

## **Information**

### **The role of the Guardianship Tribunal**

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#### **Who we are**

The Guardianship Tribunal is an independent legal tribunal established under the *Guardianship Act* 1987. Its purpose is to protect and promote the rights and welfare of adults with impaired decision making capacity.

#### **What we do**

Adults with disabilities are usually assisted with decision making by family members, friends and service providers. In most cases this informal decision making is appropriate and meets the person's needs. If these informal arrangements break down or there is a legal barrier to decision making, the Tribunal can provide a legal remedy by putting formal arrangements (orders) in place.

The main role of the Guardianship Tribunal is to determine applications for the appointment of guardians and/or financial managers for people with disabilities. The Tribunal can also review the guardianship and financial management orders it makes.

The Tribunal has a number of other functions. It can:

- consent to medical and dental treatment for people 16 years and over who lack the capacity to consent to treatment themselves
- review enduring guardianship appointments and enduring powers of attorney
- approve clinical trials so that people with disabilities can participate
- recognise appointments made under corresponding law outside New South Wales
- consent to special medical treatment for children under the *Children and Young Persons (Care and Protection Act)* 1998.

#### **Guiding principles**

The Tribunal must observe the principles of the *Guardianship Act* 1987. These principles state that everyone who works with people with disabilities under the Act has a duty to:

- give the person's welfare and interests paramount consideration
- restrict the person's freedom of decision and freedom of action as little as possible
- encourage the person to live a normal life in the community
- take the person's views into consideration
- recognise the importance of preserving family relationships and cultural and linguistic environments
- encourage the person to be self reliant in matters relating to their personal, domestic and financial affairs
- protect the person from neglect, abuse and exploitation
- encourage the community to apply and promote these principles.

#### **Guardianship**

The Tribunal can appoint a guardian to make personal or lifestyle decisions on behalf of a person with decision making disabilities. When the Tribunal appoints a guardian it limits their authority to specific functions such as:

- where the person should live
- what support services the person should use
- what healthcare and medical treatment the person should receive
- whether restrictive practices are appropriate in the management of the person's behaviour.

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To make a guardianship order the Tribunal must be satisfied that:

- the person is 16 years of age or more and is resident in New South Wales
- the person has a disability that affects their decision making
- there is a current need for someone to be given legal authority to make personal decisions for them.

The Tribunal can appoint a family member or friend as a private guardian or, if it is not possible or appropriate to appoint a private guardian, it can appoint the Public Guardian. The Public Guardian is a statutory official separate to the Tribunal whose office is part of the New South Wales Attorney General's Department.

For further information about the Office of the Public Guardian please refer to the Public Guardian's website at:  
[www.lawlink.nsw.gov.au/opg](http://www.lawlink.nsw.gov.au/opg)

The Tribunal can appoint a single guardian, joint guardians and alternative guardians.

Guardianship orders are time limited. Initial orders can be made for a period of up to one year although, in certain limited circumstances, a three year order may be possible.

For further information please refer to the information sheets *Guardianship Hearings*, and *Guardianship Orders – What Happens after the Hearing?*

### **Reviews of guardianship orders**

The Tribunal has a statutory obligation to review a guardianship order when the term of the order expires. The only exception is when the Tribunal decides that it is in the person's best interests for the order not to be reviewed. If this is the case the Tribunal will state in the order that it will not be reviewed. This usually occurs when the order is required for specific decisions that, once made, will end the need for guardianship.

When the Tribunal reviews a Guardianship Order it can renew the order in the same terms, renew and vary the terms of the order or end guardianship by letting the order lapse.

### **Requested reviews**

Anyone with a genuine concern for the welfare of a person under guardianship can request that a guardianship order be reviewed by the Tribunal. The Tribunal can review a guardianship order on request if the order is not working in the interests of the person or it is thought that there is no longer a need for guardianship.

For further information please refer to the information sheet *Hearings for Reviews of Guardianship Orders*.

### **Enduring guardianship**

Under Part 2 of the *Guardianship Act 1987* an adult who has decision making capacity can appoint another adult as their enduring guardian to make lifestyle decisions for them should they lose their capacity in the future.

Part 2 also gives the Tribunal jurisdiction to review enduring guardianship appointments. Anyone with a genuine concern for the welfare of a person who has appointed an enduring guardian can apply to the Tribunal for a review of the appointment. The Tribunal can revoke or confirm the appointment or change the functions given to the enduring guardian. It can also make a guardianship order, which operates to suspend the enduring guardianship appointment.

For further information please refer to the information sheet *Planning Ahead...Enduring Guardianship* which includes a form for appointing an enduring guardian.

### **Financial management**

The Tribunal can appoint a financial manager to make financial decisions on behalf of a person who is not capable of managing their affairs.

A financial manager can make decisions about any aspect of a person's financial affairs unless

the Tribunal specifies that a part of a person's estate is excluded from management.

To make a financial management order the Tribunal must be satisfied that:

- the person has assets in New South Wales
- the person is not capable of managing his or her own affairs
- there is a need for another person to manage those affairs
- it is in the person's best interests for an order to be made.

The Tribunal can appoint a family member or friend as a private financial manager or, if it is not possible or appropriate to appoint a private financial manager, it can appoint the Protective Commissioner. The Protective Commissioner is a statutory official separate to the Tribunal whose office is part of the NSW Attorney General's Department.

Private financial managers are subject to the directions and authority of the Office of the Protective Commissioner.

For further information about the Office of the Protective Commissioner please refer to the Protective Commissioner's website at: [www.lawlink.nsw.gov.au/opc](http://www.lawlink.nsw.gov.au/opc)

### **Reviewable financial management orders**

Unlike guardianship orders, most financial management orders made by the Tribunal operate indefinitely. In some circumstances the Tribunal may decide to review a financial management order after a specified period of time. If this is the case, the review period will be stated in the order and a further hearing will be conducted to determine whether the order should continue.

### **Interim financial management orders**

If, when determining a financial management application, the Tribunal makes no findings about a person's capability to manage their affairs, it may make an interim financial management

order pending further consideration of the person's capability. Such an order can only be made for a period of up to six months.

### **Requested review or revocation of a financial management order**

Anyone with a genuine concern for the welfare of a person who is the subject of a financial management order can apply for a review or revocation of an order.

A review can be sought to replace the manager or to include or exclude a part of the person's estate from management.

The Tribunal can only revoke a financial management order only if it is satisfied that:

- the person has regained the capacity to manage their own affairs
- it is in the person's best interests for the order to be revoked.

For further information please refer to the information sheet *Hearings of Applications to Review or Revoke Financial Management Orders*.

### **Medical and dental consent**

Medical and dental practitioners have a legal and professional responsibility to obtain consent before they treat a patient. The patient usually provides this consent themselves. If they are not capable of understanding the proposed treatment, depending on the nature of the treatment, the practitioner may need to seek consent from a substitute decision maker depending on the nature of the treatment.

In most cases, a *person responsible* will be able to consent on behalf of a person with a disability. The *Guardianship Act 1987* provides a hierarchy of people from whom a doctor should identify a *person responsible*. If there is no *person responsible* or they cannot be located or decline to act, the treating practitioner can seek consent from the Tribunal.

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The Tribunal's information sheet *Person Responsible* explains the *person responsible* hierarchy as well as the categories of treatment set out in the Act and the consent requirements for each of them.

### **Review of enduring powers of attorney**

Under the *Powers of Attorney Act 2003*, the Tribunal can review enduring powers of attorney. The Tribunal can review the making of or the operation and effect of an enduring power of attorney.

For further information please refer to the information sheet *Review of Enduring Powers of Attorney – Information for Parties*.

### **Clinical trials**

If a clinical trial is to include people who lack the capacity to provide consent to treatment, it must be approved by the Tribunal.

This part of the Tribunal's jurisdiction ensures that people with disabilities are not denied access to treatment that is only available through a clinical trial. It also ensures that people with disabilities only receive medical and dental treatment which will promote their health and well being.

In clinical trial matters, the Tribunal also determines who should have consent authority for the individuals taking part. The Tribunal can confer this authority on the person responsible or exercise this function itself.

For further information please refer to the information sheet *Application for Approval of a Clinical Trial*.

### **Interstate recognition**

The Guardianship Tribunal can recognise appointments made under corresponding law in other Australian States and Territories and in New Zealand. The person appointed in a substitute decision-making role under corresponding law can apply to have their

authority recognised in New South Wales. The recognition only has effect for the period of time specified in the recognition order. The Tribunal may review its recognition when the recognition order expires.

For further information please refer to the information sheet *Recognition of Interstate Appointment*.

The Tribunal's information sheets and application forms can be accessed on its website or directly from the Tribunal.

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### **For more information contact**

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