

## Proposal for a Queensland **Adult Support and Safeguarding Act**

This would replace the *Guardianship and Administration Act*, and see consequential amendments made to other legislation (including the *Powers of Attorney Act*, *Public Guardian Act*, *Public Trustee Act*, and *QCAT Act*).

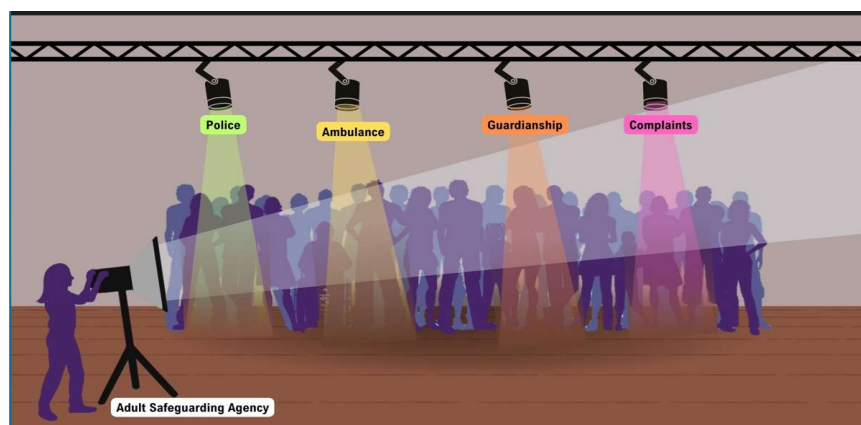
### Key reform proposals

#### Adult guardianship

- Enable the personal appointment, and tribunal appointment, of **supporters**, who would be able to access otherwise confidential information about a person in supporting them to make their own decisions.
- Specify two criteria for the appointment by QCAT of **decision-making representatives**,<sup>1</sup> in relation to personal and/or financial matters:
  1. The person has significantly impaired decision-making ability such that they are unable to understand, weigh up, retain and communicate information relevant to the particular matter; and
  2. There is a need for the appointment (without which there will be a significant risk to the person's health, welfare or property).
- Require decision-making representatives and attorneys to support people to make their own decisions wherever possible, and to use a substituted judgement (will and preferences) approach when making decisions on a person's behalf.
- Specify default position in relation to QCAT hearings that information identifying parties may be published unless an order is made otherwise.

#### Adult safeguarding

- Establish an Adult Safeguarding Commissioner with the power to investigate (with the consent of the person except in cases of suspected serious abuse) the position of **at-risk adults** (defined as people with care and support needs who are unable to protect themselves).
- Included among the Adult Safeguarding Commissioner's functions:
  - To investigate allegations that at-risk adults have been subject to violence, abuse, exploitation or neglect;
  - To identify, promote and undertake mechanisms of ensuring the safety and wellbeing of at-risk adults (this would enable, for instance, the establishment and running of regionally-based adult safeguarding networks).



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<sup>1</sup> I recommend using the term '**decision-making representative**' instead of 'guardian' and 'administrator' (this is more descriptive than just 'representative', and enables the role to have supported decision-making potential, unlike 'decision-maker'). I suggest retaining the words 'guardian' and 'trustee' in the offices of the Public Guardian and Public Trustee, and retaining the term 'attorney' in powers of attorney legislation.

## Background

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability made a number of recommendations concerning **adult guardianship** including (among others):

- Using the term ‘representative order’ instead of guardianship and administration order, and ‘representative’ in place of guardian and administrator; including new terms ‘support order’, ‘support agreement’ and ‘supported persons’; replacing enduring power of attorney with ‘enduring representation agreement’; replacing ‘decision-making capacity’, ‘capacity’ and ‘mental incapacity’ with ‘decision-making ability’; changing the title of guardianship legislation to ‘Supported and represented decision-making Act’ or ‘Decision-making Act’ (Rec. 6.4);
- Recognising the role of support people and including text of CRPD Article 12 in guardianship legislation ‘objects’ (Rec. 6.5);
- Adopting ten supported decision-making principles in guardianship legislation (Rec. 6.6);
- Enabling the personal and ‘statutory’ (i.e. QCAT) appointment of supporters, as in Victorian guardianship & powers of attorney legislation (Rec. 6.8);
- Requiring ‘representation orders’ only to be made as a last resort and in the least restrictive way; and only if ‘the order is necessary, taking into account ... the will and preferences of the proposed represented person’ (Rec. 6.9);
- Proposing a new ‘decision-making process that appointed supporters and representatives are required to follow’, which includes ‘supporting the person to express their will and preferences’ and ‘assisting the person to develop their own decision-making ability’ (Rec. 6.10);
- Removing default confidentiality restrictions (Rec. 6.12); and
- The provision of information on supported decision making (Rec. 6.13).

In relation to **adult safeguarding**, the Disability Royal Commission added its voice to a number of reform calls that have been made in the past eight years:

- In 2016 the Australian Law Reform Commission (*Elder Abuse Discussion Paper*, p. 61) identified an ‘investigation gap’ regarding responses to situations of abuse or neglect.
- In 2017 the ALRC recommended (*Elder Abuse – A national legal response*, p. 377) that ‘Adult safeguarding laws should be enacted in each state and territory’ which ‘should give adult safeguarding agencies the role of safeguarding and supporting “at-risk adults”’.
- In 2019 NSW created the office of the Ageing and Disability Commissioner, with broad investigative powers, while South Australia created the Adult Safeguarding Unit.
- In 2021 the first ever Australian elder abuse prevalence study, conducted by the Australian Institute of Family Studies (*National Elder Abuse Prevalence Study: Final Report*, p. 32), revealed that: ‘In the 12 months prior to being surveyed, 14.8% of the sample reported experiencing at least one form of elder abuse’.
- In 2022 the Queensland Public Advocate (*Adult safeguarding in Queensland. Volume 2. Reform recommendations*, Recs 1 and 10) recommended the creation of a state-based Adult Safeguarding Commissioner and local Adult Safeguarding Networks.
- In 2023 the Disability Royal Commission (Rec. 11.1 & vol. 11, p. 45) called on states and territories to legislate ‘to establish nationally consistent adult safeguarding functions’ to be operated by ‘independent statutory bodies’, not Public Guardians and Public Advocates.
- In 2023 the Independent Review into the National Disability Insurance Scheme (*Working together to deliver the NDIS*, final report, pp. 203, 206) supported the ALRC's call regarding ‘adult safeguarding agencies’.

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