

THE NSW PUBLIC GUARDIAN
Making Decisions for People
under Guardianship

Information

**for Family, Friends
and Service Providers**



**Public
Guardian**
Justice & Attorney General

Family and friends

of a person under guardianship and service providers often have questions about the appointment and the role of the NSW Public Guardian. This book answers some of those questions.

INTRODUCTION

Guardianship is an important safeguard for people with disabilities in our community. If a person has lost the capacity to understand and appreciate the health and life decisions that need to be made, the person may be vulnerable to having decisions made for them that are not in their best interests.

The Public Guardian is the guardian for people who may have a disability such as dementia, intellectual disability, brain injury, or mental illness, who may have experienced abuse, neglect or exploitation, or who may live an at risk or itinerant lifestyle. At the very least the person may have lost the ability to clearly say what they want and to have their views respected.

The Public Guardian is appointed for a limited period of time to make decisions in one or more areas of the person's life.

The Public Guardian tries wherever possible to make the decision that the person would have made for themselves, and where that isn't possible, to make a decision that is in the best interests of the person.

To do this we need to talk to the person for whom we are guardian, service professionals, family members and friends. We hope the information in this booklet will help to develop relationships that will help us to make the best decision possible for the person under guardianship.

If you have been jointly appointed with the Public Guardian as the person's guardian, we look forward to working with you to make our respective decisions in a way that will benefit the person under our joint guardianship.



WHO IS THE PUBLIC GUARDIAN?

The Public Guardian is a public official appointed by the Guardianship Tribunal or the Supreme Court under the Guardianship Act 1987 with the authority to make some personal and health decisions on behalf of another person.

The Public Guardian is part of the NSW Department of Justice and Attorney General. The Public Guardian is different to the NSW Trustee and Guardian. The NSW Trustee and Guardian makes financial decisions for a person under the NSW Trustee and Guardian Act 2009.

The Guardianship Tribunal is a separate organisation to the Public Guardian. After the Public Guardian is appointed, the Guardianship Tribunal has no further involvement in making guardianship decisions. This is the role of the Public Guardian.

WHY IS THE PUBLIC GUARDIAN APPOINTED?

The Public Guardian is appointed when it is necessary for an independent person to make decisions on behalf of a person with a disability.

WHAT IF YOU ARE UNHAPPY WITH THE APPOINTMENT OF THE PUBLIC GUARDIAN?

If you are unhappy with the appointment of the Public Guardian and want to have the appointment reconsidered, or you would like to help the person under guardianship to do this, you can lodge an appeal to the Administrative Decisions Tribunal or to the Supreme Court. There are some costs associated with both of these avenues of appeal. If you appeal to the Administrative Decisions Tribunal the appeal must be made within 28 days after you receive the reasons for the decision from the Guardianship Tribunal.

If you want to appeal the decision, you should seek independent legal advice. For more information on how to appeal you can contact the Administrative Decisions Tribunal or LawAccess. Their contact details are at the end of this booklet.

You can also ask the Guardianship Tribunal to review a guardianship order at any time during the course of the order.

DO YOU NEED TO COME TO THE OFFICE TO MEET THE GUARDIAN?

While you are welcome to come to the office nearest you to meet the guardian it is not always necessary. Staff can organise to meet with you at a convenient location. If you believe it is important to have a face to face meeting at any time, you should talk to the guardian about this.

WHO CAN YOU CALL IF YOU NEED TO TALK TO SOMEONE?

We will give you the name of the guardian who will be making decisions on behalf of the person under guardianship. If this person is away or not available you can speak to the duty guardian. The duty guardian will make sure that all the information you provide is given to the guardian and can also help you if you do not know the name of the guardian. The duty guardian is available so that any urgent decisions can be made.

If you would like more information about the Public Guardian you can call and ask to speak to an Information Officer.

IS THERE SOMEONE AVAILABLE AFTER OFFICE HOURS?

For urgent decisions the duty guardian can be contacted after office hours (office hours are 9am – 5pm Monday to Friday). Call 02 8688 2650 or 1800 451 510 and you will be given directions on how to contact the duty guardian.

The after hours service is used only when decisions need to be made immediately, for example consenting to medical treatment. Because of the process for decision making, there will be many decisions that cannot be made after hours.

HOW DOES THE PUBLIC GUARDIAN MAKE DECISIONS?

The Public Guardian needs to know what decisions are necessary, what choices are available and the effect the proposed decision will have on the person's life.

We will talk to the person under guardianship. His or her views, past and present, lifestyle choices, beliefs and values help direct our decision making on the person's behalf.

We will also talk to those who know the person under guardianship well and who may also be affected by the decision. We are interested in their thoughts and opinions about what the person would have wanted or what is considered best for them.

We will also ask service providers to give us information about the support and services available and to give an opinion on the outcome of potential decisions.

When we have this information and have considered all the options available, the Public Guardian will make a decision.

WHAT GUIDES THE PUBLIC GUARDIAN WHEN MAKING DECISIONS?

The Public Guardian can only make decisions in the areas set out in the guardianship order. You should read the guardianship order to see what areas of authority (functions) the Public Guardian has.

The Public Guardian must make decisions that reflect the principles of the Guardianship Act 1987.

Staff are also guided by written policy statements on particular decision making areas and a number of internal decision-making procedures.

THE PRINCIPLES OF THE GUARDIANSHIP ACT 1987

- The welfare and interests of the person should be given paramount consideration
- The freedom of decision and 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
- The importance of preserving family relationships and cultural and linguistic environments 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 neglect, abuse and exploitation
- The community should be encouraged to apply and promote these principles

HOW LONG DOES IT TAKE TO MAKE A DECISION?

It can take time to collect all the information that is needed and to talk to the person under guardianship and other people who will be affected by the decision. At times a decision may not be possible until services or support provided by government departments and other agencies become available. You should talk to the guardian about the length of time they think it will take to make a particular decision.

It is important to remember that where medical or dental treatment is urgent a doctor or dentist can provide this treatment without consent.



WILL THE PUBLIC GUARDIAN KEEP YOU INFORMED?

Family members, friends and service providers who are closely involved with the person, or who will be affected by the decision will be informed as decision making progresses. There may be some information that we might not provide if the person under guardianship does not want that information given out, or if it is personal information that other people do not need to know.

CAN YOU ASK FOR THE REASONS FOR A DECISION?

If you are affected by a decision you can ask the guardian for reasons why a decision was made. You can also ask for these reasons to be given to you in writing.



WHAT IF THERE IS CONFLICT ABOUT A DECISION?

Where family members or friends have a strong disagreement over a decision that needs to be made, the guardian may suggest that the people involved be referred to the Community Justice Centre for mediation. The Community Justice Centre is independent of the Public Guardian and staff of the Public Guardian do not usually attend the mediation.

WHAT HAPPENS IF THE DECISION HAS FINANCIAL IMPLICATIONS?

We will always work closely with either the person who informally provides financial support, or the person appointed under a power of attorney or financial management order when making a guardianship decision that could have financial implications.

WHAT IF YOU THINK THE DECISION IS NOT IN THE INTEREST OF THE PERSON UNDER GUARDIANSHIP?

If you are unhappy with a decision that has been made, you can speak to the guardian about your concerns. If you are still unhappy after speaking with the guardian you can ask for the decision to be reviewed by a senior staff member. This is called an internal review. For more information on asking for a review you can call the Complaints Support Officer.

The Complaints Support Officer is there to help you ask for an internal review of a decision.

If, after a decision is internally reviewed, you are still unhappy, you can ask the Administrative Decisions Tribunal to review the decision.

DO YOU WANT TO MAKE A COMPLAINT?

If you want to make a complaint you can discuss this with the guardian. Talking about the problem, getting more information or clearing up any misunderstandings can help sort things out quickly. If you do not want to speak to the guardian, you can speak to the guardian's supervisor, the Regional Manager, or to the Complaints Support Officer. You will need to put your complaint in writing to the Public Guardian or the Complaints Support Officer.

The Complaints Support Officer is there to help you to make a complaint.

A complaint will be investigated and we will provide you with an outcome in writing within 10 working days.



WHO IS THE PUBLIC GUARDIAN ACCOUNTABLE TO?

The Public Guardian is accountable to the Director General of the Department of Justice and Attorney General. The Public Guardian reports to the Director General through the Chief Executive Officer of the NSW Trustee and Guardian. The Public Guardian's decisions are reviewable by the Administrative Decisions Tribunal. The Public Guardian is accountable to the NSW Ombudsman for the way we deliver our service.

WHAT CAN I EXPECT OF THE SERVICE PROVIDED BY THE PUBLIC GUARDIAN?

The Public Guardian is committed to providing a quality of guardianship service to best meet the needs of the person under guardianship. This is reflected in our Guardianship Decision Making Service Standards. The Standards are minimum standards and we exceed them in many areas. You can ask for a copy of our Standards. The Standards are about things such as our contact with you, our record keeping and our decision making process.

WHAT OTHER SERVICES DOES THE PUBLIC GUARDIAN PROVIDE?

We provide an information service to the general community and to legally appointed guardians.

Anyone can call to speak to our Information Officers between 9am – 5pm Monday to Friday. We provide free written information on things such as our role and function, our policies, our standards, and our complaint and review processes.

The Public Guardian can arrange for information to be provided in other formats such as Braille, tape recordings or in community languages on request and most of our information is on the **www.lawlink.nsw.gov.au/opg** website.

We also provide free education seminars to interested groups across NSW either on request or when advertised on our website. You can register with us to get email notification of upcoming events.

The Private Guardian Support Unit (PGSU) provides an information, support and referral service to family members or friends appointed by the Guardianship Tribunal as a person's guardian. The Unit also provides assistance to enduring guardians appointed by the person prior to a loss of capacity. The PGSU does not supervise the actions of private or enduring guardians or tell them what decisions to make, but provides support, general information about the role of a guardian and referral to appropriate agencies.

To be on the mailing list of the Public Guardian or for the Private Guardian Support Unit see contact details.

PUBLIC GUARDIAN CONTACT DETAILS

Central Office

Western Regional Team, Admin/Registry Team, Information & Support,
Private Guardian Support Unit and Complaints Support Officer

Parramatta Justice Precinct,
160 Marsden Street, Parramatta NSW 2150

Telephone 02 8688 2650

Country Callers 1800 451 510

Facsimile 02 8688 9797

TTY 1800 882 889

Southern Regional Office

Level 2, Suites 204-206,
83 York Street, Sydney NSW 2000

Telephone 02 8083 9100

Country Callers 1800 451 428

Facsimile 02 8083 9111

Northern Regional Office

Level 3,
4 Watt Street, Gosford NSW 2250

Telephone 02 4320 4888

Country Callers 1800 451 694

Facsimile 02 4320 4818

Email: informationsupport@opg.nsw.gov.au

Website: www.lawlink.nsw.gov.au/opg

OTHER USEFUL CONTACT DETAILS

Guardianship Tribunal

2A Rowntree Street, Balmain NSW 2041 or
Locked Bag 9 Balmain NSW 2041

Telephone 02 9556 7600

Country Callers 1800 463 928

Facsimile 02 9555 9049

Website: www.gt.nsw.gov.au

Administrative Decisions Tribunal

Level 15,
111 Elizabeth Street, Sydney NSW 2000

Telephone 02 9233 4677

Country Callers 1800 060 410

Facsimile 02 9233 3283

Website: www.lawlink.nsw.gov.au/adt

LawAccess NSW

PO Box 620 Parramatta NSW 2124

Telephone 1300 888 529

Translating Service 131 450

Facsimile 02 8833 3101

Website: www.lawaccess.nsw.gov.au

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This information is available on our website and can be provided in alternative formats such as Braille, audiotape, large print or computer disk. Please contact the Public Guardian on 02 8688 6070 (voice), 02 1800 882 889 (TTY – for people who are deaf or have a speech impairment) or email informationssupport@opg.nsw.gov.au

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