

Australians living under state control are testifying at the Disability Royal Commission. But gag laws mean you won't see their faces

By Anne Connolly

Posted Sun 20 Nov 2022 at 5:00am, updated Sun 20 Nov 2022 at 11:48am



Long-silenced Australians — no doubt with a pseudonym — will this week give their accounts of life under state control to the Disability Royal Commission. (Pexels: Bas Masseur)

"When people with a disability approach me as a lawyer, they express a sincere and genuine fear of 'the government', as they call it, which is the Public Guardian and Public Trustee, coming to make decisions for them."

That's what lawyer Natalie Wade told Four Corners earlier this year, as part of our program, [State Control](#) — a year-long investigation into the secretive guardianship and administration system which controls the lives of 50,000 Australians.

The "decisions" this system makes are fundamental to these people's human rights, including where someone lives, what medical treatment they have, how much of their own money they are allocated and what they can spend it on.

Pop icon [Britney Spears was placed under similar orders](#) in the US for 14 years. In that case, her father was given authority over her.

In Australia, "state control" is supposed to be a last resort, with families and friends supposedly preferred to assist a loved one. However, in some states, family are often rejected in favour of public guardians and trustees.

Public guardians and trustees across the country argue that they're stepping in to ensure vulnerable people aren't neglected or exploited. That's because these people have been deemed to be lacking capacity due to cognitive disabilities like stroke, dementia, a mental illness or an intellectual disability.



Britney Spears's father Jamie (left) set up and oversaw the conservatorship that controlled the pop star's life and money for more than a decade. (AP: File)

Unlike the Britney Spears case, the issue is relatively unknown here because virtually every government in Australia makes it a criminal offence for the media to identify anyone "under orders". Gag laws mean publishing a story — even after someone has died — is against the law in most of the country, with penalties ranging from hefty fines to a jail sentence for journalists.

That's why the ABC went to the Supreme Courts in Western Australia and Queensland to fight to identify some of those people. We won, and were able to expose extraordinary fees and legal costs charged unknowingly to clients with cognitive disabilities.

Hearings of heartache

This week some of these long-silenced people will be giving their accounts of life under state control to the disability royal commission.

If any of their stories are like the emails we received following our Four Corners, there will be plenty of heartache on display.

People tell us they have barely enough to live on and have to beg for extra money for Christmas and holidays. Families says their relatives with intellectual disabilities are placed in group homes against their will. Those who try to escape the system find the process overwhelming and are often denied their own funds to hire a lawyer to assist.

Even if they do find the funds to hire a solicitor, they need to apply for "special leave" to attend the hearing.

Meanwhile, the Public Guardian and Public Trustee have in-house legal experts who are well versed in the process.

This imbalance is one reason why the vast majority of people under orders remain so for their entire lives.

The public trustees are largely self-funded, only surviving by charging fees from their incapacitated "customers", as they are called, which total millions of dollars every year. In Queensland, someone can be paying more than a third of their disability pension in fees.

Then there's the conflicts of interest. [The Office of the Public Trustee in Queensland in particular](#) has been criticised for putting people's money in their own investment funds — for which it earns management fees — and taking a slice of earnings. Despite an independent report by the Public Advocate labelling this a breach of the agency's fiduciary duties, the Queensland government has ignored those findings.

Like other states and territories, it's in the Queensland government's interests to keep the Public Trustee an independent, self-funded entity rather than a department requiring funding from state coffers.

Analysis from the ABC's experts




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It's not peanuts we're talking about here. State trustees across the country manage assets worth more than \$13 billion, yet there is no transparency into their investment practices.

NDIS providers moving in

And there's another worrying new trend. Anybody can make an application to state tribunals to have the Public Guardian and Trustee installed — including aged care and NDIS providers.

Families have contacted us about NDIS providers trying to wrest control of their loved ones with intellectual disabilities by going to state tribunals with allegations which they say are unfounded. They say this sometimes happens when families make complaints or are about to sack providers, meaning the company is about to lose a contract worth hundreds of thousands of dollars.

If the provider is successful, it means the family loses control over their loved one who is then moved into a group home — often against their will — and the provider gets an even larger taxpayer funded package and this time with no financial oversight.

Our Four Corners program in March calculated that one man was \$1 million worse off after his time with the Public Trustee, prompting the Queensland government to announce two inquiries. Eight months later, the findings are yet to be released.

In the wake of our story, [Queensland's Public Advocate recommended](#) the gag laws in that state be lifted. The Public Guardian, Public Trustee and the Attorney General, Shannon Fentiman, have all indicated their opposition to this, saying it puts vulnerable people at risk of exploitation if it becomes publicly known that they are under the Guardian and Trustee.

When the hearings at the Disability Royal Commission start tomorrow, journalists won't be able to identify any witnesses who are under the Public Guardian and Trustee. Instead, they'll be given pseudonyms.

That means media coverage will likely be limited, because journalists can't illustrate their story with photos and give a human face to their real life problems.

And without publicity, a system which is fundamental to people's human rights remains hidden when what is desperately required is some sunlight on this social policy.

Anne Connolly, Stephanie Zillman and Ali Russell won the Gold Walkley this week, as well as the award for Public Service Journalism, for their investigation, [State Control](#).