



MULTICULTURAL
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Ms Erin Gough
Policy Manager
NSW Law Reform Commission
GPO Box 31
Sydney NSW 2001

Dear Ms Gough

Thank you for granting Multicultural NSW with the opportunity to respond to the current review of the Guardianship Act 1987. On 21 November 2016, Multicultural NSW submitted a response to Question Paper 1, Preconditions for alternative decision-making arrangements. We have now reviewed Question Paper 2 – Decision Making Models and Question Paper 3 – The role of guardians and financial managers and would like to present our position and recommendations on the following pages.

As a statutory authority, Multicultural NSW is guided the *Multicultural NSW Act 2000* which prescribes that all individuals in New South Wales should have the greatest possible opportunity to contribute to, and participate in, all aspects of public life in which they may legally participate, and make use of, and participate in, relevant activities and programs provided or administered by the Government of New South Wales.

Multicultural NSW is the leading NSW agency responsible for building and maintaining a cohesive and harmonious multicultural society that enriches the lives of all the people of NSW. We are driven by three key principles:

- Engage with all sections of society and break down barriers to participation.
- Enable equitable access to services and programs.
- Enrich social and economic capacity through cultural diversity as an asset of our state.

The Government Policy and Research Division is responsible for advising the NSW Government on the cultural diversity dimensions of policies and contributing to government inquiries and consultations by identifying the key issues that affect universal access to government services and programs.

For any further questions regarding this submission

Regards

Director, Government Policy and Research

Summary of recommendations for Question Paper 2 and Question Paper 3

Question Paper 2 Recommendation

Multicultural NSW recommends adopting the supported decision making model associated with making financial, medical and personal decisions. Noting, there will be instances where the substitute and/or co-decision making model will be applied depending on the circumstances of the person.

Question Paper 2 Recommendation

Multicultural NSW recommends the needs of culturally, religiously and linguistically diverse individuals and communities be considered during the review of the *Guardianship Act 1987* and the policy implementation phase.

Question Paper 3 Recommendation

Multicultural NSW recommends consulting and engaging with a wide range of stakeholders taking into consideration evidence from industry experts, practitioners and local community consultations.

Question Paper 3 Recommendation

Multicultural NSW recommends additional decision making principles are incorporated to support the role of guardians and financial managers in NSW.

Review of the Guardianship Act 1987

Question Paper 2 – Decision Making Models

Multicultural NSW supports in principle the Law Reform Commission's proposal of reviewing alternative decision making models and suggests that the supported decision making model is the ideal framework for people in NSW. People in NSW should have the right to make decisions for themselves, however it should be recognised that some people may need or want support in reaching their decision. Our position is in line with the objectives of Multicultural NSW as identified in the *Multicultural NSW Act 2000*, to promote the participation of the people of New South Wales in community life and the public decision-making process so that they can exercise their rights and fulfil their obligations.

Multicultural NSW considers the other two decision making models, co-decision and substitute decision making to be a final option for supporting people who may not have the ability or capacity to make decisions on their own.

In reviewing Question Paper 2, Multicultural NSW suggests that for the supported decision making model to be effective, the following be implemented:

- Targeted cultural and linguistic training and support services and resources, including professional service providers and volunteers, to ensure the underlying principles of the legislation such as respecting the will and preferences of the person be understood and carried out.
- In exercising their legal capacity, the people of NSW, particularly those from culturally and linguistically diverse backgrounds, should have the necessary resources, including culturally sensitive legal service providers available to them. This includes information in other languages, to support them in making their own decisions or supporting those who need assistance with decision making.
- Embedding an understanding and awareness of multicultural principles as per section 3 of the *Multicultural Act 2000* will allow there to be an understanding of the social and economic benefits that diverse communities fulfil whilst having the correct decision making measures in place to support these communities.
- Recently in NSW, there has been an increased intake of refugees and humanitarian entrants, particularly those affected by current conflicts in the Middle East. In addition, the overall size of Australia's Humanitarian program is set to increase in the coming years. It is therefore essential, for the purposes of inclusivity and cultural diversity, that diverse communities are given the opportunity to learn, understand and implement the decision-making norms legally adhered to in NSW as defined by the *Guardianship Act 1987*.
- Ongoing and widespread community education, which is culturally and linguistically appropriate and meaningful, on the principle and practice of the legislation, right and implication on people in need of support.

Multicultural NSW agrees the decision-making framework should be more flexible as advised by the Law Reform Commission. The supported decision-making model echoes the principles underlying the United Nations *Convention on the Rights of Persons with Disabilities* to ensure people with disabilities and restricted capacity participate actively in society and have equal recognition before the law. For the model to be effective, the supporter must respect the rights, will and preferences of the person being supported.

Review of the Guardianship Act 1987

Question Paper 3 – The role of guardians and financial managers

Multicultural NSW supports in principle the Law Reform Commission's proposal of allowing guardians and financial managers to make decisions on behalf of somebody else. *Given the technical, financial and legal nature associated with Question Paper 3, the Agency is unable to provide a comment against all components of the paper.* However, listed below are detailed recommendations that we believe impact culturally, linguistically, religiously and diverse communities in NSW.

- As per section 3 (f) of the *Multicultural Act 2000*, the people of New South Wales are of different linguistic, religious and ancestral backgrounds who, either individually or in community with other members of their respective groups, are free to profess, practise and maintain their own linguistic, religious and ancestral heritage. The Agency's recommendation would be to ensure any amendments should account for cultural and possible religious considerations surrounding involvement of family, friends and relatives to express their opinion on who should act as a person's guardian or financial manager in the future. Noting here, being governed by the rule of law within a democratic framework, affects which decisions can be fulfilled or abandoned.
- As per section 1.5 of Question Paper 3, concerns are raised around the different needs of people with disability. The Agency considers as per the *Multicultural Act 2000*, that all individuals should be recognised irrespective of their linguistic, religious and ancestral backgrounds. For the purposes of social inclusion and consulting with people of diverse backgrounds, various NSW Government departments such as Family and Community Services (FACS) have in place initiatives to support people living with a disability in line with our Multicultural Principles and as reported against our Multicultural Policies and Services Program. Consulting with agencies such as FACS, other industry wide experts and local communities will provide the Law Reform Commission with additional considerations prior to making amendments to the *Guardianship Act 1987*.
- Multicultural NSW acknowledges one of the general principles in NSW as per section 4.7 (e) of the Question Paper 3, with respect to people with disability, emphasises the importance of preserving the family relationships and the cultural and linguistic environments of such persons should be recognised. Multicultural NSW agrees the following decision-making principles be applied to the general principles in NSW, *should also consider and promote the basic human rights of all adults, consider the person's right to be treated with dignity and respect and encouraging the person's right to be a valued member of society and encourage them to undertake socially valued roles.* These additional principles link directly to our Multicultural Principles as per section 3 of the *Multicultural Act 2000* and should be incorporated as part of the review of the *Guardianship Act 1987*.