

Guardianship & Financial Management in NSW

Navigators Guide

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Some people who access mental health services, with severe mental illness or with other disorders such as dementia, brain injury and intellectual disability, can experience profound difficulty in making satisfactory decisions about their life in areas such as finding accommodation, accessing health care, and managing finances. Compromised ability to make decisions can lead to worsening of mental illness symptoms and general health, increased risk of harm to self and others, risk of homelessness and more frequent admissions to inpatient facilities.

Family and carers, who support a person who makes decisions that put their health and welfare at risk, may experience high anxiety about the person's future prospects in addition to possible detrimental impact on their own health. When these difficulties occur it is natural for family and carers to begin to make some decisions in order to assist their loved one, such as managing bank accounts and bills and assisting with arranging health appointments.

However, in some circumstances a person's decision making ability is of sufficient concern that the person themselves, family and/or health professionals may consider applying for formal processes that assist with decision making such as guardianship or financial management. The following information highlights options available to you and your loved in such circumstances.

Guardianship Tribunal

The Guardianship Tribunal is the main NSW government body that deals with applications or requests for **substitute decision makers**. Applications can be received from members of the public or professionals involved with a person

experiencing decision making problems. The Guardianship Tribunal, which consists of qualified professionals and citizens, will consider evidence provided by family and health care professionals and can approve or appoint 'substitute decision makers' such as a family member, Public Guardian or Financial Manager.

Enduring Guardianship

One way the person themselves can plan for the future is to appoint an Enduring Guardian, usually a family member. This means that if the capacity to make decisions is compromised or lost there is already someone in place who can respond to decision making needs. An Enduring Guardian can make decisions such as where someone should live and what medical treatment and services should be received.

Enduring Power of Attorney

An Enduring Power of Attorney can also be appointed by a person who is anticipating decision making difficulties regarding their financial affairs. An attorney appointed under an enduring power of attorney can make financial decisions on behalf of someone such as selling the person's house or operating their bank account.

The decision to appoint an Enduring Guardian or Enduring Power of Attorney requires careful conversation with family or others who may be involved. An application can be made to the Guardianship Tribunal to review the appointment if it is no longer in the best interests of the person. The Tribunal has the power to vary or revoke such arrangements.

Guardianship

When a person's decision making is of

such concern that a guardian is required the Guardianship Tribunal will make a **Guardianship Order** and can appoint either a private or public Guardian. The Tribunal will then allocate functions or decision making areas that the guardian is responsible for such as medical, accommodation and dental.

Private Guardian

A family member, friend or other person who is able to perform the role of *substitute decision maker* can be appointed to the role of private guardian. If a private guardian is appointed the **Office of the Public Guardian** can facilitate contact with the **Private Guardian Support Unit** (PGSU). The PGSU is a free and confidential service to assist legally appointed guardians in their role by providing support and information using the knowledge and experience of the NSW Public Guardian.

NSW Public Guardian

If there is not a suitable person that can be appointed to the role of private guardian the Guardianship Tribunal will refer to the Office of the Public Guardian for allocation of a Public Guardian. A Public Guardian is not a family member or friend and they may make a decision on behalf of the person in the decision making areas that have been identified in the Guardianship Order.

The Public Guardian is a *substitute decision maker* not a *substitute caregiver*, therefore a decision made by the Public guardian is treated as if it were the decision of the person they represent. The Public Guardian will also be an advocate for the services and support needed by the person under Guardianship.

The guardian is appointed for the length of time specified in the order, after which a review may be held by

the Guardianship Tribunal to decide if a Guardian is still needed.

Financial Management

The Guardianship Tribunal or the Mental Health Review Tribunal (MHRT) can appoint a financial manager to assist with decisions regarding a person's financial affairs. The Guardianship Tribunal can appoint a private financial manager or the Office of the Protective Commissioner (OPC) as a public financial manager whereas the MHRT is only authorised to appoint the OPC.

Office of the Protective Commissioner

When appointed as the financial manager, the OPC will assist, in consultation with the person and suitable others, with decisions regarding financial affairs to ensure a reasonable quality of life. The OPC can provide a range of financial, legal, technical and disability advice services such as protecting assets and legal rights, making investments, managing a business, liaising with financial and legal institutions, facilitating the buying and selling of a home and organizing an adequate cash flow to pay bills.

Private Management Support

When someone other than the OPC is appointed as the financial manager such as a family member, friend, professional or trust company, direction, supervision and support can be provided by the OPC. The OPC can assist with auditing accounts, preparing a plan of management and providing managers with the necessary legal authority to manage the person's affairs.

Contacts & Websites

Guardianship Tribunal (Sydney)

Ph 02 9555 8500

Free Call 1800 463 928

Fx 02 9555 9049

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www.gt.nsw.gov.au

**Mental Health Review Tribunal
(Sydney)**

Ph 02 9816 5955
Free Call 1800 815 511
Fx 02 9817 4543

www.mhrt.nsw.gov.au

**Office of the Public Guardian
(Gosford Office)**

Ph 02 4320 4888
Fx 02 4320 4818
After Hours 1800 451 510 (Free Call)

*Private Guardian Support Unit
(Sydney)*

Ph 02 8688 6060
Fx 02 8688 9797

www.lawlink.nsw.gov.au/opg

**Office of the Protective
Commissioner**

Ph 1300 360 466 (Outside Sydney)
Fx 02 8688 9743

www.lawlink.nsw.gov.au/opc

