

# Now You're the Guardian

A guide for people appointed as guardians under the  
Guardianship Act 1987 NSW



**Public  
Guardian**  
Justice & Attorney General





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# Contents

<b>1</b>	<b>Introduction to guardianship</b>	<b>6</b>
<b>2</b>	<b>Understanding your guardianship order</b>	<b>12</b>
<b>3</b>	<b>Getting started as a guardian</b>	<b>19</b>
	Private Guardian Support Unit	<b>29</b>
<b>4</b>	<b>Functions of a guardian</b>	<b>32</b>
	4.1 Accommodation function	<b>32</b>
	4.2 Coercive accommodation function	<b>36</b>
	4.3 Health care function	<b>38</b>
	4.4 Medical & dental consent function	<b>41</b>
	4.5 Services function	<b>51</b>
	4.6 Restrictive practices function	<b>54</b>
	4.7 Access function	<b>59</b>
	4.8 Admission of a person to a mental health facility	<b>62</b>
<b>5</b>	<b>Making a complaint</b>	<b>64</b>
<b>6</b>	<b>Useful resources</b>	<b>66</b>
<b>7</b>	<b>Glossary</b>	<b>72</b>

## 1. Introduction to guardianship

### What is guardianship?

The *Guardianship Act 1987* (NSW) was introduced as a result of significant lobbying by people with disabilities and those from community and government organisations, who were concerned about the lives of people with a disability. The Act was created to protect the legal rights of people over the age of 16 years who have a disability that affects their capacity to make decisions, and to enable decisions to be made on their behalf.

Guardianship is when a person is appointed under the Guardianship Act to make decisions on behalf of another person who lacks decision-making capacity because of a disability. Most people with disabilities do not need guardians, and can be supported to make their own decisions. Guardianship is the last resort.

Guardianship is limited to current need and is not intended to last forever. Substitute decision-making is a formal appointment and is not assumed by relationship.

### Who might need a guardian?

In some instances, a person's disability affects their capacity to make personal and life choices and decisions for themselves. If this person does not have anyone who can help, or their family or friends disagree about important matters, they may need someone who will act in their best interests and make decisions on their behalf.



#### DID YOU KNOW?

A guardian cannot make a will on behalf of the person they represent, vote on their behalf, or consent to their marriage or divorce.

The Public Guardian  
offers a free information  
and advice line for  
private guardians and  
enduring guardians.  
You can contact the  
Private Guardian  
Support Unit (PGSU) on  
02 8688 6060  
or by email:  
informationsupport@  
opg.nsw.gov.au

## What is a guardian?

A guardian is a person appointed under the Guardianship Act to make legally valid decisions on behalf of a person with a disability who is unable to make decisions on their own or without support. A guardian can be appointed by the Guardianship Tribunal or by a legal process known as enduring guardianship.

A guardian will usually be authorised to make decisions on behalf of another person in specific area(s) of the person's life, for a certain length of time. In guardianship, an area of decision-making authority is called a function.

Guardians are appointed to make health and welfare decisions on behalf of the person under guardianship. They cannot make decisions about financial matters or the person's estate unless they have been authorised under an enduring power of attorney or have been appointed by the Guardianship Tribunal, the Mental Health Review Tribunal or the Supreme Court as the person's financial manager.

In appointments made by the Guardianship Tribunal, anyone can apply to become a guardian. In the first instance the Tribunal will consider appointing a relative, friend or unpaid carer of the person, who is willing to make decisions in the best interests of the person with a disability.

## Who is the Public Guardian?

When there is no private person who can be appointed guardian, the Tribunal will appoint the Public Guardian to make decisions on behalf of the person with a disability. The Public Guardian is only appointed as 'the guardian of last resort'. This usually happens when no one is available or willing to act as a guardian, or where there is conflict within the family about legal decisions in relation to the person under guardianship.

The Public Guardian may also be appointed jointly with a private guardian but only with different functions (areas of decision-making).

## What is joint guardianship?

Sometimes, depending on the circumstances, the Tribunal will appoint more than one guardian for a person. There are a number of ways the Tribunal might appoint different people to be guardians for the same person. For example:

- > appointed jointly - two or more guardians (but not the Public Guardian) can be appointed to share the same function(s). If you are appointed in this way you need to make decisions together; or
- > appointed separately - two or more guardians might be appointed with different functions. If you are appointed in this way you make decisions separately but it is a good idea to keep each other informed about the decisions being considered or that have been made; or
- > a guardian might be appointed with one or more functions, and the Public Guardian can be appointed with one or more functions that are different to the guardian. (A private guardian and the Public Guardian cannot be appointed to share the same function). If you are appointed in this way it is a good idea to stay in touch with the Public Guardian about decisions being considered or that have been made.

## What is an alternative guardian?

Sometimes, the Tribunal will appoint an alternative guardian for the person with a disability at the same time as it appoints a guardian. The alternative guardian is like a back-up. They only make decisions if the other guardian is not able to due to absence or incapacity.



### Case Study

**Mr Tan, 87, lives alone and has Alzheimer's disease. His two children are appointed as guardians with the joint functions of medical/ dental consent, services and health care. As joint guardians they need to agree and make decisions together.**

**An accommodation function was given to the Public Guardian. The Guardianship Tribunal appointed the Public Guardian with an accommodation function because Mr Tan's children, while very caring and supportive of their father, could not reach an agreement about where he should live ■**



### DID YOU KNOW?

Enduring guardians have the same legal authority to make decisions as guardians appointed by the Guardianship Tribunal, according to the 'functions' (areas of decision-making authority) that the appointor has given them and to the principles of the Guardianship Act.

## Enduring guardianship

### What is an enduring guardian?

An enduring guardianship appointment is a legal document where you nominate someone to make health and welfare decisions for you, for example where you live and the health care you receive. 'Enduring' means it continues (endures) when you are unable to make these types of decisions for yourself.

As an enduring guardian you can start making decisions when the person who appointed you loses capacity. Your decisions have the same legal force as a guardian appointed by the Guardianship Tribunal.

### How does it work?

Like guardians appointed by the Guardianship Tribunal, an enduring guardian:

- > can only consent to medical and dental treatment that will promote or maintain the health and well-being of the person
- > cannot make or alter a will on behalf of the person under guardianship
- > cannot vote or consent to marriage on behalf of the person under guardianship
- > cannot consent to medical or dental treatment on behalf of the person under guardianship where the person is objecting to that treatment. Only the Guardianship Tribunal can give this authority, after specific discussion at a guardianship hearing
- > cannot consent to treatment that is defined as special medical treatment. Only the Guardianship Tribunal can consent to special treatment
- > cannot make decisions that are against the law. For example, euthanasia is illegal in all states and territories of Australia.

As with guardians appointed by the Tribunal, enduring guardians do not make financial decisions. An enduring guardian may have been appointed as a financial manager or enduring power of attorney as well, but these are different roles.

Unlike guardianship orders made by the Guardianship Tribunal, enduring guardianship appointments are not time-limited, are not automatically reviewed by the Tribunal and are not registered.

### Directions

When appointing an enduring guardian, the person can give the intended guardian directions about the kinds of decisions that should be made. As long as the directions were made as part of the witnessed appointment, and are relevant to the decision that needs to be made, they are binding directions. You will need to make yourself familiar with any directions that have been included in the form appointing you as enduring guardian.

### Disagreements

If there are concerns about the welfare and well-being of a person under an enduring guardianship form of appointment, anyone with a genuine concern for the person can apply to the Guardianship Tribunal to review the appointment. The Tribunal can then review the person's situation and any appointment made at a hearing and based on the findings, may then uphold, vary, revoke or suspend the appointment; adjourn the hearing; or make a guardianship order.

### When does enduring guardianship end?

Enduring guardianship ends when the person under guardianship dies or the guardian resigns, or it is revoked by the person who made the appointment (while they have capacity), the Guardianship Tribunal or the Supreme Court. When appointing joint enduring guardians, the person can state clearly that they wish the appointment to continue if one of the joint guardians dies, resigns or becomes incapacitated. If this is not specifically stated, a joint enduring guardianship appointment will end if one of the joint enduring guardians dies, resigns or becomes incapacitated.

### Interstate recognition

Enduring guardianship forms of appointment set up in NSW are only valid in NSW. If the person under guardianship moves to another state or territory, you would need to seek recognition of your appointment from the equivalent Guardianship Tribunal body in the state or territory the person has moved to. You can contact the guardianship agency in the state or territory in which the person lives or the Private Guardian Support Unit for more information.



### Case study

Mrs Griffin appointed her daughters Jean and Susan as her enduring guardians, and has since developed dementia. However, Jean and Susan disagree about their mother's capacity to decide about the services she receives at home. Jean believes her mother now lacks capacity to make decisions and therefore, their appointment as their mother's enduring guardians should now take effect. Susan acknowledges that her mother's condition is getting worse, but she feels her mother can still make her own decisions.

Jean and Susan request that Mrs Griffin's doctor assess her capacity to make her own decisions. After the assessment, the doctor is satisfied that Mrs Griffin lacks capacity to make her own decisions about what services she needs. Susan and Jean begin making decisions as Mrs Griffin's enduring guardians ■



### For more information about enduring guardianship

Contact a solicitor or request a free copy of, *Enduring Guardianship, your way to plan ahead* from the Private Guardian Support Unit  
phone 02 8688 6060 or toll free 1800 451 510.  
The booklet can also be downloaded from [www.lawlink.nsw.gov.au/opg](http://www.lawlink.nsw.gov.au/opg).

## Capacity

Capacity is the ability to make decisions for yourself. People who have capacity are able to decide what is best for them and can take or leave the advice of others.

Broadly speaking, when a person has capacity to make a particular decision, they are able to understand the facts and choices involved, weigh up and understand the consequences of choices and communicate their decision. If a person can't follow this process, they are said to lack capacity.

A person may lack capacity temporarily, or may be able to make some decisions but not others, or may regain capacity.

Capacity is decision-specific. It is rare for a person to not have any decision-making capacity and more often people lack capacity in making one type of decision.

- > global capacity – where a person is capable or incapable of making all decisions
- > domain specific capacity – where a person has capacity in one domain for example health care, but lacks capacity in another domain, for example finance
- > decision specific capacity - where a person could be capable of making simple decisions within a particular area or domain but not capable of making complex decisions within the same domain<sup>1</sup>.

## Who decides if the person lacks capacity?

Disability alone does not indicate a lack of capacity. A person with a disability may still be able to make his or her own decisions without assistance, or with support.

An eccentric life, poor or controversial personal decision-making may not mean that the person lacks capacity. We may not agree with another person's decisions. What must be determined is whether the person is simply making 'bad' decisions or whether he or she lacks capacity to make decisions.

When there is disagreement about capacity a professional assessment should be sought from a clinical neuropsychologist or other trained health professional, such as a geriatrician or psychiatrist. For more information on capacity seek a copy of the Attorney Generals Department's *Capacity Toolkit* by phoning 02 8688 7507 or [www.lawlink.nsw.gov.au/diversityservices](http://www.lawlink.nsw.gov.au/diversityservices)

<sup>1</sup> Dr Peteris Darzins et al in *Who Can Decide? The six step capacity assessment process* Memory Australia Press (2000)

## 2. Understanding your guardianship order

### What is a guardianship order?

If, following a guardianship hearing, the Guardianship Tribunal finds that a person with a disability requires a guardian to make health and welfare decisions on his or her behalf, it will produce a legal document called a guardianship order.

A guardianship order authorises someone (the guardian) to make decisions on behalf of another person about matters such as the person's health care, where they should live, where they might work or receive training, or what kind of care and support services they will need and receive.

Guardians are not authorised to make decisions about financial matters or the person's estate unless they have been given authority under an enduring power of attorney or have been appointed by the Guardianship Tribunal, the Mental Health Review Tribunal or the Supreme Court as the person's financial manager.

### Types of guardianship orders

Guardianship orders are not all the same. There are a number of different types of orders that affect what decisions a guardian can make and for how long they hold their role as guardian.

#### Limited orders

If an order is 'limited', the guardian is only given the authority to make decisions in specific areas of a person's life. These areas will be listed in the guardianship order as functions. This is the most common type of order.

#### Plenary orders

If an order is 'plenary', the guardian is given the authority to make decisions in almost all areas of the person's life, except financial matters. Plenary orders are highly unusual in NSW.

#### Initial order

When a person with a disability comes under guardianship for the first time, the order that is made is called the initial order. Most initial orders are made for any period up to one year and are reviewed before the end of that time.

### **Non-reviewable order**

This type of order states that the order will not be reviewed when the order expires. This may be because the Tribunal considers that the person will no longer require a guardian once initial decisions are made.

### **Temporary order**

A temporary order can be made for up to 30 days and may be reviewed and renewed for a further 30 days if necessary. Only the Public Guardian can be appointed under a temporary order.

### **Guardianship order following a review hearing**

A further order can be made following the review of an initial order. This order differs in that it can be made for any period up to five years before the next review is required. This order may be different from the initial order, as the Tribunal can make changes to the functions given to the guardian(s) or indeed who will be the guardian(s).

## **What is in the guardianship order?**

Once you have been appointed as a guardian, the Guardianship Tribunal will send you, and the person for whom you are a guardian, a written copy of the guardianship order. Each order is created specially for the person with the disability. All of your authority comes from this document so you need to read the order carefully and make a note of particular details.

### **Functions**

When a guardian is appointed, they are given the authority to make decisions on behalf of the person under guardianship in certain areas of this person's life. The areas of decision-making authority are called functions.

The most frequently used functions given to guardians by the Guardianship Tribunal are:

- > accommodation
- > health care
- > medical/dental treatment consent
- > services

The functions of access and restrictive practices are also given regularly.

## Conditions

The Guardianship Tribunal may make a guardianship order subject to any conditions that it considers are needed. You are legally bound to abide by these conditions as part of your responsibilities as a guardian.

Most guardianship orders contain conditions that say the guardian:

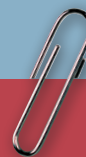
- > in exercising his/her decision-making powers, should take all reasonable steps to bring the person under guardianship to an understanding of the issues affecting him/her;
- > will obtain, and take into consideration, the views of the person under guardianship when significant decisions are made on their behalf. It is sometimes stated that the views of the person under guardianship do not bind you (the guardian) in your decision-making; and/or
- > cannot authorise any form of restraint or confinement for the person, or use any threat of such restraint or confinement.

Other conditions will vary according to the situation. A special condition requires the guardian to take a certain course of action in relation to a particular function they have been appointed to carry out. This may include such things as undertaking consultation with specific people, seeking particular assessments and/or attending meetings.

## Recommendations

Sometimes, the Tribunal includes recommendations for guardians to consider when making decisions within their appointed functions. These recommendations usually relate to particular issues that were highlighted during the Tribunal hearing. It is important that recommendations included in an order are taken into consideration whenever decisions are made.

Recommendations usually provide suggestions about issues such as: with whom you should consult before making a decision; which assessments might be useful; or what course(s) of action might be in the interests of the person.



**TIP** - It is very useful to take a photocopy of the guardianship order with you, (eg to meetings, visits and the hospital), so that you can show it whenever you need to.



## DID YOU KNOW?

The Tribunal can review an order at any time if it considers this would be in the best interests of the person under guardianship.

## Will the guardianship order be reviewed?

The Guardianship Tribunal reviews guardianship orders before the date of expiry unless it has made a non-reviewable order in the first instance. Sometimes the hearing date is set for after the expiry date of the order. As long as a formal notice of hearing is issued by the Tribunal before the expiry date, the order will still have effect until the review is complete.

The Tribunal can also review an order at any time if it receives a request, or on its own initiative considers this would be in the best interests of the person under guardianship.

The purpose of a review hearing is to decide whether there still needs to be a guardianship order and if so, whether the current guardianship arrangements and functions should continue as they are or be changed. The Tribunal may decide to continue the order, change the order or end the order.

## Review process

The review will take place at a hearing. You will be asked to attend the hearing along with the person under guardianship and with others who are involved in that person's life. You or others involved may choose to participate in the hearing by phone.

At the review hearing, the Tribunal will ask you questions about:

- > what has happened since the order was made?
- > has there been any change in the person's situation?
- > what decisions have you made and how did you go about making these?
- > are there still decisions that a guardian needs to make for the person?

The Tribunal will ask questions of the person under guardianship and other involved people such as family members, service providers and doctors. The review is your chance to say if you think guardianship for the person is still required and raise any issues you think are relevant.

At a review, the Tribunal is trying to decide:

- > does the person still have a disability?
- > is the person still totally or partially incapable of making their own decisions because of this disability?
- > does the person still have a need for guardianship? Are there decisions that still need to be made?
- > should a further guardianship order be made, and if so, for how long?
- > does there need to be any change in the new order compared with previous orders?
- > should the same guardian(s) be re-appointed if they are willing?
- > what areas of the person's life should the guardian(s) be able to make decisions within?
- > does the order need to be subject to any conditions?
- > can or should the order be made non-reviewable?

Whenever possible, the Tribunal will take into account the views of the person under guardianship. The Tribunal will also consider the general principles of the Guardianship Act that aim to ensure that the welfare and interests of the person are given paramount consideration.

The Tribunal will usually tell you its decision at the end of the hearing. If a new order has been made, the Tribunal will send you a copy of the order and the reasons for its decision in writing. These will be sent to you, with a copy for the person under guardianship and to the person's spouse or carer.

### **Preparing for a review hearing**

You will be contacted by the Tribunal before the review date. You can ask them for information about the Tribunal's procedures and what orders the Tribunal may make.

The Tribunal will send you a questionnaire about what decisions you have made as a guardian. You should complete and return it to the Tribunal before the hearing. In addition to the questionnaire, a useful way for guardians to prepare for a review hearing is to write a brief report for the Tribunal. Preparing a report helps you consolidate your thoughts about the previous period of guardianship, as well as your thoughts on the continuing need for guardianship. It will also help you to talk clearly about the decisions you have made as guardian

### Case study

Mrs Meyer, 96, has dementia and lives alone. Her daughter, Mrs Hall, has been appointed as her guardian with the functions of medical/dental consent, health care and services.

Mrs Meyer's dementia has now deteriorated to the extent that the Aged Care Assessment Team suggests that she needs to be cared for in a nursing home. Mrs Meyer doesn't want to move to a nursing home and other family members think Mrs Meyer should stay living in her own home.

Mrs Hall applied to the Guardianship Tribunal for a review of the current guardianship order, to ask for the additional function of 'accommodation'. This function would authorise Mrs Hall to make the decision about where her mother should live, including whether she should move to a nursing home ■

and to identify and raise any issues you want to make the Tribunal aware of. You don't have to include everything you've done. Rather, use it to explain how you have gone about your role as guardian and how you have made decisions. You should also discuss the current situation and needs of the person for whom you are the appointed guardian.

If you need help to prepare for the review, contact the Private Guardian Support Unit (PGSU) on 02 8688 6060.

### Can I get the guardianship order changed?

If you think the guardianship order is not working as well as it could, or additional functions are needed, then you can apply to the Guardianship Tribunal to have the order reviewed. You can also request a review of the current guardianship order if you think the person no longer needs guardianship.

If you believe the order needs to vary for some reason, it is a good idea to call the Tribunal first to discuss your situation and the needs of the person under guardianship. The Guardianship Tribunal has a form to request a review hearing, *Request to review guardianship order*, available on their website [www.gt.nsw.gov.au](http://www.gt.nsw.gov.au)

### Is the guardianship order valid in other states?

Each state and territory in Australia has its own guardianship laws. The guardianship order appointing you (whether appointed by the Guardianship Tribunal or as an enduring guardian), is only valid in NSW. If the person under guardianship moves interstate, your NSW guardianship order no longer has any effect and you no longer have any decision-making authority.

If you believe the person under guardianship no longer needs someone to make decisions for them, then you don't need to take any action. If however, you believe that decisions still need to be made for the person, you can seek recognition of the order or make a guardianship application in the state or territory where the person is living.

For more information about this process or for contact details for interstate agencies, contact the PGSU on 02 8688 6060.

## Sample guardianship order

### *Guardianship Tribunal*

FILE NO: C  
MATTER NO: 2008

Hearing concerning: **Mr A. Sample**  
Guardian at time of hearing: **The Public Guardian**  
Date and place of hearing: **10 June 2009 at Balmain**

**Tribunal Member:** Ms Jane Brown

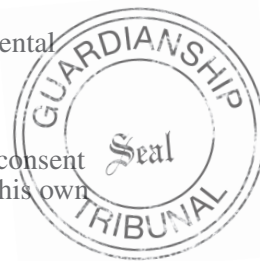
#### **LIMITED GUARDIANSHIP ORDER** Guardianship Act 1987

Date of order: 10 June 2009

The Tribunal reviewed the limited guardianship order concerning Mr A. Sample made on 13 June 2008.

The Tribunal renews and varies its order of 13 June 2008 in relation to Mr A. Sample as follows:

1. Mr A. Sample shall remain under guardianship.
2. His guardian shall be Mr M Citizen of Sydney.
3. This is an order for continuing guardianship for a period of 12 months from the date of this order or until the Tribunal varies, suspends or revokes the order at an earlier date on request or at its own initiative.
4. This order is an order for limited guardianship giving the guardian custody of Mr A. Sample to the extent necessary to carry out the functions referred to below.
5. The guardian shall have the following functions in relation to Mr A. Sample
  - a) **Health Care**  
To determine what health care and major and minor dental and dental treatment Mr A. Sample may receive
  - b) **Medical and Dental Consent**  
Where Mr A. Sample is not capable of giving a valid consent to his own treatment, to make substitute decisions on his own



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## 3. Getting started as a guardian

### Understand your role and responsibilities

You become a person's legal guardian from the date you are appointed by the Guardianship Tribunal, or in the case of enduring guardianship, when the person loses capacity.

If you are appointed as a guardian by the Tribunal, you will receive the guardianship order and the reasons for the decision (why the Tribunal appointed you) in the mail within a few weeks of the hearing. The reasons are important because they help you understand the background to the decision-making authorities (functions) included in the order. Occasionally you may need to refer to the reasons to explain your authority, for example where there is a need to advocate strongly to the service provider.


Take some time to understand and become familiar with your new role as a guardian, and the details of your guardianship order. You will need to understand which functions you have been given and whether the Tribunal has made any conditions you must abide by, or recommendations you need to consider, when you are making decisions. If you have an enduring guardianship form of appointment, you will also need to check if the appointment includes any directions.

### File and copy

It is important to keep the original stamped and signed order in a safe place as it is proof that you have the legal authority to make certain decisions on behalf of the person under guardianship. It is useful to get some copies of the order certified by an authorised person (such as a solicitor or a Justice of the Peace) as you may need to provide a copy to service providers and practitioners for them to keep in their files.

### Let people know

You will need to inform all the relevant people who support the person for whom you are guardian for, about the functions you have been given. This might include people such as carers, service providers, doctors, dentists and case managers. Also, let family and friends know. It is best to provide this notice formally in writing and to provide the person or service provider with a certified copy of your guardianship order.



**TIP** - Always ask questions, not only to make sure you fully understand what is being proposed, but also to determine if the decision or action will be in the best interests of the person.

## Inform yourself

When you notify services that you are the guardian, ask them to provide you with an overview of the care or services they currently provide to the person under guardianship. Ask them to let you know if there are any issues that they, or the person, may have that require ongoing monitoring or attention or may change regularly.

You can also ask to see the service provider's policies or guidelines that relate to the functions you have been appointed with. This will help you understand and know what you can expect from them in relation to a particular situation. You could also ask to see the policy that outlines how staff will work with clients who lack capacity and how they will work with guardians or substitute decision-makers.

## Make a guardianship plan

A guardianship plan is a detailed outline of the functions you have and the decisions that you need to make under each function. You can also include any actions or strategies you will take to achieve your planned outcome.

Some suggestions for making a guardianship plan include:

- > what you expect is often what you get - so aim high!
- > make a list of what needs to be done and plan a way of approaching each task
- > attack the problem, not the people (eg, service providers)
- > ask to see relevant written material when necessary
- > if service providers say they will call you back, ask when you can expect their call - if they don't call then, ring them again.

If you require assistance developing your guardianship plan or have further questions about guardianship or what you need to do, you can contact the Private Guardian Support Unit on 02 8688 6060.

The principles of the *Guardianship Act 1987* (NSW) are:

- > the **welfare and interests of the person** should be given paramount consideration
- > the freedom of decision and the freedom of action of the person should be **restricted as little as possible**
- > the person should be encouraged as far as possible to live a **normal life in the community**
- > the **views of the person** should be taken into consideration

> it is important to **preserve family relationships and the cultural and linguistic environment** of the person should be recognised

> the person should be encouraged as far as possible to **be self reliant** in matters relating to personal, domestic and financial affairs

> the person should be **protected from abuse, neglect and exploitation**

> the community should be encouraged to apply and promote these principles.

## Respect privacy

Like anyone else in the community, people under guardianship are entitled to privacy.

Where it is possible, they should be allowed to make decisions about what happens to information about them, but in some instances, a request for information may be complicated. As the person's guardian, you may have to make a decision on the person's behalf if the request relates to an area where you have a function.

Agencies are bound by privacy legislation<sup>2</sup>. They are not permitted to release personal information about a person except under certain circumstances. As a guardian you have the right to access information if you have the services, health care and/or medical/dental consent functions in your order. For example, you may need to access medical records for the person you are guardian for in order to make a decision about their health care. You need to accompany your request for this information with a copy of the current guardianship order and the reason for your request.

For more information about privacy, call Privacy NSW (see chapter 6, Useful Resources) or download the best practice guideline *Privacy and people with decision-making disabilities*.

[www.lawlink.nsw.gov.au/lawlink/privacynsw](http://www.lawlink.nsw.gov.au/lawlink/privacynsw)

## Making decisions

When you have been appointed as a guardian, you have a legal responsibility to the person with the disability to make decisions for them in the areas in which you have been appointed. Any decision you make on behalf of the person has the same legal effect as if the person had made it.

Your decisions need to be in the best interests of the person and in line with the general principles of the *Guardianship Act 1987* (NSW). The principles of the Act aim to promote the independence and choice of the person under guardianship at the same time as ensuring their care and protection.

<sup>2</sup> Public sector agencies, including NSW state government departments, area health services and local councils, are bound by the *Privacy and Personal Information Protection Act 1998* (NSW).

To help you make decisions on behalf of the person under guardianship, the following steps are recommended:

- > ask the person under guardianship what they wish to happen or closely consider what they had expressed in the past, if known
- > consider the views of family, friends and carers
- > consider the views and recommendations of service providers and specialists involved with the person (eg, doctors, psychologists, speech therapists)
- > ensure that the option being proposed is the least restrictive option for the person
- > ensure the proposal promotes the health and well-being of the person under guardianship
- > consider whether there are any other options and whether these would be more appropriate
- > ensure the decision will, in your view, provide the best outcome for the person.

## Signing contracts and liability

While as guardian you can make decisions about the person's care and well-being in the functions you have been appointed with in the guardianship order, you cannot enter into financial contracts on behalf of the person under guardianship nor can you sign contracts that waive a person's rights.

The *Guardianship Act 1987* (NSW) (section 30) protects you from legal action being taken against you for decisions you make, providing you have the function to make the decisions, you make them in the best interest of the person, in good faith and with reasonable care under the circumstances.



### Can I get a copy of the Guardianship Act?

You can buy a copy of the *Guardianship Act 1987* (NSW) from Salmat Print, phone 02 9311 9899. You can download the Act from the Australasian Legal Information Institute (AustLII) website at:

[http://www.austlii.edu.au/au/legis/nsw/consol\\_act/ga1987136/](http://www.austlii.edu.au/au/legis/nsw/consol_act/ga1987136/)

and the regulations at:

[http://www.austlii.edu.au/au/legis/nsw/consol\\_reg/gr2005227/](http://www.austlii.edu.au/au/legis/nsw/consol_reg/gr2005227/)

## Keeping records

Keeping up-to-date records of your guardianship decisions, consultations and actions is a good way to make your role a lot easier, particularly if you run into conflict or difficulty or when you need to attend the Guardianship Tribunal review hearings and discuss the decisions you have made. Documenting conversations and meetings helps keep a factual account and also aids your memory.

Here are some record-keeping suggestions:

- > keep all your guardianship information together in a book or folder
- > make a note of every phone call or meeting where you have sought someone's views to help in the decision-making process, or where an undertaking has been made by you or by them
- > keep a copy of all letters sent and received
- > keep a copy of all emails sent and received
- > keep a copy of your guardianship plan
- > keep a record of all your decisions
- > for contentious or complicated decisions, consider including a brief summary of the reason for the decision and people consulted
- > keep a record of all medical and dental consents provided
- > keep the names and contact details of individuals and services involved with the person under guardianship.

## Using email

Electronic mail can be a great way of communicating. It is fast and direct and you can include multiple people in one message. You can send messages when it suits you and it's inexpensive. However it does have some significant draw-backs which are worth considering. For example:

- > you cannot guarantee that the recipient will receive the mail in the time you anticipate - some people don't have regular email access; some service providers will not receive emails when away on holidays or sick leave. If the message is important it should be followed up with a phone call

- > email encourages an informal approach that might not always be suitable, particularly if you are in dispute
- > email is so easily accessible that it's tempting to send off a message in the heat of the moment to your entire address book only to regret it later. 'Email rage' can cause offence, miscommunication and escalation of conflict
- > emails are not an appropriate way to make a formal complaint unless as a last resort.

## Maintaining a balance

Sometimes, as a guardian, you might ask, "Am I making the right decision?", or "What else should I consider?", or "Who else should I contact/consult with?", or "Where to from here?"

While being a guardian for a person with a disability can be rewarding it can also feel overwhelming and frustrating, particularly if the person's situation involves conflict or if there are protracted negotiations with service providers. Disagreements may develop between you and the person under guardianship if you consider it necessary to consent to something to which they object. Being a guardian for someone can bring many extra responsibilities on top of an already long list of things you have to do.

These are some suggestions that might help you find balance in your role as guardian:

- > take one step at a time
- > be kind to yourself and reflect every now and then on what you have achieved - give yourself a pat on the back
- > pace yourself with difficult issues
- > give yourself a break and do something you enjoy
- > if possible schedule your time so that you deal with one issue or one difficult phone call per day and once that's done leave everything else until tomorrow
- > understand there may be times when you are going to be upset over an issue, and that you might need to talk about it
- > see if you can establish a network of people you can talk to (including the PGSU).

Remember that as long as you are acting in the best interests of the person, you are doing the best job you can and that is all that is legally required of you.

## Holidays and sickness

If you are not able to fulfil the role of guardian for a substantial period of time you will need to inform the Guardianship Tribunal. If you know at the time of the review hearing that you may not be available at times, let the Tribunal know and it can appoint an alternative guardian or a joint guardian to ensure that the person will have a guardian available.

You cannot delegate or give your authority to someone else. For example, if you go overseas on holidays for six months, you cannot nominate another person to take over your role. Only the Guardianship Tribunal has the authority to do this.

It is important to note that you don't need to be physically present to be the decision-maker. If you can be contacted by phone or email, that is enough. You can also try to plan ahead and deal with any important decisions before you go away.

## Death or incapacity

If a guardian loses capacity (and therefore isn't able to perform his or her decision-making role) or dies, and an alternative guardian has been appointed by the Guardianship Tribunal, that person then becomes the guardian for the duration of the order.

If a guardian loses capacity or dies, and no alternative guardian has been appointed, the Public Guardian then becomes the guardian for the remaining period of the order.

The guardianship order ceases upon the death of the person under guardianship. You no longer have decision-making authority or responsibility following the death of the person under guardianship. While you may have things to organise and decide as a family member or friend (such as the funeral arrangements), you are no longer responsible as a guardian.

If the person under your guardianship dies during the course of the guardianship order, it's a good idea to let guardianship and financial agencies know so that you don't receive unwanted correspondence in future. For example, you might notify:

- > the Guardianship Tribunal
- > the Private Guardian Support Unit
- > the NSW Trustee and Guardian (formerly the Office of the Protective Commissioner and the Public Trustee)
- > other agencies involved

Case managers, other service providers or friends can help make these notifications.

## Working with the Public Guardian

Sometimes the Tribunal will appoint more than one guardian for a person. One of these may be the Public Guardian. The Public Guardian can be appointed jointly with a private person but they cannot have the same functions. A private guardian has the same legal standing as the Public Guardian, just different functions.

The Public Guardian is a statutory appointee (that is, a person appointed to a position by an Act of Parliament). His or her authority is delegated to staff of the Public Guardian.

The Public Guardian will make decisions according to the Guardianship Standards, position statements and practice guidelines of the office, as well as the principles of the Guardianship Act. The officer responsible will seek the views of the person, the guardian, family and friends before making any major decisions.

If you are a joint guardian with the Public Guardian, you can contact the officer responsible at any time to communicate your views and raise any concerns about the person under guardianship. If the officer responsible is not available and the matter is urgent you can speak with the duty guardian.

## What if I am not happy with the Public Guardian?

If you are unhappy with the quality of service from the Public Guardian, and you have tried to resolve it with the officer responsible, you can make a complaint. Complaints should be made in writing to the Complaints Support Officer. You will receive a response to your complaint in writing.

If you are unhappy with a decision made by the Public Guardian on behalf of the person under guardianship, you can ask for the written reasons for the decision and then for the decision to be reviewed internally. If you disagree with the outcome of the internal review, you can apply to the Administrative Decisions Tribunal (ADT) to review the decision. For more information about complaints and reviews, speak with the officer responsible or a Complaints Support Officer at the Public Guardian.

## Working with financial managers

Many people under guardianship are under financial management orders. Some guardians are appointed as private financial managers, but these are different roles.

If you are appointed as a guardian and private financial manager you will need to exercise these two distinct authorities in different ways. Some major differences between guardianship and financial management are:

- > unlike guardianship orders, financial management orders are generally not time limited
- > guardians make health and welfare decisions for the person under guardianship whereas financial managers make financial decisions
- > private financial managers are accountable to the NSW Trustee and Guardian (NSW T&G)<sup>3</sup> and must consult with the NSW T&G regarding major financial decisions. Guardians are not accountable to the Public Guardian and are not required to consult with the Public Guardian when making decisions
- > private financial managers are supported by the Private Management Branch within the NSW T&G. Guardians are supported by the Private Guardian Support Unit within the Public Guardian.

It is often necessary to consult and communicate with financial managers in the process of guardianship decision-making. For example, an accommodation decision may not be possible without the sale of a house, or a decision to increase in-home services may only be possible with information about a person's funds and their ability to pay for services. Your decision-making as a guardian may need to be informed by the person's financial affairs.

Likewise, the attorney (under an enduring power of attorney) or financial manager's decision-making may depend on the decisions of the guardian. It is important to inform the financial manager of any significant decisions being considered or that have been made.

Many people under guardianship are also under the financial management of the NSW T&G.

If you do not agree with the private financial manager or attorney you can apply to the Guardianship Tribunal to review the appointment.

<sup>3</sup> The NSW Trustee and Guardian (NSW T&G) commenced operation on 1 July 2009. Its services were formerly known as the Office of the Protective Commissioner and the Public Trustee.

If you are unhappy with the quality of service from the NSW T&G, or if you disagree with a decision, contact them on 02 8688 2600 to make a complaint or seek a review. If this does not resolve your concerns, you can apply to the Administrative Decisions Tribunal to review the decision.

## Working with advocates

Advocacy is the process of standing alongside a person who is disadvantaged and speaking out on their behalf in a way that represents the best interests of that person.

Disability advocates support people by providing information and linking them with services and people so that the person is empowered to obtain their rights. The advocate acts as a voice for the client and can only act with the permission of the client.

Advocates are not legally appointed and have no authority to make decisions on behalf of the person under guardianship. An advocate does not have the right to request information about the person with a disability, except when authorised by the person with the disability or guardian.

Advocacy services can complement guardianship. Some useful advocacy services are listed in Chapter 6, Useful Resources.

### Case study

Margaret is guardian for her daughter Bronwyn who has an intellectual disability. Bronwyn lives in a group home. The group home service provider informs Margaret that Bronwyn has to move to a new home because the resident mix is going to change. Margaret is concerned about the impact of a sudden move for Bronwyn but is not sure if she has authority to withhold consent. She phones the Private Guardian Support Unit (PGSU) to talk about what is happening.

The PGSU talks with Margaret over the phone about:

- > her authority under the guardianship order
- > how she might go about deciding whether the proposed change to accommodation is or is not in Bronwyn's best interests
- > how to seek a proposal from the service provider with information to assist in the decision-making process, such as their accommodation transfer plan, a transition plan and risk assessment ■

## Private Guardian Support Unit (PGSU)

The Private Guardian Support Unit (PGSU) is a free information and support service for legal guardians and those seeking to become legal guardians. It can provide information about services and issues that may help you as guardian in your decision-making. Staff from the PGSU will listen to you, make suggestions as appropriate and refer you to other agencies if required. The PGSU can help you to:

- > understand the guardianship order and other legislation
- > understand your role, rights and responsibilities
- > prepare for meetings, correspondence, complaints and review hearings
- > create a 'guardianship plan'
- > develop strategies about maintaining or obtaining services for the person under guardianship.

The PGSU aims to provide a link with guardians so they don't feel so alone in their role. You can contact the unit to discuss any concerns or issues relating to your role. The PGSU does not supervise the actions of guardians or tell you what decisions to make, but rather it aims to provide support and general information. This can include examples from PGSU's experience of how other guardians have handled similar situations and options available.

Conversations between guardians and staff of the PGSU are confidential. The PGSU is obliged however, to report any threats or disclosures that indicate a person under guardianship is at risk of harm or an illegal act has been committed.

You can request copies of fact sheets or relevant publications, as well as copies of the PGSU's regular newsletter *Onguard*. You will automatically go onto the mailing list for *Onguard* when you become appointed as a guardian.

You can call the telephone information line between 9am-5pm, Monday to Friday on 02 8688 6060. If you are outside the Sydney metropolitan region, call 1800 451 510 and ask for the Private Guardian Support Unit. You can email the PGSU at [informationsupport@opg.nsw.gov.au](mailto:informationsupport@opg.nsw.gov.au)

The PGSU also has a website where you can view information about the *Guardianship Act 1987* (NSW), the Public Guardian and guardianship in general and download fact sheets and other resources. The address is: [www.lawlink.nsw.gov.au/opg](http://www.lawlink.nsw.gov.au/opg)

## Sample guardianship plan

Juanita has just been appointed as guardian for her cousin Andre. She has the functions of accommodation, health care, medical and dental consent and services. Juanita contacts PGSU to confirm her understanding of the guardianship order and her role. She discusses her guardianship plan with PGSU. Juanita keeps all of her guardianship information, records of actions and decisions together in an exercise book and includes the guardianship plan in this book. She sets out a decision, action and time frame under each function.

Function	Decision	Action & due date
Accommodation	to decide where Andre should live	<ul style="list-style-type: none"> <li>&gt; set meeting with case manager to discuss different options available (within 1 month)</li> <li>&gt; seek medical advice from Andre's GP and specialist (2 months)</li> <li>&gt; talk with Andre about where he wants to live and why (2 months)</li> <li>&gt; talk with family members and Andre's best friend Nathan for their views about where Andre should live (2 months)</li> </ul>
Medical and dental consent	consent to medication as necessary	<ul style="list-style-type: none"> <li>&gt; bring copy of guardianship order to next appointments with Andre's GP and specialist and explain guardianship role</li> <li>&gt; give GP &amp; specialist my contact details for when consent is needed</li> </ul>

Date of Plan: 30 March 2009

Written by: Juanita Jones

Review Date: 30 September 2009

## Sample contact record

It is important to keep track of the information you have gathered and actions taken as a guardian. One way of recording details would be to use your own contact record, for example:

Date	Contact	Detail	Follow-up
1.4.08	Phone call to Disability Service (02 3333 3333)	Spoke with Julie Rigg, intake officer. Requested case management service for Kristy. Julie to send me the intake forms.	Action: forms should be received by 10.4.08 – if not ring Julie back
3.4.08	Phone call from Dr Smith, neurologist	Verbal consent provided to Epilim 1000mg mane & 1500mg nocte for continuation of epilepsy management. Kristy does not object to medication. Consent valid until next neurological review in six months.	Action: put neurology appointment in diary
7.4.08	Disability Service case management intake forms received yesterday	Completed and returned by post today. See copy on file.	Action: phone call next Monday to request response due date.

## 4. Functions of a guardian

### 4.1 Accommodation function

The accommodation function is given to a guardian when decisions need to be made on behalf of the person with a disability about where they should live.

#### How is this function explained in my guardianship order?

If you have this function, you may find it worded in the order like this: *'To determine where the person may reside.'*

#### What does an accommodation function authorise me to do?

This function gives guardians the authority to decide where the person may:

- > live, or stay, temporarily. This may include decisions about respite (in an aged care facility, group home or health care facility)
- > live in the longer-term or permanently
- > go for holidays or overnight visits, often including whether the person can visit family and friends.

#### Deciding where a person should live

Proposals about where the person should live or stay, how long they should be there, and sometimes, how they should get there, may be raised by health care workers, other service providers, the person with the disability or their family and friends. As a guardian with an accommodation function, you will need to consider these proposals and make decisions that are in the best interest of the person under guardianship.

Many guardianship orders with the accommodation function are appointed because the person under guardianship is no longer able to live safely in their current home without some, or more, support. A guardian with an accommodation function must then decide whether the person can be further supported in their existing home or whether they need to move into accommodation that is able to provide a higher level of support (for example a group home or an aged-care facility).



#### DID YOU KNOW?

The 'functions' of accommodation, health care and consent to medical and dental treatment are the most commonly given 'functions' in an order by the Tribunal.

These are big decisions. Usually people move homes because they want to and some people have lived in their home for a long time. Moving a person somewhere new because they have no other choice can be very traumatic.

To help you make the best decision, you need to get as much information as you can and you may be able to get a professional to assess the situation. For example, if the person you are a guardian for is elderly and living at home, you can ask the Aged Care Assessment Team (ACAT) to assess the situation and make recommendations about what would be required to enable the person to remain at home. The ACAT may find that it would not be safe or suitable for the person to remain in their home even with additional supports or equipment. In these instances, they would advise you to move the person to another home and make suggestions about the most suitable style of accommodation.<sup>4</sup>

Similar assessments are also available for people who are in hospital, usually with the assistance of a social worker or other health worker attached to the ward.

If the person already lives in supported accommodation, meet with the manager of the facility and discuss whether their management and support strategies can be varied to enable the person to remain in their current home. If the necessary level of support cannot be provided, ask the service provider to let you know about alternative accommodation options. Arrange appointments for you to visit these facilities and if appropriate, take the person under guardianship with you and ask them for their view about the various options.

If you, or the person under guardianship, are unsure about whether an alternative accommodation will be suitable in the longer-term, you could consent to the person moving there for an agreed trial period.

If you make a decision to change a person's accommodation, remember to let the Guardianship Tribunal, financial manager and any other relevant organisations know so they can update their records about how to contact the person.

### **Signing contracts and liability**

While you as guardian can make decisions about where the person lives, you cannot enter into financial contracts on behalf of the person under guardianship. Decisions about financial aspects of a person's accommodation or care should be directed to their financial manager.

<sup>4</sup> You might be asked to sign the aged care client record. This form provides approval for the person to access support or accommodation. If the person cannot sign the form themselves due to incapacity, you have this authority.

### **What if the person under guardianship refuses to move from their current home?**

Moving from one home to another is very stressful, especially if it is not a move the person really wants to make. If possible, give the person as much time as you can to get used to the idea. It may also be helpful for the person to visit the new accommodation a few times before the actual move is made. If there are any people that the person under guardianship particularly likes or trusts, ask them to talk about the move with the person and explain why the move is best for their safety and well-being.

Sometimes, a person's objection is because of his or her disability or lack of insight into their treatment needs. They may object verbally but not in any coherent or strenuous way. When it is time for the move to take place, they may go along with the decision and move without objection.

It is very important that you stay honest and open with the person and don't try to move them by deception. Such action would be contrary to the principles of the Guardianship Act.

The last resort is for the person to be physically moved by others. This is an extremely serious thing to do and will be most distressing for the person. It should only be considered if it is urgent, the person needs to move for their safety and well-being and the person clearly objects, physically objects or will otherwise require coercion to guarantee his or her compliance. If you do need to consider this action, you must first be sure you have the authority to carry it out.

### **Do I have the authority to move a person against their wishes?**

You only have the authority to move someone against their wishes if you have been appointed with a 'coercive' accommodation function in the guardianship order. This will be written as 'accommodation and authorise others' and includes the authority to request the assistance of police and ambulance to take a person to their accommodation, and retrieve them if they leave.

If this situation was anticipated at the hearing, this function may already be part of the order. If not, you may need to apply to the Tribunal for this extra authority.

### **Case study**

Nora, 80, has dementia. Her guardian, Anne, has accommodation, health care and services functions. Over the past year Nora's health has deteriorated and services tell Anne that they are struggling to keep Nora safe at home, even with maximum support.

After a fall, Nora is taken to hospital. The treating team recommend low level dementia specific aged care for Nora.

Anne talks with Nora about how she has been managing at home and seeks her views about moving to an aged care facility. Nora denies receiving any assistance at home and refuses to discuss alternatives to living at home. Anne asks the Occupational Therapist to do a home assessment.

Nora doesn't recognise her house and cannot participate in the assessment. Later, she does not remember going home.

Anne agrees to Nora's placement in an aged care facility when she leaves hospital ■

### **What happens if the person attempts to leave the new accommodation?**

It is completely normal for a person to take time to settle into their new place. Staff should be aware of this and as part of their duty of care<sup>5</sup>, they should help the person to settle in. Sometimes, staff may be able to distract a person who wants to leave by engaging with them in activities or conversation.

It is also important to talk with the person about why they want to leave. Where possible, consider the person's thoughts and the reasons they give you for wanting to leave and then talk with the staff. Staff may be able to make changes that improve the situation and help the person to feel comfortable and happy.

If the person remains very unhappy, you may need to consider if the accommodation is the best place for them and whether there are any alternatives.

If the person keeps trying to leave, and there are concerns for their safety if they do leave, then a service provider may be able to keep the person in accommodation under their 'duty of care'.

You do not have the authority to ensure the person remains in the accommodation unless you have been appointed with a coercive accommodation function in your guardianship order. This function gives the guardian the authority to ensure the person remains within a place and/or to assist the person to return to the accommodation if they leave. If you do not have this function, but you think you need it, you can apply to the Tribunal for this authority.

### **What can I do if I am not satisfied with information I am getting about accommodation options?**

If you are unhappy with the accommodation options given, you could:

- > discuss your concerns with the staff member or service provider
- > suggest other accommodation options you would like them to consider
- > make a formal complaint to the service provider on behalf of the person under guardianship.

If you think that the service provider does not understand or respect your role as guardian, you can suggest they request an education session from the Public Guardian.

5 'Duty of care' is the obligation a service provider has to provide care and protection of the person in their care and to take whatever action necessary to ensure this.

## 4.2 Coercive accommodation function

A coercive accommodation function is given to a guardian when there is a need to ensure the safety of the person under guardianship and in some cases, to override any objections the person may have to accommodation decisions.

### What does a coercive accommodation function authorise me to do?

A coercive accommodation function gives you all the same authorities as the standard accommodation function plus the additional authority to:

- > decide that an accommodation decision should be enforced even if the person disagrees or forgets about it; and
- > request assistance from others including police and ambulance in enforcing the decision.

### Implementing the coercive accommodation function

Before giving the extra authority contained in a coercive accommodation function, the Tribunal may ask you what has been done to help the person understand why the accommodation decision has been made. When it comes time to make a decision to use this coercive authority you will need to consider this again. Coercive decisions can be very distressing for the person under guardianship and should only be undertaken as a last resort, even if you have the legal authority to do it.

Before enforcing compliance of an accommodation decision you will need to:

- > weigh up the benefits of the decision against the burdens of implementing it. That is, while the accommodation decision might be in the person's best interests, will the impact of the steps necessary to enforce the decision be worse than the existing risk?
- > consider how the decision will be enforced and by whom, and
- > consider whether all other less restrictive options have been tried.



### Case study

Paul, 23, has an acquired brain injury after a motor vehicle accident. Paul is in a rehabilitation program but is unwilling to stay and tries to leave.

Paul's friend Dave was appointed as guardian with the functions of medical/dental consent, health care and coercive accommodation. The coercive accommodation gave Dave extra authority to ask other people, such as the nursing staff, to keep Paul within the unit and to bring him back if he left. This meant Paul could complete the rehabilitation program ■

You don't have to make these decisions alone. You can consult with relevant service providers or health or other professionals if this input is useful for you.

If you do decide that the person needs to be moved by force, you are not legally required to attend during the removal. You can ask other people to attend such as the case manager or key worker from the service the person is leaving or alternatively, from the service the person is going to.

### Can I get help from the police and/or ambulance services?

A coercive accommodation function authorises you to request assistance from police or ambulance officers. However, this function is only given as a last resort and is not very common, so many police and ambulance officers are not familiar with this authority. If you have a coercive accommodation function, it is a good idea to write to or visit the relevant police and ambulance stations (probably the ones that are closest to the place where the person under guardianship is living) as soon as you can. Provide them with a certified copy of the order and explain the meaning of the function and the type of help you may need from them. Then, if things do get to a crisis point, they will know what you need them to do and that you have the authority to ask them to do it.

Ambulance officers are not able to force people to travel with them. However, with a request from an appropriately authorised guardian and assistance from police, ambulances can help with transportation.

### What if the police or ambulance officers won't help me?

If police or ambulance officers still won't help you, or they are unsure about what you are asking them to do, you could suggest they contact the Guardianship Tribunal or Private Guardian Support Unit (PGSU) to confirm the legitimacy and meaning of the order and the function.

### 4.3 Health care function

A health care function is given to a guardian when the person with a disability needs to have decisions made about their health care.

How is this function explained in my guardianship order?

If you have this function, you may find it worded in the order like this:

‘To determine what health care, and major or minor treatments, the person may receive’.

#### What does a health care function authorise me to do?

A health care function gives you the authority to determine what health care the person should receive. For example, with this authority you can make decisions about:

- > assessments, non-invasive examinations, investigations, diagnostic procedures; health care monitoring and observation; generalist nursing or personal care; nursing care plans
- > whether the person should attend medical or other health care appointments (as an out-patient, in the community or at home)
- > whether the health care information about the person should be released if requested
- > whether specialist medical (non-invasive) assessments/ reviews, such as those by a psychiatrist or a neurologist, should be undertaken
- > whether the person should be admitted to an acute general hospital for the purpose of investigation or treatment, where the person is not objecting to the admission
- > whether the person should be discharged from an acute general health care facility
- > whether the person should receive non-invasive treatments such as: massage, physiotherapy, speech therapy, and/or use non-ingested agents (such as creams, lotions or alternative/complimentary therapies) which are not subject to Part 5 of the *Guardianship Act 1987* (NSW)

- > the need for a case conference or review meeting with health care professionals or service providers to discuss health care matters relating to the person
- > which health care services or professionals the person under guardianship will receive a service from, such as the person's general practitioner, dentist, psychologist, psychiatrist, and also whether it is necessary to change a practitioner
- > dietary matters (following recommendations by a dietician) if this will have an impact upon the person's health.

**Please note:** this function does not give you authority to consent to or decline medical or dental procedures or treatments, which are outlined within the provisions of Part 5 of the Guardianship Act. To consent to or decline medical or dental treatment, you need a medical and dental consent function.

### **Making decisions about a person's health care**

In some instances, you will need to make decisions that respond to requests or recommendations made by health practitioners or service providers about the person's health care. In other instances, you may make requests for things to be done that you believe are needed. If you feel that the person is not receiving the care they need, you can request that things such as tests or check-ups are done. If necessary, you can make a decision to change practitioners.

To help you with your ongoing management of the health care function, you can ask the service providers who are involved in the health care of the person you are guardian for to:

- > provide a treatment plan (if the person is admitted to a health care facility, or elsewhere because major health concerns have been raised or diagnosed)
- > provide you with written reports following medical (or other) reviews and/or assessments
- > arrange for check-ups for the person with their dentist, general practitioner, optometrist, audiologist
- > provide a health care management plan if the person is at risk of self-harm.

**Accessing health care records**

Health records belong to the health practitioner but you have the right to access the records of the person you are guardian for when you have a health care function. You can request access to information about the person's health care or medical history from treating doctors, health care facilities, accommodation (aged care facility) and/or other services.

While this is not something you would do routinely, you might need to access the person's medical records from time to time to help you understand your role more fully or if you have a major health care decision to make on behalf of the person or if you are concerned about the care the person is currently getting. There is further discussion about this issue on page 22.

For more information about how to access health records, refer to the brochure *Your Health Information* (2008) published by the Health Care Complaints Commission.

**What can I do if I am not satisfied with the health care options I have been given?**

If you are not satisfied with the health care options you have been given, you might:

- > let the staff worker / service provider know of your concerns
- > suggest any other options you would like them to consider.

If this does not achieve the desired outcome, you can make a formal complaint to the service provider on behalf of the person under guardianship. For more information about making a complaint, see Chapter 5, Making a Complaint.



### DID YOU KNOW?

If you do not have a medical/dental function, you could still be the 'person responsible' for the person with a disability.

## 4.4 Medical and dental consent function

A medical and dental consent function is given when the person under guardianship needs medical and dental treatment and they are unable to provide their own consent.

### How is this function explained in my guardianship order?

If you have this function, you may find it worded in the order like this:

*'To consent on the person's behalf to medical and dental treatment to which they are not capable of consenting for themselves, subject to the provisions of Part 5 of the Guardianship Act 1987.'*

### What does a medical and dental consent function authorise me to do?

This function gives you the authority to give or decline consent to medical or dental treatments and procedures. With this authority you may:

- > give or decline consent to major or minor medical or dental treatments
- > give or decline consent to the use of medications for the purposes of sedation or chemical restraint
- > give consent for a limited time.

In this instance, a substitute decision-maker is appointed to ensure:

- (a) that people are not deprived of necessary medical or dental treatment merely because they lack the capacity to consent to the carrying out of such treatment, and
- (b) that any medical or dental treatment that is carried out on such people is carried out for the purpose of promoting and maintaining their health and well-being.

### What is consent from a 'person responsible'?

*The Guardianship Act 1987* (Part 5, Section 33 (2)) states that a person is incapable of giving consent to the carrying out of medical or dental treatment if the person:

- (a) is incapable of understanding the general nature and effect of the proposed treatment, or
- (b) is incapable of indicating whether or not he or she consents or does not consent to the treatment being carried out.

When a person lacks capacity to consent the treating practitioner must seek consent from the patient's person responsible.

A guardian with a medical and dental function is a person responsible. There can also be other persons responsible who are involved by virtue of their relationship to the person and do not have to be appointed by the Guardianship Tribunal. In this instance, person responsible is the term that replaces next of kin. The person responsible hierarchy only applies to medical and dental decision-making and not other life areas.

The person responsible is:

- > a guardian who has the function of consenting to medical, dental and health care treatments

or, if there is no guardian appointed with this authority

- > a spouse, de facto spouse or same sex partner with whom the person has a close, continuing relationship


or, if there is no such spouse, de facto spouse or same sex partner

- > an unpaid carer who is now providing support to the person or who provided this support before the person entered residential care

or, if there is no carer

- > a relative or friend who has a close personal relationship with the person.

It is up to the medical or dental practitioner to determine who the person responsible is.



**TIP** - The guardian or 'person responsible' should always consider the views (if any) of the person who will be receiving the treatment and ensure the person does not object to the proposed treatment.



### Case study

Tom has an intellectual disability. When Tom develops a toothache he goes to the dentist who explains to Tom and his father that his tooth is decayed and needs to be removed. With the support of the dentist and his father, Tom is able to understand what the proposed treatment will mean for him and provide his own consent to the treatment. However when Tom's dentist recommends a general anaesthetic to remove a number of teeth, Tom does not understand the risks of the anaesthesia. Tom's dentist assesses that Tom is not able to give consent for the treatment and talks to Tom's father, as person responsible, instead ■

## What types of treatment can the person responsible consent to?

The *Guardianship Act 1987* (NSW) refers to four categories of treatment, which are urgent, minor, major and special. Under Part 5 of the Act, doctors and dentists are required to obtain a valid consent before treating. The Act also states who can provide valid consent to these treatments when the person receiving the treatment is unable to provide their own consent.

### ***Urgent treatment***

If a doctor or dentist urgently needs to treat the person to save his or her life, to prevent serious damage to his or her health, or to prevent or alleviate significant pain or distress, they can do so without consent.

### ***Minor treatments***

Any treatment not listed below as a major or special treatment is a minor treatment, unless it involves significant risk to the person.

The person responsible can consent to minor treatments and consent can be made verbally or in writing. If the person responsible cannot be located and the patient is not objecting, the doctor or dentist may treat without consent. The doctor/dentist is required to write in the person's medical record that the treatment was necessary to promote their health and well-being and that the person did not object.

### ***Major treatments***

The person responsible can consent to these types of treatments. If they cannot be contacted, only the Guardianship Tribunal can then consent. The doctor or dentist must request consent to major treatments in writing, and consent to the treatment must also be provided in writing. Treatment can be discussed over the phone or in person, but consent needs to be sought and provided, in writing.

Major treatments include:

- > any treatment that involves long-lasting injectable hormone for contraception or menstrual regulation
- > any treatment that involves the administration of a drug of addiction
- > treatment involving general anaesthetic or other sedation but not treatment involving:
  - ▮ sedation used for the management of fractured or dislocated limbs
  - ▮ sedation used to facilitate the insertion of an endoscope into a person's body for diagnostic purposes unless the endoscope is inserted through a breach or incision in the skin or mucous membrane
- > any treatment for the purpose of eliminating menstruation
- > any treatment that involves the administration of a restricted substance for the purpose of affecting the central nervous system, but not treatment:
  - ▮ involving a substance that is intended to be used for analgesic, antipyretic, antiparksonian, antihistaminic, antiemetic, antinauseant or anticonvulsant purposes; or
  - ▮ that is to be given only once; or
  - ▮ that is a PRN (which means as and when required, according to the person's need) but not more than three times a month; or
  - ▮ given for sedation in minor medical procedures.
- > any treatment that involves a substantial risk to the person, that is, a risk that amounts to more than a mere possibility of:
  - ▮ death; or
  - ▮ brain damage; or
  - ▮ paralysis; or
  - ▮ permanent loss of function of any organ or limb; or
  - ▮ permanent and disfiguring scarring; or .
  - ▮ exacerbation of the condition being treated; or
  - ▮ an unusually prolonged period of recovery; or
  - ▮ a detrimental change of personality; or
  - ▮ a high level of pain or stress.
- > any treatment involving testing for HIV
- > any dental treatment involving the administration of a general anaesthetic or simple sedation
- > any dental treatment resulting in the removal of all teeth or which will significantly impair the person's ability to chew food.



## DID YOU KNOW?

If the Guardianship Tribunal provides an initial consent to one of these treatments, it can then give you a function to provide further consents to this or similar “special” treatments.

### Special treatment

Only the Guardianship Tribunal can consent to any of the following ‘special’ treatments:

- > sterilisation
- > termination of pregnancy
- > drugs of addiction used for more than 10 days in 30 (except if the person has cancer or is dying)
- > aversive measures - mechanical, chemical or physical
- > experimental treatments, including
  - ▶ any new treatment that has not yet gained the support of a substantial number of doctors or dentists specialising in the area
  - ▶ use of medication that affects the central nervous system when the dosage, duration or combination is outside accepted norms
  - ▶ androgen-reducing medications for behavioural control (eg, androcur).

### Making decisions about medical and dental consent

*The Guardianship Act 1987* states that before a medical or dental practitioner can ask you for consent on behalf of another person, they must be sure you are informed of all the details of the treatment, including its risks and benefits. If you have been provided with all the relevant information, and you consent to the treatment or medication, this is known as giving informed consent or valid consent.

If you are asked to consent to a treatment or medication on behalf of someone else, it is essential that you have as much information as possible to help you decide. These are some questions you could ask the practitioner:

- > what is the person’s diagnosis?
- > what does this mean?
- > how does the doctor/dentist plan to treat the person?
- > what is the purpose of the procedure - to cure, relieve symptoms or investigate further?
- > what will be the likely outcome of the procedure?
- > will there be pain or discomfort for the person?
- > are there any risks involved and how likely are they?
- > are there any side effects and how likely are they?
- > are there any alternatives?
- > what would happen if the treatment wasn’t given?

If you are asked to consent to medication on behalf of someone else, these are some questions you could ask:

- > what is the name of the medication (brand name and/or generic name)?
- > how does it work?
- > what are the benefits?
- > what happens if the person does not take it?
- > is it habit/addiction forming?
- > how important is it that the person takes the medication?
- > how long will it take to work and how will you know it is working?
- > what will happen if it doesn't work?
- > when and how should it be taken?
- > for how long should it be taken?
- > what are the side effects?

You can ask the practitioner to provide you with a treatment plan and ask for an annual assessment of the person and the impact of the treatment. Attend a consultation with the person under guardianship if you feel this will help you to make your decision.



### DID YOU KNOW?

A doctor may also choose to make an application to the Tribunal to consider consent to a treatment if the guardian or 'person responsible' is objecting to the proposed treatment.

### What if the person objects to the treatment?

The person responsible should always consider the views (if any) of the person who will be receiving the treatment and ensure the person does not object to the proposed treatment.

If the person under guardianship does object to the treatment, you as their guardian with medical and dental consent function can override their objections if, and only if:

- > the person has minimal or no understanding of what the treatment involves; and /or
- > the treatment will cause them no distress, or if it will cause distress, this is likely to be reasonably tolerable and only transitory.

In all other circumstances, if you are asked to provide consent to a medical or dental treatment and the person under guardianship objects, you will need to ask the treating practitioner to apply to the Guardianship Tribunal for consent.

The Tribunal may then either:

- > provide consent to the treatment (overriding the person's objections) as a one-off matter, as permitted under Part 5 of the *Guardianship Act 1987*; or
- > extend your decision-making authority to include the authority to consent to medical/dental treatment overriding the person's objections. This is called a Section 46A power under the *Guardianship Act 1987* (NSW).

### Use of medication to restrain or control the person's behaviour

Sometimes medications designed to treat mental illness (a group of drugs commonly called psychotropic medications) are suggested for someone who is considered to have challenging or difficult behaviour, for example an elderly person with severe dementia who becomes agitated and aggressive toward others.

As guardian, you can only provide consent when the treatment will promote and maintain the person's health and well-being. Medication which is used to restrain or control someone's behaviour should only be consented to when it is part of a behaviour management plan.


Useful resources:

- > *Best Practice Model for the Use of Psychotropic Medication in Residential Aged Care Facilities*  
NSW Health 2001
- > *Guidelines on the Management of Challenging Behaviour in Residential Aged Care Facilities in New South Wales* NSW Health 2001
- > *Behaviour Support: Policy and Practice Manual: Guidelines for the provision of behaviour support services for people with an intellectual disability*  
DADHC 2009
- > The Guardianship Tribunal has a booklet about behaviour management

### Case study

Mr Salgado, 79, has dementia and lives in a nursing home in a small rural town. His granddaughter is his guardian with medical/dental consent and health care functions.

As Mr Salgado's dementia has increased he has become more agitated at particular times of the day, and is occasionally aggressive towards staff and other residents. He is assessed at a unit designed for people who are confused and have dementia and positive interventions and changes to his environment are made. However, there are times for which Mr Salgado's GP has recommended sedative medication to ensure that his distress does not seriously put at risk his general health and well-being ■



NSW Health has guidelines for end-of-life care and decision-making that outline a process for reaching end-of-life decisions. Health professionals making end-of-life proposals to guardians and family members should be familiar with these guidelines, which are available from NSW Health:

*Guidelines for end-of-life care and decision-making* (2005) NSW Health

*Decisions relating to No Cardio-Pulmonary Resuscitation (NCPR) Orders* (2008) NSW Health

## End-of-life decisions

Sometimes guardians are asked to consent to medical treatment that has the potential to affect the timing of a person's death and the person's quality of life immediately before death. The guardian can consent to end-of-life treatment provided the treatment has therapeutic value, is not burdensome, traumatic or intrusive and can be brought to an end if required.

These sorts of decisions are different to euthanasia, which directly and intentionally causes the death of a person in order to relieve that person's suffering. Euthanasia is illegal in New South Wales.

If you are asked to consent to treatment that relates to end-of-life, the practitioner making the request should provide you with the information described on pages 45 and 46.

## Advance care directives

An advance care directive (ACD) contains instructions that consent to, or refuse to consent to, specified medical treatments in the future. They become effective in situations where the person is no longer able to make decisions. Advance care directives can be useful for people with recurring illnesses. ACDs allow the person to 'have a voice' and participate in treatment planning while they have capacity and insight, for a time when they may not have capacity, insight or much power.

Guardians cannot make advance care directives on behalf of a person under guardianship but can be involved in advance care planning. If you are aware that the person under your guardianship has written an ACD, you should draw it to the attention of the treating team. Depending on the content, the ACD may affect your decision-making when considering whether to provide or withhold consent to medical/dental treatment. NSW Health has a useful publication titled *Using Advance Care Directives*, 2004.

**What can I do if I am not happy with the treatment proposed or satisfied with the medical care of the person under guardianship?**

If you are unsure about the necessity of a proposed treatment, you can get a second opinion from another practitioner or ask for a review by a specialist. Similarly, if you feel the person is not getting the service or treatment they need, you can change the person's doctor or dentist. You may wish to discuss this with the person, as well as any relevant support staff and the practitioner themselves if appropriate.

If you as guardian decide to decline consent to a treatment, it is important to know that the doctor may then choose to apply directly to the Guardianship Tribunal and ask them to consider consenting to the treatment. The Tribunal may override your decision if it decides the treatment will be in the best interests of the person under guardianship.

If these actions do not resolve your concerns, you may wish to make a complaint to the Health Care Complaints Commission (HCCC) on behalf of the person. You can also express your concerns about non-compliance with, or alleged breaches of, the provisions of Part 5 of the *Guardianship Act 1987*.

## 4.5 Services function

A services function is given to a guardian when the person under guardianship needs to have decisions made on their behalf about what services they need to support or assist them.

### How is this function explained in my guardianship order?

If you have this function, you may find it worded in the order like this:

*‘To make decisions concerning the major services the person should access’.*

### What does a services function authorise me to do?

This function gives you the authority to make decisions about (including giving or declining consent) the types of services and support the person gets and/or which agencies will provide them. The type of services required, and the agencies that provide them, will vary depending on the person’s needs. Some examples of the services you may need to make decisions about include:

- > case management
- > direct personal or attendant care
- > house cleaning, shopping, Meals on Wheels, practical home-support services
- > service plans, including assessment and review
- > counselling and therapy services to assess the person under guardianship
- > employment, training, vocational or education services
- > skills development and/or recreational activities.

Other things you may have to decide about if you have this function is whether to release personal information about the person under guardianship if it is requested by service providers and whether the person can be involved in a positive behaviour intervention and support program not involving restrictive practices.

If the person under your guardianship is currently not receiving any support from service providers, it may be worth getting the person’s situation assessed just to confirm that they are still able to function adequately unsupported. If the person is leaving the criminal justice system, an acute care hospital, or a psychiatric facility, make sure they have all the necessary discharge planning. As well as making

**TIP** - If you are being asked to consent to an assessment, plan or to particular strategies, you should ask to see the agency’s relevant policy or procedure prior to providing consent.

decisions about what services the person should receive, you may also have to advocate on behalf of the person to make sure that they get these services and in a way that is satisfactory to meet their needs.

### Case managers

Identifying a case manager early can make your job as guardian a lot easier.

Agencies that provide services to people with a disability or with a brain injury or who are aged, usually employ people to coordinate and/or deliver the care and services that their clients might need or want.

When a case manager begins working with a client, they will usually review and assess the person's circumstances and make recommendations about their support needs. As the person's guardian, you can ask the case manager to discuss these recommendations with you and together you can work out a case plan for the person under guardianship. You can also request a review of the person's case plan at a later date if you think it is necessary.

The case manager has an on-going responsibility for the care and support of the person, including coordinating other direct service providers if relevant. They will monitor the delivery of services and how the person is responding to the help and can notify you if there are any concerns or if changes need to be made. They may also be available to assist in times of crisis or emergency.

If the person under guardianship currently does not have a case manager, and you feel that they (or you) would benefit from having one, contact the service that is most relevant to the circumstances of the person under your guardianship. If you are not sure which service to contact, call the PGSU and talk it over with them.

### What if the services available are not adequate to meet the person's needs?

If the person has the financial resources, you could consider using private operators to provide additional services if those available through funded agencies are not sufficient to meet the person's needs. You will need to discuss this with the person's financial manager.

If the person does not have additional financial resources, then you will need to discuss the options further with the person's case manager.



### DID YOU KNOW?

Written service plans need to indicate how a service will be co-ordinated, and by whom and when they will be reviewed.

### Case study

Miss Tait, 94, lives at home and has been diagnosed with dementia. Her guardian Roger has health care and services functions. Miss Tait refuses to allow staff members from Community Options into her home to help clean the house, make sure she eats a meal and provide her with support so she can safely remain at home.

Roger agrees to the service providers going into the home to provide the necessary assistance for Miss Tait. He also negotiates with her attorney for the service providers to be given keys to gain entry whenever necessary. The case manager and Roger spend time with Miss Tait during the visits to make sure she doesn't become too distressed and to give her the opportunity to get to know the regular staff members ■

### What if the person objects to the services?

Sometimes, the person under guardianship may object to a service provider coming into their home. This usually occurs because they are unfamiliar with the service provider and have not had a chance to build rapport with them.

If someone needs to come into the home of the person under guardianship, try to do this in a sensitive way. Talk to the person about why the support is necessary and wherever possible, give them time to get to know the service provider who will be visiting them. If you are able to, it may be useful for you to come with the service provider, at least for the first few visits. You can help the person under guardianship to get to know them and you can demonstrate your trust in them and with what they are doing.

If possible, the person under guardianship should also have some choice about who comes into their home, when they come and how long they stay.

If the person continues to refuse to let anybody into their home, and it becomes vital that the person receive the service, (for example they may be faced with eviction if the property is not cleaned), then the service provider will need to be given access to the property without the person's consent. In this circumstance, you or the person's case manager will need to consult with the person's attorney or financial manager to authorise entry into the house. Only these people can authorise the entry of staff members of a service into the property. A guardian cannot authorise entry into a locked property.

### What can I do if I am not satisfied with the service options given?

If you are unhappy with the service options given, you might:

- > let the worker/agency know of your concerns
- > suggest any other options you would like them to consider

If this does not achieve the desired outcome, you can make a formal complaint to the service provider or the relevant external complaints body.

## 4.6 Restrictive practices function

A restrictive practices function is given when the person under guardianship may need to be protected from self-harm by the use of physical restraint for a limited time.

### How is this function explained in my guardianship order?

If you have this function, you may find it worded in the order like this:

*'To make decisions about the use of the following restrictive practices'*

or

*'To give or withhold consent to a behaviour intervention and support program'*

### What does a restrictive practices function authorise me to do?

This function gives you the authority to consent or refuse consent to the use of restrictive practices that are aimed at managing or controlling the person's behaviour. The function will usually include special conditions that specify the type of restrictive practices that you may consent to. With this authority you may:

- > give or decline consent to the use of restrictive practices within the context of a positive behaviour intervention and support program
- > give or decline consent to any further authority granted in the special conditions of the order.

This function does not authorise you to use restraint to overcome objections to medical treatment (as outlined in Part 5 of the *Guardianship Act*) or to consent to chemical restraint.

The decision to restrain someone within the mental health system is a decision for the clinician involved and Mental Health Review Tribunal and under the *Mental Health Act 2007*. Guardians cannot consent to a person being restrained within a mental health unit.

### What are restrictive practices?

Restrictive practices are techniques used to control or change a person's behaviour. The techniques used include personal physical restraint or restrictions to the physical environment. Without consent, these practices may be considered to be an assault or wrongful imprisonment.

Restrictive practices should only be consented to:

- > as a last resort;
- > within the context of a positive behaviour and intervention support plan; and
- > according to best practice.

Some restrictive practices may be used in a crisis situation, and as a last resort, as part of a service provider's duty of care to the person. This should only occur when it is clear to the service provider that if they did not take this action the person would be at risk of harming her/himself or others.

If restrictive practices are proposed or are in use, and you do not have a restrictive practices function, you or the service provider must apply for this extra authority from the Guardianship Tribunal.

Practices such as punishment, the loss of privileges, seclusion, aversive treatment, the denial of access, manacles and posey vests are prohibited practices and should never be used.

### Use of restrictive practices within services

In order to use restrictive practices, service providers need to follow an internal process for consent that usually includes a written policy authorisation at a senior level to the restrictive practices consent, as well as seeking the consent of the guardian.

To help you make decisions about restrictive practices, you can ask service providers to provide you with their policy on using restrictive practices and on their internal processes for gaining consent and monitoring the use of the practice.

### How do I know if physical restraint is necessary?

In some circumstances, the use of restraint may be required under duty of care if a particular behaviour could lead to the harm of the person or of others, or to respond to the behaviour in an emergency for the safety of all. In these situations, restraint should be considered a last resort and should only be used for as short a time as possible.

Deciding to use physical restraint to change a person's behaviour continually is a serious decision. A number of studies and reports have questioned its effectiveness and there is evidence to suggest it can have negative consequences for a person. Studies show that restraint does not assist a person to change their behaviour in those areas. It has also been found that physical restraint can increase (not reduce) the risk of a person falling, that it can result in the development of pressure sores, constipation and incontinence as well as other serious injury if the person tries to remove the restraint. Being restrained may also lead to the person feeling frustrated and powerless, to the point of becoming distressed, agitated, upset and confused.

It is important for guardians to think carefully about :

- > the reasons for physical restraint
- > the possible consequences for the person
- > how it directly benefits the person
- > whether it is the least restrictive alternative

Some of the questions you might ask service providers are:

- how serious is the communication or behaviour of concern and does it pose a threat to the person or to others?
- what are the health, medical, environmental and communication factors which could contribute to, or cause, the behaviour?
- has an assessment of the person's behaviour been done? If yes, ask to see a copy.
- what else is being done to manage the behaviour of concern, for example, can extra staff be provided to assist the person?
- how will the restraint benefit the person?
- what might be the consequences of the restraint and how will the comfort and safety of the person being restrained be ensured?
- how long is the person expected to be restrained (i.e. how many hours per day, how many hours per week)?
- what changes do people expect to see in the person's behaviour?
- how will they know if it is working or not?
- when and how will the restraint be reviewed?

Ask service providers to put any proposal to use restraint or restrictive practices in writing.

### Can I request an assessment of the person's behaviour?

Yes. If you are being asked to consent to a service provider using restrictive practices and they haven't conducted an assessment of the person and the behaviour, you can ask them to do one and then for them to use this to develop a behaviour plan. There are many reasons why a person may be communicating or acting in a particular way. It is important that every possibility be considered.

An assessment might consider:

- > what recent or past changes have occurred for the person?
- > have they moved to live in another place?
- > have other people come to live in the same home as them?
- > have new people recently come into their life (including people who the person lives with, or who support them or who are staff members)?
- > have people left who were important to the person?
- > has there been any change in medication?

The person might be reacting to:

- > boredom
- > difficulty communicating with other people
- > sadness, loss, fear, anger, illness
- > being confused about something in their life
- > not having any choices or control over what happens to them
- > remembering a recent or past trauma
- > poorly or inappropriately diagnosed or managed physical and/or psychiatric illness

Assessments need to include contributions from all the main people in the person's life, for example, family, friends, the guardian, health care professionals and relevant staff.

Plans need to be written after a lot of discussion and investigation of the reasons why the person may be acting the way they are. A behavioural practitioner, programmer or social educator will usually be involved in helping to develop appropriate strategies. If not, you can ask that someone with those skills be involved.

**Making a decision about the use of restrictive practices**

To help you make your decision, you may ask a health care professional from outside the service to review and comment on the restrictive practices plan that is proposed. You could also talk to the person under guardianship about what they would think about possible use of restrictive practices.

Based on the information you are provided with, you may decide to:

- > refuse consent to use restrictive practices
- > provide (when absolutely necessary) consent to the use of restrictive practices as a short-term (crisis) measure, with the expectation that a comprehensive support plan is developed at the earliest opportunity
- > consent to use restrictive practices as outlined in a support plan prepared by a suitably qualified professional, where consent is valid for a particular period of time, and that the use of the practice is reviewed at regular (specified) intervals with particular attention to the impact it is having on the person under guardianship. You may also ask the service provider to give you regular updates on how effective the use of the restraint is, how often it is used, in what circumstances and with what results.

**What can I do if I am unhappy/not satisfied with the restrictive practices proposed or being used?**

- > suggest any other options you would like them to consider
- > discuss your concerns about the use of restraint with the worker or agency
- > make a complaint to the agency, funding body or a complaints body such as the Ombudsman
- > contact the Disability Abuse and Neglect Hotline
- > contact the Guardianship Tribunal for further powers so you can arrange alternative support services or accommodation.

Refer to chapter 6 for contact details. If you feel that the service provider does not understand or respect your role as guardian, you can suggest they request an education session from the Public Guardian.

## 4.7 Access function

An access function is given to a guardian when there is a need to decide who the person with a disability should have contact with.

### How is this function explained in my guardianship order?

If you have this function, you may find it worded in the order like this:

*'To make decisions regarding access/contact arrangements'.*

### What does an access function authorise me to do?

An access function gives you the authority to decide:

- > who the person under guardianship should have visits from and who they should visit
- > who the person should have contact with (including written and telephone contact)
- > when such visits/contact should occur, for how long, and in what circumstances.

Such decisions may involve you consenting to, and sometimes placing limits upon, requests by others for visits to (or contact with) the person under guardianship. These decisions can sometimes be difficult to make, as you need to consider what will be in the best interests of the person for whom you are guardian. The person under guardianship has the right to see (or have contact with) those people he or she wishes to, and not to see those they do not wish to. However, the person also has the right to be protected from harm, conflict, undue influence or pressure from others.

In some instances, restricting access or stopping someone from visiting the person under guardianship may require some safety actions such as changing the locks. If this is required, you will need to discuss the expenses with the person's financial manager.

For some people the intention of an access function is to allow or facilitate *greater* rather than lesser access. An access protocol should be developed and distributed to all parties.

#### The access protocol developed may address the following:

- > times of access
- > how often
- > details of access arrangements
- > contact arrangements during access visits
- > supervised access
- > how changes to the protocol can be made
- > timeframe for reviewing the protocol

### Can I apply for an Apprehended Violence Order on behalf of the person under guardianship?

No. An apprehended violence order (AVO) can protect someone if there are concerns for their safety and they need to be protected from someone else. However, under the Crimes Act, only the person in need of protection or the police can apply for an AVO. A guardian cannot apply for an AVO on behalf of the person under guardianship.

You can deny contact with someone if you are very concerned for the safety or well-being of the person under guardianship when they are with that person. If this raises concerns, or there are repeated breaches of an access arrangement, you might need to consider if an AVO is required.

If you are concerned for the safety of the person under guardianship, you can discuss this with the person's case manager and the police. If required, the police can make an application for an AVO on the person's behalf. Most police stations have a Domestic Violence Liaison Officer who will be able to help you.

### Making decisions about access

When you are making decisions about access, you need to consider whether:

- > the person (under guardianship) wants to have contact with a particular person/persons
- > this contact will benefit the person under guardianship and if so, under what conditions
- > the contact will have a negative consequence for the person under guardianship.

It is a good idea to seek an informal, and negotiated, arrangement for visits and/or contact whenever possible. Remember however, that you can give or decline consent to visits or contact at given times and locations, and you can insist on certain conditions (for example, supervised access only).



### Case study

Brian, 35, has an intellectual disability and lives in a group home. He has acquired some 'new friends' who have been taking advantage of him. The 'friends' have been taking Brian to places which are unfamiliar to him, taking whatever money he has on him and abandoning him.

Brian's cousin, Mark, is appointed as his guardian with an access function so he can protect Brian from being further exploited by these 'new friends' ■

To help you to manage the access function, you could ask service providers (where relevant) to:

- > meet with you and the person under guardianship to discuss access issues
- > develop an access plan in consultation with the person under guardianship, you, family and/or friends
- > ensure this access plan includes advice about what to do if things go wrong or not as planned
- > monitor visits that have been consented to as part of an access plan and provide support to the person under guardianship during those visits, if necessary
- > write reports for you on how things are going
- > assess the person's capacity to make decisions about visits, or to consider the impact of these visits
- > assist a person to change the locks to their house or change their telephone number, to improve their safety and security.

To help develop the access plan, ask the people who wish to visit the person under guardianship when they want to visit or have contact with the person. If you consent to the access plan, make sure a copy of your consent is sent to senior staff for their records. If the person lives in a residential facility or group home, ask staff to share information about the access plan with other staff.

### **What can I do if I am concerned about a lack of cooperation with my access decisions?**

If you are unhappy about a lack of cooperation with your access decisions, you need to:

- > let the person/worker/agency know your concerns
- > suggest any other options you would like them to consider
- > make arrangements for greater supervision
- > talk to a Domestic Violence Liaison Officer (police) about an AVO

If this does not achieve the desired outcome, you can make a formal complaint to the service provider on behalf of the person under guardianship.

If you feel that the service provider does not understand or respect your role as guardian, you can suggest they request an education session from the Public Guardian.

## 4.8 Admission of a person to a mental health facility

When a person with a disability needs to have treatment in a psychiatric facility, and they are unable to request their own voluntary admission, a guardian may request their voluntary admission to the facility.

The authority governing this action comes from Section 7 of the *Mental Health Act 2007*, which states:

1. A person under guardianship may be admitted to a mental health facility as a voluntary patient if the guardian of the person makes a request to an authorised medical officer.
2. A person under guardianship must not be admitted as a voluntary patient if the person's guardian objects to the admission to the authorised medical officer.
3. An authorised medical officer must discharge a person under guardianship who has been admitted as a voluntary patient if the person's guardian requests that the person be discharged.

Section 8 of the *Mental Health Act 2007* further states that

1. An authorised medical officer may discharge a voluntary patient at any time if the officer is of the opinion that the patient is not likely to benefit from further care or treatment as a voluntary patient.
2. A voluntary patient may discharge him or herself from or leave a mental health facility at any time.
3. An authorised medical officer must give notice of the discharge of a voluntary patient who is a person under guardianship to the person's guardian.



### Case study

**Amanda, age 49, has significant memory problems, often appears to experience hallucinations and has become increasingly confused. Amanda's brother, Peter, who is her guardian with functions of services, accommodation and medical/dental consent, requested her voluntary admission to a psychiatric hospital, under the Mental Health Act. Amanda's admission was required to allow for a thorough review and assessment ■**

For you as guardian, this means:

- > you can make a request to the medical superintendent for the voluntary admission of the person for whom you are the guardian. The medical superintendent will decide if he or she will accept your application for admission
- > you can consent to the person under your guardianship being discharged from a psychiatric facility at any time, unless they have been made an involuntary patient under the Mental Health Act
- > the person cannot be held as a voluntary patient without your consent
- > you cannot consent to the person, as a voluntary patient, being held against their wishes in the hospital or psychiatric facility.

However, also under the Mental Health Act, if a voluntary patient asks to leave the hospital, and it is felt that to do so would place them in an 'at risk' situation, the treating psychiatrist may consider changing their status to involuntary.

If the person does not have a guardian, an application may need to be made to appoint a guardian who will then be able to request their voluntary admission.

## 5. Making a complaint

If you are unhappy about a decision, a service or any situation where you think the rights of the person with a disability have not been recognised or respected, you can make a complaint. You can also make a complaint if a decision has not been made or an action has not been taken and you believe this inaction may be having a negative effect on the person.

### Making an informal complaint

To begin with, consider approaching a senior staff member of the service with which you have a complaint. This can be done verbally, in person or over the phone. Let them know you are concerned about a decision or action (or lack thereof) and the impact it is having on the person under guardianship. Ask them to explain why they made the decision or took that action and to put the reasons in writing. Make a note of the person's name, the date of the conversation and what was discussed.

### Making a formal complaint


If this informal approach does not resolve the issue, then you may need to consider making a formal complaint to the service in writing. Most public and private sector organisations have complaint handling procedures that you can follow, which should outline the format the service needs your complaint in, who to make the complaint to and what type of response you can expect in terms of format and timeline.

Complaint letters should include:

- > what your complaint is about, including the nature of your concern for the person under guardianship
- > what you want to happen
- > who you have spoken to previously about the matter.

If you feel that your letter needs more detail, you could also include:

- > relevant dates and times
- > a description of relevant incidents
- > details of telephone conversations and meetings and who you spoke to
- > copies of relevant letters.



The NSW Ombudsman has published a useful resource called *The Rights Stuff Toolkit: Tips for Solving Problems and Making Complaints* (2009) which is available on-line at [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)

You can also ask for any explanations you think are important, let the service know what action you think should be taken to resolve the problem and request that your letter be acknowledged in writing along with a date by which you can expect a response. If necessary, tell them what action you will consider taking if the matter is not resolved to your satisfaction.

Remember to attach copies of relevant documents to your covering letter.

Keep a copy of all correspondence you receive and send, and any other important documents or notes, including details of telephone calls. You may need to send further letters or provide more information. It helps if you can find this information easily and have evidence to back up your claims.

### **Mediation**

Mediation may be offered to you as part of the complaint resolution process, or it is something that you as the guardian may consider proposing to the involved parties. Mediation is a formal process that can help people who strongly disagree with each other to reach an agreement. In mediation, a neutral person (known as the mediator) sits down with the people who are in dispute to find out why there is a dispute, help them to think about other options and alternatives, and to help them reach an agreement.

In NSW, the Community Justice Centre provides a free mediation and conflict management service to people who need it.

## 6. Useful resources

### Aboriginal Medical Service

Phone 02 9319 5823

The Aboriginal Medical Service provides medical/dental clinics, access to counsellors, health workers and community clinics. It also provides visits to jail by medical staff. Branches of the service are located in regions throughout the state.

### Administrative Decisions Tribunal (ADT)

Phone: 02 9223 4677

Email: [ag\\_adt@agd.nsw.gov.au](mailto:ag_adt@agd.nsw.gov.au)

[www.lawlink.nsw.gov.au/adt](http://www.lawlink.nsw.gov.au/adt)

The main functions of the ADT are to review specific administrative decisions of NSW Government agencies, including reviewing decisions made by the Guardianship Tribunal.

### Aged Care Assessment Teams (ACATs)

Phone: 1800 242 636 or your local hospital

ACATs help older people and their carers work out what kind of care will best meet their needs when they are no longer able to manage at home without assistance. ACATs provide information on suitable care options and can help arrange access or referral to appropriate residential or community care services such as Home and Community Care (HACC). An ACAT assessment and approval is required before people can access residential aged care, Community Aged Care Packages (CACPs) or Extended Aged Care at Home (EACH) Packages.

### Aged Care Complaints Investigation Scheme

Phone: 1800 550 552

[www.health.gov.au/oacqc](http://www.health.gov.au/oacqc)

The Aged Care Complaints Investigation Scheme investigates complaints and concerns about Australian government-subsidised aged care including hostels, nursing homes and community care.

### Aged Care Information Line

Phone: 1800 500 853

Email: [admin@seniors.gov.au](mailto:admin@seniors.gov.au)

[www.seniors.gov.au](http://www.seniors.gov.au)

The Aged Care Information Line provides basic information about home and community care, fees, bonds/charges, aged care approval round, income/means testing, access to care, publicity material, residential classification scale and financial assistance and legislation.

### The Aged Care Rights Service NSW (TARS)

Phone: 02 9281 3600 or 1800 424 079

Email: [tars@tars.com.au](mailto:tars@tars.com.au)

[www.tars.com.au](http://www.tars.com.au)

The Aged-care Rights Service (TARS) is a community legal centre that provides advocacy for the residents of Commonwealth funded hostels and nursing homes, self-care retirement villages and recipients of in-home aged care in NSW. It also gives information on the costs associated with entering an aged care facility and advice on retirement village contracts.

### Alzheimer's Australia NSW

Phone: 02 9805 0100 or 1800 639 331  
1800 100 500

Email: [admin@alznsn.asn.au](mailto:admin@alznsn.asn.au)

[www.alzheimers.org.au](http://www.alzheimers.org.au)

Alzheimer's Australia NSW is a peak body representing the interests of people living with dementia in NSW. It is actively involved with policy and research and provides a wide range of services including support, information, education and community advocacy.

### **Benevolent Society**

Phone: 02 9339 8000  
[www.bensoc.org.au](http://www.bensoc.org.au)

The Benevolent Society is an independent, secular, not-for-profit organisation helping to connect communities through support groups, volunteer visiting programs and community projects and has staff and offices throughout NSW.

### **Brain Injury Association of NSW Inc**

Phone: 02 9868 5261 or 1800 802 840  
 Email: [mail@biansw.org.au](mailto:mail@biansw.org.au)  
[www.biansw.org.au](http://www.biansw.org.au)

The Brain Injury Association of New South Wales is the advocacy body in NSW for people with an acquired brain injury, their families, carers and interested organisations. It represents their needs to government, service providers, broader community and the media.

### **Carers NSW**

Phone: 02 9280 4744 or 1800 242 636  
 Emergency respite: 1800 059 059  
 Email [contact@carersnsw.asn.au](mailto:contact@carersnsw.asn.au)  
[www.carersnsw.asn.au](http://www.carersnsw.asn.au)

Carers NSW is an association for relatives and friends who are caring for people with a disability, mental health problem, chronic condition or who are frail aged. It provides a range of support services for carers including carer support groups, counselling, an information line, factsheets, carer support kits, systemic advocacy and a library.

### **City and Inner West Disability Advocacy**

Phone: 02 9212 2020  
 Email: [ciwda@mdaa.org.au](mailto:ciwda@mdaa.org.au)  
[www.mdaa.org.au/ciwda](http://www.mdaa.org.au/ciwda)

City and Inner West Disability Advocacy (CiWDA) provides advocacy services to people with disability and their families and carers living in the City and Inner West area of Sydney.

### **Commonwealth Ombudsman**

Phone: 1300 362 072  
 Email: [ombudsman@ombudsman.gov.au](mailto:ombudsman@ombudsman.gov.au)  
[www.ombudsman.gov.au](http://www.ombudsman.gov.au)

The Commonwealth Ombudsman assists the Australian community by resolving complaints about Australian Government agencies such as defence force, immigration, law enforcement, postal services and other Australian government agencies. If you think you have been unfairly treated by a federal government agency you can complain to the Ombudsman.

### **NSW Community Justice Centre**

Phone: 02 9228 7455  
 Email: [cjc\\_northern@agd.nsw.gov.au](mailto:cjc_northern@agd.nsw.gov.au)  
[www.cjc.nsw.gov.au](http://www.cjc.nsw.gov.au)

Community Justice Centres provide free mediation and conflict management services to help people resolve disputes. Funded by the NSW Government as part of the Department of Justice and Attorney General, services are confidential, voluntary, timely and easy to use.

### **NSW Council for Intellectual Disability**

Phone: 02 9211 1611 or 1800 424 065  
 Email: [mail@nswcid.org.au](mailto:mail@nswcid.org.au)  
[www.nswcid.org.au](http://www.nswcid.org.au)

The NSW Council for Intellectual Disability (CID) provides representation, advocacy and policy recommendations for people with an intellectual disability and their carers. It also provides an information and referral service for consumers, families and workers in the field.

### **Department of Ageing, Disability and Home Care (DADHC)**

Phone: Central Office 02 8270 2000  
Seniors Information Service 13 12 44  
Email: [info@dadhc.nsw.gov.au](mailto:info@dadhc.nsw.gov.au)  
[www.dadhc.nsw.gov.au](http://www.dadhc.nsw.gov.au)

DADHC provide support and services to people with disabilities and their carers in NSW. The Department funds and licenses a range of services for people with disability, older people and carers, including Home Care, community access, accommodation and respite and services.

### **Disability Abuse and Neglect Hotline**

Phone: 1800 880 052  
[www.disabilityhotline.org](http://www.disabilityhotline.org)

The National Disability Abuse and Neglect Hotline is an Australia-wide telephone hotline for reporting abuse and neglect of people with disabilities using government funded services. Allegations are referred to the appropriate authority for investigation.

### **Disability Advocacy Network**

Phone: 6921 9225 or 1800 250 292  
Email: [dan\\_inc@bigpond.com](mailto:dan_inc@bigpond.com)  
[www.dan-inc.net.au](http://www.dan-inc.net.au)

Disability Advocacy Network (DAN) provides advocacy services to people who have a disability, their family and carers in the Riverina and Murray South West Slopes, Southern Tablelands and Central Murrumbidgee.

### **Disability Advocacy NSW**

Phone: 1300 365 085  
Email: [da@da.org.au](mailto:da@da.org.au)  
[www.da.org.au](http://www.da.org.au)

Disability Advocacy (DA) service provides an information and advocacy service to people with disability and their family, and operates in the Hunter, New England and Mid-North Coast regions of NSW.

### **Disability Council of NSW**

Phone: 02 9211 2866 or 1800 044 848  
TTY: 02 9211 2866  
Email: [disabilitycouncil@dadhc.nsw.gov.au](mailto:disabilitycouncil@dadhc.nsw.gov.au)  
[www.disabilitycouncil.nsw.gov.au](http://www.disabilitycouncil.nsw.gov.au)

The Disability Council is the official advisory body to the NSW Government on disability issues. The Council monitors the implementation of government policy in relation to people with disabilities, their families and carers. It also advises the Minister for Ageing & Disability on priority issues that need urgent action.

### **Disability Discrimination Legal Centre (NSW)**

Phone: 1800 800 708  
Email: [info@ddlcnsw.org.au](mailto:info@ddlcnsw.org.au)  
[www.ddlcnsw.org.au](http://www.ddlcnsw.org.au)

The Disability Discrimination Legal Centre (DDLC) provides free legal advice, representation and assistance for problems involving discrimination against people with disabilities and their associates.

### **Family Advocacy**

Phone: 02 9869 0866 or 1800 620 588  
Email: [familyadvocacy@family-advocacy.com](mailto:familyadvocacy@family-advocacy.com)  
[www.family-advocacy.com](http://www.family-advocacy.com)

Family Advocacy is an independent, community-based social advocacy organisation which works with families in which there is a child or an adult who has a developmental disability.

### Guardianship Tribunal

Phone: 02 9556 7600 or 1800 463 928

Email: [gt@gt.nsw.gov.au](mailto:gt@gt.nsw.gov.au)

[www.gt.nsw.gov.au](http://www.gt.nsw.gov.au)

The Guardianship Tribunal is a legal tribunal established under the *Guardianship Act 1987* (NSW). The Guardianship Tribunal makes decisions about the appointment of guardians and financial managers, and about medical and dental consent, for people aged 16 years and over with decision-making disabilities. It may:

- > review the guardianship and financial management orders it makes
- > review enduring powers of attorney and enduring guardianship appointments
- > provide consent to medical or dental treatment
- > approve a clinical trial so that people with decision-making disabilities can take part

### Health Care Complaints Commission

Phone: 02 9219 7444 or 1800 043 159

Email: [hccc@hccc.nsw.gov.au](mailto:hccc@hccc.nsw.gov.au)

[www.hccc.nsw.gov.au](http://www.hccc.nsw.gov.au)

The Commission's Inquiry Service handles inquiries from people who are concerned about the quality of the health care provided to them or to a family member or friend.

### Intellectual Disability Rights Service

Phone: 02 9318 0144 or 1800 666 611

Email: [info@idrs.org.au](mailto:info@idrs.org.au)

[www.idrs.org.au](http://www.idrs.org.au)

The Intellectual Disability Rights Service (IDRS) is a community legal centre which gives advice and referral service on legal and rights issues for people with an intellectual disability. Issues covered include discrimination, employment, guardianship and medical treatment. The service provides assistance to people with a disability, their families and carers, guardians and also to other lawyers and community workers.

### LawAccess NSW

Phone: 1300 888 529

Translating and Interpreting Service (TIS):  
13 14 50

[www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au)

On this site you will find legal information and assistance services.

### Mental Health Advocacy Service

Phone: 02 9745 4277

[www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au)

This is a service of Legal Aid NSW. It provides legal advice and aid to people who are the subject of proceedings under the Mental Health Act, the Mental Health (Criminal Procedure) Act, the Protected Estates Act and the Guardianship Act. It is concerned with protecting people's rights and providing equal access to the law, in particular by providing an advocacy service for those with mental health problems.

### Mental Health Association NSW Inc

Phone: 02 9339 6000 or 1300 794 991

Email: [info@mentalhealth.asn.au](mailto:info@mentalhealth.asn.au)

[www.mentalhealth.asn.au](http://www.mentalhealth.asn.au)

The Mental Health Associations role is to promote good practice in mental health, increase community awareness of mental illness and inform and support people to access appropriate mental health interventions. They provide an anonymous and free telephone and email information hotline during business hours.

### Mental Health Review Tribunal

Phone: 02 9816 5955 or 1800 815 511

Email: [mhrt@doh.health.nsw.gov.au](mailto:mhrt@doh.health.nsw.gov.au)

[www.mhrt.nsw.gov.au](http://www.mhrt.nsw.gov.au)

The Mental Health Review Tribunal is an independent body established under the NSW Mental Health Act 1990. It upholds the civil and legal rights of people who are mentally ill, or mentally disordered, and ensures that they receive the best possible care in the least restrictive environment.

### **Multicultural Disability Advocacy Association of NSW**

**Phone:** 02 9891 6400 or 1800 629 072  
**Email:** [mdaa@mdaa.org.au](mailto:mdaa@mdaa.org.au)  
**www.mdaa.org.au**

The Multicultural Disability Advocacy Association of NSW (MDAA) is the peak organisation for people from non-English speaking backgrounds (NESB) with disability, their families and carers in NSW. MDAA offers community information days, training and information sessions for people from a NESB with disability and their families and carers, as well as individual and systemic advocacy.

### **NSW Trustee and Guardian (NSW T&G)**

**Phone:** 02 8688 2600 or 1300 360 466  
**TTY:** 1800 882 889  
**www.lawlink.nsw.gov.au**

The NSW Trustee and Guardian (NSW T&G) has two major roles.

It provides financial management services for people who are unable to manage their own affairs due to disability. The NSW T&G can be appointed following an application to the NSW Supreme Court, Guardianship Tribunal, Mental Health Review Tribunal or a Magistrate.

It also responsible for the making of Wills, acts as Executor in deceased estates, manages Trusts and provides Attorney Services. It has offices located throughout NSW and there is an agent at every Local Court.

The NSW T&G commenced operation on 1 July 2009 and is made up of the agencies formerly known as the Office of the Protective Commissioner and the Public Trustee.

#### **> Disability Advisory Service (DAS) Branch, NSW T&G**

The Disability Advisory Service (DAS) consists of an in-house team of disability advisers and co-ordinates an external state-wide panel of Authorised Visitors who provide an independent reporting function directly to the NSW T&G. DAS provides the NSW T&G with advice about a client's disability and lifestyle needs within the context of the person's financial resources

#### **> Private Management Branch, NSW T&G**

When a person is appointed by the Guardianship Tribunal or Supreme Court, as a Private Financial Manager for a person who lacks the capacity to manage their own financial affairs, the Private Manager is authorised and directed by NSW T&G's Private Management Branch. The Private Management Branch issues Directions and Authorities to the Private Manager. These Directions and Authorities outline the decision-making powers and responsibilities of the Private Manager and give legal effect to the appointment of the manager. Private Manager's are required to submit an annual account for audit by the NSW T&G and must obtain approval to make decisions that are not contained within the Directions and Authorities.

### **NSW Ombudsman**

**Phone:** 02 9286 1000 or 1800 451 524  
**Email:** [nswombo@ombo.nsw.gov.au](mailto:nswombo@ombo.nsw.gov.au)  
**www.ombo.nsw.gov.au**

The NSW Ombudsman is an independent and impartial watchdog. Their job is to make sure that state government agencies fulfil their functions properly and improve their delivery of services to the public. The NSW Ombudsman handles complaints that fall within the following areas: public sector agencies, local government, the police, community services, workplace child protection, correctional centres, freedom of information and protected disclosures.

The NSW Ombudsman also administers the Official Community Visitors program. The role of Official Community Visitors is to promote the best interests of children, young people and people with a disability in care. They visit residential services and provide advice to the Minister and the Ombudsman about how to improve residents' quality of care.

**People with Disability Australia Inc.**

Phone: 02 9370 3100 or 1800 422 015

Email: [pwd@pwd.org.au](mailto:pwd@pwd.org.au)

[www.pwd.org.au](http://www.pwd.org.au)

People with Disability Australia Incorporated (PWD) is a national peak disability rights and advocacy organisation. It provides rights-related information, advice, referral, short-term individual, group and systemic advocacy services for people with disability and their associates.

**Privacy NSW**

Phone: 02 8688 8585

Email: [privacy\\_nsw@agd.nsw.gov.au](mailto:privacy_nsw@agd.nsw.gov.au)

[www.lawlink.nsw.gov.au/privacynsw](http://www.lawlink.nsw.gov.au/privacynsw)

Privacy NSW advises individuals, government agencies, business and other organisations on what steps they should take to ensure that the right to privacy is protected. They conduct research, answer enquiries and educating the community about privacy and receive, investigate and conciliate complaints about breaches of privacy.

**Public Interest Advocacy Centre**

Phone: 02 8898 6500

Email: [piac@piac.asn.au](mailto:piac@piac.asn.au)

[www.piac.asn.au](http://www.piac.asn.au)

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal and policy centre. PIAC makes strategic interventions in public interest matters to foster a fair, just and democratic society and to empower citizens, consumers and communities.

You can find information about the Homeless Person's Legal Services (HPLS) at PIAC. HPLS provides free legal advice to those who are homeless or at risk of homelessness at weekly Legal Advice Clinics.

PIAC is a Registered Training Organisation and offers public training courses to assist people with the knowledge and skills to be effective advocates.

**Schizophrenia Fellowship of NSW Inc**

Phone: 02 9879 2600

Email: [admin@sfnsw.org.au](mailto:admin@sfnsw.org.au)

[www.sfnsw.org.au](http://www.sfnsw.org.au)

The Schizophrenia Fellowship of NSW Inc. is committed to improving the circumstances and welfare of people living with schizophrenia, their relatives and carers, and professionals working in the area. It provides a helpline, recovery services, support groups, carers programs, respite and supported housing.

**Self Advocacy Sydney Inc**

Phone: 02 9622 3005

Email: [info@sasinc.com.au](mailto:info@sasinc.com.au)

[www.sasinc.com.au](http://www.sasinc.com.au)

Self Advocacy (Sydney) is an organisation for, and run by, people with an intellectual disability. It encourages people to speak up for themselves, understand their rights and learn new skills. It provides training, information and support to people with intellectual disability, service providers and other community groups.

**Transcultural Mental Health Centre**

Phone: 02 9840 3800 or 1800 648 911

Email: [tmhc@swahs.nsw.gov.au](mailto:tmhc@swahs.nsw.gov.au)

[www.dhi.gov.au/tmhc](http://www.dhi.gov.au/tmhc)

The Transcultural Mental Health Centre (TMHC) works in partnership with mental health services, consumers, carers and the community to improve the mental health of people from culturally and linguistically diverse (CALD) backgrounds living in NSW. TMHC conducts regular forums and conferences aimed at improving service provision and mental health literacy for CALD communities.

## Glossary of terms used

**advocacy** - the process by which a person represents the needs of a person with a disability to others involved in their care or service provision.

**appeal** - to formally ask for a decision to be reviewed.

**apprehended violence order** - a legal order made by a court to protect a person, (for as long as required) by restricting or denying contact by another person.

**behaviour management plan/ behaviour intervention plan** - a plan developed for a person with a disability which specifies a range of strategies to be used in managing the person's behaviour including strategies to build on the person's strengths and increase their life skills (*Disability Act 2006*, Victoria).

**duty of care** - an obligation a service provider has to provide care and protection of the people in their care and to take reasonable steps to ensure this.

**enduring guardian** - a legal authority given by a person to another, to make substitute decisions on their behalf, should they lose capacity to make their own health and welfare decisions.

**enduring power of attorney** - a legal authority given by a person to another, to conduct financial matters on their behalf, should they lose capacity to manage their own affairs.

**financial manager** - someone who has been appointed by a Court or a Tribunal to make financial decisions on behalf of another person who is unable to do so him/herself.

**function** - an authority given to a guardian, in a guardianship order, to make decisions in a particular part of another person's life.

**guardian** - a person who has been legally appointed, by the Guardianship Tribunal or Supreme Court, or via an enduring guardianship form of appointment, to make certain lifestyle decisions on behalf of a person (aged over 16 years) with a disability and for a specific period of time.

**guardianship order** - a legal document made by Guardianship Tribunal or Supreme Court, appointing a guardian(s) to make health and welfare decisions on behalf of a person (aged over 16 years) with a disability for a specific period of time.

**guardianship review hearing** - a hearing by the Guardianship Tribunal, to consider if the person with a disability, needs to continue having a guardian(s) to make certain decisions on their behalf and for how long.

**Guardianship Tribunal** - NSW Tribunal which decides if a person with a disability needs to have a legally appointed guardian to make certain decisions on their behalf.

**individual planning meeting** - a meeting with a person with a disability, their family and service providers, to decide on their personal goals and to plan how they can be achieved for example, social activities, living skills, managing money, personal hygiene.

**involuntary patient** - a person who has a mental illness (as defined by the Mental Health Act 2007), who is admitted, against their will, to a psychiatric facility, in order to receive treatment.

**least restrictive alternative** – the decision or option that results in a person's freedom being restricted as little as possible.

**part 5** - the section in the *Guardianship Act 1987* (NSW), that defines valid consent to medical and dental treatment and who can provide substitute consent to different types of treatment. It also identifies medical and dental practitioners' responsibilities in obtaining this consent.

**person responsible** - a person (as specified in Part 5 of the *Guardianship Act*) who is not formally appointed but who is considered by a medical practitioner able to give consent to certain medical/dental treatments on behalf of another person who is not capable of providing that consent for her/himself.

**power of attorney** - a legal authority given by a person to another, to conduct financial matters on their behalf.

**p.r.n.** - medication, prescribed by a medical practitioner, which is to be given as and when required, according to the person's need.

**psychotropic medication** - medication that is given to a person to assist in relieving their mood or state of mind. It can be given either for a short period of time or on a regular basis for an extended length of time depending on the person's needs.

**Public Guardian** - is 'the guardian of last resort' when no person known to the person with a disability, under guardianship, can be appointed.

**respite** - a planned short stay in residential accommodation to assist and support the person with a disability and their carers.

**restraint** - mechanical, chemical or physical measures which can be used to manage or control a person's behaviour by restricting their freedom of movement.

**restrictive practices** – techniques that are used as a last resort to control or change a person's behaviour, including physical restraint. Without consent these practices could be considered an assault or wrongful imprisonment.

**substitute medical and dental consent** - consent to medical or dental treatment (as defined in part 5 of the *Guardianship Act*) on behalf of someone else who is unable to give consent him/herself.

**voluntary patient** - a person with a mental illness (as defined by the *Mental Health Act 1990*), who voluntarily agrees to be admitted to a psychiatric facility, in order to receive treatment.

## notes

# Now You're the Guardian

A guide for people appointed as guardians  
under the Guardianship Act 1987 NSW

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