



MULTICULTURAL
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Ms Erin Gough
Policy Manager
NSW Law Reform Commission
GPO Box 31
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Our Ref: CT 6819
File Ref: 16/0306

Dear Ms Gough

Thank you for the opportunity for Multicultural NSW to comment on Question Papers 4, 5 and 6 of the *Guardianship Act 1987* (the Act) review.

Under the *Multicultural NSW Act 2000*, Multicultural NSW is tasked to promote a cohesive and harmonious multicultural society and to ensure people from culturally diverse backgrounds are fully considered and have the greatest possible access to government programs and services.

In respect to Question Papers 4, 5 and 6, Multicultural NSW supports the reforms proposed to the *Guardianship Act 1987* to ensure the best interests, rights and safety of those people the Act is designed to assist.

Multicultural NSW reiterates its position that lack of understanding of the Act, limited English language ability and cultural difference of people from culturally diverse backgrounds add extra challenges to enabling people of this group to benefit fully from the guardianship legislation.

Apart from recommending to formally validate the value of family and to include the requirement for a linguistically and culturally appropriate strategy in the legislation, Multicultural NSW encourages the development of regulations and code of practice to provide more tangible guidance for professionals and others working with people with disability from culturally diverse backgrounds.

I have attached a more detail response to the Papers.

For any further discussion on the response, please contact [REDACTED]

Yours sincerely

[REDACTED]
Marie Swain
Acting Director, Government Policy and Research

Review of Guardianship Act 1987
Question Paper 4, 5 and 6
Multicultural NSW submission

Multicultural NSW supports the reform of the *Guardianship Act 1987* (the Act) moving from focussing on disability and what people **cannot** do, to a more humanitarian and holistic framework which puts an emphasis on people's will and preference and what they **can** do.

Multicultural NSW supports government agencies and institutions taking into consideration people from culturally and linguistically diverse backgrounds (CALD) to enable the greatest possible access to government programs and services by all.

As discussed in previous responses, guardianship matters are complex and confusing for most and the perplexity increases in the case of people from culturally, linguistically and religiously diverse backgrounds. It remains true that all people with disability face barriers to social participation including access to employment, technology, social activity and economic wellbeing. People with incapacity, who are migrants and new arrivals, especially those from non-English speaking countries are likely to face deeper forms of marginalisation.

According to the 2017 Productivity Commission Report on Government Services, 'Australian residents and citizens from Non-English Speaking Country (NESB) background with disability demonstrate a significantly lower uptake of services'. Nationally in 2014-15, the proportion of NESB population who used National Disability Agreement (NDA) services was lower than that of the population born in an English-speaking country, for accommodation support services, community support services and community access services. For example, the proportion of NESB people who used NDA respite services was lower than the proportion born in an English-speaking country (0.5 compared to 2.0 service users per 1000 people)¹.

In addition to language and literacy barriers and the lack of culturally appropriate information, people from CALD backgrounds face extra challenges which impede them benefitting from the guardianship legislation. Some of the barriers are:

- limited understanding of the need for guardianship in the Australian legal and social context,
- the complexity and formality of the system,
- fear and anger that power will be taken away from the carer and family
- a belief that informal arrangements are an acceptable or preferable alternative

¹ <http://www.pc.gov.au/research/ongoing/report-on-government-services/2017/community-services/services-for-people-with-disability/rogs-2017-volume-f-chapter15.pdf>

While the guardianship legislation sets out to ensure the dignity and rights of people, it is understood that it must achieve its purpose of protecting people from abuse, neglect and other forms of exploitation.

Multicultural NSW agrees and supports the safeguard mechanisms proposed in the reform including the process and requirements of appointment of enduring guardians, regular as well as random reviews of guardianship and financial orders and performance of guardians, registration of enduring guardianship appointments and orders, and arrangements for consent to medical and dental treatment and the use of restrictive practices.

These measures are necessary to safeguard the rights of all who are impacted including the incapacitated person, the family and the guardian. The task of effectively communicating the purpose and standards of the legislation remains a challenge. In the case of the culturally, linguistically and religiously diverse community, Multicultural NSW advocates for further consideration of the above-mentioned barriers to ensure people from this community enjoy the intended benefits provided for in the legislation.

Language difficulty has been identified as one of the key obstacles. Multicultural NSW recommends in-language information and use of interpreters be referred to in the legislation to set the minimum standard of catering for the needs of the CALD community.

As supporting others such as government staff, health practitioners, solicitors plays an important part in the function of the guardianship legislation, it is recommended that the cultural competence requirement of supporting others be referred to in the legislation to ensure a certain level of understanding and skills in working with a CALD person and their family is achieved. Training should include working with interpreters, and developing an ability to read and manage the dynamics of family or friends.

As legislation defines the broad directives and general standards, it may not be possible to isolate or cover all special interest groups that are affected. Regulations and codes of practice, on the other hand, could provide more detailed guidance and best practice. Therefore, Multicultural NSW recommends supporting regulations and codes of practice be developed which include strategies to overcome barriers faced by new arrivals and people from culturally, religiously and linguistically diverse backgrounds.

Conclusion

Multicultural NSW supports the reform of the *Guardianship Act 1987* and agrees with the safeguard mechanisms proposed. In line with previous responses, Multicultural NSW emphasises the need to consider the additional barriers experienced by people from CALD background.

We recommend the legislation validates the role of family, and refers to the use of in-language information and interpreters where appropriate. In addition to references in the legislation, we recommend regulations and code of practice be developed and implemented.

Finally, Multicultural NSW supports a regulatory role for the government to ensure the intended outcome of the legislation.