

17 October 2016

Alan Cameron AO  
Chairperson  
NSW Law Reform Commission

By email: [nsw\\_lrc@justice.nsw.gov.au](mailto:nsw_lrc@justice.nsw.gov.au)

Dear Mr Cameron

Thank you for the opportunity to provide input into the first Question Paper of the review of the *Guardianship Act 1987 (NSW) (Guardianship Ac.)*.

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 contextual points which we hope will guide the Commission throughout this review.

It is important to note that this review is taking place alongside policy shifts which will give many people with disability opportunities to increase their decision-making capacity.

- At a State level, the *Disability Inclusion Act 2014* aims to increase the responsiveness of all parts of the NSW Government to people with disability, creating opportunities for deeper interaction with mainstream services.
- Nationally, the roll-out of the National Disability Insurance Scheme (NDIS) will give many people with disability access to more support than in the past.

Policies promoting autonomy and rights contrast sharply with the low expectations that have beset people with disability in the recent past. As current outcomes for many people with disability have been shaped by low expectations, there is likely to be a lag before the new paradigm of increased inclusion and support leads to observable changes in outcomes for people.

In this context, a revised *Guardianship Act* must reflect an environment where people with disability are empowered, while recognising many may need support to exercise their rights and time to develop decision-making capacity.

Three elements that are particularly important in striking this balance are outlined below:

1. **The concepts of ‘disability’ and ‘decision-making capacity’ must be decoupled.** Legislation that includes disability as a pre-requisite to a finding that a person lacks capacity is contrary to Article 12 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and reflects low expectations rather than empowerment. An empowered view of people with disability would involve decision-making capacity being measured on a case-by-case base, ensuring the person has access to appropriate support.
2. **A focus on accessible information and appropriate support.** As part of assessing decision-making capacity, the revised *Guardianship Act* should provide that people have access to support when making decisions, including information in a form accessible to them. Due to previously low expectations of people with disability, there may be a need to assess whether appropriate support has been provided in the period leading up to the Tribunal’s involvement, not just to make decisions, but to engage in the community and build skills more broadly.
3. **Statutory review period to ensure the *Guardianship Act* is responsive to the new environment.** As the review is occurring while policy setting are evolving, it is important that the *Guardianship Act* incorporate a statutory review period set to ensure it is fit for purpose, and can operate well in an environment where people with disability have access to increased support and autonomy, and are viewed socially as full citizens.

We look forward to working with you throughout this review. If you have any questions about the points raised above, please email Carolyn Hodge (NCOSS Policy Lead, Disability) at [carolyn@ncoss.org.au](mailto:carolyn@ncoss.org.au).

Yours sincerely



Melanie Fernandez  
A/ Deputy Chief Executive Officer