Queensland Law Society

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Office of the President

12 February 2026

Our ref: LP-MC

The Honourable David Thomas
Reviewer
Queensland Civil and Administrative Tribunal Act Statutory Review 2025-2026

By email: [redacted]

Dear Mr Thomas

Queensland Civil and Administrative Tribunal Act Statutory Review 2025-26 - Issues Paper 4 – Guardianship and Administration

Key Recommendations

QLS recommends:

1. Establishment of a QCAT funding stakeholder group (with groups for each division) to bring together relevant stakeholders and cross-departmental staff to support sustainable funding of the QCAT into the future.
2. Establishment of a specialised guardianship division supported by specialist tribunal Members and staff, having regard to the potential budgetary and time constraints of setting up a separate tribunal.
3. QCAT must be sufficiently resourced and skilled to conduct its own inquiries. This is a fundamental issue requiring a whole of Government commitment to long term and adequate funding to ensure legislative safeguards are preserved and implemented in practice.
4. Specialist processes (by specialist registry staff) to enhance existing models of operation and practice in QCAT's guardianship jurisdiction. This would include improved triaging and diversion of applicants (by explicit powers to dismiss applications if it is found that support arrangements are adequate for the adult) and applications, to alternative processes.
5. Targeted funding for health professionals carrying out capacity assessments and funding to increase genuine understanding of capacity, human rights, and supported and substitute decision-making across all stakeholders, service providers and the community.
6. Section 125 separate representative appointments under the *Guardianship and Administration Act* should be specifically funded, for example by expansion of Legal Aid Queensland's Mental Health Legal Practice program to facilitate these appointments.
7. To improve the delivery of the hospital hearing program, a funded specialty and independent program (such as a specific health justice partnership) on site to assist adults and provide advice, guidance and ensure that all evidence and appropriate support and facilities are available.

Thank you for the opportunity to provide feedback on the *Queensland Civil and Administrative Tribunal Act Statutory Review 2025-26*.

We also take the opportunity to extend our appreciation to you and the Review team for the opportunity to provide preliminary feedback during our meetings in January 2026.

This response is limited to the issues identified in Issues paper 4 which relates to Guardianship and administration (**the Issues paper**).

Sustainable funding model

A dedicated sustainable funding model is a critical component in delivering many of the recommendations outlined in our submission. This requires funding of the guardianship system, that is, in addition to the tribunal, the Public Guardian, the Public Trustee, the Public Advocate, the legal assistance sector, and the health and other non-legal stakeholders who support its work.

While QLS acknowledges that the Government must balance competing priorities with limited resources, QCAT plays an essential role in our civil justice system and under-resourcing of the tribunal has a significant impact on access to justice for vulnerable people in Queensland.

Guardianship matters in particular, are highly complex and require important safeguards which cannot be absorbed within existing QCAT resources.

We recommend specific stakeholder consultation on a sustainable funding model to ensure the resourcing needs and implications on all areas of the justice and the health system connected to QCAT are considered.

Funding must be grounded in the protection of rights and the effective operation of supported decision-making, which is integral to ensuring adults can equally and meaningfully participate in proceedings that impact them. This includes access to appropriately funded legal representation and advocacy, rather than outcomes turning on informal workarounds or the capacity of families or community services to compensate for systemic gaps.

Establishment of a QCAT funding stakeholder group (with groups for each QCAT division), which brings together relevant stakeholders and cross-departmental stuff including Treasury and Queensland Health, could also assist in reviewing existing funding models, areas for potential reform and ensuring any increased funding or resourcing does not result in reduced funding (or resourcing impacts), for other areas of the guardianship system.

Background

As an inquisitorial jurisdiction, the guardianship jurisdiction is unique with many users requiring specialist support from the tribunal and its registry staff.

Consistent with the themes identified by the Review team to date, our members report a disconnect between the safeguards within the guardianship legislation and their practical application in the community and in QCAT guardianship proceedings.

On one hand, the legislation requires the presumption of capacity, and the tribunal must commence with this mindset. However, our members report that, the tribunal is often presented with material which is deficit focused, and very often, the tribunal Member is requiring the adult to prove they have capacity despite the presumption.

Further, it is essential for the adult to participate, to the maximum extent possible, in the QCAT process. A potential outcome of the process may be an order which removes the personal autonomy of the adult to make vital decisions for themselves, including where they will live, whom they will spend time with, what medical treatment they will receive, and how they will use their financial resources. Such an outcome should never occur unless the adult has, to the maximum extent possible, been able to participate in the process, and unless there is clear and compelling evidence, tested where necessary in a hearing, that the conditions for an order have been met.

Many of the issues which have arisen have emerged because QCAT has not been sufficiently resourced. Despite the description of the jurisdiction as inquisitorial, the tribunal lacks the resources and processes to make any sort of independent inquiry or conduct any meaningful gathering of evidence. In these circumstances, the process reverts to the adversarial model which usually applies to resolving legal matters before a tribunal. Unless the adult is legally represented, they cannot participate adequately in a complex tribunal process that is adversarial in nature.

In our view, this is a fundamental issue requiring a whole of Government commitment to long term and adequate funding to ensure legislative safeguards are preserved and implemented in practice.

Whilst there is consideration of the appropriate characteristics of QCAT's guardianship jurisdiction, the foundational question should be what is the best structure to ensure the inquisitorial nature of the proceedings can be supported. Tribunal Members and staff must also possess the specialist skills and expertise to respond to communication differences, accessibility requirements, cultural norms and practices, and diverse language needs.

Regardless of where the guardianship jurisdiction sits (within QCAT as it is currently or separately), the implementation of specialist procedures, processes and commensurate resources including legal assistance sector funding remain central to achieving its legislative purpose and preserving and promoting the rights of adults who are required to access or navigate this jurisdiction.

Our response to the consultation questions is set out below.

Procedural fairness and participation (Q1)

Participation of the adult in practice would be significantly enhanced by speciality processes and staff, case management and triaging. Plain language sheets, information packs and webinars should also be available to support adults and families. This would also assist health and legal professionals who do not regularly practice in this area and reduce unnecessary barriers placed before the adult's participation in the pre-hearing preparation, the hearing itself, and decision-making more broadly.

Full participation requires implementation of a circle of support (legal and non-legal) for the adult and greater stakeholder and community understanding of capacity and supported decision-making.

Timely sharing of information and material is also an important element of participation. For example, often there is a reluctance to provide a copy of the Health professional report to the adult, particularly in the hospital hearing program. This should be mandatory or should otherwise be provided to an independent legal practitioner or advocate for the adult. Preventing access to this material is often a result of a lack of understanding, which would be assisted by increased

education amongst all stakeholders and community members about capacity. We suggest explicit legislative and/or policy guidance, similar to the *Mental Health Act 2016* (Qld), to ensure people receive a copy of their application and supporting Health professional report a week before the hearing.

Interim orders (Q2-5)

Our members with expertise in this area report that interim orders are not well understood. It is a common misconception that if an interim order has been made, the adult lacks capacity. This can sometimes lead to difficulty for those seeking to assist the adult, as people around them can inaccurately perceive them as unable to engage advocacy services or legal representation.

The Issues paper identifies that most case management activity occurs without a formal hearing or input from active parties, including the adult.[1] We strongly recommend that the adult be advised of an interim application being lodged and be given an opportunity to respond prior to a decision being reached.

We suggest there are several safeguards which should be considered prior to issuing interim orders such as:

- Appointment of a separate representative under section 125 of the *Guardianship and Administration Act*; and
- An oral directions hearing prior to making an interim order.

Addressing existing delays would also assist in reducing the number of interim orders as matters will be dealt with more quickly. When made inappropriately, interim orders can be unnecessary, harmful to existing support systems and networks in place, and can result in fees to be borne by the adult, which can affect their ongoing financial stability.

Applications heard 'on the papers' without an oral hearing (Q6-7)

The appropriateness or otherwise of an application being heard 'on the papers' without an oral hearing is context specific, with our members reporting some cases are appropriate for dealing with on the papers and others are not.

Regardless, where matters are dealt with on the papers, safeguards, such as the appointment of a representative for the adult, are critical. We suggest these appointments should be publicly funded when needed. Such funding should be means tested to ensure State funding is targeted to financially disadvantaged people, and should be extended to include people with means who are subjected to decision-making against their interests that prevents them from accessing their funds.

QLS recommends that matters in relation to restrictive practices should require an oral hearing and that in all matters, an adult should be given a right to respond prior to a decision being made. Section 125 appointments should be made in all restrictive practices applications.

We also recommend that, in relation to applications to appoint the Public Trustee which are not opposed by active parties, there needs to be a requirement for some inquiry to ensure all appropriate people who may be active parties are identified. Further, the tribunal needs to ensure there is need for a decision maker (e.g., to ensure all bills are being paid) and that

[1] Page 40.

appointment of an administrator will have utility (as various trusts, companies etc. cannot be managed by the Public Trustee through a QCAT appointment).

Information relied on (Q8-9)

QLS recommends that when the affected adult initiates an application seeking a review they should be afforded some flexibility in providing medical evidence. Our members report that often the adult is unable to obtain medical evidence because they do not have access to funds for medical reports and specialist assessments. This can be the case even when the adult has significant assets (which may be held under attorney or administrator management). We also note there is no Medicare item code for preparation of these written reports which can be a barrier for adults and health professionals in obtaining and providing Health professional reports. While there is discretion for QCAT to make an interim order without medical evidence in these circumstances or in similar circumstances where access to the adult is being withheld from the applicant,[2] this often requires technical legal submissions to support such an application being accepted by the tribunal.

QLS also recommends that no final order be made without medical evidence from an appropriate doctor/specialist, which may include a geriatrician who has administered relevant tests, or a General Practitioner (**GP**) who has known and treated the adult for an extended period. We suggest that Health professional reports should not be completed by allied health professionals unless a medical practitioner has also provided a report and the allied health report is provided as supporting documentation.

Where the adult has a severe and longstanding disability, other evidence should be accepted. For example, in relation to a person with severe disability since childhood who has been assessed for a higher-level NDIS package, but there has previously been no need for a formal appointment as informal arrangements have been sufficient. In these cases, the tribunal should be able to rely on the evidence provided to NDIS where it deals with a person's capacity to make particular decisions, provided that NDIS reports are viewed with caution as they can be deficit focused to obtain increased funding. There should also be provision for flexibility where a report was obtained in the last 6 months.

QLS recommends targeted funding for health professionals carrying out capacity assessments. QLS also calls for funding to increase genuine understanding of capacity, human rights, and supported and substitute decision-making across all stakeholders, service providers and the community.

The quality of some medical evidence has been raised, for example, in the context of enacting an enduring power of attorney. Our members have reported a lack of awareness amongst some health professionals of the requirements of a capacity assessment which is needed to inform completion of a Health professional report. We understand health professionals may also be reluctant to document their opinions in writing to preserve the patient relationship. QLS has benefited from liaising with the health profession to look at ways to support doctors, particularly GPs in the provision of these reports and will shortly be publishing an educational webinar for legal practitioners and GPs regarding Health professional reports for QCAT's guardianship jurisdiction.

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[2] *Queensland Civil and Administrative Tribunal Act 2009* (Qld) s 63(1) *HM v The Public Trustee of Queensland* [2012] QCATA 161 at [44]; and *Guardianship and Administration Act 2000* (Qld) section 114(1) see LER [2018] QCAT 40 at [18]-[19]

In this regard, we suggest there would be benefit in reviewing the current format of the QCAT Health professional report and considering opportunities to ensure greater alignment with the *Queensland Capacity Assessment Guidelines 2020*. We understand GPs could also be supported in completion of these reports by digitising the forms into their existing software. This should be explored as a priority in consultation with medical representatives from the public and private sectors.

QCAT hospital hearings program (Q10-11 and 15)

Our members report the hospital hearing program is expeditious but they have significant concerns that it does so at the expense of procedural fairness and natural justice. The lack of participation by the adult is a significant concern.

A rights approach to hospital hearings requires adequate time, specialist decision-makers, and properly funded supports to ensure adults can participate to the maximum extent possible and that decisions are not driven by urgency or system pressures. Timely access to independent legal representation and/or advocacy is especially critical in hospital hearings to support participation, test evidence, and ensure the adult's views and preferences are properly presented before the tribunal. Without dedicated resourcing and integrated supports, hospital hearings risk defaulting to administrative efficiency rather than giving real effect to the presumption of capacity, least-restrictive decision-making, and human rights obligations.

In some cases, these matters have a duration of 17 days from application to hearing, which is far too short, particularly for those where the situation is a new, event-driven circumstance (such as a stroke or fall).

Our members report that many hospital hearings are heard too quickly and often when an adult is still acutely unwell, experiencing cognitive fluctuation or recovering, often in hospital without their usual support aids (e.g. glasses/hearing aids) or support persons. Many people in hospital report there are limitations to visitor/supporter engagement while in hospital due to the cost and burden on the visitor, the adult's medical condition and the adult not wanting distractions or visitors during doctors' visits, the timing of which can be unpredictable.

Obtaining and retaining documents is also a barrier to adults being unable to appreciate the seriousness of the matters under consideration and unable to obtain independent advice or advocacy services due to the compressed timeframe between the Notice of Hearing and hearing date. Provision of all relevant information is also a barrier with often only the Notice of Hearing being provided to the adult. The Application and clinical information should also be provided.

Our members report seeing adults who have some capacity to make decisions but simply do not have knowledge of the tribunal process except that a hearing will occur. Greater safeguards are needed to ensure the provision of documentation for adults involved.

The other practical reality is that the hospital setting is not conducive to an adult's comprehension of the relevant paperwork and preparation of a response. In addition, our members report that adults reduce their engagement with the social worker (often the applicant), and this is sometimes seen as indicative of impairment. The adult often reports a distrust of the application and a resulting refusal to engage in capacity assessments.

Some older adults report to our members of a reluctance to engage with health professionals subsequently due to concerns about impacts on their rights and autonomy including the decision to live where they wish.

The quality of hospital hearing evidence has also been raised which often does not reflect the acute nature of an injury or illness. Our members report the perceived risk to the adult and their human rights is rarely understood and there is limited understanding of informal supports and networks available to the adult. Health professional reports in this context are insufficient. Analogous to an electroconvulsive therapy application in the Mental Health Tribunal, a second opinion regarding capacity could be required by a suitable doctor, independent of the treating team.

The adult should be appointed a section 125 representative or advocate (funded) in all matters and given adequate access to all material so they can adequately prepare and respond. This must include the Health professional report and application. The separate representative must also be advised of their appointment in a timely manner.

QLS recommends a funded specialty and independent program on site to assist adults in these circumstances, provide advice and guidance, and ensure that appropriate facilities are available such as a suitable remote hearing room. Post-hearing, adults should also be supported in relation to any impacts from the order and so issues such as elder abuse can be identified and factored into the need or appropriateness of any appointment, and the adult can be supported.

Remote hearings (Q12-14)

Remote hearings can be beneficial for advocates who may attend multiple hearings in one day and to adults living in regional and remote communities, who have difficulties attending in person or to assist in maximising the adult's willingness to engage. Courtrooms can also be intimidating for members of the community, and our members report this sometimes impacts the adult attending in person.

However, it is important that both technological and physical infrastructure is accessible and functional to remove barriers to participation and inclusion. For example, there can be disadvantages when the adult has phone or hearing difficulties.

Different models of hearing matters promote access to justice but there are existing barriers for adults requiring interpreters and a need for improved processes and support for those from culturally and linguistically diverse backgrounds and/or people with disability.

QCase will assist in timely sharing of information (including to representatives), however the registry will still need to play an important role to address any barriers for adults who are unable to access the information online. Accessibility options should be considered as well as alternatives to digital records to facilitate fair access to information. Some concerns from members were raised for older users of the tribunal, with a move to a digital platform posing a greater disparity in the timeliness of document retrieval. This could affect a person's ability to respond to material provided to the tribunal close to the hearing date, and could further perpetuate elder abuse or systems abuses.

Case management and triage (Q16-18)

As noted above, our members report it has been necessary to apply for interim orders due to delays in the jurisdiction. For example, inclusion of an interim application means a hearing may take place within 3 months, rather than 8 months with a usual application. These difficulties would be addressed by improved processes to triage applications including early consideration of which matters can be decided on the papers and ensuring urgent matters are dealt with appropriately.

Timely provision of evidence and file management

Currently, there is an inconsistent approach to compliance with evidence production requirements, which means that parties will introduce material during the oral hearing. Our members also report several occasions where a Tribunal Member has not been provided material which was filed months prior and is only discovered during an oral hearing.

Additionally, sometimes the section 125 representative has not been provided with a full file, despite communications with the tribunal, which similarly is uncovered at the hearing.

The Victorian Law Reform Commission's recommendation regarding specialist processes, including improved triaging and diversion of applicants and applications to alternative processes,[3] would greatly enhance the existing models of operation and practice in QCAT's guardianship jurisdiction. The tribunal must be resourced to undertake case management and triaging in exercising its inquisitorial function.

This requires specialist support from QCAT's registry to manage:

- Early case management.
- Triaging of applications, with a judicial registrar determining merit to proceed to hearings and the power to make inquiries and reject applications.

  Our members report there are circumstances where applicants are initiating QCAT applications as a way of sabotaging an adult's progress, when the applicant is no longer part of the adult's life. These applications should be further scrutinised to determine merit.
- Early information gathering to ensure that adults, legal representatives and advocates have access to documents to enable them time to prepare themselves and obtain evidence. Copies of QCAT orders should also be provided including to separate representative appointees. Registered post is preferred to ensure that service has been securely provided. This is particularly important for adults experiencing elder abuse.

Our members have also suggested the tribunal should more frequently utilise non-reviewable orders. Allowing orders to lapse can be adequate when circumstances are suitable, for example, a Guardian for Accommodation decision can lapse once the adult is in suitable accommodation for 3 months and not looking to change that living situation.

Specialised registry staff would significantly support the tribunal by identifying adults who have supports or other people that can assist them or are able to advise the support the adult may need to make their own decisions. This model would ultimately be much more effective and efficient in identifying adults who have been caught up in the jurisdiction unnecessarily.

Specialisation and training would also assist early determinations in matters where vexatious parties are seeking to join or commence a matter as an 'active party' without sufficient standing or as an attempt to further perpetrate elder abuse or other forms of abuse. Our members have reported the addition of some parties as inappropriate and having confidentiality and privacy impacts. There should be appropriate restrictions in the *Guardianship and Administration Act* in this regard. Preparation and maintenance of a QCAT benchbook for the guardianship jurisdiction would also assist.

[3] Victorian Law Reform Commission, *Guardianship* (Final Report No. 24, 2012).

Adults should also be supported by improved access mechanisms to advocacy and legal representation.

Hearing rooms and accessibility (Q19-20)

Our members report there can be challenges with hearing matters in tribunal rooms and court rooms, for example, due to the number of active parties and the difficulty in conveying the gravity of the matter. For some adults the hearing rooms are intimidating.

The Issues paper highlights the Victorian example where the Human Rights Division operates from a purpose-built facility developed in consultation with Dementia Australia and Vision Australia. Lessons may be drawn from the Victorian model. QLS supports early consultation with court users with lived experience and other peak bodies and community organisations at the earliest stages of building design and refurbishment in this regard. Specific consultation should also be conducted with the deaf and hard of hearing community, with such a lived experience being overly represented in many users of the guardianship jurisdiction due to age. The failure to improve accessibility has significant procedural fairness implications and can lead to unnecessary appeals and further impact an adult's human rights due to delays.

The presence of security staff is also of assistance for clients where there are family violence concerns. This should be combined with appropriate infrastructure and processes to allow physical separation during entry/exit, checking in and while waiting.

Legal and other representation (Q21-26))

There should be an automatic right to representation for the adult, without the need to seek leave, regardless of the adult's impairment. This avoids the confusion of an implied determination of impaired capacity, if leave is not seen as necessary by the tribunal. This also provides certainty for legal practitioners in the context of their professional obligations.

We understand the Australian Lawyers Alliance similarly supports legal representation "as of right" in these matters, where the promotion of human rights and autonomy should remain paramount.

This should be direct representation unless the adult, with appropriate support, cannot provide instructions to a direct representative. If direct representation is not possible, then there should be separate representation applying a best interests model informed by the underpinning principles that apply in the jurisdiction. Such a model should include putting before the views, so far as they can be ascertained, of the adult.

Our members report increasing complexity and conflict in areas such as powers of attorney relating to significant decisions, disputes about the management of large assets, and allegations of negligence regarding attorney conduct. It may be that power to refer some matters to the Supreme or District Court is appropriate in some cases. The prevalence and impacts of elder abuse add significantly to the complexities.

Legal representation could assist in diverting unmeritorious applications and identifying matters where an active party does not have standing, at an early stage. There should be clear legislative mechanisms to determine whether a matter warrants engagement of legal representation.

Additionally, if other parties have legal representation, the adult should automatically be appointed a funded section 125 representative if no other legal representative or advocacy option is already engaged. These appointments should not be means tested as often adults do

not have access to any funds, even where they may hold a large asset pool. If the adult has means and is able to pay, it is appropriate for there to be an avenue to direct payment, for example, a direction to the administrator to pay reasonable professional fees as incurred.

Our members suggest that some matters should also allow for section 125 appointments as of right. These include:

- Restrictive Practices applications.
- Matters involving family and domestic violence (including abuse of older persons).
- Supreme Court referrals where an adult is under indefinite detention (i.e., under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld)); and
- District Court, or child safety applications (where the adult is a parent of a child subject to Child Safety appointment).

Our members report there is no clear criteria as to when these appointments will be made. In our view, making a section 125 appointment automatically will improve the management of these matters as case officers will be familiar with the process and right to share information. This will reduce delays and resource impacts as there will be less need for the adult or advocate to request a section 125 appointment (this usually requires an adjournment and postponement once the separate representative has considered the matter).

We also suggest some legislative drafting is needed to clarify the scope of the representative role in supporting the adult's participation upon these appointments.

Funding is a significant issue for section 125 appointments. Whilst they are more complex, requiring up to 150 hours work, resourcing by community legal centres for these appointments comes from existing funding allocations and is not specifically funded. These funding impacts will only increase with an ageing population and generational wealth shifts over the next decade.

QLS strongly recommends these appointments be specifically and adequately funded, for example by expansion of Legal Aid Queensland's Mental Health Legal Practice program to facilitate these appointments.

These appointments are essential in overcoming barriers for adults experiencing elder abuse, who are socially isolated or financially impacted. Our members report that often there has been insufficient contact with the adult and that strengthened inquisitorial processes, registry powers and pre conferencing (with specialist staff) along with supported access to legal and non-legal support services (including disability advocacy) is essential to timely responses to elder abuse.

It is important to note such appointments do not mean the adult will not attend or participate in the hearing.

Other parties' right to representation

Consistent with our longstanding position that legal representation should be available as of right to all parties, QLS considers other parties (including active parties) should have a right to legal representation in guardianship matters and that it should be publicly funded for the adult in appropriate cases.

Government parties and self-represented parties

QLS considers that if government entities are legally represented in a matter, then all parties should be legally represented.

In respect of self-represented parties likely requiring further assistance, we suggest it would be appropriate to appoint counsel to assist akin to the Coroners Court model.

Other matters

Costs (Q27-30)

QLS agrees the default position, that each party must bear their own costs, should remain (with some revision of current costs provisions) in this jurisdiction, provided there is appropriately funded legal assistance for financially disadvantaged parties. This should be the case irrespective of whether the matter is in relation to an enduring power of attorney dispute under the *Powers of Attorney Act 1998* (Qld) or guardianship, administration or declaration of capacity matter under the *Guardianship and Administration Act 2000* (Qld).

In respect of costs orders we recommend:

- section 125 separate representative appointees and generally adults/principals should be protected from costs orders.

  Although, our members report that there may be some cases where it would be appropriate for all parties' costs to be paid from the adult's estate (for example, where the application was only necessary because there was no enduring power of attorney and the adult has a significant estate).

  and

- the power to award costs in cases where applications are brought vexatiously or not in good faith. (e.g. as part of an ongoing family dispute, or to seek control of NDIS funds).

It is important to emphasise that work in this jurisdiction can be extremely complex.

QLS would support a scale of costs. However, any scale must accurately reflect the true cost of legal assistance. The tribunal should also have scope to make other orders in particularly complex cases. We suggest a statutory requirement to review any scale is necessary in this regard.

Tribunal composition (Q31-32)

QLS is firmly of the view that only legally qualified and specialist trained Members should be hearing guardianship matters. A panel becomes less necessary if Members have specific training and expertise. As stated previously, Members could utilise 'friend of the court' or 'counsel assisting' type roles in certain matters such as complex financial cases, those involving restrictive practices or complex disability. The tribunal would then be supported by specialists as necessary, e.g. accountants, superannuation experts, behaviour support practitioners, specialist health professionals and cultural expertise and support. This would require funding to support the model but is necessary to promote the improved participation of adults in decision-making and greater understanding of supporting adults where capacity is in question.

The Issues paper states there is no ongoing opportunity for permanent or sessional Members to shadow another tribunal Member on guardianship matters. New Members should have the opportunity to shadow experienced Members. The Senior Member should provide ongoing training support and be required to observe all the Members' proceedings at least once per calendar year to enhance ongoing development.

QLS would welcome an increase in appointment of full time and part time Members with less reliance on sessional Members.

Alternative dispute resolution (Q33)

QLS supports the increased use of dispute resolution in guardianship matters, especially for matters involving enduring powers of attorney. Dispute resolution options and support services should be available prior to an application being made so that if a matter is resolved within families, the requirement for an application and Tribunal proceedings is avoided.

Our members with expertise in this area report that when the adult is not involved in the dispute, and the dispute is between family members, the matter could be resolved in mediation, before attracting QCAT attention.

In matters where the adult is wishing to challenge decisions being made by the attorney or appointed decision maker, but not necessarily change the appointments, mediation would be useful. Although our members will refer clients to alternative dispute resolution, there is difficulty compelling other parties to participate as, again, there is an inaccurate perception that the adult having impaired capacity cannot raise concerns. A tribunal direction for mediation would be useful in these circumstances, and could be applied for, without the need to apply for a hearing.

Mediation will need to be conducted by highly specialised mediators. Additionally, all mediation, conferencing and facilitated meetings need to include an educational focus on the primacy of the adult's interests, views and preferences.

By their nature, these processes should be voluntary, however an attorney's refusal to engage may also speak to their willingness to listen and respond to the adult's concerns.

Notification and service (Q34-39)

As indicated above, the adult and their representative should be provided with a copy of all applications and reports provided on the file, as soon as they are lodged.

It is preferred that the tribunal retain this responsibility, as appropriate service can be difficult to establish between parties who are in dispute.

Sharing of personal information

Affected adults often report dissatisfaction that their personal information (forming part of the Notice of Hearing) is being shared with people they consider are not adequately connected to the adult or the matter. There should be clear registry processes in place to preserve and manage party confidentiality and sharing of information in appropriate circumstances.

Inspecting or accessing documents (Q40-42)

Our members report there have been improvements in obtaining documents in recent years.

However, not receiving all the documents on file for a matter is an ongoing issue, with our members often attending a hearing only to discover that materials submitted to the tribunal were not distributed to all parties.

Confidentiality orders against the adult are increasingly made, and these cause concern for the adult to access information being said about them. Some confidentiality orders have been unworkable, for example where the entire file is restricted from the adult, so the advocate is unable to adequately explain the reason for contacting the adult, nor the allegations contained

in the material. Routinely, confidentiality orders are meaningless as other parties have disclosed the material. Confidentiality orders are commonly without real merit.

The online portal should improve access to file material so that parties are less reliant on the case officer taking manual steps (e.g. emailing the information to various parties) although we reiterate that other mechanisms will still be needed where digital access is a barrier.

Written reasons (Q43)

QLS supports the publishing of guardianship decisions, especially where there are novel or emerging issues involved. Too few decisions are published, so case law is difficult to use in submissions.

Challenging tribunal decisions (Q44-47)

Our members report there are often delays in receiving decisions in a timely manner, although this has recently improved. This impedes a party's access to appeal and to reopening of matters (which is rarely utilised) and can have significant impacts when a decision such as a selling a home has been made.

Appeals are expensive and, given the largest sector of legal assistance and advocacy support in guardianship are community legal centres, an appeal can be too onerous, slow and not adequately funded. The potential for a costs order is also a concern. The preference to obtain counsel adds to the cost and difficulty. Our members report it is typically easier, cheaper and more expedient to lodge a new application, seeking a review.

Our members have also emphasised that speciality processes and staff should remain through the whole process from registry to appeals.

Supervision of private administrators

There is currently insufficient scrutiny of administrator actions, especially in long appointments. At a minimum, private administrators should be directed and required to provide annual reporting to the adult.

Adults should be provided with reports from QCAT confirming they have received the administrator's report and that either it was considered satisfactory, more information was required or was unsatisfactory and that QCAT will initiate a review of the appointment.

Data and reporting (Q48)

QCAT annual reporting should be more comprehensive. Reports should include data in relation to adults such as demographics, location/regions, number of applications, number of hearings, number of people attending their hearing, number of private/public appointments, and whether a matter is aged care or NDIS generated.

Consistency in collected data is also important so QCAT, government agencies and support services can glean a clear understanding of where issues are emerging. For example, QCAT records the number of applications, whereas most agencies would record the number of hearings or the number of adults. However, some hearings have 7 or more applications being heard at once. This is critical information to understand what is happening in practice and where additional resources may be needed.

The Issues paper notes that QCAT has previously reported on clinical trials involving adults with impaired decision making in its annual reports. This should be resumed for transparency and in the public interest.

Forum and options for greater specialisation (Q49-51)

There are different views amongst our members about the best forum and options for greater specialisation in QCAT's guardianship jurisdiction.

There are however consistent views as to the need for its practices and processes to facilitate and maintain specialised staff and training and ensure the adult remains involved throughout the process. As noted earlier, specialisation in the registry must go hand in hand with specialist tribunal Members (whether as a separate entity, division or otherwise).

Broadly, our members are supportive of a specialised division noting the potential budgetary and time constraints with setting up a separate tribunal. There are also benefits for families to see how the processes fit together, particularly where legal or other issues are intersecting.

There needs to be clear rules about what can and cannot be heard in the separate division and by which specialist Members. The division must be supported by adequate training and education funding for development of existing and new specialist staff. This could be supported by requiring a certain number of days of exposure to the jurisdiction each calendar year.

We note that such specialist training would be beneficial in all parts of the tribunal.

Review of Public Guardian decisions (Q52)

It is appropriate for the review of decisions made by the Public Guardian to stay where guardianship matters are heard to ensure specialism is retained and applied.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on [redacted]

Yours faithfully

[redacted]

Peter Jolly
President