Australian Autism Alliance

Submission to Queensland Civil and Administrative Tribunal Act Statutory Review 25-26

(Issues Paper 4: Guardianship and Administration - *publication, confidentiality, and identification rights*)

Submitted to: QCAT Act Review Team via online submission portal qcatactreview@justice.qld.gov.au
Date: 31 January 2026
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Acknowledgements

We acknowledge the First Nations and Traditional Owners of the land, sea and waterways and pay respects to Elders past, and present and recognise those whose ongoing effort to protect and promote Aboriginal and Torres Strait Islander cultures will leave a lasting legacy for future Elders and leaders.
We recognise the enduring connection that First Nations peoples have to land, waters, culture, and community. This land was, is, and always will be Aboriginal land.
We acknowledge the individual and collective expertise of those with a living or lived experience of disability, as well as the lived experience of people who have been carers. We recognise their vital contribution at all levels and value the courage of those who share their unique perspective for the purpose of learning and growing together to achieve better outcomes for all.

About the Australian Autism Alliance

www.australianautismalliance.org.au

The Australian Autism Alliance (the Alliance) was established in 2016 and aims to improve the life chances of autistic people and facilitate collaboration within the autism community. The members represent a cohesive national network of key organisations with a diverse focus on autism – that is led by autistic people, advocacy groups, peak bodies, service providers, and researchers.
We reach over half a million people through our communication channels and provide support to people with autism across the lifespan. Most importantly, our work is informed by Autistic people and the Australian Autism community.
The Alliance is a funded Disability Representative Organisation (DRO) and is Australia's strong voice for autism. The Alliance works across government and systems to translate lived experience into evidence-based policy, enforceable safeguards, and measurable outcomes. The Alliance supports Australian government in various roles and representations, including: DSS Disability, Representative Organisation, the NDIA Autism Advisory Group, the NDIA DRCO Co-Design Advisory and Reform groups, NDIS Commission Disability Sector Consultative group, National Autism Strategy Oversight Council member, and National Health and Mental Health Roadmap for Autistic people.

We:

- are Australia's first diverse collaborative network of autism organisations bringing together a range of autism interests.
- are a funded Disability Representative Organisation (DRO) since 2024 advocating reach well over half a million people through our communication channels and provide support to Autistic people across the lifespan from early childhood to adulthood. Most importantly, our work is informed by Autistic people and the Australian Autism community
- have significant national and international linkages for advocacy, research and service delivery.
- worked with government to secure pre-election commitments for the National Autism Strategy and National Health and Mental Health Roadmap
- continue to support government through being active in various roles and representations, including: DHDA DRO forums, the NDIA Autism Advisory Group, the NDIA DRCO Co-Design Advisory and Reform groups, NDIS Commission Disability Sector Consultative group, National Autism Strategy Oversight Council member, National Health and Mental Health Roadmap for Autistic people, and Chidren's Expert Advisory Group
- have been a witness at a number of inquiries including the Senate Inquiry into Autism and the NDIS Capability and Culture of the NDIA.
- commissioned the largest and most comprehensive community consultation survey of Autistic people and their families and carers in Australia to inform the Senate Inquiry into Autism with over 3,800 responses received.

Contents

1.0 Introduction

The Australian Autism Alliance (Alliance) welcomes the opportunity to make a submission to the Queensland Civil and Administrative Tribunal Act Review (2025–26) in response to *Issues Paper 4: Guardianship and Administration*. This submission focuses on the treatment of *publication, confidentiality, and identification rights* for adults under guardianship or administration orders within the QCAT framework.

We support reforms that:
a) Remove default non-publication restrictions for adults under guardianship/administration orders;
b) Replace them with targeted, discretionary safeguards that apply only where there is clear evidence of serious risk;
c) Align Queensland law with human rights principles (including the Human Rights Act 2019 (Qld), the UN Convention on the Rights of Persons with Disabilities, and contemporary guardianship best practice); and
d) Ensure consistency with national developments such as legislative reform in Tasmania, and compliance with Recommendation 6.12 of the Disability Royal Commission.

2. Issues Identified in the Review

The current statutory framework in Queensland's guardianship and administration jurisdiction has the potential to impose *blanket confidentiality restrictions* that operate as "gag laws," preventing adults from identifying themselves or narrating their own experiences publicly without tribunal permission—regardless of risk or capacity (see Issues Paper 4).

This approach:

- Silences lived experience and discourages transparency;
- Can shield maladministration from public scrutiny;
- Is inconsistent with the Human Rights Act 2019 (Qld), which requires decision-makers to respect and protect relevant human rights; and
- May disadvantage individuals who wish to share their own stories, advocate for systemic improvement, or hold decision-makers accountable.

These concerns have been articulated recently nationally in an open letter to all Australian Premiers and Attorneys-General, led by the Australian Autism Alliance, and endorsed by individuals and organisations across the disability, legal, and advocacy sectors (see Appendix A).

3. Principles for Reform

We recommend the Review adopt the following principles when considering reform of publication and confidentiality provisions:

a) Open Justice as Default
Publication and self-identification should be permitted by default for adults subject to guardianship or administration orders, absent compelling evidence of risk.

b) Targeted Non-Publication Orders
The QCAT Act should empower QCAT to make non-publication and confidentiality orders *only* when satisfied on evidence that such an order is necessary to prevent:

- Exploitation or abuse;
- Undue influence;

- Serious psychological harm; or
- Breaches of safety or privacy.

c) Proportionality and Least Restrictive Means
Any non-publication order must be the *least restrictive* means of addressing identified risk and tailored to the circumstances of the individual.

d) Review and Timeliness
Non-publication orders should be:
- Time-limited
- Subject to periodic review
- Appealable

4. Alignment with Human Rights and Best Practice

Queensland's Human Rights Act 2019 (Qld) requires public authorities to act compatibly with human rights, including respect for dignity, autonomy, and freedom of expression.

Independent law reform authorities and national best-practice models support this approach. The Victorian Law Reform Commission's 2025 Spotlight Paper identifies default non-publication provisions as inconsistent with contemporary human rights standards and recommends reversing the presumption in favour of targeted, discretionary safeguards (see Appendix B).

Reforms in Tasmania and the ACT demonstrate that open justice and strong protective mechanisms can coexist effectively within Australian guardianship systems (see Appendix C).

4A. Safeguards Framework for Protecting Vulnerable Adults
We recognise that there are circumstances in which non-publication orders are necessary to protect individuals from genuine harm. Reform should therefore retain strong, targeted safeguards that can be activated where there is clear evidence of risk. Drawing on the Disability Royal Commission's Recommendation 6.12, the Victorian Law Reform Commission's 2025 Spotlight Paper, and Tasmania's 2024 legislative reforms, we propose a safeguards framework comprising the following elements:

i) Capacity Threshold
Publication should be permitted where the adult demonstrates decision-making capacity in relation to disclosure, or is supported to make that decision.

ii) Informed Consent Standard
Adults should be provided with clear, accessible information about the potential risks and consequences of publication before consenting to disclosure.

iii) Harm-Based Test
The Tribunal should only make a non-publication order where it is satisfied, on evidence, that publication would create a serious risk of:
- exploitation or abuse;
- undue influence;
- serious psychological harm; or
- threats to safety, security, or privacy.

iv) Partial-Anonymity Options
Orders should allow for the suppression of third-party identifiers or sensitive details without preventing the adult from speaking about their own experiences.

v) Review and Appeal
All non-publication orders should be time-limited, subject to periodic review, and open to appeal.

This safeguards framework reflects the principles set out in our national open letter to Premiers and Attorneys-General, endorsed by disability, legal, and advocacy organisations across Australia (see Appendix A).

5. Recommended Reform Outcomes

We recommend that the Review explicitly recommend:

a) **Amendments to the QCAT Act and related provisions** to remove default non-publication orders for guardianship and administration matters;

b) **Insertion of discretionary non-publication powers** with clear statutory criteria that require evidence of risk in line with human rights principles;

c) **Statutory principles establishing the presumption of open justice** and respect for autonomy and self-identification; and

d) **Guidelines or practice directions** to ensure tribunal members apply these reforms consistently once enacted.

6. Conclusion

The Queensland Civil and Administrative Tribunal Act review presents a once-in-a-generation opportunity to modernise guardianship and administration laws. By reforming publication and confidentiality provisions in line with human rights and best practice, Queensland can lead nationally and better protect the dignity, autonomy, and voices of adults under guardianship or administration orders.

Thank you for the opportunity to contribute to this important review.

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Appendix A – Open Letter to All Australian Governments (3 December 2025)

The following open letter, endorsed by individuals and organisations across Australia's disability, legal, and advocacy sectors, outlines the national context and rationale for reform of default non-publication provisions in guardianship and administration matters.

An Open Letter to All Australian Governments: Repeal of Default Non-Publication Provisions in Guardianship and Administration Matters

3 December 2025

To the Honourable Premiers, Chief Ministers, and Attorneys-General of Australia,

We write to you as Australians from all walks of life, representing various disabilities, united in our call upon all state and territory governments to initiate legislative amendments to repeal default non-publication provisions in guardianship and administration matters, and to replace them with targeted, discretionary powers that align with the principles of open justice and human rights.

The human cost of these existing laws, and the urgent need for balanced reform, were recently highlighted by the experience of disability advocate Mr Uli Cartwright. In 2021, Mr Cartwright's documentary *Life Is a Battlefield* was withdrawn from public broadcast because he identified himself as a former client of Victoria's State Trustees. In Victoria, where Mr Cartwright resides, Clause 37 of Schedule 1 to the *Victorian Civil and Administrative Tribunal Act 1998 (Vic)* imposes non-publication requirement as a default position. Hence individuals under guardianship or administration orders cannot publicly discuss their own circumstances without the leave of the Victorian Civil and Administrative Tribunal (VCAT).

In evidence before the Disability Royal Commission, Mr Cartwright stated: *"You can't do anything … you may as well have your identity stripped."*[1] In further describing the effect of this provision, he said, *"It strips away [your dignity] and autonomy… People living with disability … shouldn't have to ask for permission to tell their own story."*

Nationally, an estimated **50,000 Australians live under guardianship or administration orders** administered by public guardians and public trustees (ABC, 2023). In nearly every jurisdiction, these individuals are subject to statutory prohibitions—commonly referred to as "gag laws"—that prevent them from publicly identifying themselves or speaking about their own experiences without the prior authorisation of a tribunal. Note these issues also occur under Mental Health Tribunals that authorise involuntary treatment on people with psychosocial disability.

While these provisions are framed as protective, in practice they often amount to censorship. In denying individuals the right to tell their own story, they also deny their ability to seek accountability and to live with dignity and autonomy.

At the same time, we recognise that there are circumstances where non-publication orders are necessary and appropriate - for example, to prevent exploitation, undue influence, or serious

[1] https://www.lawreform.vic.gov.au/publication/i-want-to-tell-my-story-the-guardianship-and-administration-confidentiality-law/introduction/

psychological harm. The issue is not the existence of protective powers, but their use as a blanket rule rather than as a targeted safeguard.

A comparison of the legal landscape below identifies that every Australian state and territory continues to enact gag laws with the exception of Tasmania:

- **Victoria (VCAT):** Default gag under clause 37.
- **NSW (NCAT):** Identifying publication prohibited; decisions anonymised.
- **Queensland (QCAT):** Section 114A of the *Guardianship and Administration Act 2000 (Qld)* makes identifying publication an offence.
- **South Australia (SACAT):** Publication prohibited unless specifically authorised.
- **Western Australia (SAT):** Offence provisions under the *Guardianship and Administration Act 1990 (WA)*.
- **Northern Territory (NTCAT):** Non-publication orders and anonymisation powers exercised by default.
- **ACT (ACAT):** Open justice applies, subject to discretionary non-publication orders.
- **Tasmania (TASCAT):** Reforms enacted in September 2024 permit individuals to identify themselves and to speak publicly without retribution.

Tasmania's legislative reform, however, demonstrates that change can occur and still be consistent with protective objectives. The findings of the following authorities also support this reform:

- **Disability Royal Commission (Final Report, 2023; Recommendation 6.12)[2]:** Recommends repeal of default confidentiality provisions and adoption of open justice, with targeted protective measures applied only when necessary.
- **Victorian Law Reform Commission (Spotlight Report, 2025):** Identifies ongoing inconsistency of gag laws with human rights and lived-experience voices.[3]
- **Queensland Public Advocate (2022):** Called for repeal of section 114A, noting it silences adults even where they wish to speak[4].
- **Former Victorian Public Advocate, Dr Colleen Pearce:** Warned that such laws are inconsistent with both privacy and freedom of expression under the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

As we recognise the importance of safeguards, there are circumstances where non-publication orders may still be necessary. This is where there is evidence of:

- **Exploitation risk** — exposure to financial abuse, predatory behaviour, or coercion.
- **Undue influence** — where family members, service providers, or others may push the person to speak against their will.
- **Serious psychological harm** — where disclosure would likely cause severe and lasting distress.
- **Safety or privacy breaches** — disclosure compromising physical safety, security, or sensitive medical details.

[2] https://disability.royalcommission.gov.au/publications/final-report-volume-6-enabling-autonomy-and-access
[3] https://www.lawreform.vic.gov.au/publication/i-want-to-tell-my-story-the-guardianship-and-administration-confidentiality-law/introduction/
[4] https://www.lawreform.vic.gov.au/publication/i-want-to-tell-my-story-the-guardianship-and-administration-confidentiality-law/views-on-the-safeguards-in-interstate-models/#footnote-ref-242

In these circumstances, non-publication orders must remain available and enforceable. However, they should be by **exception and not be the default**.[5]

To this end to ensure that any reform is balanced, we have identified principles to guide the reform:

1. **End default gags** — individuals must have the default right to identify themselves and to speak about their own lives.
2. **Proportionality test** — orders should be the least restrictive option, tailored to the specific risk.
3. **Embed human rights** — implement Recommendation 6.12 of the Disability Royal Commission in full.
4. **Centre lived experience** — ensure reform processes include the voices of people directly affected.
5. **Safeguards** — a safeguard framework needs to exist.

To the last principle, Safeguards, recommendations from Victoria's Law Reform Commission, Tasmania's 2024 Administrative Orders Reform and the Disability Royal Commission's Recommendation 6.12, support a safeguarding framework that includes the following features:

i. **Capacity threshold:** publication is permitted where the person demonstrates decision-making capacity, in relation to disclosure or is supported to make that decision.
ii. **Informed consent standard:** Individuals must be supported with clear, accessible information about risks before consenting to disclosure.
iii. **Harm test:** targeted non-publication orders are only used where a tribunal finds clear evidence of serious risk or harm to the individual.
iv. **Partial-anonymity options:** Orders can suppress third-party identifiers (family, carers) or sensitive details without silencing the individual.
v. **Review periods:** All non-publication orders should be time-limited, subject to periodic review, and open to appeal.

Call to Action

In summary, we respectfully call upon all state and territory governments to initiate legislative amendments to **repeal default non-publication provisions** in guardianship and administration matters, and to replace them with **targeted, evidence-based powers** that preserve protective safeguards while ensuring the right of individuals to speak openly where it is safe and appropriate to do so.

This reform is timely, providing a once-in-a-generation opportunity. With the **Disability Discrimination Act** currently under review—an area where we would gladly support the adoption of a **National Human Rights Act** creating a positive duty for all duty holders—and with the most extensive suite of reforms across the disability sector in decades underway, including the redesign of the NDIS planning framework and the implementation of other recommendations from the Disability Royal Commission, there is a clear opportunity to align Australia's guardianship systems with contemporary human-rights standards and the principles of open justice.

Maintaining blanket non-publication laws is not a neutral position. It entrenches secrecy, shields maladministration, and suppresses the voices of those most affected. By contrast, reform would empower individuals to share their experiences, inform better policy, and ensure that rights

[5] https://disability.royalcommission.gov.au/publications/final-report-volume-6-enabling-autonomy-and-access

recognised in law are supported by mechanisms that make them real in practice—especially where decisions affect participation in community and public life.

As disability advocate Mr Uli Cartwright stated: “It’s just outdated. It needs to be changed.” (*SBS, 2023*)

We concur. Reform is overdue. Tasmania’s 2024 amendments demonstrate that this change is achievable, responsible, and consistent with protective objectives. We therefore urge every government in Australia to act without delay to bring guardianship and administration law into line with human-rights obligations and the lived realities of the people it is intended to serve.

We would appreciate the opportunity to meet with you at your earliest convenience and look forward to working with you to deliver this greatly needed reform.

Your sincerely,

Jenny Karavolos

Co-chair, Australian Autism Alliance,

respectfully submitted on behalf of:

Individual Endorsements

Colleen Pearce, Former Public Advocate Victoria
Craig Dent, Former State Trustee, CEO, Victoria

Organisational Endorsements

Australian Autism Alliance
Australian Federation of Disability Organisations
Berry Street Yooralla
Children and Young People with Disability Australia
Citizen Advocacy South Australia Inc
Community Mental Health Australia
Council for Intellectual Disability, NSW
Developmental Disability WA
Disability Advocacy and Complaints Service of South Australia (‘DACSSA’)
Disability Advocacy Network Australia
Down Syndrome Australia
Every Australian Counts
Justice and Equity Centre
Life Without Barriers
National Mental Health Consumer Alliance
National Ethnic Disability Alliance
Parent to Parent
Physical Disability Australia
Speak Out Advocacy
Trauma-Informed Yoga Australia
Uli Cartwright and Crew
Victorian Advocacy League for Individuals with Disability (VALID)
Villamanta Disability Rights Legal Service
William Ward-Boas Consulting
Young People in Nursing Homes National Alliance


AUSTRALIAN
Autism Alliance


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CMHA
Community Mental Health Australia


cid
Council for
Intellectual Disability


DACSSA
DISABILITY ADVOCACY


DANA


Every
Australian
Counts


ADVOCACY
KNOWLEDGE
COMMUNITY
DEVELOPMENTAL DISABILITY wa


Down Syndrome
Australia


Justice and
Equity Centre


LIFE
WITHOUT
BARRIERS


NATIONAL MENTAL HEALTH
CONSUMER ALLIANCE

William Ward-Boas Consulting

Appendix B – VLRC Executive Summary Extract (February 2025)

Purpose of the Spotlight Paper
The Victorian Law Reform Commission examined the operation and impact of Clause 37 of Schedule 1 to the Victorian Civil and Administrative Tribunal Act 1998 (Vic), which imposes default non-publication requirements in guardianship and administration matters. The Paper assesses compatibility with Victoria's human rights and guardianship framework.

Key Finding – Clause 37 as a "Gag Law"
The Commission found the provision prevents people from speaking publicly about their own experiences without tribunal permission and creates a chilling effect even when prosecutions are rare.

Human Rights Inconsistency
The framework was found inconsistent with the Charter of Human Rights and Responsibilities Act 2006 (Vic), the Guardianship and Administration Act 2019 (Vic), and Australia's obligations under the CRPD.

Accountability and Transparency
Default confidentiality risks shielding public institutions from scrutiny and undermining open justice principles.

Support for Recommendation 6.12
The Commission endorses reversing the default position to permit speech unless a tribunal makes a targeted, evidence-based order restricting publication.

Best Practice Models
Tasmania's 2024 reforms and the ACT's open justice framework are cited as contemporary, rights-consistent models.

Relevance to Queensland

Queensland's Human Rights Act 2019 (Qld) imposes similar obligations, making the Commission's findings directly applicable to Queensland reform.

Appendix C – National Best Practice Comparison (Tasmania & ACT)

Tasmania (2024 Reforms)
- Default position permits individuals to identify themselves and speak publicly.
- Consent-based model supported by capacity assessment.
- Tribunal may impose targeted non-publication orders where serious risk exists.
- Orders must be proportionate, time-limited, and reviewable.

Australian Capital Territory
- Open justice default.
- Discretionary suppression only where harm or competing interests outweigh transparency.
- Partial anonymity protects third parties and sensitive information.

Relevance to Queensland
Both models demonstrate that strong safeguards can coexist with open justice, autonomy, and accountability.