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Guardianship laws overhaul needed to help promote people's rights: report

Tasmania's guardianship laws are outdated and need to be reformed to advance the rights of people with disability, according to a new report released today.

The Tasmania Law Reform Institute (TLRI) has released its latest report, *Review of the Guardianship and Administration Act 1995 (Tas)*, which recommends a major overhaul of the State's guardianship laws.

The report is the first comprehensive review of the Act since it came into force 20 years ago, with the institute receiving considerable community input during its consultation period. These submissions provided the basis of its recommendations.

Currently, the Act covers people who, because of a disability, are unable to make decisions about their financial and personal matters, including medical treatment.

Among the report's recommendations is the removal of the need to establish that a person has a disability, and refocusing on whether a person is able to make decisions with the use of appropriate support.

The report states this approach ensures that people with disability are treated equally before the law, reflecting a contemporary rights-based approach to decision-making.

Other key recommendations include:

- A supported decision-making framework, with traditional guardianship and administration as a last resort;
- Decisions about a person's life being based upon their views, wishes, preferences and rights, removing the 'best interests' test;
- Clarifying the legal status of advanced care directives;
- Reforms to prevent, better detect, and respond to abuse and neglect of people with a need for decision-making support.

"These reforms will bring Tasmania's laws closer into line with laws in Victoria and several overseas jurisdictions and are broadly consistent with recommendations made by other law reform institutes across the country," report author Kate Hanslow said.

The report also recommends that advance care directives be included in the legislative framework.

"The institute received a lot of feedback that, while advance care directives are made and used in Tasmania, it would be useful for their role to be confirmed by legislation," Mrs Hanslow said.

"The proposed provisions will strengthen the role of advance care directives in supporting people to make their own decisions and giving them confidence that those decisions will be respected."

The majority of applications before the Guardianship and Administration Board involve people over 65 years of age, with the most common disability being dementia.

The report considers a range of safeguards to better protect against the abuse and neglect of people who may require support with decision-making.

"These reforms complement the broader national reform agenda to prevent, detect and respond to elder abuse in the community," Mrs Hanslow said.

The review of the Act was referred to the institute by former State Attorney-General, the late Vanessa Goodwin MHA. The report evaluated existing laws against the rights enshrined in the *Convention on the Rights of Persons with Disabilities* and was undertaken in consultation with an expert reference group comprising Jennifer Dunbabin, Philippa Shirley and John Blackwood.

For media interviews contact: Kate Hanslow (report author) 0409 894 533; Associate Professor Terese Henning (TLRI Director) 0437 391 064.

The TLRI is committed to improving the accessibility of its reports. An Easy Read version of the report will be available on the TLRI website soon.

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