

Guardianship Standards

The minimum expectations
of guardianship staff in making
substitute decisions on behalf
of people with disabilities whose
guardian is the Public Guardian



Office of the
Public Guardian
Attorney General's
department of nsw



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1 PROVIDE INFORMATION

When appointed, the Office of the Public Guardian will meet the following standards.

- 1.1** Forward information to the person under guardianship ('the person') and to the applicant about the appointment and role of the Public Guardian. This will happen within three working days of the Public Guardian receiving written notification of appointment from the Guardianship Tribunal.
- 1.2** Provide information on the role of the Public Guardian to people involved at the guardianship hearing. This will happen within one month of the Public Guardian receiving written notification of appointment from the Guardianship Tribunal.
- 1.3** Where appropriate, ensure that information about substitute consent is provided to primary health care practitioners who provide services to the person. This will happen within one month of the Public Guardian receiving written notification of appointment from the Guardianship Tribunal.
- 1.4** Ensure that information is made available about:
 - the role of the Public Guardian
 - the general principles of the Guardianship Act
 - substitute consent to medical or dental treatment
 - the Public Guardian's decision-making powers in relation to a person
 - the Public Guardian's decision-making policies and processes
 - how a person can make a complaint or have a decision reviewed. This information will either be provided by the officer, or the Office of the Public Guardian's Community Information and Support Branch.

2 SEEK VIEWS

In seeking views, staff making guardianship decisions will meet the following standards.

- 2.1** Seek, and take into account, the views of the person when making major guardianship decisions. The officer may do this during a visit, by talking on the telephone with the person, or by arranging for an independent representative to seek the person's views.
- 2.2** Seek the reasons for, and take account of, a person's objections to a proposed course of action. Before making a decision against the person's wishes the officer will advocate for other, less restrictive alternatives that meet the person's needs.
- 2.3** Seek, and take into account, the views of significant people involved with the person when making major guardianship decisions.
- 2.4** Take into consideration the recommendations of health care professionals and other service providers, involved with the person, when making major guardianship decisions.
- 2.5** Visit the person within three months of the guardianship order being made, if that order will last for three months or more. Further visits and contact will occur, as necessary, to assist the Public Guardian in supporting and promoting the person's welfare and interests through guardianship.
- 2.6** Consider the views of anyone genuinely involved with the person, concerning guardianship issues, when these views are put to the Public Guardian.

3 RECORD INFORMATION

In recording information, staff making guardianship decisions will meet the following standards.

- 3.1** Record consents, including any time-frames or conditions.
- 3.2** Record the significant details of all contacts made, and decisions taken, in relation to the guardianship of the person.
- 3.3** Record the reasons for all guardianship decisions, including the key facts of the situation, relevant views, and the officer's reasoning.

4 MAKE DECISIONS

In making decisions relating to a guardianship order, staff will meet the following standards.

- 4.1** Be familiar with the details of the current guardianship order when exercising the authority of the Public Guardian.
- 4.2** Make decisions only within the functions included in the current guardianship order. The officer will ensure that decisions are taken at the appropriate level of delegation within the Office of the Public Guardian.
- 4.3** Treat as urgent matters that involve a threat to the person's safety, where the person is at risk of becoming homeless, or where there is a danger to the person's health and well-being.
- 4.4** Make decisions in line with the Public Guardian's policies, and in accordance with the general principles of the Guardianship Act.
- 4.5** Develop a decision-making plan for the person within three months of the order.
- 4.6** Respond to requests for consent to medical and dental treatment within one working day.
- 4.7** Respond to after hours calls within one hour of receipt.
- 4.8** Confirm all major decisions in writing and provide written Reasons for Decision for all contentious decisions within 28 days of the decision being made.
- 4.9** Files will be reviewed regularly and audited every 12 months.

5 PARTICIPATE IN GUARDIANSHIP REVIEWS

When participating in guardianship reviews, staff will meet the following standards.

- 5.1** Request a review of the current guardianship order, by the Guardianship Tribunal, if the Public Guardian believes a change in functions will assist in better promoting or safeguarding the welfare and interests of the person.
- 5.2** Recommend the making of a further guardianship order with particular functions, only if there is evidence that the person currently needs decisions to be made for them in those areas.
- 5.3** Provide a written view concerning a guardianship review hearing to the Guardianship Tribunal. This information will be provided at least five days prior to the hearing.
- 5.4** Be available to speak to the Guardianship Tribunal at the time of the hearing, to discuss the Public Guardian's views and to provide evidence concerning the person's need for further guardianship. If the officer cannot be available, he/she will ensure that another officer can be available.

6 PROFESSIONAL DEVELOPMENT

To ensure professional development, staff making guardianship decisions will meet the following standard.

- 6.1** Attend a minimum of twenty hours a year of continuing education in guardianship-related matters.

GLOSSARY

after hours calls These are telephone calls made to the After Hours Service of the Office of the Public Guardian. This service operates between 5pm and 9am on weekdays, and between 5pm Friday and 9am Monday. The service provides an officer to deal with requests for urgent decisions that cannot wait until the next business day.

applicant The person who writes to the Guardianship Tribunal asking for a guardian to be appointed for another person.

appointment The decision of the Guardianship Tribunal to make one person the guardian of another person.

decision-making plan A planning tool used to direct the decision-making, advocacy and other actions of the staff of the Office of the Public Guardian in relation to each person under the Public Guardian's guardianship.

functions These are the decision-making powers given to a guardian (and detailed in an order). Functions identify the limited areas in which the guardian can make decisions on behalf of the person with a disability.

guardianship issues These issues include the decisions a guardian makes, or the advocacy he/she must provide, to promote the interests and welfare of the person under guardianship. These issues can vary between orders, and will depend on the person's circumstances, the decision-making functions the guardian has been given, and the types of decisions a person requires.

Guardianship Tribunal This is the organisation with the legal authority to decide whether a person requires a guardian.

hearings and a guardianship review

hearing The meeting at which the Guardianship Tribunal investigates concerns relating to a person with a disability, and decides whether to make a guardianship order.

major decisions These decisions include providing consent to a person moving to new accommodation, or to receiving a major medical treatment. Other examples of major decisions include, limiting or denying access visits to a friend or family member, making a decision against the wishes or objections of a person under guardianship, or making

a decision where there is contention and disagreement between those involved with the person.

order A guardianship order is the document created by the Guardianship Tribunal when it appoints a guardian for a person with a disability. The order will tell you who the guardian is, and for how long he/she will be guardian, and it identifies the guardian's decision-making authority.

primary health care practitioner

This is the doctor, dentist or other health care worker who usually treats the person under guardianship ('the person') or arranges for his/her treatment. In the case of doctors, this normally means the person's general practitioner.

significant person This can be someone who is the carer of the person, or his/her spouse or partner. A significant person could also be a family member, a friend or neighbour, the person's financial manager or attorney acting under a power of attorney, or someone else who plays a recognised role in the person's life.

substitute consent A decision made by one person (with the appropriate legal authority to do so) on behalf of another person, where the second person cannot make his/her own decisions because he/she has a disability that affects his/her decision-making capacity.

supervisor Each officer within the Office of the Public Guardian has a designated supervisor, who has responsibility for supporting and assisting him/her. An officer's supervisor may assist in making higher level decisions, in reviewing the officer's decision-making processes, and in monitoring his/her cases through a process of review and audit.

a written view A document created by the Public Guardian to assist the Tribunal at a guardianship review hearing. This 'view' outlines the Public Guardian's actions and decisions, taken on behalf of the person under guardianship, under the current order. The 'view' will also outline the reasoning behind the Public Guardian's recommendation for guardianship to continue or to cease.

There are six Guardianship Standards

- 1 Provide information
- 2 Seek views
- 3 Record information
- 4 Make decisions
- 5 Participate in guardianship reviews
- 6 Professional development

The Office of the Public Guardian has guardianship standards to identify minimum requirements a person under guardianship, and other interested parties, can expect of guardianship staff. These standards follow the general principles of the Guardianship Act 1987, which set out the principles a guardian must observe when making decisions on behalf of the person.

The standards complement policies, practice statements and procedures, which are already in place to guide and direct the decision-making and advocacy of staff of the Office of the Public Guardian. Complaint and review mechanisms exist for people affected by the decisions of the Public Guardian. Staff of the Office of the Public Guardian are also bound by a range of government requirements, including a Code of Practice relating to areas such as appropriate professional behaviour, privacy and confidentiality, conflict of interest and ethical work practices.

FURTHER INFORMATION

The Office of the Public Guardian produces a range of information about guardianship and the role of the Public Guardian, including the following publications.

Policy statements of the Public Guardian Policies concerning the major decision-making areas.

Information for family, friends and service providers An explanation of the appointment and role of the Public Guardian, including how decisions are made.

Answers to your questions A plain English explanation of the appointment and role of the Public Guardian, including how decisions are made, for people with a disability.

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