

30 January 2017

Mr Alan Cameron, AO
Chairperson
NSW Law Reform Commission
By email: nsw_lrc@justice.nsw.gov.au



To whom it may concern

Thank you for the opportunity to provide input into the review of the *Guardianship Act 1987 (NSW) (Guardianship Act)* on matters raised in Question Paper 2: Decision-making models.

The NSW Council of Social Service (NCOSS) works with and for people experiencing poverty and disadvantage to see positive change in our communities. When rates of poverty and inequality are low, everyone in NSW benefits. With 80 years of knowledge and experience informing our vision, NCOSS is uniquely placed to bring together civil society to work with government and business to ensure communities in NSW are strong for everyone. As the peak body for health and community services in NSW we support the sector to deliver innovative services that grow and evolve as needs and circumstances evolve.

NCOSS provides secretariat support to the NSW Disability Network Forum (DNF), which comprises non-government, non-provider peak representative, advocacy and information groups whose primary aim is to promote the interests of people with disability. In this capacity, NCOSS has provided significant input into the DNF's response to the Question Paper. [This response can be accessed via this link.](#)

In addition to endorsing the DNF's response, we highlight key points relevant to the introduction of a supported decision-making model in NSW.

Model of supported decision-making refined over time

As the Commission is aware, supported decision-making represents a fundamental shift from the model of substitute decision-making currently operating in NSW. Models of supported decision-making operating internationally are in their infancy. Additionally, as we have previously noted,¹ the NDIS will offer many people with disability access to greater support, which will correspondingly increase their life experience and experience making decisions.

It is important that a person's right to support when making decisions be made explicit in the *Guardianship Act*. This would enable the law to promote an empowered view of people with disability, while providing guidance for supporters. The vehicle or model to facilitate an individual's decision-making support should be determined by their specific needs.

In this context, it would be prudent for the *Guardianship Act* to recognise a range of supported decision-making models, accompanied by appropriate safeguards. Evidence collected on the operation of the models in NSW as well as other jurisdictions would allow for an evaluation of the circumstances under which different approaches are effective.

¹ NCOSS Response to Question Paper 1.

Results of this evaluation could inform refinements to the model of supported decision-making during the statutory review of the *Guardianship Act*. We have previously recommended that a three-year review period would be appropriate.²

We caution that the models of supported decision-making introduced in the revised *Guardianship Act* should not be overly prescriptive. Overregulation might discourage people with disability and those who interact with them from engaging with supported decision-making. This would defeat the purpose of these provisions; to recognise and promote the right of all people to make decisions with appropriate support.

Key eligibility criteria for supporters

To properly exercise their function of assisting people to make decisions and build their decision-making capacity, it is crucial that supporters and co-decision-makers have a deep knowledge of and trusting relationship with the person they support (or a commitment to acquiring this knowledge and building this relationship). They should have minimal conflict of interest, as this is likely to impair their ability to act on a person's will and preferences.

Training for supporters and people with disability

As recognised by the Australian Law Reform Commission, training and guidance of supporters in the performance of their complex role is crucial to the effectiveness of supported decision-making. This training must be regular, properly resourced and recognised as a necessary component for quality decision support outcomes. In some cases, the Tribunal may wish to mandate that a supporter undertake training. Focuses of the training should include building supporters' skills in:

- using their influence appropriately (rather than effectively becoming a substitute decision-maker) ;
- respecting a person's dignity of risk; and
- building a person's skills, confidence and experience in making various decisions, including by extending their range of experience.

Alongside training of supporters, community education should be implemented so people with disability are aware of their right to support in making decisions and the opportunities available under the revised *Guardianship Act*. To be widely accessible, the training should be delivered in a range of modes, including face-to-face, and should utilise plain English as well as languages other than English.

If you have any questions about points raised above, please email Ya'el Frisch (NCOSS Policy Officer) at yael@ncoss.org.au.

Yours sincerely



Melanie Fernandez
Deputy Chief Executive Officer

² Ibid.