NSW LAW REFORM COMMISSION
REVIEW OF GUARDIANSHIP ACT 2009 (NSW)

Submission dated: March 18, 2016
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My submission to the Law Reform Commission is based on my personal experience over a period of more than seven years. It is submitted from the perspective of a layperson, not a lawyer, who unfortunately relied on the Guardianship Act 1987 and the NSW Trustee & Guardian Act 2003 to protect a person with disabilities. Needless to say, reliance on that Act was an exercise in abject futility.

Whatever the relationship between the -

NSW Trustee and Guardian Act 2009 (NSW)
The Powers of Attorney Act 2-0-03 (NSW)
The Mental Health Act 2007 (NSW), and
other relevant legislation

the facts are that none of those Acts afford any effective protections or safeguards to a person with disabilities from abuse, neglect and violence. In reality, the flaws and loopholes in those clauses actually assist all perpetrators including the Guardianship Tribunal, Public Guardian and Public Trustee, in carrying out human rights violations against disabled persons.

The mere filing of a guardianship application can trigger the prejudices and prevailing social attitudes on the parts of those who hear and adjudicate in Guardianship Tribunals. Pretextuality and meretricious decisions in cases of "cognitive impairment" inevitably lead to plenary guardianship orders.

Much commentary and dialogue has centred about "safeguards" for the disabled person but the sad reality is that there are NONE. Internal reviews of Tribunal decisions, ADT, the Appeal Panel of NCAT etc. are self-serving entities that rarely, if ever, go against a Tribunal decision no matter how obvious the Tribunal's Decision is wrong and or how obvious the Orders are made in direct violation of the UNCRPD and disabled person's basic human rights.

Appeals to the Ombudsman, who has no authority to enforce recommendations , unfortunately undertakes investigations which are superficial and thwarted by the fact that file doctoring by Public Guardians, service providers, institutions etc. prevents any prospect of justice being achieved. Government departments are well known for "protecting its own" and "never biting the hand that feeds it". Anyone within those departments who have the moral fortitude and a conscience to report wrongdoing is treated as a leper, a whistle blower and a person to be silenced at all costs. Where are the safeguards there?

In Sydney on Monday 7 March 2016, during proceedings of the General Purpose Standing committee 2. - Enquiry into Elder abuse, one of the speakers the Hon. Dr. P.R. Phelps stated "*....I do not think that there is anything easier than going to NCAT – We love NCAT – we think it is fantastic*". And why wouldn't they - they rarely lose a case as judgements invariably uphold the Tribunal decisions. The ADT is not a Court, with rules of evidence, it is just another superfluous, self-serving administrative arm of the Government.

A general culture of "them and us" attitude permeates throughout all the government bodies leaving a complainant with nowhere to turn for justice. The Public Guardian uses funds from the disabled

person's estate to pay their legal fees and the families and loved ones of the disabled person's have to mortgage their homes to pay for their own counsel which can amount to $60,000 in the vain hope of having plenary guardianship orders overturned.

This so called accessibility and low cost of justice provided by Australian guardianship systems has resulted in human rights abuses and guardianship orders made being on a much broader spectrum than is necessary. It has the effect of protecting the status quo of paternalistic substitute decision making regimes and, more importantly, it has inhibited opportunities to explore and implement other options for protections of disabled persons.

Attending the same meeting mentioned above, Mr. Malcolm Schyvens, Deputy President and Head of Guardianship Division, NCAT stated -

- in the last reporting year the Tribunal received 7,500 applications
- 47% of application related to a person's financial affairs.
- 55% of applications were made by family or friends
- 45% of applications made by service providers, such as health and disability ` professional, social workers, aged care facilities or case workers

-and -

- 75% completed within 13 weeks
- 90% of high risk matters finalised within 3 days of receipt of application
- 95% completed within 21 weeks

He further goes on to say that staff have a broad range of *qualifications and experience* and that only 7% of all matters that come before the Guardianship division involved legal representation. Whatever the level of "expertise", it seems to me that credentials do not always equate to *competence* or *basic common sense:*-

A small example of this "*expertise*" in cases I am familiar include -

1) Public Guardian: Insisted that the family member buy a certain type of motor vehicle for the disabled person despite the family's pleas that it was not appropriate style of vehicle to accommodate a wheelchair.
Outcome: vehicle purchased and then had to be resold because Guardian finally acknowledged that the wheelchair did not fit. Stress, unnecessary expense and frustration at lack of respect given to family/ carers views.

2) Public Trustee: At ADT hearing: Submitted written acknowledgement that lift was needed in home for wheelchair bound person to remain living in home (16 stairs from outside of home to front door but internal living all on one level and deemed suitable by health professionals) . Despite the Public Trustee's acknowledgement, it refused to allow lift to be installed knowing full well that sufficient estate funds were available for this purpose AND that the live in carer (son) and another sibling offered to personally contribute from their own funds towards the cost of the installation.
. Both Public Trustee & Public Guardian acknowledged that disabled person with mild cognitive impairment very well looked after in the home, son and other sibling were very capable of providing optimum care and disabled person's express wishes to remain living in the family home. Catch 22 – where was the common sense decision in this case?

Public Guardian: At the ADT hearing, when examined by the family's barrister, the Public

Guardian responded “It is has always been our intention to institutionalise her anyway”.
Outcome: Disabled removed from family home of 50 years into institution against recommendations by health professionals, against disabled person's will and the wishes of the two children. Distress, despair and severe depression suffered by disabled person who said she had lost her will to live and would rather die than remain in institution. Disabled person died seven months later and two children still traumatised by effect of plenary guardianship orders. **Where was this a case of “last resort”?**

3) Public Guardian: Refused to allow family carers to take disabled person to GP for examination for chest infection and insisted that disabled person went on outing with other sibling because it was her “access day”. Told to take disabled person to GP on another day and not prepared to allow access to occur one hour later so disabled person could visit doctor first.
Outcome: Disabled person was ultimately diagnosed with chest infection and bed ridden for a week and forced to endure outing when not well.

4) Public Guardian: Placed disabled person under plenary guardianship because of conflict between two siblings despite fact that one sibling had cared for 24/7 for the disabled person for 6 six years and the other sibling provided no care whatsoever either before or after guardianship order.
Outcome: Sibling has made no contact with disabled person despite right to do so and disabled father and daughter cannot remove plenary guardianship order despite applications to do so.

5) Public Trustee: Refused to allow disabled person to purchase home with his liquid assets because “he is to old to buy a home” and “country homes take too long to sell”.

Outcome: Forced disabled person and his daughter who is full time carer to become renters for the past 5 years, have had to move 3 times because of landlord sales of home, funds now depleted so that he will be rendered homeless or institutionalised when funds run out. Funds reduced from $560,000 to $180,000 during this period. Stress, insecurity of tenure, removal from familiar environment, disruption to quality of life and financial distress and mismanagement.

The Tribunal and its cohorts' cooker cutter mentality of “substituted decision making” has long been the preferred option by the Guardianship Tribunal with NO consideration actually given to any interplay between guardianship laws and international human rights law whatsoever – hence the continuing great divide between law in theory and law in practice!

If Mr. Schyvens' statistics quoted above are reliable, it would be fair to say that legal representation has been so minor because -

- very few people have the funds to pay for legal advice,;
- do not understand, are frustrated, intimidated and beaten down by the bureaucratic round robin review processes which are impossible to navigate;
- are not in a position to or are not prepared to mortgage their homes to fund the (futile)legal representation of their application , or
- all of the above.

More importantly, disabled persons do not have available to them the services of an independent Public Advocate or proper Court of Law with dedicated Counsel which takes the issues of human rights abuses seriously.

Further, whilst Mr. Schyvens statistics may receive a glowing report card from his auditors, when chiselling down to the real facts and experiences of people who have come before these government bodies, a very different landscape of the functions and operations of NCAT' s Guardianship as a whole would emerge.

For example,

(a) Does the "no fee" application encourage and enable perpetrators and vexatious persons to use the Tribunals as an easy means of achieving their agenda?

(b) How many of the applications were investigated – *obviously the answer is none,* since it is not the role of the Tribunal to do so nor does it *operate under rules of evidence?*

(c) How many of the applications made by the service providers , social workers, aged care facilities and disability persons who understand how to manipulate the system's failings were motivated by self-interest or had no conflict of interest?

- and -

(d) how complex were the 95% of applications which were finalised with that 21 week period?

(e) how complex were the 75% of cases completed within 13 week?

(f) what constitutes "high risk" for the matters to be completed within 3 days of receipt of application

\- - and most importantly -

How many of all of these cases were given a plenary guardianship order? Cheap and expedient Tribunal hearings never have and never will provide a just or fair outcome.

Clearly, neither the Hon. Dr. Phelps or anyone on the Committee have read any of the heart wrenching submissions to the Senate Inquiry into Abuse, Neglect and Violence against disabled people and how the system consistently fails them on almost every level. Those submissions do not have self-serving agendas of protecting their turf as do those of government bodies, service providers and all others who rely on Government funding for their existence.

Clearly, there is a great discordance between guardianship-law-in-practice and guardianship-law-on-the-books. It is, therefore, incumbent upon the Law Reform Commission to adopt therapeutic jurisprudence which would require it to look at law as it actually impacts people's lives. By adopting this application, laws adopted will establish a more humane and psychologically optimal way of handling legal issues collaboratively, creatively and respectfully. It will also greatly assist in reducing, or preventing, any potential infringement of autonomy of rights in this area of law.

The concept of guardianship by the Guardianship Tribunal, Public Trustee & Public Guardian is frequently used improperly to deprive individuals with an intellectual, physical or psychiatric disability of their human rights. By virtue of its structure and operations, the Guardianship Tribunal and the Guardianship Act, in its present form, provides perpetrators with a legal mechanism by

which to hide abuses and defy accountability - and to do so with total impunity.

Also, once a medical expert recommends and a judge decides that a person is unable to make day-to-day decisions on the basis of "cognitive impairment", that person will be formally stripped of their legal capacity. Boxes are ticked and everyone is happy except for the victim and his/her family who have to live through the horror of plenary guardianship and every difficulty, frustration and abuse it entails.

The term ***"last resort"*** has been misused and abused by the Guardianship Tribunal for so long that in that it has been adopted as its default button - a form of expediently dispatching its case load. Equally problematic is the Tribunal's entrenched belief and philosophical approach towards disabilities – "an all or nothing" - attitude towards a disabled person's mental and legal capacity. This inherent failure of the Tribunal to understand or recognise the fluidity of mental capacity, despite copious amounts of research in this area, is reflective of its competency or lack thereof to deal with complex matters. The disabled person's view, wishes and desires are NOT taken into account and lip service ".......acting in the best interest of....." is utilised as the basis on which the plenary guardianship order is made.

In particular, in matters of **"family conflict"** , Guardianship Tribunals invariably use this as a reason for them to apply the definition of **"last resort"** and place the disabled person under plenary guardianship. The Guardianship Tribunal is an administrative body. It is not a judiciary bound by strict rules of evidence and is not and should never have been considered as an appropriate forum to hear complex matters.

Making Plenary Guardianship Orders is, in many instances, an abuse of power by the Guardianship Tribunal . By "throwing out the baby with the bathwater" the Tribunal is, in fact, punishing the very person they are supposed to protect by removing from them every right they have as a human being. The Public Guardian, in turn, has a culture of where "we are always going to institutionalise them anyway" ultimately results in the disabled person being removed from the home. Further, studies regularly show that institutionalised abuse is "facilitated, and not prevented by guardianships" (*see Pen State Law Review - Amita Dhanda, Legal Capacity In the Disability Rights Convention: Stranglehold of the Past or Lodestar for the Future, at 455 n.77,445-46 citing studies).*

The UNCRPD is, without doubt, a very well considered and drafted document which created the most important developments ever seen in international human rights law for persons with disabilities. It is an instrument that seeks to reverse the oppressive behaviour and attitudes that have stigmatised persons with disabilities throughout the centuries. It also seeks to provide safeguards and protections for disabled persons where there are none.

When Australia became a signatory to the UNCRPD there was finally some hope that persons under guardianship would have a legal instrument on which to rely or to obtain justice, protections and a restoration of their basic human rights. The key Article 12 of the UNCRPD directly implicates guardianship laws and, together with other CRPD articles, clearly articulates a new conceptualisation of guardianship as a whole and a basis on which to reshape guardianship laws.

Regretfully, Australian law makers DID NOT legislate the policies and guidelines of the UNCRPD nor did it implement any safeguards to protect the disabled. Consequently, becoming a signatory to that instrument has served only as a paper victory for the oppressed and enabled the draconian measures of the plenary guardianship and other human rights abuses to under pin the guardianship regime we have in Australia today.

It is not my intent to go through each Article of the UNCRPD and compare it to the various Sections of the Guardianship Act. It is for the legal minds of the Law Reform Commission and

other associated personnel to argue the minutiae of the law. I simply will point out the flaws in the Guardianship Act 1987 that have caused me and countless others to despair and suffer because of the lack of justice, the lack of transparency and the lack of safeguards or legal redress.

1. The NSW Guardianship Act does not have any safeguards to ensure that the Guardianship Tribunal operates within the intent and mandate of the Guardianship Act nor does it have any punishments for those who do not do so. The Guardianship model in NSW is one where, at best , it will provide personal care and property management for a disabled person who cannot manage totally alone – on the premise that something is better than nothing even if those decisions are made against the disabled person's will. At worst, it deprives the individual of his fundamental freedom, the right to make decisions about his own life and renders him totally powerless in every respect. Unfortunately, the latter is the predominant of the two.

2. In order for the UNCRPD to be effective, the law makers MUST legislate that the Articles contained in that instrument become law. Without such legislation, there are no safeguards to ensure that the Tribunal et al are acting in accordance with the mandate and intent of the Guardianship Act. Thus, the UNCRPD becomes redundant, serving only as convenient and useful smoke screen for those organisations to hide their wrongdoing.

4. There is NO independent Public Advocacy Centre or Commission vested with full investigative powers to help disabled persons and their support network against predators. For example, Powers of Attorney being revoked, funds being misappropriated or siphoned from the disabled person's bank account, homes being sold without the disabled person's knowledge, mortgages fraudulently levied against the estates etc. etc.

   From my experience, I believe that there is an urgent need for the The Law Reform Commission to recommend changes in the law which will provide safeguards and protections for the disabled where there currently are none.

5. **Powers of Attorney & Guardianship:**

   (A) **Issues regarding Powers of Attorney should not remain in the domain of the Guardianship Tribunal.**
   Rather, a specialist department with experienced forensic investigators should be established as outlined in (B) below, and a specialist Court of Law created, to hear matters not limited to but relating to -

   (i) misuse and abuse of power over the disabled person for financial gain;
   (ii) manipulation and coercion of the disabled person to revoke the current Power of Attorney in favour of another to the detriment of the disabled person;
   (iii) misappropriation of assets and estate of the disabled person;
   (iv) removal of funds or valuable items from the disabled person's estate;
   (v) fraudulently obtained mortgages over the disabled person's property;

   (B) Registration of Powers of Attorney should be a legal requirement as they are a very important document.. If they are not registered then they must be viewed as invalid. A Power of Attorney department, perhaps housed within a newly created fully independent and impartial Public Advocacy Centre, should be established to deal with registrations and procedural requirements.
   For example, -

(i) If a revocation is sought, then suitable safeguards should be in place requiring the applicant to provide reasons for such revocation and the physical opinion sought from the disabled person or his/her trusted representative or person responsible.

(ii) All immediate family members or personal caretakers/friends should be advised , in writing, of the application to revoke the current Power of Attorney, including, of course, the current Attorneys;

(iii) A written opinion of the treating GP as to the disabled person's ability to understand the import of the preparation of or the revocation of that instrument.

(iv) The Revocation should be prepared by an in-house lawyer within the proposed department who should also satisfy himself/herself that the disabled understands what the revocation means and also, in the case of a substitute power of attorney, what the duties of a Power of Attorney & Guardianship entail. If the Power of Attorney is prepared by an external lawyer, then such person be required by law to follow a series of procedures before the instrument is executed (the Law Society already has guidelines in this regard)

(v) Preparation of a Power of Attorney;

(vi) Utilise the services of appropriately trained personnel to obtain the views of the disabled person, where possible, as to whom they would wish to be their Attorney and Guardian

(vii) Consider applications from suitable candidates who are willing to take on the task of Attorney and Guardian , and

(viii) the establishment and running cost of the the department should come from Commonwealth funding and subsidised by other government funding sources (eg savings by restructuring and downsizing Guardianship Tribunals). Users of this service should be required to pay a minimal fee for each service, i.e. preparation of the Power of Attorney, Revocation of the Power of Attorney and registration of the Power of Attorney.

Powers of Attorney & Guardianship should be uniform and adopted on a national level.

Currently, in disputed matters, the Tribunal generally sets aside the Power of Attorney and places the disabled person under plenary guardianship and that is the end of the matter.

Despite the Tribunal's rhetoric, the wishes of the disabled person are either not taken into account or simply ignored. None of the panel members are skilled in asking appropriate questions and posing them in a way which the disabled persons can articulate their real views. That is, if the Tribunal allows the disabled person to attend or speak at all. From my observations, panel members treat disabled persons as if they are infantile and without any reasoning abilities whatsoever – the term “cognitively disabled” ensures that presumption.

The Tribunal simply “ticks the boxes” and most definitely does not apply a “...person centred approach” in arriving at a decision. Such is the Government's expectation of “quick and cheap” justice available for all – and clearly a sub-standard form of justice of which Dr. Phelps and Mr. Schyvens clearly approve!

(C) Tribunal's have ingrained attitudes that “families” are the major perpetrators of abuse

against the disabled. Whilst it is true that vindictive siblings, family members and greedy offspring with a sense of financial entitlement do exist, Tribunals, on the other hand, naively defer in favour of the "trusted" professionals of the disabled person such as bankers, lawyers, accountants, real estate agents, service providers (nursing homes) etc. These people can also be predators and are well versed in deception. They are no match for many concerned family members/carers/friends who are bewildered by the system and are unable to articulate and challenge the predators without support.

6.. **Substituted : - (meaning - To remove, replace, exchange, instead of ...)**

Plenary guardianship orders are a "civil death" as such orders are permanent. Persons are denied their right to make some of the most important and basic decisions about their life on account of an actual or perceived disability, without a fair hearing or review by *competent* judicial authorities. Please note my comment re NCAT.

Substituted decision making should be removed in its entirety. No one should ever have the right to remove the personhood of one person and replace it with another, usually a stranger, as in the case of the Public Guardian/Trustee, service provider or institution. To do so is draconian, inhuman and an abuse of a disabled person's human rights. No one has the right to tell another how they should live, where they should live or impose their own views on what constitutes "....in the best interests of........".

The UNCRPD obliges countries to use guardianship as little as possible and to limit as much as possible the powers guardians have. This is not happening. Substitute decision making is excessively used and misapplied and will continue to do so unless law reforms remove from Guardianship Tribunals the power to do so.

7. **Supported : - (meaning - To assist, help, encourage, to aid or back up)**

Much commentary has been made of late regarding the interpretation of "supported" and "substituted" decisions. There is a very real danger that the term "supported decision making" can and will be used as a thinly veiled mechanism by which substitution of personhood will still occur . Therefore, it is crucial to delineate with absolute clarity the role and authority that "support" imposes on the disabled person. Without this transparency, misuse and abuse of power under the guardianship regime will continue.

In relation to "substituted" my views have already been made clear and my views of "supported" decision making are as follows:-

(ii) No formulae exist where "support" can be specifically defined to cover all circumstances. To try and do so is not only idealistic but also futile because everyone is different and everyone has different needs which change from time to time. Nonetheless, it should not be an excuse not to implement urgent law reform in this area.

It seems clear to me that a complete overhaul and restructure of of the Guardianship Tribunal is required together. Clauses in the Acts which currently grant wide reaching decision making powers to the Tribunal, Public Trustee and Public Guardian should be removed.

Public Guardians are strangers, public servants, who have little or no knowledge of the complexities and special needs of persons with disabilities. To grant plenary guardianship to a stranger(s) who has no intimate knowledge of

the disabled person, their likes or dislikes, their needs, cultural differences, the family dynamics etc. beggars belief. In many cases there are a round robin of guardians who do not liaise with one other, do not read file notes (if any) and cause nothing other than disruption, confusion and distress for the disabled person under their “guardianship”. Family and carers are designated the status of “persona non grata” and it is not unusual for guardians never to have met the disabled person whilst under guardianship despite procedural requirements that they do so.

(iii) In my opinion, the definition of support means situations where a person is totally alone in the world and in need of assistance on one or a number of levels. Such assistance may be ordered by the Tribunal where the disabled person is in danger of exploitation, abuse, harm and neglect and **ONLY** then should a Tribunal order be sought.

Those supports **do not mean** the removal of one's personhood as is the case of plenary guardianship orders. It should simply mean that formal support is required from a guardian to ascertain, request and obtain a suite of supports that are necessary to assist, as far as possible, in achieving a quality of life and are in accordance with the disabled person's needs and wishes.

In other words, the formally appointed guardian would, as required, project manage the needs of the person under their care. If an application is made for guardianship orders, then the “support” provided could, for example, any one of the following three levels. “Support” orders should not be permanent.

Level 1: Person living in institution – oversee conditions of nursing facility; regular checks with doctors and quarterly visits to nursing home; oversee payment of expenses; ensure that the wishes of disabled person are being met. Ensure that the disabled person is physically well looked after. Neither guardianship nor financial management should_be granted to the institution or service provider

Provide support to make decisions and exercise legal capacity to the greatest extent possible in accordance with the disabled person's abilities. Ensuring that “will and preference” becomes the basis of decisions made together and not predicated on the personal likes and dislikes of the guardian.

Liaison Support Officer (LSO) rather than “Guardian”
Support means “assistance” not “ownership” of the person.

Level 2: Person living alone - Co-ordinate a range of services for a person in accordance with their disabilities and heir requirements. All service providers would be required to provide quarterly reports to the LSO as to how the program is progressing and where possible, counter signed by the disabled person or family member/carer etc.. The LSO would be required to make quarterly visits to the disabled person to satisfy himself/herself that the disabled person is happy with the arrangements.
Financial managers, if one is required, should also account to the LSO for quarterly expenditure and LSO should ensure that

the disabled person is not being deprived of funds to ensure quality of life or their needs/wants. Being disabled does not mean that a person cannot control their own funds but they may need support to do so. Provide support to make decisions and exercise legal capacity to the greatest extent possible. Ensuring that will and preference becomes the basis of decisions made together

Liaison Support Officer rather than "Guardian" .
Support means "assistance" not "ownership" of the person.

Level 3: Person living in home with a full time carer but not family member - providing updated details of services available to assist in the caring role and ensure that the wishes and need of the disabled person are being met . LSO to oversee payment of expenses, if required and the disabled person agrees to it.

Liaison Support Officer rather than "guardian"
Support means "assistance" not "ownership" of the person.

Level 4: **Temporary measure until a Specialist Court is established for general guardianship matters – see No. 6 below.**

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Where there is "family conflict" the family member, friend, carer etc. who has the caring role, and there is no evidence of wrongdoing, then that carer/supporter should be granted full guardianship of the disabled person. If that carer is also competent, and there is no evidence of wrongdoing, financial management should also be granted to that carer. That carer would be formally recognised as the guardian or person responsible.

Access arrangements, designed by the Public guardian, should not take precedence over the will and desires of the disabled person. If the disabled person does not wish to go out with a particular person as specified in the Access Orders, or have the access exercised in certain manner, as order by the Public guardian, , then the will of the disabled person should be paramount. This does not happen – see example 3 in page 3. above. The disabled person then is used as a "pawn" by the disgruntled party in "family conflict" cases to the detriment of the disabled person and the distress of the in-home 24/7 family carer.

Therefore, in these circumstances, a guardianship order should not be placed over the disabled person. The person responsible status should be granted to the family carer.

8. **Guardianship Generally**:

As stated throughout this Submission, there is an urgent need for the presence of a vigorous, advocacy-focused and dedicated counsel to provide representation to the disabled person when violations of the CRPD or abuse, violence or neglect occur.

The Guardianship Tribunal can levy fines of $20,000 and threats of legal action against complainants if they publicly air their opinions and identify the person under guardianship. Clearly that is a safeguard for the Guardianship Tribunal and its cohorts. I see none for the disabled person. This is no different from the gag clause recently placed on Community Justice Centres by the Government in order to continue to receive government funding – that is, stop pushing law reform issues or you will not be funded! These gag clauses are used as an excuse to "protect privacy issues" when in reality it is simply a legal guise, endorsed by the Government, to stop the truth of human rights abuses from being exposed.

There is an abundance of documentation written by distinguished legal minds, both nationally and internationally from which the Law Reform Commission can reasonably conclude that plenary guardianship is regarded as a hopelessly antiquated system of guardianship, without any form of procedural safeguards and used to deprive individuals with cognitive impairments of their legal and human rights.

For over 30 years individuals have made Submissions to the various Inquiries outlining the failure of a system which has fostered such abuses. In Australia, too much credence has been placed on law in theory than law in practice and rhetoric by self-serving Govt. departments, institution and service providers.

It is time that the Law Reform Commission paid heed to the voices of the victims of this guardianship regime. The victims of paedophilia waited 30 years before the Gorge Pells of the world were exposed – guardianship victims have been waiting for far longer than that.

To label or pigeon hole vulnerable persons as "*disabled*" is not appropriate for the conceptual language of the guardianship and financial management regime. History has shown that it is a term which is used as a "one size fits all" and is open to misuse and abuse. My suggestion is that the term "disability" be removed in its entirety. I do not accept that "decision making capacity" is a more appropriate replacement.

Capacity for decision making is very fluid, and varies from time to time. Further, a proper evaluation of the decision making competency of a person depends on many variables, two of which rely on (a) the expertise and understanding of the adjudicator and (b) the depth of the decision to be made by the disabled person, and the disabled person's circumstances .

A cognitively impaired person may, for example, have no ability to decide on aspects of life the general public may take for granted, i.e. what bus to catch, which insurance to buy or understand (or care) about topical issues but they still have the ability to articulate what they would like to eat, who they like to be with and more importantly where, how and with whom they would like to live. They can still make choices.

Terminology:
The term "*decision making capacity*" underestimates the abilities of cognitively impaired persons in relation to their own life's circumstances. These considerations and not factors which are taken into account in guardianship matters. Therefore, a more benign term such as **"dependent person**" as opposed to the "decision making capacity" mooted by the Law Reform Commission in its Terms of Reference would be a less tainted application.

Safeguards:
The Law cannot legislate for every single circumstance that may or may not occur in regard to disabled persons. However, that does not mean that it should do nothing and allow the

status quo to remain.

In my view, by addressing the following points, disabled persons will finally have some safeguards upon which to rely with faced with guardianship applications-

- remove from the Guardianship Tribunal the power to place plenary guardianship orders on any person, the subject of a guardianship application;
- streamline, improve, expand and consolidate the type and level of support packages that the Australian Government currently provides to disabled people;
- establish a fully independent and impartial Public Advocacy Centre, which has the availability and presence of dedicated and committed counsel to provide representation to the population in question.
- Establish a department, within the Public advocacy Centre which deals with all matters relating to Powers of Attorney & Guardianship.
- creation of a Specialist Court of Law, bound by rules of evidence and dedicated to the hearing of complex matters, on a case by case basis.

Wilful blindness has created a shameful past in Australian history - The Stolen Generation, paedophilia in the churches, abuses of children in orphanages and institutions and our draconian guardianship regimes which are still in existence.

If this current round of Inquiries does not result in the absolute removal of substitute decision making and necessary law reforms recommended and legislated to stop the human rights abuses under this guardianship regime, then a Royal Commission needs to occur.

Thank you for the opportunity to make this Submission.

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