual concerns with dignity and respect.

(c) Properly funded and appropriately trained support

We also note that many young people in our client group, due to their homelessness and other disadvantages, do not have a network of appropriate family and/or friends who could be informal supporters.

These clients all have complex needs and if it was considered appropriate that they needed assistance in decision-making, in our view it should be by people who have received proper training and are adequately funded to provide the range of assistance that these complex needs clients will need to address.

Since they cannot draw on a network of family or friends, they will be forced to rely upon agencies or other government appointed entities to provide them with the necessary decision making support. Due to being exploited or abused by the adults who were supposed to have supported them, many have developed severe trust issues, providing a further challenge for any potential supporters.

We therefore believe that, to prevent exploitation of these vulnerable young people, any such scheme would have to be appropriately funded and monitored with easy access to avenues for complaints or for change of support people provided.

Set out below is a case study of one of our clients who we consider illustrates almost all of the points made above and why it is important that any review of the *Guardianship Act* take into account the particular challenges of these young people and offers solutions which continue to treat them with respect and dignity and not add to their feelings of disempowerment.

Case Study

Kathleen is a 20-year-old Aboriginal woman. Since she was very young, she has been subjected to physical and sexual abuse by her brothers and stepfather. She also reported that many members of her family had spent long periods in custody.

At the age of 14 years she disclosed to a teacher and to police about the family abuse. She fled the family home and went to a refuge. She was forced to flee the refuge after she was sexually assaulted and subsequently became homeless until very recently. Whilst homeless she was extremely vulnerable and was the victim of further physical and sexual abuse.

Due to her homelessness and background of family dysfunction and disadvantage, Kathleen has had very little formal education. She instructs that she has never been treated with respect or dignity by the adults in her life and has great difficulty trusting anyone.

Kathleen was assessed last year as suffering from a mild intellectual disability. In addition she is suffering from mental health issues such as depression and PTSD as a result of the immense trauma she has suffered. She has been hospitalised many times following suicide attempts. She also has a substance abuse problem. In addition she has a neurological issue, in that she suffers from seizures. .

She currently has an excellent case worker whom she trusts (after months of working together) that maintains daily contact with her. She assists her in organising Kathleen's many medical, psychological, psychiatric, housing, legal and other appointments. She also takes her to these appointments.

Kathleen expressed to her case worker that her Aboriginal heritage was important to her and she would prefer to attend aboriginal medical and counselling services. The case worker respected this request and went out of her way to organise for Kathleen to attend culturally appropriate services.

Kathleen feels that she is being treated with dignity and respect and trusts this case worker to assist her in making all of these important decisions. However this arrangement is completely dependent upon Kathleen meeting the eligibility requirements of her support service, the support service continuing to be funded and the relevant case worker continuing to be employed by the service and permitted to continue providing this kind of intensive support.

This arrangement seems to us to be similar to the proposed supported decision-making model and in our view reflects the kind of intensive relationship and time and effort that would be required in order to properly support this type of vulnerable client

We consider that Kathleen's circumstances illustrate the importance of any form of supported decision-making model including adequate funding and appropriate training for proposed support workers in order for these vulnerable young people with complex needs to feel empowered and treated with respect and dignity despite their limitations in capacity.

3.2 Financial management orders

As discussed above, a number of our clients have been subjected to Financial Management Orders.

For our client group, in most cases (for the reasons discussed above), the only available option for a financial manager is the NSW Trustee and Guardian. This means that these vulnerable young people find themselves in a position where they have another stranger appointed to manage their affairs.

Whilst most recognise that some form of financial management assistance is required, they have expressed that the current form of financial management orders makes them feel that they have lost control over their day-to-day affairs. The most common refrain is the impression that they are forced to be dependent on the good nature of the appointed case officer at the relevant time and that they need to effectively *beg* this officer for any small expense, which is humiliating as well as time-consuming and frustrating.

In addition, for many clients with long-term capacity issues, they have reported that it seems to them that their case officers have a high case load, are not available enough and just as they have established a rapport with a particular case officer and he/she is familiar with their circumstances, that person leaves or is transferred.

Of course we recognise that not all of these issues can be resolved by legislation, however we would ask that in any review or restructure of financial management orders, the concerns expressed above be taken into consideration. Also that adequate funding and training be provided to support the financial management orders for our particular client group, who by virtue of their youth and disadvantage could be subject to these orders for a long time.

3.3 Fees

We note that the NSW Trustee and Guardian (which is a government department) charges fees for managing funds which are subject to Financial Management Orders.

We do concede that these fees may not be seen as too oppressive when one considers the private sector. However, our client group is one of the most vulnerable groups in the community, who usually require financial management orders because of their disadvantaged circumstances and their lack of capacity or social or support networks that they can trust not to exploit them.

Several of our clients under financial management orders have received awards of compensation for personal injury or child abuse. In our view it is against the spirit of the purpose of these awards to deduct fees because of a person's limited capacity, particularly when that limited capacity may have been the result of the injuries being compensated.

We would suggest that there should be provisions for a discretion to waive fees where a person under a financial management order is homeless or young or an otherwise vulnerable person.

4 Conclusion

We consider that it is very important for any review of the *Guardianship Act* to take into consideration how this review could impact on vulnerable people, particularly young people, in our client group.

As discussed, we consider it very important that they have the opportunity to retain the power to make, or at least to participate in making, their own decisions so far as possible. We also strongly emphasise the importance of providing for and properly funding any alternative decision-making models, as in our view this is the best way to ensure that there are proper options available for young, homeless people with limited capacity.

Yours faithfully

Jane Sanders
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