



NSW

Public Guardianship Standards



Public Guardian
Justice & Attorney General

NSW Guardianship Standards

These standards are based on the *National Standards of Public Guardianship*, endorsed by the Australian Guardianship and Administration Council in 2009.

The ratification by Australia of the *United Nations Convention on the Rights of Persons with Disabilities* on 17 July 2008 has informed these guardianship standards. The convention promotes, protects and ensures the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities. The convention defines these rights in each area of life and includes, amongst others, access to justice, freedom of expression, independent life in the community, education, work, standard of living, health care, rehabilitation, and participation in political and public life.

In particular *Article 12: Equal recognition before the law* provides that:

- Persons with disabilities have the right to recognition as persons before the law
- Persons with disabilities enjoy legal capacity on equal basis with others in all aspects of their lives
- Persons with disabilities access the support they may require in exercising their legal capacity
- All measures that relate to the exercise of legal capacity are safeguarded to prevent abuse; they respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest possible time and are subject to regular review by a competent, independent and impartial authority or judicial body.

In law there is a presumption of capacity for all people, and all possible efforts should be made to assist a person to exercise their own capacity. When a person does not have full legal capacity, such incapacity is decision specific, and therefore a person's decision-making capacity needs to be considered for each and every decision. These principles are considered to be inherent within the guardianship standards.

1

PROVIDE INFORMATION

The Public Guardian will send information to the person under guardianship and to other people who the Public Guardian consider to be significantly involved in a person's life about:

- The role of the Public Guardian
- The principles of the Guardianship Act
- The authority of the guardian to make decisions
- How to request reasons for a decision
- How to make a complaint or have a decision reviewed
- How to apply for a review of a guardianship order
- How to access information
- Interpreting and translating services

This will happen within one month of the Public Guardian receiving written notification of appointment from the Guardianship Tribunal.

The Public Guardian will provide information about substitute consent to medical and dental treatment to health care professionals providing treatment to the person under guardianship. This will happen within one month of the Public Guardian receiving written notification of appointment from the Guardianship Tribunal.

2

SEEK VIEWS

Staff of the Public Guardian will seek and take into account the views of the person under guardianship when making substitute decisions and wherever possible make decisions that are consistent with their wishes. Staff may do this during a visit, by telephone, or by arranging an independent person to seek the persons' views. If the person under guardianship objects to the proposed decision, staff of the Public Guardian will try to seek the reasons for their objection and consider ways to resolve the disagreement if possible.

Staff of the Public Guardian will seek and take into account the views of other people that the Public Guardian consider to be significantly involved with the person when making major guardianship decisions. If any person with a genuine interest in the person's life objects to the proposed decision, staff will seek the reasons for their objection and take account of these when making the decision.

Staff of the Public Guardian will seek and consider the views of relevant health care professionals when making significant decisions, and if needed will seek a second opinion on behalf of the person.

Staff of the Public Guardian will make personal contact with the person under guardianship with a minimum of one visit per year.

3

RECORD INFORMATION

Staff making guardianship decisions will record:

- Details of decisions made, including the views of the person under guardianship and other relevant people, the information used to make the decision and the reasoning behind the decision
- Details of significant information obtained and contacts made on behalf of the person under guardianship

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MAKE DECISIONS

In making decisions relating to a guardianship order, staff of the Public Guardian will:

- Make decisions according to the principles of the Guardianship Act, and the authority of the current guardianship order
- Make decisions according to the Public Guardian's policies and procedures, and within their level of delegated authority
- Acknowledge receipt of requests for major decisions and provide information to the person requesting the decision about decision-making processes and timeframes
- Respond to requests for consent to medical and dental treatment within one working day. Respond to after-hours calls within one hour of receipt
- Communicate all decisions to the person in a manner that the person understands
- Communicate decisions to other people where the Public Guardian considers that the decision is relevant to them
- Provide written reasons for decisions within 28 days of a request from the person under guardianship, or from a person whom the Public Guardian considers has a genuine interest in the person's welfare. A request for written reasons must be made within 28 days of the decision being made
- Review decisions when requested by the person or someone whom the Public Guardian considers has a genuine interest in the person's life
- Review files regularly in line with the Public Guardian's record keeping procedures

5

PARTICIPATING IN GUARDIANSHIP REVIEWS

When participating in guardianship reviews, staff will:

- Request a review of the current order if there is a need to extend, review or revoke the powers given under the order where the order is not working in the best interests of the person
- Recommend the making of a further guardianship order for the shortest time possible only if there is evidence that the person lacks capacity and has a current need for decisions to be made for them
- Consult with the person under guardianship as far as possible to get their views, and consult with other relevant people and professionals who may have views regarding the person's current and future needs when preparing the Public Guardian's view for the Guardianship Tribunal
- Provide a written or verbal view concerning a guardianship review hearing to the Guardianship Tribunal as agreed between the Public Guardian and the Guardianship Tribunal. This information will be provided prior to the hearing
- Be available to speak to the Guardianship Tribunal at the time of the hearing, to discuss the Public Guardian's views concerning the person's need for guardianship

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PROFESSIONAL DEVELOPMENT

The Public Guardian will ensure that:

- All staff have access to regular individual supervision, support and guidance
- Staff will attend a minimum of 30 hours or 5 days (for full time staff and pro rata for part time staff) a year of continuing education in areas relevant to their role

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PROTECTION

Staff making guardianship decisions will:

- Consider whether the person under guardianship is safe, and if they have experienced abuse, exploitation and/or neglect
- Make referrals to or enquiries with relevant authorities or services where there is any reasonable suspicion that the person under guardianship has experienced abuse, exploitation and or neglect
- Respond urgently to requests for decisions where there is an immediate threat to the person's safety, or the person is at risk of becoming homeless, or where there is a danger to the person's health and well-being

8

ADVOCACY

People under guardianship have a right to access housing, health care, and support services in order to participate in the community and maintain or improve their quality of life.

Staff making guardianship decisions will:

- Make sure all available options have been presented before making decisions
- Make all possible efforts to advocate for outcomes that improve both quality of life and opportunity for the person under guardianship
- Engage or inform other agencies about barriers to achieving the best possible outcomes for the person under guardianship

Staff making guardianship decisions will ensure that:

- Personal information held by the Public Guardian is kept confidential, in accordance with privacy laws and the Department of Justice and Attorney General's code of conduct
- Personal information will only be released when it is relevant to guardianship decisions, is in the best interests of the person under guardianship, and is consistent with relevant laws
- Before releasing personal information, the views of the person under guardianship will be sought and taken into account

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