

Question 1.

The Declaration may indicate Australia's caution at the time of ratification as it was unclear what final interpretation would be placed on Article 12. The Declaration may also indicate Australia's confidence in the safeguards built into state/territory guardianship systems that differentiate it from other systems internationally.

The question of how consistently these safeguards are applied in Australia is important, particularly in relation to plenary guardianship orders and financial management orders that are generally unreviewed.

Question 2.

Public Guardian is aware of ongoing consultation about the Strategy.

Question 3.

No.

Question 4.

Yes, if the best agreement was reached. A uniform approach should fit with the Nation Disability Insurance Scheme and should not require that a person prove his or her capacity through assessment.

Question 5.

Supported decision making should be recognised as an essential part of the decision making process for people with decision making needs. Many if not most families, carers and others already provide support to people with decision making needs. In NSW the Public Guardian is partnering with Ageing, Disability and Home Care and NSW Trustee and Guardian in a Supported Decision Making pilot to find out more about the best ways to support people to make their own decisions and assist supporters to provide the best support. The pilot should be completed and evaluated by end 2014.

Question 6-8: no comment

Question 9.

Decisions of the NSW Public Guardian and NSW Civil and Administrative Tribunal (Guardianship Division) can be reviewed by the NSW Civil and Administrative Tribunal, allowing greater transparency and accountability in

the decision making process. The right of review is not consistent across Australia.

Question 10-11: no comment

Question 12.

Question 13.

The NDIS Rules indicate that a nominee should be appointed in rare circumstances and with a view to the person's wishes. It would be worth reviewing launch sites to see what decisions are being made in practice. In situations where there are concerns for a person's capacity to participate in the planning process in such a way that allows them to gain the most from the scheme, recognition of supported decision making could allow the person to receive decision making support without a nominee being required.

Question 14.

It is our understanding that where there is a state/territory appointed guardian or financial manager, that person shall be appointed nominee, if their guardianship / financial functions are relevant to the role. Our experience in the NSW Hunter launch site is that the Public Guardian has been appointed nominee for people under his guardianship.

Question 15-33: no comment

Question 34.

Question 35.

Issues relating to unlawful detention and unlawful restraint should be discussed in relation to aged care facilities.

Question 36.

Question 37.

People should be protected from any behaviour towards them which may constitute a crime or tort under the common law. Judicial oversight of any authorisation for restrictive practices should be in place.

Question 38-41: no comment

The Public Guardian looks forward to the opportunity to comment on these important issues in more detail in the ALRC Inquiry's Discussion Paper.