

Review of the Guardianship Act

Question Paper 3: The role of guardians and financial managers

Easy Read version

Who could be a guardian?

A guardian is somebody who is chosen to make personal decisions for someone else.

We are interested in your ideas about who could be a guardian.

What do you think?

Here are some questions to think about.

Question 1: Who should be able to be a guardian

Currently, in NSW, the law says that a person can choose someone to make decisions for them.

This person is called an '**enduring guardian**'.

There are some rules about who can be an enduring guardian.

The person:

- must be at least 18 years old
- cannot be someone who is paid to provide the person with medical, accommodation or any other services
- cannot be the spouse, parents, child, brother or sister of someone paid to provide the person with a service.

The person can choose 1 or more enduring guardians.

The person can also choose someone to step in if the original guardian can no longer do the job.

What do you think about these rules?

Should there be any other rules?

You can use the space below to share your thoughts.

ok

Question 2: Who can the tribunal choose to be a guardian?

In some situations, a **tribunal** can choose a guardian for another person.

A tribunal is a group of people who work together to make legal decisions.

There are rules about the people the tribunal can choose to be a guardian:

- they must be at least 18 years old
- they must get along well with the person they are deciding for
- they must not put their own interests ahead of the interests of the person they are deciding for
- they must be willing and able to exercise the role of guardian.

What do you think about these rules?

Should there be any other rules?

What do you think?

ok

Question 3: Should the tribunal choose the Public Guardian?

There is a government person called the Public Guardian.

The Public Guardian makes decisions for other people.

The tribunal can only choose the Public Guardian to be a guardian if no one else is available.

For example, the tribunal might choose the Public Guardian if the person doesn't have any family or friends who are willing or able to perform this job.

What do you think?

Are there any other things the tribunal should think about?

What do you think?

definitely not

Question 4: Should volunteers from the community be appointed to act as guardians?

It can sometimes be difficult to find someone to act as a guardian.

People may not have friends or relatives who are willing or able to do this job.

In some parts of Australia, trained volunteers from the community can act as guardians.

Do you think this is a good idea?

What do you think?

yes someone who actually knows the consumer would be preferable to the public trustee

Who could be a financial manager?

A financial manager is somebody who can make financial decisions for someone else.

We are interested in your ideas about who should be a financial manager.

Here are some questions to think about.

Question 5: Who should the tribunal choose as a financial manager?

At the moment, the tribunal can choose someone to be a financial manager.

The person must be a 'suitable person'.

The current law does not explain what this means.

Some people think that the law should explain who can be a financial manager.

Here are some ideas about what the tribunal should think about:

- The relationship between the person and the financial manager.
- Whether the financial manager might put their own interests ahead of the person's interests.
- Whether there is any family conflict or disagreement between the person and the financial manager.
- The financial manager's honesty and character.
- Whether the financial manager is willing and able to do the job.
- Whether the financial manager will make decisions to keep the person safe and well.

What do you think about these ideas?

Are there any other things that the tribunal should think about?

What do you think?

family should be financial managers or if none then someone nominated by the consumer.

Question 6: When should the tribunal choose the NSW Trustee as the financial manager?

There is a government agency called the NSW Trustee.

In some cases, the tribunal can choose the NSW Trustee as the financial manager.

The law allows the tribunal to do this even if there are other options.

Do you think that the NSW Trustee should only be chosen if no one else can do it?

If so, should the law say this?

What do you think?

never

Question 7: Should the tribunal choose a company to be the financial manager?

In some other parts of Australia, a company can be chosen to make financial decisions for someone else.

However, some people think that companies will not always have the person's best interests in mind.

Sometimes, they might keep their own profits in mind.

For this reason, people think that strict rules should apply if this is allowed in NSW.

What do you think?

companies as a last resort may be appointed

some companies may have the interests of the person in mind if they are a not for profit organisation

Question 8: Should family and friends be able to suggest who the tribunal should appoint when they can no longer care for the person?

Some people have suggested that family and friends who can no longer care for a person could suggest to the tribunal who should be a guardian or financial manager.

At the moment, the law does not allow this in NSW.

What do you think?

yes the tribunal should always listen to the suggestions of family and friends as they are the ones who have the best interests of the person in mind

What powers should guardians and financial managers have?

Question 9: What powers should a guardian have?

At the moment the tribunal can make an order that sets out exactly what a guardian can and can't make decisions about.

These are called 'limited' orders.

The tribunal could also give the guardian very broad powers that are not explained in detail.

This is called a 'plenary' order.

Some people think that there should be a list of all the types of decisions a guardian can make for the tribunal to choose from.

For example, decisions relating to:

- where a person lives and who they live with
- their job
- their health care.

There is also a suggestion that the law should list the things that guardians can't do.

For example:

- voting on behalf of the person
- deciding whether the person can marry or divorce
- making the person's will.

Do you think the law should set out a list of the decisions a guardian can and can't make?

What should be on the list?

Should the tribunal be able to say which of these decisions a guardian can make?

What do you think?

I agree

Question 10: What powers should a financial manager have?

In NSW, the law currently says that the NSW Trustee or the courts get to decide what powers a financial manager has.

Examples of powers include:

- To receive money, rent, income or profit from someone's property.
- To buy property for someone else.
- To rent out or sell someone's property.
- To manage someone's business.
- To pay rates, taxes and other debts for someone.

The tribunal or NSW Trustee could decide which powers a financial manager should have.

Or all financial managers could have the same powers (and the tribunal could only remove powers when it's really important).

What do you think?

powers to be used only when unwell and with the sign off from a psychiatrist or treating physician

What should guardians and financial managers do?

Question 11: What duties and responsibilities should guardians and financial managers have?

The law says that, when making decisions for someone else, guardians and financial managers have to think about the following things:

- The person's welfare – meaning their options for staying well and safe.
- The person's interests – the things that are important in their life.
- The person's views and opinions.
- The person's freedom to make their own decisions.
- The person's relationship with their family.
- The person's culture.
- Encouraging the person to manage their own choices and day-to-day life.
- Protecting the person from harm.

Most importantly, the law currently says that guardians and financial managers must think about the person's welfare and interests first.

An important document called the *UN Convention on the Rights of Persons with Disability* says that we must look at this a different way.

Instead of thinking about people's welfare and interests first, we must think about what people actually want.

However, it's sometimes not easy to work out what some people want and not everyone will agree about what a person actually wants.

Some people find it hard to communicate. Some people may not understand at all.

Even though this is difficult, it may be possible to design a law that addresses these problems.

Some laws in other parts of Australia already do this.

They often include:

- A rule that the decision-maker must listen to what the person wants and help to make this happen.
- Instructions about how the decision-maker can decide what the person wants.
- Instructions on what to do if the decision-maker can't work out what the person wants.
- An understanding that the decision-maker may override what the person wants in some rare cases. For example, if the person doesn't want to eat anything but also doesn't want to die.

Do you think guardians and financial managers should try to work out what the person actually wants?

When should they be allowed to override what a person wants?

What do you think?

as much autonomy as possible should be given to the person before enlisting people to make decisions for them

