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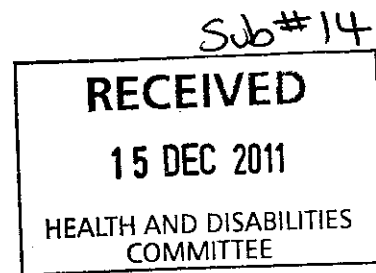
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One Company
Many Brands



15 December 2011

Ms Sue Cawcutt
Research Director
Health and Disabilities Committee
Parliament House
BRISBANE QLD 4000



11.1.4.3

By email: hdc@parliament.qld.gov.au

Dear Ms Cawcutt

PARLIAMENTARY INQUIRY INTO THE QUEENSLAND LAW REFORM COMMISSION RECOMMENDATIONS ON GUARDIANSHIP LAWS

I refer to the *Inquiry into the Queensland Law Reform Commission Recommendations on Guardianship Laws* (the Issues Paper) conducted by the Health and Disabilities Committee. Suncorp welcomes the opportunity to contribute to the discussion.

Who Are We?

The Suncorp Group Limited is the Australia's leading insurer for a range of insurance products that cover personal injuries nationally. Personal injury products include compulsory third party insurance, workers compensation (with travel to and from work cover), commercial and personal insurance products.

Suncorp general insurance products are available through our mass brands: Apia, AAMI, GIO, Vero, Suncorp and our niche brands: Shannons, CIL Insurance, InsureMyRide, Bingle and Just Car Insurance.

This submission is made on behalf of the Suncorp General Insurance division.

The Issues Paper

The Issues Paper raises recommendations made by the Queensland Law Reform Commission (QLRC) in respect to:

- advanced health directives;
- common law rights to consent or refuse treatment – impact of the guardianship legislation;
- decisions to withhold or withdraw a life-sustaining measure;
- objections by an adult to health care;
- other QLRC recommendations including the appointment of a litigation guardian.

Suncorp confines its comments to the recommendations in respect to the appointment of a litigation guardian. Suncorp expresses no view in respect to the remainder of the Issues Paper.

Recommendation 28-2 is the QLRC's proposal in respect to the appointment of a litigation guardian. Specifically it states that Rule 95 of the *Uniform Civil Procedure Rules 1999* (Qld) should be amended:

- (a) to provide that, generally, the court may appoint a person as litigation guardian for a person under a legal incapacity only if the person consents to being appointed as litigation guardian;
- (b) to provide that, despite the provision that gives effect to Recommendation 28-2(a), the court may:
 - (i) appoint the Public Trustee, without the Public Trustee's consent, as litigation guardian for an adult with impaired capacity for a proceeding that relates to the adult's financial or property matters; and
 - (ii) appoint the Adult Guardian, without the Adult Guardian's consent, as litigation guardian for an adult with impaired capacity in a proceeding that does not relate to the adult's financial or property matters; and
- (c) to include a note, in the provision that gives effect to Recommendation 28-2(b)(i), that refers to section 27 of the *Public Trustee Act 1978* (Qld) as the source of the Public Trustee's power to act as a litigation guardian.

Appointment of Litigation Guardian

Suncorp supports the recommendation that the courts should have the ability to appoint the Public Trustee or an Adult Guardian, without the consent of either, as a litigation guardian of last resort for a person who lacks legal capacity. This view is based on balancing the burden on the Public Trustee against the need to protect the rights and interests of individuals with impaired capacity. Suncorp also recognises the potential risks to an individual and the administration of justice if no one is appointed to act, in circumstances where no one is willing to be appointed as litigation guardian and the litigant lacks legal capacity.

Appointing a litigation guardian of last resort would represent the default position in protecting an individual's interests and proper administration of justice. The Public Trustee - as a government agency - has the legislative power to provide safe guards to protect the individual's interests.

If such a default position is not available, delays to the court process are likely because an unrepresented person who lacks legal capacity cannot provide instructions to prosecute their claim in order to enforce their legal rights. This is undesirable for the individual and the administration of justice. The proposed amendment in Chapter 28 would be beneficial by:

- providing adequate representation of individuals who lack legal capacity;
- ensuring that litigated matters progressing in an efficient and timely manner (pre and at court);
- ensuring that litigated matters are dealt with appropriately; and
- protecting the rights and interests of individuals who lack legal capacity.

It is noted the laws in respect to the appointment of a litigation guardian vary across the state jurisdictions.

Suncorp does not specifically wish to make a submission regarding whether a litigation guardian should give consent prior to being appointed. We would prefer to see the law harmonised nationally. If no one is willing to consent, it is desirable, in the interests of justice that the court should have the power to appoint the Public Trustee or Adult Guardian as outlined above.

Conclusion

Suncorp is keen to work collaboratively with the Queensland Government to achieve the right policy settings in protecting an individual's interests, where they lack legal capacity whilst at the same time facilitating the

proper administration of justice. It is preferred that the policy setting adopted be harmonised nationally, if possible.

If you have any questions or comments in respect to Suncorp's response, please contact me on 03 8681 9428 or 0425 294 903. Alternatively, please contact Mike Thomas – Manager, Government and Stakeholder Relations on 02 8121 3115 or 0419 772 069.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Annabelle Butler', written in a cursive style.

Annabelle Butler
Executive Manager
Public Policy and Stakeholder Management
General Insurance