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Submission to Law Reform Commission regarding *Guardianship Act 1987*

In this preliminary submission, I will highlight the uncertainty created by the legislation with relation to the number of Substitute Guardians that can be appointed as prescribed in Section 6DA of the *Guardianship Act 1987*.

Section 8 of the *Interpretation Act 1987* contains the following interpretation “In any Act or instrument (b) for a reference to a word or expression in the singular form includes a reference to the word or expression in the plural form”. The application of this to Section 6DA of the *Guardianship Act 1987* should allow the reader of the *Guardianship Act 1987* to believe that more than one substitute enduring guardian can be appointed.

To put doubt into this aforementioned belief, Section 6D and Section 6DA of the *Guardianship Act 1987* use plural form and singular form respectively. The use of plural form in Section 6D but the singular form in Section 6DA could be inferred to mean that the legislators specifically disallowed the option of more than one substitute guardian due to the specific use of the plural and singular forms of the term “guardians” and “substitute guardian”. This would be in conflict with Section 8 of the Interpretation Act.

Section 6D of the *Guardianship Act 1987* specifically refers to the “Appointment of 2 or more enduring guardians”.

Section 6DA of the *Guardianship Act 1987* though titled “Substitute enduring guardians” refers to “guardian” only in the singular form in paragraphs 1 to 5. The certainty of the legality of appointment of 2 or more substitute enduring guardians is in doubt due to the use of the singular form of “guardian” in Section 6DA when compared to the use of the plural form in Section 6D.

In order to remove any doubt as to the number of substitute guardians that can be appointed, Section 6DA should use plural form “guardians” in paragraphs 1 to 5.

In addition to the suggested amendment of the legislation, NSW Trustee and Guardian should amend its Form of Appointment of Enduring Guardian available on the internet to allow more than one substitute guardian. Currently, NSW Trustee and Guardian does not allow more than one substitute guardian to be appointed and the form available on many websites which appears to be a copy of the one on the NSW Trustee and Guardian website does not allow the appointment of more than a single substitute guardian.

To ensure better clarity and to resolve the issue raised in the above paragraph, the form “Form 1 - Appointment of enduring guardian” in “*GUARDIANSHIP REGULATION 2010 - SCHEDULE 1*” should be modified to allow the appointment of one or more substitute guardians rather than have having no reference to substitute guardians at all, other than in the note at the footer of this form, where there is reference to “more than one enduring guardian” but only a single “substitute enduring guardian”.

Yours sincerely

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