

Mr Paul McKnight
Executive Director, Justice Strategy and Policy
Department of Justice
GPO Box 31
SYDNEY NSW 2001

Ref EAP16/4478

Dear Mr McKnight,

Repeal of the Guardianship Regulation 2010

The Department of Community Services (FACS) welcomes this opportunity to comment on the public consultation draft of the repeal of the Guardianship Regulation 2010.

FACS supports vulnerable people and families across NSW to participate in social and economic life, through its own services, and through funding non-government organisations to deliver specialist support services. Included in this client group are people who may require formalised substitute consent arrangements to provide appropriate support, lifestyle and medical treatment decisions.

Relevance of the repeal and proposed Regulation

FACS' client groups are affected by the regulatory decision-making regime under the *Guardianship Act 1987* (the Act) and the Regulation.

The proposed Regulation supports the key purposes of the existing Regulation which are to:

- enable the effective and efficient operation of an enduring guardianship system in NSW
- give effect to the provisions that enable medical and dental treatment for persons who are incapable of giving consent and who require substitute consent.

FACS notes that it is proposed to remake the Regulation in the same terms as the existing Regulation, with minor administrative amendments. FACS supports this approach and does not propose that any further changes to enhance the operation of the Regulation at this stage.

Response to proposed amendments – Part 2 Enduring guardians

The proposed amendments include an expansion of the class of persons who can be 'eligible witnesses' for the appointment, revocation or resignation of an enduring guardian, to include the Public Guardian, or a person approved by the Public Guardian.

FACS supports the proposed expansion of this class of persons as this will enhance the effective administration of the enduring guardianship system for people living in NSW.

Response to proposed amendments – Part 3 Medical and dental treatment

The proposed amendments include:

- moving the definitions of 'drug of addiction' and 'simple sedation' from the general definitions to the provision on medical treatment
- declaring certain more serious medical treatments, as 'special treatment' or 'prescribed special treatment' which can only be provided with the substitute consent of the Guardianship Division of the NSW Civil and Administrative Tribunal.

FACS supports the proposed safeguards on substitute consent for major and certain special medical treatment as this will help ensure that such treatment promotes a person's health and wellbeing.

Response to proposed amendments – Part 4 Miscellaneous

The proposed amendments include updating of the interstate enduring guardianship instruments that are recognised in NSW for the purposes of the Act.

FACS notes this amendment is in response to recent legislative enactments in other jurisdictions. The recognition of interstate guardianship and financial management instruments makes it easier for interstate orders to be recognised by the NSW Civil and Administrative Tribunal. This provides additional choice and control to people with disability; and promotes the efficacy of substitute consent arrangements for people living in NSW.

Note on the future impact of the review of the Guardianship Act 1987 and national disability reform agenda

FACS notes the current review of the Act being conducted by the NSW Law Reform Commission and the potential impact of any reforms to the Act on the future of the Regulation, such as the range of areas of decision-making that may be formalised under the Regulation.

FACS also notes the broader context of the disability reform agenda in NSW and nationally. The transition to the National Disability Insurance Scheme Act 2013 (Cth) presents a nominee system of substitute support in disability planning that will interact with state appointed guardianship and decision-making arrangements and as such needs to be considered in any future reforms.

If you would like more information, please contact Louise Blazejowska, Director, Legislative Reform and Right to Information on (02) 8879 9011 or Louise.Blazejowska@facs.nsw.gov.au.

Yours sincerely,



Jim Longley
Deputy Secretary

14/6/16