

Determining whether to consent to a proposal concerning access to a person under guardianship

Decision making in relation to access to a person under the guardianship of the Public Guardian may involve consenting to proposals about who a person should see, visit, be visited by, or have other contact with (e.g. through writing or by telephone). Decision-making in this area may also involve consenting to where, when and how this contact should occur.

RELEVANT LEGISLATION

NSW Crimes Act 1900 (Part 15A Apprehended Violence Orders)

NSW Guardianship Act 1987 Section 4 - General Principles, require that:

- in the exercise of her/his functions, the guardian should take into account the views of the person under guardianship;
- the importance of preserving family relationships and the cultural and linguistic environments of the person should be recognised;
- the person should be protected from abuse, neglect and exploitation.

POSITION STATEMENT

A person under guardianship should be able to see, or have contact with whoever they wish. The Public Guardian advocates the right of a person under guardianship to be protected from harm, conflict, undue influence or other unreasonable pressures. This right to protection is the fundamental basis on which all access decisions are made.

When a person under guardianship is clearly at risk from unwanted contact, and a criminal offence is likely to be committed, anyone aware of potential danger to the person has a duty to seek immediate police assistance.

The Public Guardian may be given the authority to make decisions about access where there is significant conflict between people close to the person under guardianship, and where this conflict has a negative effect on the person. Sometimes this authority is given when the person is vulnerable and at possible risk due to the influence of a particular person or persons.

The Public Guardian will seek, wherever possible, a negotiated and informal solution to visiting and contact issues. Where the Public Guardian is satisfied that a person is at risk, and where no agreement can be reached about informal access arrangements, the Public Guardian will make a decision about access.

Determining access

Decision-making in relation to access is aimed at determining the contact a person under guardianship has with others. Access decisions are not primarily directed at limiting the actions of friends, family members or others. Where a person under guardianship expresses the view not to see a particular person, or where the person is considered at risk if particular contact is maintained, a decision may be made which results in that contact being restricted or monitored. It is recognised that a person whose access to the person under guardianship is restricted or denied by a decision of the Public Guardian may be dissatisfied with the decision. They do however have the right to make a complaint about the matter or to seek a review of the guardianship decision.

Access decisions made by the Public Guardian do not replace responsibility that carers, health care professionals and other service providers have which arise from their duty of care to the person. If in the course of an access visit, a carer, health professional or other service provider is concerned that the person's safety or well-being may be at risk, then appropriate action should be taken.

FACTORS CONSIDERED BY THE PUBLIC GUARDIAN BEFORE MAKING A DECISION

Views available

- What are the views of the person under guardianship about who they wish to have contact with?
- Request assessment of the person's capacity where appropriate to make visiting/contact decisions, or of the impact of these visits on the person.
- Is the person under guardianship able to indicate (or has done so in the past) his/her wishes in relation to access? If not, has information been gathered regarding his/her response and interaction with those requesting contact?
- What are the views of interested parties regarding when they wish to see the person, and the reason they hold concerns, if any, regarding contact by others?

Information for service providers concerning:

- whether an informal and negotiated arrangement for visits and/or contact with the person can be achieved;
- any risks associated with the proposed contact;
- the history of the relationship between the person under guardianship and those requesting access;
- the influence of the person's cultural and religious values and those of his/her family in relation in this matter;
- whether there is an Apprehended (Personal or Domestic)Violence Order (**AVO**), Trespass Order or Family Court injunction which may affect a person's contact with the person under guardianship;
- the access plan developed in consultation with the person's family and/or friends;
- proposals for times and dates of visits from family/friends;
- whether a local service provider has been identified to assist in implementing the access plan;
- the assistance they will provide for the person's security arrangements (e.g. changing of locks, telephone numbers).

ACTIONS THE PUBLIC GUARDIAN WILL TAKE WHEN AN ACCESS DECISION HAS BEEN MADE

- Inform all parties in writing of the access decision and any conditions attached to decision.
- Provide or withhold consent to visits or contact at given times/locations depending upon certain conditions being met (e.g. supervised access only).
- Provide or withhold consent to proposals for phone or written contact.
- Where necessary request that service providers monitor visits (consented to as part of an access plan) and provide support to the person under guardianship during these visits.
- Request reports of, or data collection relating to, the effect of contact on the person under guardianship as required.

ACTIONS THE PUBLIC GUARDIAN DOES NOT TAKE IN RELATION TO ACCESS DECISIONS

- Facilitate or supervise contact or visits between the person under guardianship and others;
- Take the person under guardianship to or from access visits.
It is the responsibility of the person's case manager or primary support service, in conjunction with appropriate health care workers and other services to provide the Public Guardian with information about the effect of access visits on the person under guardianship.
- Pay or negotiate fees associated with avoiding unwanted contact (such as the changing of locks or phone numbers), where this is necessary. This is the responsibility of the person, his/her attorney under an enduring power of attorney or his/her financial manager.
- Take out an Apprehended Violence Order on a person's behalf.

The Public Guardian will advocate and make representations to the NSW Police Service, requesting that the police seek an AVO on behalf of a person when this is considered necessary. The Public Guardian may request police to intervene where access conditions have been breached.

OTHER RELATED OPG POSITION STATEMENTS

Valuing the cultural, linguistic and religious background of the person under guardianship