

14 June 2016

Executive Director, Justice Strategy & Policy
Department of Justice
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Consultation draft of the proposed *Guardianship Regulation 2016* and Regulatory Impact Statement

Dear Mr McKnight,

Carers NSW welcomes the opportunity to provide comment on the public consultation draft of the proposed *Guardianship Regulation 2016* and Regulatory Impact Statement (RIS). We commend the NSW Department of Justice on formally seeking our feedback as a key stakeholder, in line with the obligations of public sector agencies under the NSW *Carers (Recognition) 2010 Act 2010*.¹

Carers NSW is an organisation for people who provide informal care and support to a family member or friend who has a disability, mental illness, drug or alcohol dependency, chronic condition, terminal illness, or who is frail. Carers NSW supports and advocates for carers in NSW and is the only state-wide organisation that has all carers as its primary focus. Carers NSW is also part of the National Network of Carers Associations, which works collaboratively to lead change and action for carers.

We support the third and preferred option presented in the RIS to remake the proposed regulation and cannot foresee any major costs to carers of the proposed amendments. However, we should note that, given the short timeframe for feedback, we have not had the capacity to consult directly with carers regarding the changes nor thoroughly explore their potential costs to carers.

However, from our perspective, a number of the changes would seem to benefit carers, whether they are formally appointed substitute decision makers or providing more informal support to people with a cognitive impairment and/or their formally appointed substitute decision makers.

For example, the amended regulation provides further specification about the types of treatment for which consent is required, and about which level of consent is required for the various types of treatment. This detail will be useful for carers and other stakeholders in determining appropriate decision making processes for medical and dental treatments. The recognition of 'persons responsible' in lieu of formal appointments by the Tribunal is also a positive change.

Carers NSW agrees that consistently recording the appointment of enduring guardians through official forms should continue, however we would encourage the Department to regularly consult with users and evaluate whether the forms are both accessible and efficient. We are supportive of any measures that reduce unnecessary paperwork for carers to complete, as carers tend to have many demands on their time.

The proposed expansion of eligibility for witnessing enduring guardianship applications may benefit some carers, for example when the decision makers being appointed or their preferred witnesses reside overseas. Further, solidifying the continuity of interstate guardianship arrangements following a move, and recognising guardians and financial managers appointed in any state, territory or country with compatible legislation, will likely promote positive outcomes for carers living or moving from another jurisdiction, reducing the need to duplicate paperwork within varying systems.

The only question arising for Carers NSW from the RIS relates to the proposed requirement for employees of the Office of the Public Guardian or NSW Trustee and Guardian to complete an approved course of study before being able to perform the role of eligible witness. We agree that this step constitutes an important safeguard, but wonder what, if any equivalent, information, training and support are made available to witnesses who are family members, friends or other individuals not employed by the Office of the Public Guardian or NSW Trustee and Guardian.

Finally, the introduction of a mechanism of external review for people aggrieved with decisions of the Public Guardian is strongly supported by Carers NSW. The Department of Justice should ensure that carers are aware of this mechanism and how to access it, and that carers are able to prompt review with regard to decisions either affecting the person they care for or themselves.

Thank you for accepting our submission. For further information, please contact Sarah Judd, Senior Policy and Development Officer, on (02) 9280 4744 or email sarahj@carersnsw.org.au.

Yours sincerely,



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CEO
Carers NSW

¹ *Carers (Recognition) Act 2010*, Part 2, Section 7 (2).