



What if Britney Spears lived in Australia? Supported decision-making that bridges the capacity / incapacity divide

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Britney Spears is free, but nearly 61,000 Australians still live under state control

Public guardians and trustees hold enormous control over the social lives, medical care and finances of these people.

AMBER SCHULTZ NOV 15, 2021

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Guardianship: Life under the hidden control of the Public Trustee system revealed | Four Corners

'The guardianship system in Australia is similar to the one that controlled megastar Britney Spears in the US.' ABC Australia news



Royal Commission
Into Violence, Abuse, Neglect and Exploitation
of People with Disability

Research Report

**Diversity, dignity, equity and
best practice: a framework for
supported decision-making**

The Living with Disability
Research Centre, La Trobe University

January 2023

Appendix A

Supported decision-making: The current state of knowledge

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January 2023

What do we know about what happened to Britney Spears?

Mr Spears - conservator for personal matters, and co-conservator for financial matters.

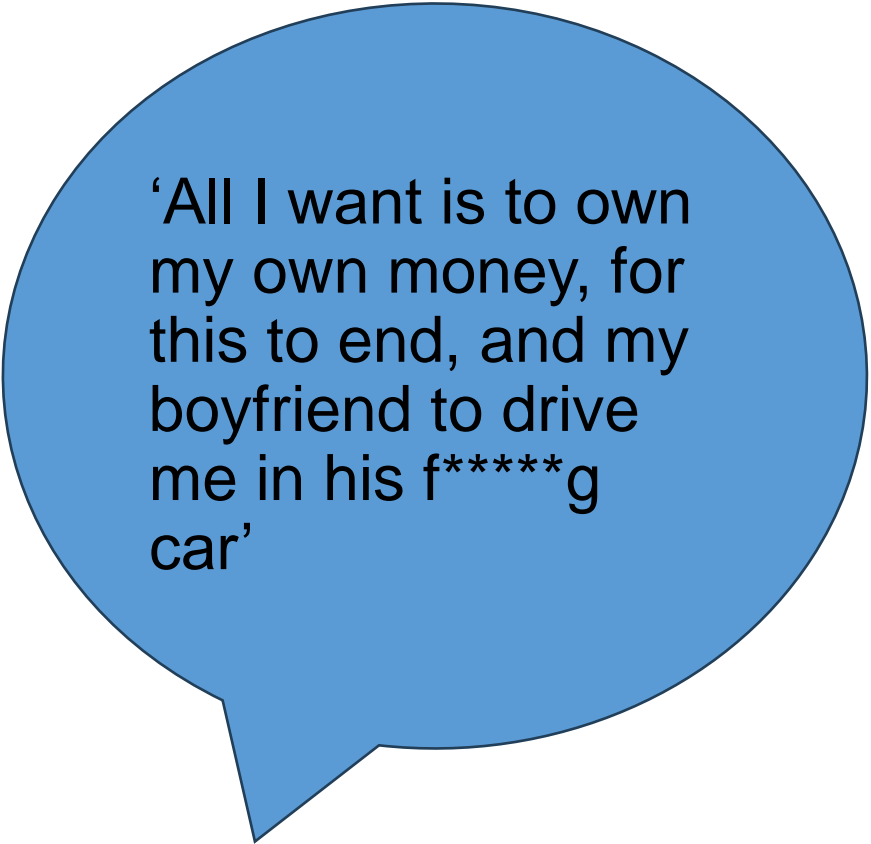
Decision-making power over all of her financial and personal matters, indefinitely.

Ms Spears started performing again, recording and touring.

After 10 years, #freeBritney movement started

In 2021 the conservatorship was ended after 13 years.

- She had been forced to go on tour
- Conservators had decided where she lived, worked and “received therapy”
- Coerced into taking medication, drug rehabilitation
- Refused to allow her to see her friends, marry or have her contraceptive device removed.



‘All I want is to own my own money, for this to end, and my boyfriend to drive me in his f*****g car’

California

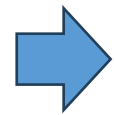
Substantive law - grounded in protective origins.

Judges don't follow the law.

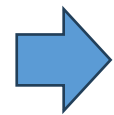
Catch 22 – Const. demands due process because guardianship =. “civil death”, but due process leads to guardianship lasting forever. This is because:



Due process waived



Due process is costly - cost rules favour conservators



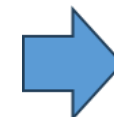
Chronic under – funding.

Qld & Vic

Human rights reforms over past 30 years.

Tribunal system – less technical,

Tribunal system is less costly, more accessible and transparent.



Lawyers and guardians unpaid (administrators can be paid), fewer lawyers, no costs orders.

Substantive law

	California Probate Code	Qld & Vic – Guardianship and Administration Acts
Appointment threshold	No mental capacity test except for health care <i>Personal</i> – unable to provide properly for your physical health, food, clothing, or shelter <i>Finance</i> - substantially unable to manage his or her own financial resources or resist fraud or undue influence	Mental capacity – functional test need for a decision
Overriding principle	Best interests – although should try to follow will and preferences for health care	Will and preferences, and - Qld – rights interests and opportunities - Vic - Personal and social wellbeing
Less restrictive alternative (LRA)	Included	More integrative and iterative
Conservator’s duties	‘care, custody and control’	Encourage participation and inclusion in the community

Procedural law – court v tribunal, but otherwise, not dissimilar....

Process	California – Probate Code and Civil Procedure Rules	Qld & Vic – tribunal jurisdiction
Notice of hearing	Yes – can be waived	Yes – can be waived
Urgent appointments	Yes	Yes
Legal representation	Yes, for appl/conservator, discretionary for adult (since changed)	Qld – as of right for adult, discretionary for appl Vic – discretionary for both
Evidence	Collected by court investigator	Heard by tribunal
Costs orders	Costs of appl’s orders (even if not successful) often paid by adult	No costs orders
Reviews and termination	Reviews mandated, can be terminated	Reviews mandated and can be terminated on own motion
Reasons for decision	None provided – but can get copy of investigator’s report. None published	Given on request of party, selected decisions published online



How did this play out with Ms Spears?

- ✘ Neither substantive law nor procedural law followed.
- ✘ Waiver of notice
- ✘ Temporary conservatorship granted even though no investigator's report – plenary — even though eg no accommodation decisions to be made – so not the LRA.
- ✘ Ms Spears deemed at commencement of hearing (!) to not have capacity to instruct counsel, so given panel attorney – best interests, not will and preference.
- ✘ Ongoing conservatorship – plenary, not LRA.
- ✘ Costs orders against Ms Spears (including court investigator's costs), paying conservators' and attorneys' legal costs. Conservators and attorneys paid ongoing
- ✘ Conservators considered they had 'custody and control' – made unlawful decisions
- ✘ Reviews – tick box exercise.
- ✔ Only terminated due to publicity– first granted own attorney and then termination.

What would happen in Qld and Victoria?

Case	Process	Outcome – least restrictive alternative
<i>HAC MTD</i>	Urgent application for temporary guardianship	Both dismissed for lack of evidence of immediate risk of harm and the HRA Qld presumed against appointment.
<i>VWA</i>	Urgent application for temporary and later general guardianship	Dismissed both applications. VWA had mild vascular dementia and some cognitive decline, but independent evidence that she still had the ability to manage her financial affairs, including the sale of a property of significant value.
<i>PCP</i>	Urgent application for temporary, followed by general guardianship	No waiver of notice, granted for accommodation and services only – ongoing guardianship dismissed because no more decisions to be made – PCP had accommodation and services in place. Tribunal appointed administrators chosen by PCP – with order they get approval before selling house.
<i>KH</i>	Review and termination	Had a guardian for services, on review still had impaired capacity but no guardian needed because not evident her needs wouldn't be met without one.
<i>ZFN</i>	Termination	Revoked a non-contact order because ZFN now had a trusted person in place to negotiate access between her and her adult sons.
<i>NCX</i>	Removing and changing guardians	Removed two guardians because they were failing to make decisions according to NCX's will and preferences and appointed a guardian chosen by NCX.

So what?

Immediate issues

- Highly unlikely Ms Spears under guardianship in Australia.
- The California Probate Code has been amended since.

Wider issues

- Australian - promote supported decision-making outside of but also within the guardianship relationship.
- Guardianship often promoted as always rights denying and supported decision-making as always rights affirming.
- Focus on contest between supported decision-making and guardianship shrouds real and significant issues of socio-economic disadvantage, mental health and abuse
- We need to reform guardianship systems, but these issues of pervasive disadvantage in the disability and aged communities are the issues we need to focus on to prevent guardianship being overused and public guardian offices becoming a last resort when other systems fail.

Learn
me Right

IN HEALTH LAW AND BIOETHICS

29/04/2022 · S1, E4 · 31 MIN

Learn Me Right in Conservatorship and Britney Spears

Australian Centre for Health Law Research

▶ Play

[Duffy, Julia](#) (2024) What if Britney Spears Lived in Australia?: Disrupting the Binary Framing of Guardianship versus Supported Decision-Making. *Transnational Law and Contemporary Problems*, 33(1), pp. 40-94.
<https://tlcp.law.uiowa.edu/online-edition>

Cases

HAC [2022] QCAT 104

MTD [2022] QCAT 89

VWA (Guardianship) [2021] VCAT 193

PCP (Guardianship) [2022] VCAT 364

KH [2014] QCAT 585

ZFN (Guardianship) [2022] VCAT 262

NCX (Guardianship) [2021] VCAT 544