



5 February 2020

## **Review of the Civil and Administrative Tribunal Act and key features of the Guardianship Division**

The recent review of the Civil and Administrative Tribunal Act (CAT Act) has led us to reflect on key features of the Act in relation to the Guardianship Division.

The Guardianship Division has a very important role in protecting the rights and interests of people with disability. However, it does this by taking away fundamental decision-making rights and freedoms of individuals and giving them to a guardian or financial manager. This process clearly needs strong safeguards.

In carrying out its responsibilities, the Guardianship Division needs to ensure that it provides processes that maximise the inclusion and input of people with disability whose rights are being considered, as well the people who support them.

We support continuous improvement in both the inclusion of people with disability in guardianship hearings and the safeguards on the Tribunal processes which interfere with their freedoms.

The CAT Act contains various provisions which we see as vital to be guaranteed. These provisions include:

- A three member panel with a mix of relevant expertise hearing all applications for guardianship and financial management orders, for consent to special medical treatment and for reviews of appointments of enduring guardians and powers of attorney.
- The Division being required to conduct a hearing for all substantive matters rather than being allowed to deal with some matters on the papers.
- The Division providing written reasons for decision for all substantive matters.

Over the 30 year life of the Guardianship Act, there have sometimes been suggestions to relax these provisions in the name of flexibility. However, we have observed elsewhere that what flows from flexibility is budget pressures leading to cases being dealt with in a very inappropriate manner.

We call for the protections of individual rights and features that promote inclusion in the CAT Act to be preserved and enhanced both in the review of the Act and in the Tribunal's processes.

We look forward to action on the Law Reform Commission Review of the Guardianship Act 1987. However, implementation of the Commission's review would continue to require a division of NCAT with similar safeguards on inclusion and individual rights as currently required for the Guardianship Division.

Contact:

*Justine O'Neill*

*CEO, Council for Intellectual Disability*

[justine@cid.org.au](mailto:justine@cid.org.au)