



NSW Civil and Administrative Tribunal
New South Wales

Case Name: BQH
Medium Neutral Citation: [2018] NSWCATGD 16
Hearing Date(s): 27 September 2018
Date of Orders: 27 September 2018
Decision Date: 27 September 2018
Jurisdiction: Guardianship Division
Before: M D Schyvens, Deputy President
Decision: The application to review the current guardianship order for BQH is dismissed after hearing.

The guardianship order for BQH made on 15 September 2017 has been reviewed. The order is now as follows:

1. The Public Guardian is appointed as the guardian.
2. This is a continuing guardianship order for a period of three years from 27 September 2018.
3. This is a limited guardianship order giving the guardian(s) custody of BQH to the extent necessary to carry out the functions below.

FUNCTIONS:

4. The guardian has the following functions:
 - a) Accommodation

To decide where BQH may reside.

b) Health care

To decide what health care BQH may receive.

c) Medical/Dental consent

To make substitute decisions about proposed minor or major medical or dental treatment, where BQH is not capable of giving a valid consent.

d) Services

To make decisions about services to be provided to BQH.

CONDITION:

5. The condition of this order is:

a) Standard Condition

In exercising this role the guardian shall take all reasonable steps to bring BQH to an understanding of the issues and to obtain and consider their views before making significant decisions.

Catchwords: GUARDIANSHIP -- application to review guardianship order – NDIS -- the meaning of the services function – continued appointment of the Public Guardian

Legislation Cited: Guardianship Act 1987 (NSW), Part 5, ss 3(1)–(2), 3D, 3F, 4, 4(a)–(g), 14, 14(2), 15(3)–(4), 16(2)(b), 21(1)(b), 21(2)(b)

Cases Cited: IF v IG [2004] NSWADTAP 3
NVQ [2016] NSWCATGD 38

Texts Cited: Nil

Category: Principal judgment

Parties: 009: Review of Guardianship Order

BQH (the person)
Public Guardian (appointed guardian)
CZH (carer)

011: Requested Review of Guardianship Order

BQH (the person, applicant)

Public Guardian (appointed guardian)

Representation: Legal Representation:
T Chate (for BQH)

File Number(s): NCAT 2014/00384122

Publication Restriction: Decisions of the Guardianship Division of the Civil and Administrative Tribunal have been anonymised to remove any information that may identify any person involved in the Tribunal's proceedings (s 65, Civil and Administrative Tribunal Act 2013 (NSW)).

REASONS FOR DECISION

Background

- 1 BQH is 25 years of age and currently resides in a group home in regional NSW.
- 2 The Tribunal first received applications relating to BQH in July 2015. At that time, MAS, an advocate with the organisation People with Disability (PWD), made applications seeking the appointment of a guardian and financial manager for BQH.
- 3 A hearing was held on 17 August 2015. The Tribunal made orders on that same date that the Public Guardian be appointed as BQH's temporary guardian and that the hearing for the financial management application be adjourned. The Tribunal's reasons for those orders disclosed the following:
 - At that time, BQH was living with her parents, GBH and CZH, in an outer suburb of Sydney;
 - The applicant requested the hearing of the applications be expedited, as she understood GBH had allegedly assaulted CZH, which resulted in CZH's hospitalisation, and as a result had concerns for BQH and her accommodation;
 - That the evidence before the Tribunal was that BQH has moderate intellectual disability and challenging behaviours;
 - That there was an immediate need for a guardian to be appointed, primarily because BQH did not wish to remain living in the family home, and was at risk

of harm and homelessness as she was unable to make alternative arrangements herself.

- 4 A further hearing was conducted on 22 September 2015 at which time the Tribunal appointed the Public Guardian as BQH's guardian for a period of one year, and committed the management of her estate to the NSW Trustee and Guardian, with the financial management order to be reviewed in one year's time.
- 5 Both the guardianship and financial management orders were reviewed on 27 September 2016. Both orders were renewed: the guardianship order for a further one year period, and the financial management order was made non-reviewable.
- 6 The guardianship order was further reviewed at a hearing on 15 September 2017. The Tribunal renewed the appointment of the Public Guardian for a further one year period with the authority to make decisions about the services BQH receives.
- 7 On 12 October 2017, the original applicant, MAS, requested that the renewed order be reviewed due to alleged delays by the Public Guardian in arranging services for BQH and for not involving her in the decision-making process. The hearing was held on 7 November 2017 and the Tribunal was not satisfied that the application disclosed grounds to warrant a review of the order.
- 8 On 18 April 2018, the Tribunal received an application from BQH herself requesting a review of the guardianship order that had been made on 15 September 2017. The application revealed that BQH had left her parents' home in February 2018 as a result of her allegedly having been the victim of domestic violence in the home, that BQH was in receipt of respite accommodation, and that BQH was planning to move to a group home in regional NSW.
- 9 The application for review submitted that the order should be revoked on the basis the actions and decisions (or lack thereof) of the Public Guardian meant that the guardianship order was not in BQH's best interests:

[BQH] has not benefitted from substituted decision making by the Public Guardian, and further that the existing order has prevented [BQH] from accessing the services she needs, and further that it has also prevented her

from having her NDIS plan reviewed, and further that it urgently needs to be revoked to enable her to live in the group home at [regional NSW].

It will be submitted, with respect, that it is in [BQH]'s best interests to have the existing order revoked leaving [BQH] free to engage a new co-ordinator of services under the NDIS, also to engage the services she needs, also to negotiate directly with the NDIS, and also to access her NDIS funds; with the help of her advocate.

- 10 A directions hearing for BQH's application was conducted on 1 June 2018 primarily to determine a request by BQH to be legally represented by Mr Tim Chate, a solicitor with the Intellectual Disability Rights Service (IDRS). At that directions hearing, the Public Guardian submitted the Tribunal should consider appointing a separate representative for BQH in the proceedings, rather than granting her leave to be legally represented as she had requested. The Public Guardian also raised issues in relation to BQH's intention to seek a report from an appropriate healthcare professional, assessing her capacity for decision making, to support her review application. The Tribunal issued directions to the parties and adjourned the matter to a further directions hearing.
- 11 A further directions hearing was conducted on 22 June 2018 at which time the Tribunal granted leave for BQH to be legally represented by Mr Chate, and noted that the Public Guardian had consented to BQH obtaining a report assessing her decision-making capacity, as was contemplated at the previous directions hearing. The substantive hearing for BQH's application for review was set down for 21 August 2018.
- 12 On 19 July 2018, the Tribunal received a request from Mr Chate on behalf of BQH that the substantive hearing be adjourned to allow more time for the completion of the report into BQH's decision-making capacity. The Tribunal adjourned the proceedings (on the papers) until 27 September 2018.
- 13 These reasons explain the orders made by the Tribunal at the conclusion of the substantive hearing held on 27 September 2018. As the guardianship order was due to be reviewed given the term of the order was to end on 15 September 2018, the statutory end-of-term review of the order was also listed for hearing at the same time as BQH's application for review.
- 14 As is detailed later in these reasons, by the time of the substantive hearing, circumstances had changed significantly for BQH, to the extent that she no

longer sought revocation of the guardianship order, but rather, sought the continuation of the appointment of the Public Guardian with expanded authority. Accordingly, with the consent of BQH's legal representative, I dismissed BQH's application for review of the current order and proceeded to review the order through the vehicle of the statutory end of term review.

The hearing and the parties to the hearing

- 15 At the end of these reasons are lists of the parties to the application and the witnesses who participated in the hearing. [Appendix removed for publication.]
- 16 The Tribunal endeavours whenever possible and appropriate to ensure that the person the subject of guardianship proceedings participates in the hearing so that the Tribunal may obtain their views. The hearing was listed within reasonable proximity to the regional NSW location where BQH resided at the time, to promote her attendance. Pleasingly, BQH was able to attend the hearing with the support of her legal representative.
- 17 The Tribunal's reasons for previous orders relating to BQH have identified BQH's mother, CZH, as a party to guardianship proceedings by virtue of being a carer: s 3D and s 3F of the *Guardianship Act 1987* (NSW) (the Act). Accordingly, CZH was provided with a notice of the hearing and copies of documents relating to the hearing. Both CZH and BQH's father, GBH, had communicated with the Tribunal's Registry prior to the hearing, requesting that they participate in the hearing by telephone.
- 18 On behalf of BQH, Mr Chate wrote to the Tribunal prior to the hearing advising that it was BQH's wish that her parents have no involvement in the hearing.
- 19 At the commencement of the hearing I noted that I saw no need to make contact with GBH, as he was not a party to the proceedings. In relation to CZH, while on the evidence before me it may be questionable whether she, as a carer, retained the status of being a party to the proceedings, I enquired whether BQH would object to me contacting CZH at the commencement of the hearing to seek her views, without her participating for the duration of the hearing. After a break to confer with Mr Chate, BQH advised she was content with this course of action.

20 Accordingly, I contacted CZH and sought her views on the matters that were before me. CZH stated that she missed BQH, that BQH's relatives missed her, that she and GBH loved her, and that she wanted BQH to be happy in life and to look after herself. After receiving CZH's views I terminated the call with her and proceeded with the hearing. I note that BQH was visibly distressed during the period her mother was providing her views to me.

What did the Tribunal have to decide?

21 On reviewing the current guardianship order the Tribunal may renew the order, renew and vary the order, or determine that the order is to lapse.

22 The questions to be considered by the Tribunal were:

- Is BQH someone for whom the Tribunal could make an order because she continues to have a disability which prevents her from being able to make important life decisions?
- Should the Tribunal make a further guardianship order, and if so, what order should be made?
- Who should be the guardian?
- How long should the order last?

Is BQH someone for whom the Tribunal could make a further order because she continues to have a disability which prevents her from being able to make important life decisions?

23 Section 14 of the Act provides that the Tribunal may make a guardianship order for a person if it is satisfied that he/she is "a person in need of a guardian". A person in need of a guardian is "a person who because of a disability is totally or partially incapable of managing his or her person": s 3(1) of the Act. A person with a disability is a person who is:

- (a) intellectually, physically, psychologically, or sensorily disabled;
- (b) of advanced age;
- (c) a mentally ill person within the meaning of the *Mental Health Act 2007*; or
- (d) otherwise disabled;

and by virtue of that fact is restricted in one or more major life activities to such an extent that he or she requires supervision or social habilitation: s 3(2) of the Act.

24 I had before me an extensive report authored by Professor Z, forensic psychologist with a university in Sydney. The report, which was titled a “forensic psychological assessment of BQH” outlined Professor Z’s qualifications, noted that she had been instructed for the purposes of the application before the Tribunal to write the report, and detailed the capacity assessments that she had conducted upon BQH over two consultations on 28 June and 24 July 2018. Professor Z provided the following summary conclusions in her report:

...

[BQH] functions in the range of moderate intellectual disability for both cognitive reasoning and skills of adaptive behaviour. Her communication skills are the area of greatest deficit, in the range of severe intellectual disability. Therefore, [BQH] probably suffers from significant frustration when trying to communicate with others; these results also are indicative of serious deficits when attempting to understand complex, abstract concepts. Any information which is conveyed to [BQH] needs to be presented at a level which takes in to account her receptive language deficits.

...

In my opinion I agree with the view expressed that the client has a cognitive impairment and severe psychological and behavioural disturbance, and is unable to make important life decisions.

...

When asked about her health care needs, she did not understand the question and could not conceptualise of what would be needed. She is receiving some medication, but she did not know what the medication was. She also said that she would like to engage in some training to become a dog washer, but did not know how this might be achieved. Therefore, she has a very limited understanding of the breadth and complexity of her needs.

...

In my opinion, the client herself does not have the capacity to make decision about her accommodation, health care and services, and lacks insight into her needs. She may be able to make some of these decisions with the help and support of her advocate, but her advocate is in Sydney and [BQH] now resides in [regional NSW] and apparently has not seen her advocate in a face-to-face capacity since she moved to [regional NSW].

25 Mr Chate noted that the report of Professor Z was clear in its conclusion. That is, BQH has an intellectual disability and as a result is unable to make important life decisions. I received no submissions suggesting any contrary conclusion should be drawn from the report.

26 I accepted the detailed and uncontradicted report of Professor Z. I was satisfied that BQH had a disability which impairs her decision-making ability. I was satisfied that she remains a person for whom a guardianship order could be made.

Should the Tribunal make a further guardianship order and if so, what order should be made?

27 The Tribunal must consider all of the following matters set out in s 14(2) of the Act, before exercising its discretion to make a further guardianship order:

- (a) the views (if any) of:
 - (i) the person, and
 - (ii) the person's spouse, and
 - (iii) the person's carer and
- (b) the importance of preserving the person's existing family relationships, and
- (c) the importance of preserving the person's particular cultural and linguistic environments, and
- (d) the practicability of services being provided to the person without the need for the making of such an order.

28 These matters have no hierarchy or weighting and each is a mandatory consideration. However, the Tribunal must undertake a balancing exercise for its consideration of the matters in s 14(2) of the Act. When undertaking this task the Tribunal may be guided by the principles that are set out in s 4 of the Act: *IF v IG* [2004] NSWADTAP 3.

29 As mentioned previously, between the time that BQH filed her application with the Tribunal seeking to revoke the current guardianship order (18 April 2018) and the day the hearing before me (27 September 2018), BQH's circumstances had changed to the extent that she no longer sought to have the order revoked. In fact, she wanted the appointment of the Public Guardian to continue in an expanded role. Mr Chate provided the following written submission in this regard:

I note that since making her application, [BQH]'s living arrangements have changed, also she has a much larger NDIS plan which includes funding for accommodation, and she has been assessed by [Professor Z] as needing a guardian. [BQH] accepts she needs a guardian, however she does not want [a

disability service provider] as either coordinator of services, or as a service provider.

- 30 I asked BQH if she thought that she needed the guardianship order to continue. She told me that she needed help, that she wanted “to remain with the Public Guardian as it makes me feel safe”, and that she thought it would be safer for her to remain with the Public Guardian, as she was worried that her mum and dad would try to find out where she is living and she wanted no contact with them.
- 31 Mr Chate stated that the guardianship order needed to continue and that there should be an expansion of the guardian’s functions. He noted that BQH was now in receipt of an enhanced NDIS plan and that there were plans afoot for BQH to be assisted by an alternative accommodation provider. Mr Chate noted that these issues required a guardian to be appointed with the authority to make decisions for BQH about her accommodation and services. These submissions were supported by Ms Janelle Sayer, representative of the Public Guardian.
- 32 Mr Y, team leader of the residential facility at which BQH was residing, informed me that BQH has been at her current residence since 7 May 2018. He described BQH as having taken time to settle in and that BQH’s behaviour management had been a challenge for his organisation in recent months. He agreed with the submissions of Mr Chate that BQH required a guardian to make decisions about her accommodation and provision of services, particularly given the nature of her NDIS funding.
- 33 In addition, Mr Y was of the view that BQH required a guardian to make decisions about her health care and provide substitute consent to medical and dental treatment. Mr Y noted that whilst he and health professionals assisting BQH had relied to date on BQH’s consent for treatment, he expressed real concern over the validity of this consent. Mr Y illustrated his concerns through an example of recent treatment that had been provided to BQH in the form of Depo-Provera to assist with her menstrual cycle. Whilst BQH had consented to this treatment, Mr Y remained concerned about whether she truly understood the nature and the effect of the treatment.

34 Ms Sayers, on behalf of the Public Guardian, supported the position taken by Mr Y that there was a current need for a guardian to have authority to make decisions for BQH about her health care, and to provide substitute consents to medical and dental treatment.

35 I was satisfied that there is an ongoing need for BQH to have a guardian appointed. There are significant decisions to be made in the months ahead over BQH's long-term accommodation and the services she is to be provided with pursuant to her NDIS plan. Given the specific evidence within Professor Z's report regarding BQH's lack of understanding of her healthcare needs and the purpose of her current medications (see [24] above), and the evidence of Mr Y, I was also satisfied that BQH requires the appointment of a guardian with the authority to make substitute decisions about her health care and to provide substitute consent to medical and dental treatment as required. In making this determination I took account of the fact that it seemed she was at the time estranged from anyone who may be able make substitute decisions in this domain of her life in the role of "person responsible": Part 5 of the Act.

36 Accordingly, I determined that there was an ongoing need for the appointment of a guardian for BQH with the authority to make decisions about her accommodation, her health care, as well as to provide substitute consents to medical and dental treatment as required, and to make decisions about the services to be provided to her.

Who should be appointed as the guardian?

37 The Tribunal is not able to appoint the Public Guardian as a person's guardian if there is a private person who can be appointed: s 15(3) of the Act.

38 The Supreme Court has held that:

the proper meaning to be given to the section is to read it as saying that the Public Guardian should not be appointed in circumstances in which an order can properly be made in favour of another person. That requires not only that the person be willing, reliable and responsible, but that the appointment will result in the policy considerations and principles set forth in the Act being given effect (*W v G* [2003] NSWSC 1170, [25]).

39 As there was no private person seeking to be appointed as BQH's guardian, I continued the appointment of the Public Guardian as BQH's guardian.

How long should the order last?

- 40 On review, a guardianship order can be renewed for a period of up to three years from the date on which it was made.
- 41 I saw no reason to make an order of any less duration than the maximum period permitted of three years. BQH's life circumstances are such that it is likely there will be significant decisions upcoming for which BQH will need support, or a substitute decision made on her behalf, for many months, if not years ahead. BQH has already been the subject of several hearings before the Tribunal. It was evident to me, both in the information provided prior to the hearing, and my own observation of BQH during the course of the hearing, that the lead up to a Tribunal hearing, and the hearing itself, is very stressful for her. There seems little efficacy in putting her through more hearings than required.
- 42 Needless to say, if BQH's circumstances were to change such that she no longer requires a guardianship order, or the level of authority provided to the guardian can be reduced, I would encourage the Public Guardian to seek a review of the order.

Commentary on the Services Function

- 43 As a result of matters raised before a differently constituted panel of the Tribunal at the directions hearing conducted on 1 June 2018 (see [10] above), Mr Chate made the following enquiries in his written submissions dated 24 September 2018:

IDRS would like to know if the services function prevents legal representation, and/or advocacy services, and/or prevents some medical report being obtained; without the consent of the guardian, and IDRS would like to be aware of the understanding that exists between the PG and the GT [sic] as to the meaning of the services function.

- 44 Given I did not have before me a transcript of the directions hearing in question, it was unclear to me whether the questions posed by Mr Chate directly related to the position taken by the Public Guardian at that time. I note that in submissions made by the Public Guardian dated 8 June 2018, the Public Guardian asserted that it had: not objected to BQH being legally represented but suggested that the Tribunal should consider appointing a separate representative for BQH rather than granting legal representation; not

objected to BQH's capacity being assessed but rather questioned the efficacy of such a report given that a number of assessments were already available.

- 45 In compliance with the directions made by the Tribunal on 1 June 2018, the Public Guardian made the following submissions:

10 In [BQH]'s matter the Public Guardian is appointed with a Services function. The Guardianship Act does not define the many and varied roles of a guardian in the life of a Person under guardianship. Nor does the Act specifically define the powers or authorities which can be conferred upon a guardian. As a result of this, the Public Guardian has consulted with NCAT over many years to come to an understanding about the type of decisions he will and will not make under certain functions. Such consultation aimed to ensure orders include specific functions that have utility and can achieve the intended outcomes for the person subject to the order.

11 When proposals are made to this office it is accepted guardianship practice that the Public Guardian can and does make decisions under a services function about case management, in-home care and support services, Aged Care Assessment Teams (ACAT) assessments, legal services, rehabilitation services, assessment and advocacy services, interpreter services, education, training, vocational, and employment services; social and recreational services, positive behaviour intervention services etc.

12 In practice this means the Public Guardian will undertake his substitute decision making role in accordance with the Principles of the Act and our decision making guidelines to consent or withhold consent to proposals received under a relevant function. In this case, the Public Guardian is of the view that both the assessment and the referral to a legal service are Services that the Public Guardian could consent to, if a proposal had been received.

- 46 The Public Guardian subsequently filed a report for the purposes of the substantive hearing dated 13 September 2018. That report submitted, amongst other things that:

The PG acknowledges that there have been issues raised in these proceedings as to its understanding of the limits of the Services function.

It appears that the Tribunal and/or [BQH]'s legal representative think that the PG submitted at the directions hearing on 1 June 2018 that it had the power under the Services function to prevent [BQH] from obtaining independent legal representation or a medical report without its consent. It was not the intention of the PG to submit this and we would not, in any way, prevent somebody from obtaining legal representation and medical reports.

The PG's understanding is that the *Guardianship Act 1987* (NSW) (Act) does not define the roles of a guardian in the life of a person under guardianship. Nor does the Act specifically define the powers or authorities which can be conferred upon a guardian including whether a guardian appointed under the Act can fulfil the role of agent, on another person's behalf, in legal proceedings.

However, over time, through the development of case law various functions have regularly been given to guardians such as a Services function.

The PG did not intend to suggest that it had a 'common understanding' with the Tribunal as to the extent of the Services function. The PG recognises that, from time to time, the Tribunal will confer functions with very specific details; at other times, the Tribunal will give authority in an area without specifying [sic] or limiting it to one discrete action.

The PG understands that if it is allocated the Services function under a guardianship order that it can make decisions about the services someone receives and/or which agencies can provide them. The PG interprets this function in the broadest possible way so that people under guardianship have access to the widest and most flexible range of both specialist and generic services.

47 The functions of guardianship are not defined by legislation. Rather, over the years since the commencement of the Act, the Tribunal (and its predecessor, the Guardianship Tribunal) has issued orders appointing guardians with specific functions to make substitute decisions in certain domains of the person's life. For example, decisions about where the person should live (the accommodation function), decisions about what services they should receive (the services function), and decisions about what health care they should receive (the healthcare function), to name but a few.

48 As was succinctly explained by the Tribunal in the matter of *NVQ* [2016] NSWCATGD 38 at [39]:

A guardianship order may be plenary or limited: s 16 of the Act. Under a plenary order, the guardian has "custody" of the person and all the functions that a guardian has at law or in equity: s 21(1) of the Act. Subject to any conditions specified in the order made by the Tribunal, a guardian has the power to make the decisions, take the actions, and give the consents (in relation to the functions specified in the order) that could be made, taken, or given by the person under guardianship if he or she had the requisite legal capacity: s 21(2A) of the Act. As noted by an Appeal Panel of the NSW Administrative Decision Tribunal in *HH v HI and Protective Commissioner* [2009] NSWADTAP 41, the areas in which such decisions, actions, and consents can be given have not been exhaustively defined: see also *MN v AN* (1989) 16 NSWLR 525.

49 Whilst the Tribunal can exercise the discretion to make a plenary guardianship order as defined in s 21(1)(b) of the Act, such an order has very rarely been made since the commencement of the jurisdiction. This is understandable given the duty of the Tribunal not to make a plenary order in circumstances in which a limited guardianship order would suffice: s 15(4) of the Act. When a limited guardianship order is made, the guardian has such of the functions of that person's person, to the exclusion of any other person, as the order provides (s 21(2)(b) of the Act) and the order must specify which of the

functions of a guardian the guardian shall have in respect of the person under guardianship (s 16(2)(b) of the Act).

- 50 As to the question of whether a guardian, appointed with only one function, that function being the services function, has the authority to prevent or restrict the person the subject of the order from engaging legal representation/advocacy or obtaining a report on their own condition from a healthcare professional, I would suggest that the question should be answered in the negative. To suggest otherwise, in circumstances whereby the Tribunal can and does issue specific functions to guardians relating to the provision of legal and healthcare services, would detract from the purpose and nature of limited orders.
- 51 The Tribunal regularly issues to guardians the function of healthcare. This function permits the appointed guardian to make decisions on behalf of the person for whom they are appointed as to the health professionals they should consult, including decisions about the commissioning of reports from such professionals assessing the person's condition. Similarly, while a less commonly issued function, the legal services function permits a guardian to make arrangements for the person to access to the services of a legal practitioner.
- 52 The submissions of the Public Guardian, which outline that it is the approach of that organisation to exercise the services function in the broadest possible way so that people under guardianship **have access** to the widest and most flexible range of both specialist and generic services (see [46] above), would seem to me to be an appropriate application of the guardian's authority. However, any suggestion that a broad interpretation should be applied to the services function in terms of a guardian's ability to **prevent or restrict access** to services by the person should, in my view, be avoided, given the duty upon a guardian to take account of the person's views, to encourage the person to be self-reliant and live a normal life in the community, and to restrict their freedom of decision and action as little as possible: ss 4(b), 4(c), 4(d) and 4(f) of the Act.
- 53 It is not outside the realm of contemplation that circumstances could arise whereby a guardian may need to restrict the person's access to legal services/advocacy or healthcare professionals, to promote compliance with the

duty upon the guardian to: promote the person's welfare and interests, or to protect them from neglect, abuse or exploitation: ss 4(a) and 4(g) of the Act. However, the authority to engage in such restriction or prohibition should be confined to the specific function of guardianship applicable to the activity in question, and should not be permitted to occur under a more generic function such as a services function.

- 54 Mr Chate's submission also requested to be made aware of the understanding that exists between the Public Guardian and the Tribunal as to the meaning of the services function. This request clearly stems from the submissions of the Public Guardian of 1 June 2018 (see [45] above). I note that the Public Guardian in subsequent submissions clarified that the earlier submissions had not intended to suggest there was some "common understanding" between the Tribunal and the Public Guardian as to the meaning of the function.
- 55 For clarity, I make the comment that no such "understanding", if such were to exist, would be of any validity. The determination of the parameters of the functions of guardianship in NSW is a matter of interpretation for the institutions vested to exercise the jurisdiction of the Act, namely the Supreme Court and the Tribunal. It is only through the orders and judgements of the Court, or the orders and reasons for decision of the Tribunal, that valid interpretation of the meaning or parameters of the functions granted to guardians in NSW can be sourced.

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.
Registrar

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