

LRCWA – The review of the GAA (1990) and the significance of community voices

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The LRCWA



- The Law Reform Commission of WA (LRCWA) is an independent statutory body which is tasked with reviewing aspects of Western Australian law when provided with a reference by the Attorney General.
- In April 2024 the LRCWA was, pursuant to the Terms of Reference, asked to provide advice and make recommendations on new legislation to enhance and update the Guardianship and Administration Act WA (1990).



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The Terms of Reference

- The Terms of Reference explicitly asked the LRCWA to consider a number of reports in doing this, including the recommendations of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, the statutory review of the Act conducted by the Department of the Attorney General in 2015, and the Final Report of the Western Australian Select Committee into Elder Abuse tabled in the Legislative Council in September 2018.

The Process



- After Project 114 was publicly announced in May 2024, we approached 81 organisational stakeholders representing a range of interests inviting them to make preliminary submissions to help guide the review.
- We received 22 submissions which greatly assisted us in preparing the Discussion Paper. Volume 1 was published in December 2024, and Volume 2 was published in May 2025. These were published on the Commission's website and formed the basis for many of our in-person consultations as well as later submissions.



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A holistic approach

- Our review was informed by contemporary approaches to central concepts featuring in the Act including disability, capacity, supported decision-making and recognition of a person's wishes and preferences.
- We also developed a number of guiding principles as we believed it was important to take a holistic approach which would lead to coherency and consistency.

Guiding Principles



- Principle 1: It is important to recognise the inherent dignity of all people who are affected by the Act, including the dignity of risk.
- Principle 2: It is important to recognise the significance of autonomy for all people who are affected by the Act. A person may experience varying levels of autonomy and may participate in different ways in decision-making which affects them.
- Principle 3: All people who are affected by the Act are entitled to equal rights and opportunities.
- Principle 4: The views and lived experiences of people who are affected by the Act are integral to the LRCWA review.
- Principle 5: It is important for the Act to reflect contemporary approaches to its central concepts and to express those concepts in a clear and consistent manner.
- Principle 6: Appropriate and effective safeguards are central to the Act.
- Principle 7: It is important to recognise the diversity of individuals affected by the Act, whether that diversity is associated with race, ethnicity, gender, age, disability, sexual orientation, religious beliefs, cultural background, socioeconomic status, education or life experiences (Principle 7/diversity principle).



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Challenges

- The review has been challenging for a number of reasons. The Act is unique in Australia as it covers the making of enduring instruments, the appointment of guardians and administrators, substituted decision-making including in relation to treatment and participation in medical research and the making of AHDs.
- Most other jurisdictions have separate statutes dealing with enduring instruments, or treatment decisions, for example.

Challenges



- In addition, it has not been subjected to a whole of statute review since it was first introduced. The complexity of the foundational concepts has also increased since that time because these have been substantially developed particularly in relation to decision-making concerning those living with disability and mental illness
- Of note are the adoption of the UNCRPD and the ALRC Report (2014) being amongst the most significant of these developments.

Challenges



- Other challenges arose because of the lack of clarity in the Act itself. It is beset with structural, conceptual and terminology inconsistencies.
- Many of the relevant statutory provisions were added to the Act at different times over the course of 35 years with amendments have been made to some parts but not others
- As a result, the Act contains differing terms and concepts across its various parts. It lacks internal structural coherency and does not use consistent language. Even the numbering of sections is confusing. For example, there are over 65 sections in the Act which commence with 110, each one being denoted by a letter or two letters of the alphabet.
- The sheer volume of issues requiring consideration and reform was another significant challenge.

Publication of the Discussion Paper



- Volume 1 (Dec 2024) canvassed various issues including: the language used in the Act, how decision-making capacity is defined and assessed, whether Western Australia should adopt a formal supported decision-making model, the roles and responsibilities of guardians and administrators, as well as the statutory functions of the Public Advocate.
- Volume 2 (April 2025) focused on the Act's provisions for making an enduring power of attorney (EPA) and enduring power of guardianship (EPG) (together, enduring instruments) as well as its provisions for making an advance health directive (AHD).
- Volume 2 also discussed the Act's provisions for decision-making about medical treatment, medical research, and restrictive practices and the role of SAT. In addition, it addressed some matters we were specifically asked to consider in carrying out our review, namely the role and identity of decisions-makers under the Act compared to the Aged Care Act 2024 (Cth) (Aged Care Act) and the Act's confidentiality requirements.

Processes



- Each volume of the DP uploaded, extensive list of contacts notified, invitation to people and/organisations to
 - express an interest in attending our expert reference groups and focus group sessions;\
 - to respond to questions on an online portal and/or to provide written submissions.
- Development of a summary of Project 114 and the Terms of Reference, as well as information about how people could participate, in plain English by Developmental Disability WA (DDWA). This document was circulated in our early correspondence with agencies and translated into Chinese, Italian and Vietnamese.
- In collaboration with DDWA, we also developed a plain English presentation for consultation sessions that summarised key aspects of the Act and relevant questions.
- Several organisations and peak bodies such as Advocare and the Council of Aboriginal Services WA agreed to circulate general information about the LRCWA review. They also invited input from their members and networks.

Consultation



- We held 21 different in-person and online consultation sessions with either expert reference groups or focus groups. In these sessions, we spoke to a total of 127 people from organisations and the community with lived experience of the Act. We spoke to people from legal, non-legal, government and non-government service providers.
- We conducted an additional 13 regional consultation sessions. Commissioners and representatives of the Commission visited Albany, Broome, Kalgoorlie, Port Hedland, Bunbury and the Peel region. We met with WA Country Health Services, community legal centres, Legal Aid Western Australia offices and the Aboriginal Family Legal Service offices in regional areas.
- Participants included lawyers, medical doctors and researchers, psychiatrists, nurses, social workers, other health workers, advocates, community workers and volunteers.

Consultation



- We developed an online portal which was accessible through the Commission's website. The online portal had two functions.
- First, it allowed individual and/organisational stakeholders to upload a written submission responding to our Terms of Reference and to issues raised in the Discussion Paper.
- Second, it allowed individual and/organisational stakeholders to respond to a series of questions drawn from the Discussion Paper (the **Online Survey**).
- Stakeholders could directly email submissions to the Commission

What did we uncover in our preliminary review?



- Aboriginal people are overrepresented in public guardianship orders.
- Some of the Act's key concepts, including the concept of a guardian and the concept of disability, are culturally specific. For many different reasons, these concepts may not be relevant to, or appropriate for, Aboriginal people and for culturally and linguistically diverse (CaLD) communities in the State.
- Older people, particularly those living with dementia, are now a large category of people for whom guardianship and administration orders are made.
- One of the Act's contemporary functions is to protect against, and respond to, allegations of elder abuse in circumstances that may not have been originally envisaged by the Parliament.
- Other systemic issues related to
 - the implementation of the National Disability Insurance Scheme – the complexity of the NDIS system and the insistence of NDIS service providers that they have an assurance, in the form of consent from a guardian appointed by SAT, of their authority to provide services to a client.
 - Discharge from hospital care and associated guardianship and administration applications

What did we uncover?



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- While our Terms of Reference asked us to specifically consider a number of issues in relation to the Act including the current confidentiality requirements, whether the Act should introduce a new supported decision-making framework, and the authorisation, review and oversight of restrictive practices...
- The preliminary review alerted us to many other issues that required consideration and many aspects of the Act in need of reform. These are in our view systemic in nature and include the processes and concepts applicable to capacity assessments, the decision-making standard and the scope of substituted decision-makers' authority.

Stakeholder feedback – on the Act generally



- Given the contemporary emphasis on supporting a person to make their own decisions, we have given particular and careful consideration to stakeholder' views about whether there is an ongoing need for legislation which includes substitute decision-making
- Stakeholders consistently emphasised the need for a range of statutory mechanisms that respond to the range of ways people experience difficulties with, and may need assistance with, decision-making at different points in time. At the same time, stakeholders highlighted that the various decision-making mechanisms in the Act can each promote or undermine different principles in the LRCWA review.
- Stakeholders impressed on us the need for change in the Act so that it reflects contemporary concepts of autonomy, diversity, equality and dignity.

Stakeholder feedback – key concerns



- Guardianship and administration orders are required by service providers and hospitals as a matter of convenience to facilitate the delivery of services and accommodation, rather than actual need.
- The Act's operation in the State's regional, rural and remote areas raises significant challenges. Stakeholders consistently raised concerns about represented people in regional, rural and remote areas being unable to contact Perth-based public guardians and administrators, experiencing difficulties in attending hearings and accessing necessary services (such as interpreters) to participate in hearings.
- The pressing need for cultural education and training to be provided to decision-makers who perform functions under the Act.

Stakeholder feedback – key concerns



- They reported that public guardians and administrators do not have (or take) time to develop relationships with people whom they represent and to explore a represented person's understanding of an order, as well as their concerns.
- They referred to a failure to support represented people to make decisions for themselves, decisions being made which do not reflect the represented person's views and wishes, and represented people not being heard in the decision-making process

Stakeholder feedback – key concerns



- Through the LRCWA review, stakeholders consistently identified ways in which the Act is unnecessarily complex and reflects inconsistencies (for example, in key terms and in the scope of powers conferred on different decision-makers performing functions under the Act) for no apparent reason.
- Consequently, a broad theme in stakeholder feedback was the need to simplify and streamline the Act's approach, so that members of the community can more easily understand its provisions and navigate its processes.

Stakeholder feedback – key concerns



Various stakeholders expressed (at times, overlapping) concerns that many of the Act's key terms:

- Are outdated and offensive to some people.
- Carry paternalistic connotations, in that they are also associated with parental responsibility and laws related to decision-making for children.
- Are not culturally relevant or safe.
- Are gendered.
- Do not accurately reflect the role and functions of some decision-makers under the Act.
- Are used inconsistently throughout the Act, for no clear reason.

Other information – SAT statistics



- Reinforce the relevance of the contemporary challenges we identified in the Discussion Paper.
- They confirm the increasing workload due to the increase in the number of applications made for guardianship and administration orders. There were approximately 1775 applications made in 2023 and 3124 made in 2024.
- They confirm effects of the aging population - the median age of the persons for whom applications for guardianship and administration orders were made in 2023 and 2024 was 72-73 years of age
- ➔ The Act's role to assist in preventing elder abuse.
- According to the applicants for orders, over 8% of the people about whom applications for guardianship and administration orders were made in 2024 were Aboriginal or Torres Strait Islanders.
- Need for the Act to be culturally appropriate.

What is next?



- The AG is required to table the Report into Parliament
- This will not be until Parliament resumes next year
- The government is under no obligation to enact all or any of the Commission's recommendations
- Many people are both personally and professionally invested in the need for change.



Thank you!

Any questions?



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