

Access function

Information for family and friends

This factsheet explains the access function and what decisions the Public Guardian can make using the function. A represented person is the person the guardianship order is for.

The access function authorises the Public Guardian to decide:

- who can or can't visit the represented person;
- what type of contact is allowed with the represented person, for example visiting the person at home, taking them on social outings or appointments, telephone calls, or other contact such as email or social media;
- When contact can occur, for how long and under what circumstances;
- As a last resort the Public Guardian can decide that the person should not have any contact with a particular person or people.

Informal arrangements where possible

Where informal access arrangements can be organised by family and friends of the represented person, the Public Guardian may not need to use the access function to make a formal decision. However, if informal arrangements break down or cannot be negotiated, then a formal decision may be required.

Mediation

Mediation can sometimes help family members to put aside their differences in the interests of the welfare of the represented person. Relationships Australia and

Community Justice Centres provide free mediation services in NSW.

The Public Guardian may need to make an access decision when:

- ✓ the represented person states that they do not want to have contact with a person or only wants limited contact with a person;
- ✓ the represented person wants to have contact with someone, but others are making it difficult for this to happen;
- ✓ the Public Guardian is advised that there is conflict between others that is negatively affecting the person;
- ✓ another person is behaving in a way that places the represented person at significant risk, for example at risk of services being withdrawn;
- ✓ informal arrangements are not working, and a formal decision will benefit the represented person.

An access decision may not be convenient for everybody involved. However, the Public Guardian's primary responsibility is the welfare and interests of the represented person.

The Public Guardian cannot force the represented person to have contact with a person when they do not want to.



**NSW Trustee
& Guardian**
Public Guardian

Making the decision

For the Public Guardian to make an access decision, the access function must be part of the guardianship order. If needed, the Public Guardian or another party can apply to the NSW Civil & Administrative Tribunal to have the function added to the order.

The Public Guardian works with people close to the represented person to make decisions in the best interests of the represented person. The Public Guardian is required to consider the principles of the *Guardianship Act 1987* in making decisions.

The Public Guardian will also consider:

- ✓ the views of the represented person
- ✓ the views of those who will be affected by the access decision including close family members, carers or service providers who provide regular services to the person;
- ✓ reports from health and medical professionals;
- ✓ how the access decision will be implemented.

What the Public Guardian cannot do under an access function:

- * Take the person to or from access visits or supervise visits;
- * Organise or communicate meeting times, changes or cancellations between parties;
- * Force the person to see someone they do not want to see;
- * Change locks or phone numbers to prevent unwanted contact when an access decision has been made. This is the responsibility of the person, the person's enduring power of attorney, or their financial manager.
- * Compel a person to allow access to their private property as a venue for visits to occur.

Implementing an access decision

The Public Guardian will only make an access decision as a last resort. For the access decision to work, it needs the co-operation and goodwill of family and friends

of the represented person. The Public Guardian will assess the ongoing need for the access arrangements over time.

An access decision can sometimes be difficult to enforce. For example, if

- the person lives alone and there is no person or service provider to monitor or supervise visits;
- family or friends refuse to cooperate with the access decision, for example when the owner of the home in which the represented person lives prohibits others from accessing the person.

A person who obstructs or hinders a decision made by the Public Guardian may be liable for an offence under section 103 of the *Guardianship Act 1987*.

If there are concerns for the safety of the represented person due to the behaviour of others, the Public Guardian may apply for an Apprehended Violence Order to protect the represented person.

Requesting a review of a decision

If you disagree with an access decision made by the Public Guardian, the decision can be reviewed internally by the Public Guardian and externally by NCAT. For more information about how to request a [review of a decision](#), contact the Information & Support branch of the Public Guardian on 02 8688 6070.

Contact us



If the Public Guardian is the guardian for your family member, contact us on 02 8688 2650 or 1800 451 510 if outside the metropolitan area



Email us or visit our website:
informationsupport@opg.nsw.gov.au
www.publicguardian.justice.nsw.gov.au



If you need an interpreter, contact us through the Translating and Interpreting Service on 131 450



You can contact us through the National Relay Service on 1800 882 889