



**PAVE THE WAY**

vision to action through planning

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The Executive Director  
Australian Law Reform Commission  
GPO Box 3708  
Sydney NSW 2001

By email: [disability@alrc.gov.au](mailto:disability@alrc.gov.au)

Dear Colleagues

### **Equality, Capacity and Disability in Commonwealth Laws**

Thank you for the opportunity to provide a submission in relation to the above inquiry.

#### **About Pave the Way**

Pave the Way works with families throughout Queensland to clarify their vision, to plan for a good life and a secure future for their relatives with disability.

One aspect of our work is to provide families with information about the law that relates to future planning. We provide information about assisting with decision-making, including through the use of informal support, powers of attorneys and guardianship and administration orders.

The information that we share with families emphasises the seriousness of removing the ability of a person to make their own decisions through a guardianship or administration order. We provide families with information about the legal recognition of informal decision-making support as well as trying to help families to develop strategies so that they can avoid obtaining an order.

Our experience working with families has illustrated to us that families are less likely to seek a guardianship or administration order in relation to their loved one when government agencies and other organisations recognise their role in their family member's lives.

Our submission simply seeks to stress the importance of laws that recognise the role of families in assisting people with disability to make decisions. We have only responded to the questions in your issues paper that relate to this issue.

#### **Question 5: How should the role of family members, carers and others in supporting people with disability to exercise legal capacity be recognised by Commonwealth laws and legal frameworks?**

Our observation is that the lives of family members who are caring for people who have disability are made more difficult by a lack of recognition of the natural authority of families and their role in the decision making process. Families often express an intention to seek a guardianship or administration order because their authority has been challenged by government agencies



and other organisations. When families are seeking to assist their family member to gain some level of independence they regularly struggle to have bank accounts set up for their family member, to have utilities connected and disconnected and to enter into housing agreements.

**Question 14: What changes, if any, should be made to the nominee provisions or appointment processes under the following laws or legal frameworks to ensure they interact effectively:**

**(a) the *National Disability Insurance Scheme At 2013 (Cth)* and NDIS Rules**

**(b) social security legislation; and**

**(c) state and territory systems for guardians and administrators**

Our observation is that nominee provisions are very important. They lessen the need for families to seek formal guardianship or administration orders. While we acknowledge that it is important to protect people with disability from potential exploitation this should be balanced carefully with ensuring that people who have a disability that affects their decision-making capacity can be supported to make decisions.

**Question 28: What issues arise in relation to banking for people with disability? What changes, if any, should be made to Commonwealth laws and legal frameworks to ensure people with disability control their own financial affairs and have equal access to bank loans, mortgages and other forms of financial credit?**

The issues paper notes that banks often refuse to allow people with disability to have their own bank account. This is a problem that is regularly experienced by families who are trying to open an ordinary bank account for their family member who has a disability. We are aware of numerous examples of banks being willing to open an account for a child without disability but refusing to open an account for a child with disability. Similarly banks regularly refuse to open accounts for adults with disability. While it appears that there is no actual legal impediment to banks offering this service, some banks express concern about capacity and others site an obligation to protect vulnerable people. When facing this problem some families decide to seek an administration order.

Better implementation of industry guidelines such as the Australian Bankers' Association Code of Banking Practice (in particular paragraph 7) and education about anti-discrimination legislation may assist in resolving this issue

Thank you again for the opportunity to provide a submission to your inquiry, we look forward to reading your Discussion Paper.

Yours faithfully

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