

20 August 2021

Public Trustee Review  
Department of Justice  
Office of the Secretary  
GPO Box 825  
Hobart TAS 7001

To whom it may concern,

**Re: Review of the Tasmanian Public Trustee**

TasCOSS welcomes the opportunity to make a submission to the Review of the Public Trustee. TasCOSS is the peak body for the community services sector in Tasmania. Our membership includes individuals and organisations active in the provision of community services to low income, vulnerable and disadvantaged Tasmanians. Through our advocacy and policy development, we draw attention to the causes of poverty and disadvantage and promote the adoption of effective solutions to address these issues.

With this lens, TasCOSS is particularly interested in the services provided by the Public Trustee under its community service obligations. Those services are provided to people in highly vulnerable circumstances who have had the Public Trustee appointed to manage their financial affairs. In discussions with our members it is clear that there are strong and valid concerns among advocates and community members about whether those services are being delivered in a way that meet human rights expectations as well as the Public Trustee's own commitment to provide a client service focus.<sup>1</sup> In particular, TasCOSS has spoken to Advocacy Tasmania and we endorse the comments and recommendations made in their substantial submission to the Review, especially their call to introduce legislative provisions that recognise the 'will, rights and preferences' of people, instead of a 'best interests' approach, and their call for the establishment of a supported decision-making scheme in Tasmania.

With that endorsement, TasCOSS does not see the need to provide further detailed comment on the Review, other than to comment that the review of the Public Trustee is only one element of a system of guardianship and administration in Tasmania that is clearly failing many of those people who, voluntarily or involuntarily, come under its powers. Those failings have been clearly documented in the Tasmanian Law Reform Institute's (TLRI) 2018 report on the *Guardianship and Administration Act 1995*<sup>2</sup> as well as in regular media reports.<sup>3</sup> It is our strong view that the Tasmanian Government should hasten its response to the TLRI report because, so long as the

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<sup>1</sup> Public Trustee, 'Our Mission, Vision and Values,' [https://www.publictrustee.tas.gov.au/about/our-mission-vision-and-values1.html?searched=values+statement&advsearch=oneword&highlight=ajaxSearch\\_highlight+ajaxSearch\\_highlight1+ajaxSearch\\_highlight2](https://www.publictrustee.tas.gov.au/about/our-mission-vision-and-values1.html?searched=values+statement&advsearch=oneword&highlight=ajaxSearch_highlight+ajaxSearch_highlight1+ajaxSearch_highlight2)

<sup>2</sup> Tasmanian Law Reform Institute, Review of the *Guardianship and Administration Act 1995* (Tas) 2018 [https://www.utas.edu.au/data/assets/pdf\\_file/0005/1178762/Guardianship-Final-Report.pdf](https://www.utas.edu.au/data/assets/pdf_file/0005/1178762/Guardianship-Final-Report.pdf), p.xii

<sup>3</sup> See for example <https://www.abc.net.au/news/2021-06-10/tasmanias-guardianship-laws-criticised/100201824> and <https://www.theadvocate.com.au/story/7300658/mans-life-destroyed-by-tasmanias-public-trustee/>

required legislative, procedural and cultural changes are not made, many Tasmanians will continue to experience breaches of their human rights and a question mark will remain about the Tasmanian Government's commitment to universal applicability of those rights.

Further, we endorse the key principles identified by the TLRI that must underly the systemic change needed. The principles are built on human rights obligations under the *Convention on the Rights of Persons with Disabilities*.<sup>4</sup>

**Principle 1: The equal right to make decisions**

All adults have an equal right to make decisions that affect their lives and to have those decisions respected.

**Principle 2: Support**

Persons who require support in decision-making must be provided with access to the support necessary for them to make, communicate and participate in decisions that affect their lives.

**Principle 3: Will, preferences and rights**

The will, preferences and rights of persons who may require decision-making support must direct decisions that affect their lives.

**Principle 4: Safeguards**

Laws and legal frameworks must contain appropriate and effective safeguards in relation to interventions for persons who may require decision-making support, including to prevent abuse and undue influence.<sup>5</sup>

The Review is an opportunity to put in place legislation, mechanisms and appropriate funding that will protect Tasmanians in extremely vulnerable circumstances. We urge you to make the strongest possible recommendations to ensure that every Tasmanian, particularly those who are subject to guardianship or administration orders, can be assured that they have the ability, through support where necessary, to enact their will, rights and preferences with regard to their financial affairs.

Yours sincerely



Adrienne Picone  
CEO

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<sup>4</sup> *Convention on the Rights of Persons with Disabilities*,  
<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html>

<sup>5</sup> <https://www.alrc.gov.au/publication/equality-capacity-and-disability-in-commonwealth-laws-alrc-report-124/3-national-decision-making-principles-2/national-decision-making-principles-2/>