

Review of the Guardianship Act

Question Paper 4: Safeguards and procedures

Protecting your rights and keeping you safe

Easy Read version

How to use this document

This information is written in an easy to read way.

This document has been written by the Law Reform Commission.

When you see the word 'we', it means the Law Reform Commission.

This Easy Read document is a summary of another document.

You can find the other document on our website at

lawreform.justice.nsw.gov.au

You can ask for help to read this document.

A friend, family member or support person may be able to help you.

This is the fourth question paper. There will be other papers as well.

We suggest that you look at our Easy Read Background Paper. It explains many of the ideas in this question paper in more detail.

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What we are trying to do

At the moment, we are reviewing the law about guardianship.

Guardianship is when another person makes decisions for you. This is usually because you can't make decisions on your own.

The law we are reviewing is called the *Guardianship Act 1987*.

We want to make sure that the law is fair.

We also want to make sure it is right for the community today.

Our community has changed a lot since the law was written in 1987.

We'd like to know what you think about our ideas for new laws.

This document has some questions for you to think about.

What this paper is about

This paper is about making sure you are treated well when someone else:

- makes decisions for you
- helps you make a decision.

The law says that someone can make decisions for you if you can't make them yourself.

Or, some people choose a person to help make decisions for them in the future.

They do this in case there is a time when they can't make decisions for themselves.

For example, some people get dementia as they get older, and this makes it harder to make decisions on their own.

A person who makes decisions for you has a big influence over your life.

For this reason, it's very important that the law:

- protects your rights
- helps to keep you safe.

Question 1: How should an enduring guardian be chosen?

Under the law, if you can still make your own decisions, you can choose someone to be your guardian in the future.

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

Your enduring guardian will make decisions for you when you can't make decisions anymore.

There are some rules about choosing an enduring guardian.

If you want to officially choose an enduring guardian, you must:

- Fill in a form.
- Ask the enduring guardian to fill in a form.
- Have someone else witness the form – they must see you and the enduring guardian sign it.
- The witness has to say that:
 - they saw you sign the form
 - you understood it
 - no one made you sign it against your wishes.

What do you think?

Do you agree with this method of choosing an enduring guardian?

Answer:

- Like everyone else in the community, older or other people with or without disabilities have a right to make their own decisions and regarding who they chose to make decisions on their behalf.
- The process described above is normal practice when anyone signs a legal document and people of all ages, with or without disabilities will say they understand legal documents they sign, when in reality, they do not fully understand them.
- Like anyone else, older or other PWD may believe the person they are appointing is genuine however, as con-artists are skilled manipulators and actors, no-one drawing up or witnessing a legal document being signed by an older or other person with or without a disability would be aware of whether or not they were doing so under the 'undue influence' of another party.

Question 2: When should an enduring guardian start making decisions for someone else?

At the moment, it might be unclear when an enduring guardian can start making decisions for you.

One idea to make this better is to say that a **Tribunal** needs to decide when the enduring guardian can start making decisions.

In NSW we have the Guardianship Division of the NSW Civil and Administrative Tribunal (the Tribunal).

The Tribunal is a group of people appointed by the government who work together to make decisions about:

- guardianship
- financial management.

What do you think?

Should the Tribunal decide when an enduring guardian can start making decisions for someone else?

You can use the space below to share your thoughts.

Answer:

- No unaccountable, unmonitored and misuse facilitating Tribunal that is not bound by the rules of evidence, does not have the jurisdiction to determine whether or not wrongdoing has occurred prior to a hearing and DOES NOT have to determine THE TRUTH prior to making legal decisions that affect the lives of people with disabilities (PWD) and their families, should have the power to make decisions on behalf of a vulnerable PWD.

Question 3: What powers should the Tribunal have?

The Tribunal can check how the enduring guardianship arrangement is working.

The Tribunal might:

- keep the enduring guardian's powers as they are
- make changes to the enduring guardian's powers
- take away the enduring guardian's powers and stop them making decisions, in some situations.

Some people say that the Tribunal should be able to do other things, like replace an enduring guardian.

What do you think?

What do you think about the Tribunal's powers to check how an enduring guardianship arrangement is working?

Do you have any other ideas?

You can use the space below to share your thoughts.

Answer:

- As this tribunal has a well documented track record of facilitating misuse by financial predators and making quick cheap legal decisions based on guesswork and discrimination to serve the purpose of getting through their workload in a 'timely manner', until such time that this tribunal is monitored and accountable to an independent authority as recommended by the UNCRPD, they are not fit for the purpose they are meant to serve and should NOT be involved in making any legal decisions concerning PWD?
- Regardless of who the appointed enduring guardian or POA is i.e. a family member, a friend or a public Guardian wrongdoing can easily occur and as all of these people would have the power to

block family members from visiting the PWD and can also block them from being provided with information regarding the persons finances therefore, I believe that all immediate family members should be notified prior to these instruments being put in place and once an enduring guardianship or POA is put in place, without any financial cost to them, all family members should have the power to check how the persons welfare is being cared for and how their financial affairs are being managed.

Question 4: How should we end enduring guardianships?

Sometimes, enduring guardianships don't work out.

If this happens, an enduring guardian may resign.

This means they sign a form to say that they don't want to be an enduring guardian anymore.

Or, the person who chose the enduring guardian can cancel the arrangement.

But they can only do this if they can make decisions for themselves.

The Tribunal can also cancel an enduring guardianship.

An enduring guardianship will end if the person gets married to someone who is not their guardian.

What do you think?

Are there any other ways you think an enduring guardianship should end? Should an enduring guardianship end when someone marries a person who isn't their guardian?

You can use the space below to share your thoughts.

Answer:

- As per my previous answer, family members are best placed to determine whether or not an enduring guardianship or POA is working out or not.
- Family members are also best placed to determine whether or not the PWD is being adequately care for, how their finances are being managed and if they are capable of making decisions on their own behalf.
- If the person marries, he or she can change the arrangement to suit themselves or leave it as it stood prior to the marriage therefore, there is no need for the Tribunal to be involved.
- There is NO NEED for any TRIBUNAL to become involved

Guardianship and financial management

A guardian can make personal decisions for someone else.

This includes decisions about your health and where you live.

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

This includes decisions about your **property** and **finances**.

Your property might include the house you own.

Your finances include money:

- you have now
- you will have in the future.

An important document called the United Nations *Convention on the Rights of Persons with Disabilities* explains how these relationships should work.

It says the relationship should:

- meet your needs
- only be in place for the shortest time possible
- be reviewed regularly by someone who is independent.

The law in NSW already supports some of these things.

However, some people think that the law could do more to protect people's rights.

The following sections:

- explain some of the ideas about this
- ask some questions.

Question 5: Should there be time limits for orders?

Answer:

- Yes

Guardianship orders

The Tribunal uses a **guardianship order** to appoint a guardian.

Guardianship orders have a time limit.

There are two types of guardianship orders:

- temporary
- continuing.

Temporary guardianship orders can last for up to 30 days.

They can be renewed for up to another 30 days.

Continuing guardianship orders usually last for 1 year.

They can be renewed for up to another 3 years.

In some situations, the Tribunal can make longer guardianship orders but they still have time limits.

Financial management orders

The Tribunal might appoint somebody to manage another person's property or money.

This is called a **financial management order**.

Financial management orders do not have time limits.

Some people think they should.

What do you think?

What do you think about the time limits that apply to guardianship orders?

Are they too long or too short?

Do you think financial management orders should have time limits?

You can use the space below to share your thoughts?

Answer:

- Yes, I do believe guardianship and financial management orders should have time limits however, as financial predators (con-artists, fraudsters) be they family members, new or old friends, neighbours, solicitors, financial advisors, bank staff, paid carers, medical professionals and others in the community have been using the NSWGT for their own financial gain for the last three decades, no 'guardianship or financial order' should be placed over a PWD until such time as the Government legislates the

UNCRPD into law by statute as, until this tribunal is monitored and accountable to an 'independent party' this shameful and unacceptable situation will continue to flourish unabated.

What do you think?

What do you think about the time limits that apply to guardianship orders?

Are they too long or too short?

Do you think financial management orders should have time limits?

You can use the space below to share your thoughts?

Answer:

- As previous answers

Question 6: Should there be other limits to financial management orders?

Your **estate** includes your property and finances.

The Tribunal can say that a financial manager *should not* look after some parts of a person's estate.

Some people think it would be better if the Tribunal could say what parts *should* be looked after.

This might mean you can still look after parts of your estate yourself.

What do you think?

You can use the space below to write your ideas.

Answer:

- This quasi Tribunal should not state what parts of a person's estate can be looked after, the person concerned, the appointed person or family members should determine this.

Question 7: When should the Tribunal be able to review orders?

The Tribunal must review guardianship or financial management orders if it is asked.

Or the Tribunal might choose to review an order without being asked.

There are different rules for guardianship orders and financial management orders.

Guardianship orders must be reviewed when they reach their time limit.

Because financial management orders don't have a time limit, the Tribunal doesn't need to review them regularly.

But some people think the Tribunal should review them regularly.

They think this would let the Tribunal check if:

- a person still needs the financial management order
- the order is still working.

Other people say regular reviews would:

- cost too much money
- take too much time
- not be helpful
- upset some people.

What do you think?

Do you think the Tribunal should review financial management orders regularly?

Answer:

- Taxpayer funds allocated to the NSWGT are meant to provide 'safeguards and protection' to vulnerable PWD someone needs to review these orders regularly however, as the NSWPG allegedly supervises PFM's and also financially manages their clients finances, I don't believe the NSWGT should be involved as this would equate to Caesar investigating Caesar and that would not 'be fair' to the PWD.
- Further to the above, the NSWTG charges 'protected people' under their watch a fee to supervise 'private financial managers' (PFM) however, as they are incapable of doing this effectively, they are attempting to introduce a SURITY BOND SCHEME in response to cases where managed persons have suffered financial loss or faced significant delays and costs in attempting to recover these losses.

In their correspondence to PFM's regarding the need for a SURITY Bond they state:

- The NSWTG has an obligation to ensure privately managed clients are afforded a similar level of security to that they would receive if they were managed by a professional trustee organisation.
- Private managers, like any of us, can be beset with unforeseen circumstances, including sudden illness, dementia or a variety of other life changing events.
- This issue has been a 'a concern' for a number of years and it is not possible to determine which privately managed clients may be at risk.

Further to the above, they state that signing the application form is NOT Compulsory yet, the following 'threat' is in their correspondence: correspondence states,

- Should you as a PFM elect not to fulfil the request for the completion of the application form, NSW Trustee and Guardian will follow procedure which will eventuate in an application for review of the "financial management order" being made to the NSW Civil and Administrative Tribunal.

Question 8: When should the Tribunal be able to cancel a financial management order?

After a review, the Tribunal might decide to:

- let the order continue
- change the order
- cancel the order.

The Tribunal can only cancel the order if:

- the person can look after their own estate

or

- it is in the best interests of the person.

Some people believe the Tribunal:

- shouldn't be thinking about the person's best interests
- should think about what the person wants
- should be able to cancel a financial management order when the person doesn't need it anymore.

What do you think?

Answer:

- The tribunal should think about what the person wants however, they DO NOT do this and many PWD who become 'trapped' in by these draconian regimes, have died of absolute despair when their wishes to be able to die in their own homes surrounded by caring family members and friends, have been denied their rights by callous, uncaring strangers who threaten to use their funds funds

to fight family members who attempt to remove their loved ones from their clutches.

Question 9: What should happen when a guardian or financial manager dies?

The law explains what should happen when a guardian dies.

If there's no other guardian, the **Public Guardian** takes over.

The Public Guardian is a person who works for the government.

They stay the person's guardian until the Tribunal can look over the guardianship order.

The law does not say what should happen when a financial manager dies.

There is a government agency called the NSW Trustee.

Some people think the NSW Trustee should step in and become the person's financial manager if their financial manager dies.

If the NSW Trustee doesn't step in, some people who need a financial manager might not have one until the Tribunal chooses someone else.

What do you think

Answer:

- If another person known to the PWD is available and willing to be placed in this position, they should be given preference over the NSWGT as no-one who knows how these regimes act, would voluntarily approach them.
- Even when there is another suitable person available and there is NO CONFLICT in the family, the NSWGT will place the NSWGT in these positions.

A registration system

Question 10: Should NSW have a registration system?

Some people think NSW should have a registration system.

Registering could involve sending documents to the government.

People could register all their documents about the appointment and powers of:

- enduring guardians
- guardians
- financial managers
- supporters.

Some people would be able to look up these documents.

This could help:

- banks
- healthcare services
- other service providers.

They could check:

- if someone has:
 - an enduring guardian
 - a guardian
 - a financial manager
 - a supporter
- what powers they have.

Some people think it could protect people from being abused or taken advantage of.

A registration system could also help people keep track of all their documents.

Other people are worried it might:

- take away people's privacy
- cost a lot
- be hard for people to use
- stop people from wanting to appoint an enduring guardian.

What do you think?

What do you think about this?

Answer:

- Yes, there should be a registration system for enduring Guardian's, POA's and wills as long as it is not used by the Government to round up involuntary 'clients' for the NSW TG.
- Documents should only be available at no charge to:
 - Family members
 - Service Providers
 - Banks
- As perpetrators of Financial Exploitation often take a PWD to their own solicitor or to a 'new solicitor' to draw up a POA or new Will, I believe it is important that the name of the long term solicitor used by PWD, is also registered.

Making sure guardians and financial managers do the right thing

Question 11: What should the law do to make guardians and financial managers responsible for their actions?

It is important that the law has ways to:

- prevent guardians and financial managers from abusing their power
- let people take action if this does happen.

The law already tries to do this by:

- using the NSW Trustee to supervise the work financial managers do
- letting people ask for a review of decisions made by the:
 - Public Guardian
 - NSW Trustee
- letting the Tribunal take power away from guardians and financial managers who do the wrong thing.

Some people think the law could do more.

Some of their suggestions include:

- changing the law so it explains what a guardian or financial manager's duties are
- making sure that guardians:
 - keep good records
 - report on their activities
- changing the law so guardians and financial managers can't abuse, neglect or take advantage of the person they are supposed to help
- giving the Tribunal the power to make people who do the wrong thing pay money back to people they have hurt.

What do you think?

What do you think about these suggestions?

Do you have any other ideas?

Answer:

- Considering the law allows the NSW TG to charge their clients a fee to supervise PFM's and they are incapable of doing this (see answer to question 7) it is evident the law also needs to ensure that the NSW TG are held financially responsible for their failures.
- Considering NSW TG staff have also defrauded the clients at times, the law needs to make all people who do the wrong thing pay the money back.
 - The NSW TG are meant to preserve the assets of their 'clients' yet, they force the sale of their homes regardless of the fact that family members live in it with the permission of the 'protected person', when there are enough assets available to provide for their ongoing needs.
- The law needs to ensure the NSW TG are not destroying the lives of their clients families against the wishes of their clients.

Keeping people who use supported decision-making safe

Question 12: What should the law do to make supporters responsible for their actions?

Supported decision-making means giving someone help to make decisions, rather than making decisions for them.

A **supporter** is someone who helps someone else make a decision.

Some people say the law needs to stop supporters from doing the wrong thing.

This could be done by:

- explaining clearly what the role of a supporter is

- having someone who checks what supporters do
- making sure that supporters keep good records and report about what they are doing
- letting someone cancel a supporter's powers if they want to
- letting the Tribunal review supported decision-making arrangements.

What do you think?

Answer:

- If the Government was 'genuine' about 'keeping people with supported decision making safe' they would have legislated the recommendation of the UNCRPD by statute when they ratified this document in 2008.
- The law should make it a criminal offence to defraud a PWD.
- The law should make the NSWGT and the NSWPG OPEN TO PUBLIC SCRUTINY?

The powers of the NSW Public Guardian

Question 13: Should the Public Guardian have new powers?

The NSW Public Guardian has an important job.

He or she can:

- be a person's guardian
- give people information about how guardianship works
- help people who are guardians.

There are some things the NSW Public Guardian can't do:

- help people who don't have guardianship orders
- see if someone might need a guardianship order
- look into complaints about:
 - abuse
 - neglect
 - people being taken advantage of.

Some people say the NSW Public Guardian should have these powers.

Other people say NSW needs another government person to do these things.

What do you think?

What do you think the NSW Public Guardian should be able to do?

Do you think another government person should do some of these things?

Answer:

- The Police need to investigate concerns re the abuse, neglect or exploitation of older people with or without disabilities.

How the Tribunal works

Question 14: How could we improve the way the Tribunal works?

The Tribunal does an important job.

It deals with cases about:

- guardianship
- financial management
- medical issues.

Tribunals are supposed to be different to the courts.

They should be:

- less formal
- cheaper.

It should be easier to find and use the services of the Tribunal.

The Tribunal can:

- decide how it wants to do things
- do things in a way that lets people have their say.

Most people who go to the Tribunal don't have lawyers.

What do you think?

Do you have any ideas about how the Tribunal could do things better?

Answer:

- This Tribunal couldn't be much 'cheaper' than being FREE.
- Considering this tribunal is part of the protective division of the Supreme Court, this tribunal is certainly 'different' to other Courts because they DO NOT HAVE TO ESTABLISH THE TRUTH BEFORE THEY MAKE LEGAL DECISIONS that affect the rights of a vulnerable PWD.
- Thirdly, this is NOT FAIR, NOT PROTECTIVE, NOT ACCEPTABLE and NOT RIGHT FOR THE COMMUNITY TODAY.

Question 15: Are there any other issues or ideas that you would like to share with us?

Answer,

- During a 2014 ABC Radio Program regarding the increase of Elder Abuse in Australia, Professor Wendy Lacy who is the University of South Australia's dean of law, described Australia's laws and policies surrounding Elder abuse as being a NATIONAL DISGRACE where we have multiple agencies who suspect or have notifications of abuse yet they lack the statutory authority to do anything about it.
- All Government politicians, stakeholders involved in aged care etc know that there are no enforceable protections or safeguards in Guardianship laws and legal frameworks however, they chose to do nothing about it to protect their jobs.
- In my preliminary submission PGA30 I provided you with a case summary showing how a non-family member with an \$800,000 to \$1 Million dollar interest in my father's estate, with the help of his solicitor, controlled the outcome of a past NSWGT hearing and had himself placed as a 'private financial manager'.
- I, and many other victims of this tribunal could write an instruction book on how to use this tribunal for your own financial gain therefore, it is time to change the status quo and take the necessary action to stop this abuse of the rights of PWD occurring.
- **As I have stated previously, until the Government legislates the UNCPWD Into law by STATUTE, there will be NO PROTECTION or SAFEGUARDS provided to PWD by GUARDIANSHIP REGIMES NSW or in any other State of AUSTRALIA.**

What's next?

Thank you for taking the time to answer our questions.

We will think about all the answers that you and other people give us. We will do this when we write down our ideas for making changes to the law.

If you'd like more information, please contact us. Our contact details are on page 30.

How to tell us what you think

You can send your answers to us by email or post.

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We need to receive your answers by Friday 12 May 2017.

We may publish your answers on our website, or include them in things that we write.

If we do this, people will be able to read your answers.

Please tell us if you don't want us to publish some, or all, of your answers.