

INQUIRY INTO OPPORTUNITIES TO CONSOLIDATE TRIBUNALS IN NSW

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Public Guardian Attorney General & Justice

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Macquarie St
Sydney NSW 2000

Opportunities to consolidate tribunals in NSW (Inquiry)

The Public Guardian thanks the NSW Legislative Council Standing Committee on Law and Justice for the opportunity to provide a submission to the Inquiry into Opportunities to consolidate tribunals in NSW.

NSW Public Guardian

The Public Guardian is an independent statutory official. The Public Guardian is part of the Department of Attorney General and Justice.

The Public Guardian exists to promote the rights and interests of people with disabilities through the practice of substitute decision-making, advocacy and education. The Guardianship Tribunal appoints the NSW Public Guardian as the guardian of last resort and the Public Guardian then acts as a substitute decision maker for people under his guardianship.

The Role of the Public Guardian

The Public Guardian may be given the authority to make lifestyle decisions for a person in areas of a person's life such as where the person lives, what services they receive, including access to legal services, and to give consent to medical and dental treatment. The appointment of the Public Guardian is time limited and the appointment is reviewed by the Guardianship Tribunal at the expiry of the term of the

order.

The Public Guardian, through its Private Guardian Support Unit provides an information and referral service to people who have been appointed as a guardian by the NSW Guardianship Tribunal or appointed as an enduring guardian by the person with the disability prior to the onset of incapacity.

The Public Guardian is currently the guardian for approximately 1800 people with disabilities who reside across NSW. This includes people from the most vulnerable groups in the community. People under the guardianship of the Public Guardian are affected by disabilities such as mental illness, developmental or intellectual disability, dementia, anorexia, alcohol and/or substance related brain damage and traumatic brain injury. A significant number of people are also vulnerable to abuse, neglect and exploitation. About 60% of all orders appointing a guardian in NSW result in the appointment of the Public Guardian which makes my office a key stakeholder of the GT's services.

Concerns of the Public Guardian

The Public Guardian has some concerns about the potential consolidation of Guardianship Tribunal (GT) with other tribunals:

The GT is a unique tribunal which places the person with a disability as a central concern. The GT has been set up to allow people to participate as far as possible, given their cognitive disabilities. It's more than just 'inclusion' and 'accessibility'; it's the centrality of the person, because a guardianship (or Financial Management) order is all about the person.

Most other tribunals are dealing with disputes or competing claims. The GT is only concerned with the life of the person. The GT has designed its procedures to be as informal as possible resulting in a much more accessible process than that employed by most other tribunals.

GT members have been selected for their specialised skills to make decisions about guardianship (or FM). They also have specialised skills to enable the person to participate in a hearing, deal with very sensitive and contentious matters, conduct conciliation and make good guardianship orders.

The GT has three member hearings which enable the circumstances of a person to be fully considered by people with different and complementary skills.

The GT is not fixated on the law, legal processes or lawyers at the expense of the person's involvement. Physically the GT is purposefully less intimidating to the person with the disability, the people who are supporting him/her (& those family members/friends also often have disabilities).

The informal GT model is more appropriate and fairer to the needs of the person, helps reduce the likelihood of aggression and increases the likelihood of alternative resolution or conciliation. In a traditional adversarial courtroom model a person with a

cognitive incapacity may feel utterly overwhelmed and disempowered at a time when they are extremely vulnerable.

The traditional trappings of a court/tribunal (eg insignia) are risky for a person with a mental illness. The GT tries to create an environment that invites the person to participate as much as they can.

Public Advocates and Public Guardians in other jurisdictions where the guardianship list becomes part of a super tribunal have expressed concerns to me about the movement away from the more accessible informal processes of a specialist tribunal to the more court like adversarial environment of a super tribunal.

I have consulted the CEO from NSW Trustee and Guardian and she has indicated that she fully supports the views advanced by myself as the Public Guardian. Like the Public Guardian, the NSW Trustee and Guardian is a key stakeholder in relation to the Guardianship Tribunal and would support the retention of the unique jurisdiction of the Guardianship Tribunal as a specialist stand alone tribunal.

It would be disappointing to see the loss of the unique features of the Guardianship Tribunal if it were consolidated within a super tribunal.

I and the CEO of NSW Trustee and Guardian would be pleased to have the opportunity to provide oral evidence to the Committee if this would assist.

Graeme Smith
Public Guardian