

Disability royal commission seeks guardianship and administration reform, lifting blanket gag laws

By [Cason Ho](#)

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Martin has been forced to live in a nursing home against his will for almost three years.

(ABC News: Cason Ho)

A letter from a stranger and an hour-long meeting is all it took to strip Martin* of his ability to see his family and live in his own home.

A state guardian now controls his life, against his will, because a tribunal deemed him incapable of making his own decisions.

It is similar to the conservatorship US pop star Britney Spears was under for 13 years which sparked the #FreeBritney movement.

Key points:

- The royal commission found a need to reform the guardianship system
- People going through the state care system cannot be identified

In Australia, almost anyone can apply to put someone under these orders, and it becomes illegal to identify the person as soon as an application is made.

- A lawyer says the system sets people with disability up for failure

[The nation's biggest-ever investigation into the abuse and exploitation of people with disability](#) has found a need to reform Australia's guardianship and administration system.

Among the disability royal commission's recommendations are lifting blanket gag laws across the country, and overhauling legislation to ensure people with disability are better included in decisions about their own lives.

'I just want to go back home'

Martin is a retired pensioner who has been forced to live in a nursing home for the past two years.

A routine visit to the chemist with his wife spiralled into a guardianship order, which he has tried — unsuccessfully — to escape.



Martin and Wendy haven't been allowed to see each other for almost three years. (ABC News: Cason Ho)

At the time, he claimed his wife abused and manipulated him, which sparked concerns from health staff who sent an application to the state guardian for them to take control of Martin's affairs.

But he has since admitted in a state tribunal he exaggerated the claims because he was arguing with his wife at the time.

"My wife and I were having quite a few ups and downs ... I've probably said some bad things about my wife because I was in a bad mood," a tribunal transcript reads.

"I just want to go back home ... I love them. They're my family."

Martin's wife Wendy* has not seen him since the state guardian decided it was in his best interest to separate them.



Wendy says she's confused about why the state guardian won't allow her to see her husband. (*ABC News: Cason Ho*)

"I haven't seen my husband in two-and-a-half years — he's in a nursing home at the moment," Wendy said.

"You put one person in there alone, with no family with him, how is that good for his health?"

Both Wendy and Martin have pleaded with the state tribunal and the guardian to let Martin live at home, or at the very least, let them see each other.

The tribunal has ruled Wendy unsuitable as a carer, and that it would be too risky to let Martin go home.

Recommendations for reform

The disability royal commission has made a suite of recommendations to reform laws governing guardianship and administration orders, which would address many of the issues facing people in Martin's situation.

The recommendations include:

- Moving from substitute-decision making models to supported-decision making, which would be more inclusive of a person's will
- Improving the participation of people with disability in tribunal proceedings which decide whether they can control their own lives
- Lifting blanket gag laws on guardianship proceedings, but allowing tribunals to order restrictions on a case-by-case basis
- Reviewing and improving the transparency of public trustee fees.

It follows calls from both Queensland and Victoria's public advocates to repeal their state's gag laws, and a commitment by the WA government to revising its public trustee's self-funding model.

Another recommendation is to maximise the participation of people with disability in tribunal proceedings, which often leave people like a "deer in headlights", according to Perth lawyer Richard Graham.



Richard Graham says only a small percentage of tribunal hearings are done with legal representation. (ABC News: Cason Ho)

"Sometimes they know nothing more prior to a hearing than the date and the time," he said.

"The process does set people up for failure.

"It might not be about them, it might be about their relative — they might be sitting there and, all of a sudden, their mother is now having medical decisions made about her by a stranger."

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Mr Graham said tribunal hearings often only lasted an hour, but had a disproportionately large impact on a person's life.

"It's one of the most profound ways the state can intervene in someone's life, because once a guardianship order is made, someone else — a substitute decision-maker — makes decisions as if they are that person," he said.

Tribunals are struggling to manage the increasing number of guardianship and administration orders, according to Mr Graham.

"The State Administrative Tribunal is dealing with a workload, to do with guardianship, that it was never set up or designed for."

WA's Attorney-General John Quigley, who holds ministerial responsibility over the state tribunal, public advocate, and public trustee involved with Martin's case, declined requests for interview.

"We acknowledge the release of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability Final Report, a product of significant work and dedication from people across Australia," a WA government spokesperson said.

"We extend our admiration and appreciation of the efforts of those individuals who have shared their stories, experiences and insights to the royal commission."

State and federal governments have said they are reviewing the disability royal commission's recommendations.

****Names have been changed and photos have been digitally altered in this story.***

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