

What is a Guardian?

Office of the Public Guardian – Fact Sheet

A guardian makes specific health and lifestyle decisions for people who are unable to make decisions with support. A person may also need a guardian when the support they have around them is not promoting their interests.

When is a guardian appointed?

A guardian can only be appointed when the person:

- cannot be supported to make their own decision
- has a disability or illness that affects their ability to make their own decision
- is aged 16 years or over and requires a decision to be made

Who can be a guardian?

A guardian can be a spouse, parent, relative or friend of the person. The NSW Public Guardian can also be a guardian when no private person is suitable or able to be the guardian.

A guardian must:

- be over the age of 18
- not have a conflict of interest
- be willing to be the guardian
- not be a paid service provider (excluding Centrelink payments).

How does someone become a guardian?

To become a guardian, a person must be legally appointed. In NSW adults with capacity can appoint their own enduring guardian for a time in the future when they might need someone to make important decisions on their

behalf. The Guardianship Division of the NSW Civil and Administrative Tribunal (NCAT) or the Supreme Court can also appoint a guardian if a person is unable to appoint their own due to a loss of decision making capacity.

What does a guardian do?

A guardian makes health and lifestyle decisions in the areas detailed in the guardianship order or enduring guardianship form of appointment. These decision making areas depend on what decisions might need to be made. These decisions could include, but are not limited to, where the represented person lives, what services support them, and provides consent for medical and dental treatment.

Guardians are bound by the *Guardianship Act 1987* and a guardian is responsible for ensuring decisions follow the Principles of the *Guardianship Act*. The Principles promote independence and self-reliance as well as care and protection.

The Principles of the Guardianship Act

- The welfare and interests of the person should be given paramount consideration.
- The freedom of decision and the freedom of action of the person should be restricted as little as possible.
- The person should be encouraged as far as possible to live a normal life in the community.
- The view of the person should be taken into consideration.
- It is important to preserve family relationships and the cultural and linguistic environment of the person should be recognised.

- The person should be encouraged as far as possible to be self-reliant in matters relating to personal, domestic and financial affairs.
- The person should be protected from abuse, neglect and exploitation.
- The community should be encouraged to apply and promote these principles.

Does a guardian provide care to the person?

The role of a guardian is to make decisions for the represented person. They are not responsible for providing care, accommodation, transport or for managing day-to-day affairs. However, if a private or enduring guardian has been appointed, they may also be an unpaid carer for the represented person, for example if a wife is appointed as the guardian for her husband and is caring for him at home.

How long is a guardian appointed for?

Enduring guardians, that is guardians who are appointed by the person when they have capacity, are ongoing with no time limit. Enduring guardians however, only start making decisions when the person who appointed them can no longer make their own decisions.

If a guardian is appointed by NCAT or a court, the length of the order will be decided by the court or tribunal. A first order can be up to one year. If the order is reviewed, NCAT or the court may decide to create a new order for any length of time up to 5 years.

To find out if a person has a current guardianship order, contact NCAT for a copy of the order on 02 9556 7600 or 1800 463 928 for country callers. You can also request to see a copy of the enduring guardianship appointment form.

What if I disagree with a guardian?

If you think a guardian is not making decisions that promote the interests and welfare of the represented person, you can discuss your

concerns with the guardian to try and reach an agreement. If you are still not satisfied, contact NCAT. The Tribunal may hold a hearing to review the appointment of the guardian.

If you are concerned about the actions of a staff member of the Public Guardian or a decision made by the Public Guardian, contact a Complaints Support Officer. They can assist with information on how to lodge a complaint or request a review of decision.

For more information on making a complaint or requesting a review of a decision made by the Public Guardian, you can read our fact sheets [your rights to make a complaint](#) or [your rights to request a review of decision](#).

How to contact us



Speak to an Information Support Officer:
02 8688 6070
1800 451 510 for callers outside the metropolitan area



Write to us at:
Public Guardian
Locked Bag 5116
Parramatta NSW 2124
Fax: 02 8688 9797



You can contact us through the National Relay Service on 1800 882 889



Email us or visit our website:
informationsupport@opg.nsw.gov.au
www.publicguardian.justice.nsw.gov.au/



If English is your second language, you can contact us through the Translating and Interpreting Service on 131 450.

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