

Paul McKnight

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Department of Justice

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20 June 2016

Dear Paul

Thank you for the opportunity to comment on the proposed *Guardianship Regulation 2016*. I note useful changes in the proposed regulation, such as the inclusion of foreign lawyers as eligible witnesses to enduring guardianship and updated medical treatment classifications.

I would like to recommend however that the Public Guardian is removed as an eligible witness to enduring guardianship appointments. Approved Public Guardian staff have been included as eligible witnesses since changes made in 2010, however my office is not able to provide this service and the continued inclusion and enhancement of the Public Guardian as an eligible witness in the proposed regulations will not result in an improvement in the public's access to justice.

Department of Justice proposed changes

The *Guardianship Regulation 2016* sets out a method for appointing the Public Guardian and staff to become eligible witnesses. Contrary to the Regulatory Impact Statement (RIS), the proposed regulation marks a departure from the 2010 regulation in that the Public Guardian is specified as an eligible witness (4(b)) and the Public Guardian is to approve a course of study for Public Guardian staff (4(c)(iii)), rather than the CEO NSW Trustee and Guardian.

Incompatibility of eligible witness with the role of the Public Guardian

The Public Guardian is a substitute decision maker, appointed by the Guardianship Division of the NSW Civil and Administrative Tribunal or the NSW Supreme Court. The Public Guardian is a small agency with approximately 60 staff who provide a service across NSW out of three offices in Sydney CBD, Parramatta and Gosford. As at May 2016, I am guardian to 2142 people.

My office lacks the administrative infrastructure, shop frontage and personnel to offer a meaningful service to people seeking an eligible witness in order to execute an enduring guardianship appointment.

As opposed to the NSW Trustee and Guardian and other eligible witnesses, the Public Guardian does not have any regional presence in NSW outside of Gosford. My office does not employ legal officers or staff working in a quasi-legal capacity. My office does not have any role in the creation of other legal instruments, such as wills or powers of attorney.

Apart from a considerable, and growing, workload that sees guardians each managing a caseload of approximately 50 people under guardianship, for much of the time my staff are out of the office, working directly with clients and stakeholders.

For these reasons my staff would be unlikely to have the opportunity to undertake the necessary course of training, nor be available to act as eligible witnesses if requested. For members of the public expecting increased access to justice by receiving a witness service from the Public Guardian, my office's inability to deliver this service will be a source of frustration and irritation.

Cost implications

The RIS states that there are minimal costs associated with this provision (page 13). If the Public Guardian were required to act as eligible witness, my office would experience a direct and significant cost to service impact, due to the need to divert guardians from their primary role as substitute decision makers pursuant to guardianship orders.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Graeme Smith', written in a cursive style.

GRAEME SMITH

PUBLIC GUARDIAN