

**INQUIRY INTO SUBSTITUTE DECISION-MAKING FOR  
PEOPLE LACKING CAPACITY**

**Name:** Mr Andrew Johnson

**Date received:** 15/09/2009

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Submission to the  
Inquiry into Substitute Decision-Making  
for People Lacking Capacity

Dear members of the Inquiry,

I see no problem with the Attorney General's proposed amendments.

Both the NSW *Guardianship Act 1987*, and the recent NSW *Trustee & Guardian Act 2009* need amendment to better promote the civil rights and welfare of NSW citizens at their most vulnerable time.

To mitigate systemic problems faced by the Guardianship Tribunal, I suggest sections 66 and 105 of the the NSW *Guardianship Act 1987* be amended to the effect :

**66 Conciliation to be attempted**

(1) The Tribunal shall not make a decision in respect of an application made to it until it has invited the parties to a location for the purpose of conciliation not less than 14 days before any subsequent hearing on the same matter.

(2) Any meetings conducted or proceedings held in the course of attempting to bring or bringing the parties to a settlement shall not be conducted or held in public.

(3) Any statement or admission made during the course of a conciliation hearing is not, except with the consent of all the parties, admissible as evidence in proceedings before the Tribunal or in any court.

(4) Any subsequent Tribunal hearing shall be presented only those reports, case file notes or other documents which were available to the parties at the conciliation.

**105 False or misleading statements**

Applicants and persons providing information or documents in relation to any function of this Act relating to an authority or benefit shall be advised that the *Crimes Act 1900* sections, False or misleading application, False or misleading information, and False or misleading documents are applicable in New South Wales.

I suggest **part 4(d)** of *section 33A* of the *Guardianship Act 1987* be amended from  
(d) a close friend or relative of the person.  
to the effect

(d) a person who is in a close and continuing relationship with the person.

People deemed to be lacking capacity are vulnerable to unconscionable would-be financial managers or guardians seeking the role as a means to increased future inheritance or other benefit.

Previously, some applicants have alleged other parties to suffer mental illness or worse; and under the current system these allegations have been made known to the Tribunal members via case file notes or other means, but have not been revealed to the accused.

I suggest both the *Guardianship Act 1987* and the NSW *Trustee and Guardian Act 2002* be amended to limit the spread of covert hear-say allegations; I suggest the *Guardianship Act 1987* section 101 be amended to the effect :

**101 Disclosure of information**

(1) All reports and records of statements either oral or written regarding a third party shall be made available to the third party on request.

(2) The invitation for conciliation pursuant to section 66 of this Act shall include advice that the party may request that documents pursuant to part (1) of this section of the Act should be made available to

them in confidence at the conciliation.

(3) A person shall not disclose any information obtained in connection with the administration or execution of this Act unless the disclosure is made:

- (a) with the consent of the person from whom the information was obtained,
- (b) in connection with the administration or execution of this Act,
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings,
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974 , or
- (e) with other lawful excuse

I pray that the Standing Committee on Social Issues shall give serious consideration to my submission and shall find recommendations consistent with these worthy of recommendation for consideration by the Attorney General and other interested parties.

With respect,

Andrew Robert Stuart Johnson  
15 September 2009