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Mr Alan Cameron AO
Chairperson
NSW Law Reform Commission
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Name: Kasey Tyler
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Our reference: **IPC17/A000204**

By email to: nsw_lrc@justice.nsw.gov.au

9 MAY 2017

Dear Mr Cameron,

I refer to the call for submissions on the review of the *Guardianship Act 1987* (NSW) (the Act) by the NSW Law Reform Commission and thank you for the opportunity to comment. I invite the NSW Law Reform Commission to contact my Office at any time in the future to discuss any matters of law reform that may raise privacy considerations.

A life free from unjustified interference with one's privacy is a global human right conferred by Article 17 of the International Covenant on Civil and Political Rights. It is crucial that the most vulnerable in our community can both access these rights and have tools that protect these rights from interference. The dependence of people with decision-making disabilities on others does not mean that they should lose their privacy or other human rights. On the contrary, privacy is particularly important for people with decision-making disabilities because they are vulnerable to greater intrusions on their privacy than others in the community. Accordingly, I recommend that the *Guardianship Act 1987* be further strengthened by inserting the following general principle into section 4:

- i) *As far as possible, such persons right to a private life and control over their personal and health information should be prioritised.*

Rather than comment further on operative provisions, I believe that commentary on the holistic framework of the privacy rights of people with decision making disabilities also has value in this context. Any review regarding people with decision-making disabilities should be informed by the following principles. They are based on international legal instruments, including the International Covenant on Civil and Political Rights, and domestic law including the *Privacy and Personal Information Protection Act 1998* (NSW) (PIPPA) and the *Health Records and Information Privacy Act 2002* (NSW) (HRIPA):

- (a) Respect for dignity and autonomy - All people have the inherent right to respect for their human dignity and autonomy.
- (b) Equal statutory rights - All people are equally entitled to the rights contained in PPIPA and HRIPA.
- (c) Access to information - All people have the right to be provided with information necessary to allow informed choice, in a manner appropriate to each person's abilities and their linguistic and cultural background.

(d) Participation in decision-making - All individuals have the right to participate to the greatest extent possible in decisions which affect them, including decisions about how their personal information is handled.


(e) Respect for opinions - All individuals have the right to have their values (including cultural values), wishes, preferences and opinions about how their personal information is handled respected by others.

(f) Accountability - Government agencies are accountable to individuals who use their services, including people with disabilities, the support persons of people with disabilities and the community generally, for decisions about the way that personal information is handled.

The Office of the Privacy Commissioner therefore supports the utilisation of principled decision-making norms with clear and consistent criteria for determination. Accordingly, I recommend that agencies create internal guidelines that guide staff through such decision making under, for example, s6E(2B). Inserting an obligation in the Act that requires agencies to create internal procedures that would guide this process would strengthen the rights of both the guardian and the person with the decision-making disability. The OPC would be pleased to consult with the Attorney General and the Law Reform Commission on the insertion of a legislative obligation within the Act that would require agencies to implement such procedures.

If representatives from the Law Reform Commission have any queries, please contact Kasey Tyler on _____ and quote the reference number at the top of this letter.

Yours sincerely



Dr Elizabeth Coombs
A/NSW Privacy Commissioner