New Ageing and Disability Commissioner for New South Wales

From July 2019 NSW will have a new Ageing and Disability Commissioner. The Commissioner will be a statutory authority responsible for responding to abuse, neglect and exploitation of people with disability and the elderly in home and community settings. Its main functions will be:

- Receiving, triaging and investigating allegations of abuse, neglect and exploitation.
- Providing support to vulnerable adults and their families and carers during and following an investigation.
- Reporting and making recommendations to government on related systemic issues.
- Raising community awareness – including how to prevent, identify and respond to matters.
- Administering the Official Community Visitors program in relation to disability services and assisted boarding houses.

The Commissioner’s role is distinct from the National Disability Insurance Scheme (NDIS) Quality and Safeguards Commissioner and Aged Care Quality and Safety Commission, which are responsible for responding to complaints about the NDIS and aged care services.

The establishment of the Commissioner is a response to a number of reviews and inquiries highlighting the need for better safeguards for abuse, neglect, and exploitation. These issues include the Parliamentary Inquiry into the implementation of the NDIS and the provision of disability services in New South Wales; the NSW Ombudsman’s recent report Abuse and neglect of vulnerable adults in NSW – the need for action; the NSW Law Reform Commission’s Review of the Guardianship Act 1987; and the 2016 Parliamentary Inquiry into Elder Abuse.

The NSW Government is also reviewing other recommendations in the NSW Law Reform Commission’s report, including the recommendations for moving towards an assisted decision making model. The Public Guardian welcomes any change to safeguard the rights of people with disabilities.
Guardianship Order Functions - ACCESS

Onguard will be periodically featuring the different functions a guardian can have. This issue focuses on the access function. An access function is given to a guardian when there is a need to decide who the represented person should have contact with. This might be needed to safeguard them from certain people, or to allow the person greater contact with people.

You should always take the represented person’s will and preference into account when making an access decision, and should only make an access decision if an informal arrangement doesn’t work.

What decisions can I make with an access function?

• Who the represented person should have visits from and who they should visit.
• When and where such visits/contact should occur, for how long, and in what circumstances.
• What type of contact, for example, by telephone, email, letters, text message, social media or in person

What should I take into account when making decisions about access?

• Whether the represented person wants to have contact with a particular person/persons.
• If this contact will benefit the person and if so, under what conditions.
• Whether the contact will have negative consequences for the person.

How do I make an access decision?

1. It is a good idea to seek an informal and negotiated arrangement for visits and/or contact whenever possible, without making an official decision.
2. Alternatively you can ask the person seeking access to provide you with a formal written proposal which sets out the desired access.
3. You will need to inform the represented person and carers of the proposal and seek their views on it. You can then decline or consent to visits or contact at given times and locations, and you can insist on certain conditions (for example, supervised access only). In rare cases you can decline access altogether.

How do I implement the decision?

• Arrange to meet with any service providers who will be party to the access decision.
• Make sure your decision is written down and agreed to by all parties. This is called an access plan.
• If the represented person lives in supported accommodation or aged care facility, you should provide a copy of the access plan to the facility’s management so that they can manage who visits the person.
• If the person seeking access does not cooperate with your access decision you should talk to them and refer them back to the plan. You may need to consider changing the plan if it isn’t working, but remember that as the guardian your primary concern is for the represented person.

More information is available in the factsheet section on our webpage “You are a Guardian” https://www.publicguardian.justice.nsw.gov.au/Pages/publicguardian/pg_pgsupportu/pg_youaguard.aspx

Access Case Study

Brian, 35, has an intellectual disability and lives in a group home. He has acquired some ‘new friends’ who have been taking advantage of him.

The ‘friends’ have been taking Brian to places which are unfamiliar to him, taking whatever money he has on him and abandoning him.

Brian’s cousin, Mark, is appointed as his guardian with an access function so he can protect Brian from being further exploited by these ‘new friends’.