

9 February 2017 JQ:kb

Ms Erin Gough
Policy Management, Law Reform & Sentencing Councillor Secretariat
NSW Department of Justice

Dear Erin

Could I just see whether it was too late to briefly further my comments?

I think it is becoming more frequent that the time when enduring guardianship takes effect may be problematic.

For example, when an enduring guardianship form has been properly completed, the time when it takes effect can be mistaken or contentious – this can be problematic where assets are involved.

Secondly, if the enduring guardianship is enacted at what seems to be the proper time, and the enduring guardian(s) seem to be acting (as far as it is possible to tell) in the 'impaired person's' best interest, another person can perhaps encourage, cajole, sweet-talk the 'impaired-person' into revoking the appointment, with a form witnessed by a legal representative who may have no experience in capacity assessment. This seems incongruous with the purpose of the enduring guardianship nomination in the first place. This method of revoking an enacted enduring guardianship is also problematic in that, if the enduring guardianship is enacted at the correct time, presumably the 'impaired person' has some decision making impairment with some decisions.


The current system may allow an 'impaired person' to have no alternative decision maker, leaving them in a most vulnerable position, perhaps stranded in the hospital system for a period of time, when they have had no acute illness or injury.

One of the advantages of the NSW Guardianship Board was the informal hearings which usually avoided prolonged adversarial legal processes, which would make the system, I believe, unworkable if they became commonplace. .

I wonder whether the 'hierarchy' of legal decision makers could be considered if the enduring guardian arrangements are voided.

Perhaps the NCAT – Guardianship division should have some evidence supplied when non-acute enablement of an enduring guardianship.

Yours sincerely



The information in this letter can only be released if the Author has given authorisation to do so.

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