

30th April 2020

Ms Vickie Chapman MP
Deputy Premier and Attorney General
GPO Exchange
10 Franklin Street
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Dear Attorney-General

Re - GUARDIANSHIP AND ADMINISTRATION (MISCELLANEOUS) AMENDMENT BILL 2021

Thank you for the opportunity to provide comment in relation to the *Guardianship and Administration (Miscellaneous) Amendment Bill 2021*. While the 2-week turnaround time has limited the extent of consultation we can do with older South Australians, we broadly support the Bill and welcome the changes in it.

The changes to language are overdue. COTA SA supports the changed language in the Bill. We support replacing the terms 'mental incapacity' and 'mentally incapacitated person' with contemporary, inclusive and appropriate terms, 'impaired decision-making capacity' and 'person with impaired decision-making capacity'. We note the more empowering term 'represented person' replacing the term 'protected person'. COTA SA also supports the adoption of more gender-neutral language with terms such as 'he or she' replaced by specific position titles or office holders.

We are also supportive of the new principles that will frame decision-making. They entrench a presumption of capacity, the imposition of a "least restrictive" standard, a requirement to engage the will and preferences of the represented person wherever possible and a high threshold to override ("prevent serious harm"). These changes reflect the strong view of older people that maintaining agency and decision-making is precious and fundamental at every stage of life.

With the very real risk of enduring powers of attorney being used to perpetuate financial abuse in the context of the Guardianship and Administration Act, we are pleased to see the insertion of section 58 in the Amendment Bill. These provisions, including the powers of the Tribunal to revoke, vary or suspend an enduring power of attorney may be crucial in protecting the assets of older people subject to the Act.

While the principles reflect improvements long championed by COTA SA and others, their operation will depend upon appropriate resourcing, staffing and effective systems. For example, Principle 2 (a) and (b) are predicated on the ability of individuals to meet with the

Public Advocate as needed to determine decision making capacity as well as participate in decision making processes. As such, we would like to see assurances that appropriate resources are available for the Office of the Public Advocate to ensure that the Public Advocate can physically meet with and support individuals with decision making processes.

We are concerned about the vague and non-binding language outlined in provisions such as section 5 (1) (a). Words and terms such as 'should' and 'as far as is practicable' are non-committal and may provide a loophole for the decisions and wishes of some individuals to be overlooked or ignored in some circumstances.

Further, we have concerns that there is a lack of clear guidelines and criteria for determining if decision-making capacity is impaired. As such, we would like to see a clear pathway describing the process, criteria, and who might be involved in determining if an individual has impaired decision-making capacity. This clarity will be vital for the individuals and families impacted by this legislation and processes.

Finally, COTA SA welcomes reforms to section 4A – Interstate Orders, however, the pathway for registration of interstate orders still seems unclear and somewhat convoluted. A concise set of guidelines accompanying the legislation would be useful to provide step by step information about how the legislation operates for individuals and their families.

I would be happy to provide any further information on telephone (08) 8232 0422 or 0408 814 483 or by email jmussared@cotasa.org.au.

Yours sincerely

JANE MUSSARED
Chief Executive

COTA SA is an older people's movement run by, for and with older people. We represent the aspirations, interests and rights of 633,000 older South Australians. COTA SA reflects the diversity of modern ageing in terms of living arrangements, relationships, income, health, ambitions and aspirations. COTA SA connects with thousands of older people each year throughout SA.