4. Functions of a guardian

4.1 Accommodation function

The accommodation function is given to a guardian when decisions need to be made on behalf of the person with a disability about where they should live.

How is this function explained in my guardianship order?

If you have this function, you may find it worded in the order like this: ‘To determine where the person may reside.’

What does an accommodation function authorise me to do?

This function gives guardians the authority to decide where the person may:

> live, or stay, temporarily. This may include decisions about respite (in an aged care facility, group home or health care facility)
> live in the longer-term or permanently
> go for holidays or overnight visits, often including whether the person can visit family and friends.

Deciding where a person should live

Proposals about where the person should live or stay, how long they should be there, and sometimes, how they should get there, may be raised by health care workers, other service providers, the person with the disability or their family and friends. As a guardian with an accommodation function, you will need to consider these proposals and make decisions that are in the best interest of the person under guardianship.

Many guardianship orders with the accommodation function are appointed because the person under guardianship is no longer able to live safely in their current home without some, or more, support. A guardian with an accommodation function must then decide whether the person can be further supported in their existing home or whether they need to move into accommodation that is able to provide a higher level of support (for example a group home or an aged-care facility).
These are big decisions. Usually people move homes because they want to and some people have lived in their home for a long time. Moving a person somewhere new because they have no other choice can be very traumatic.

To help you make the best decision, you need to get as much information as you can and you may be able to get a professional to assess the situation. For example, if the person you are a guardian for is elderly and living at home, you can ask the Aged Care Assessment Team (ACAT) to assess the situation and make recommendations about what would be required to enable the person to remain at home. The ACAT may find that it would not be safe or suitable for the person to remain in their home even with additional supports or equipment. In these instances, they would advise you to move the person to another home and make suggestions about the most suitable style of accommodation.4

Similar assessments are also available for people who are in hospital, usually with the assistance of a social worker or other health worker attached to the ward.

If the person already lives in supported accommodation, meet with the manager of the facility and discuss whether their management and support strategies can be varied to enable the person to remain in their current home. If the necessary level of support cannot be provided, ask the service provider to let you know about alternative accommodation options. Arrange appointments for you to visit these facilities and if appropriate, take the person under guardianship with you and ask them for their view about the various options.

If you, or the person under guardianship, are unsure about whether an alternative accommodation will be suitable in the longer-term, you could consent to the person moving there for an agreed trial period.

If you make a decision to change a person’s accommodation, remember to let the Guardianship Tribunal, financial manager and any other relevant organisations know so they can update their records about how to contact the person.

**Signing contracts and liability**

While you as guardian can make decisions about where the person lives, you cannot enter into financial contracts on behalf of the person under guardianship. Decisions about financial aspects of a person’s accommodation or care should be directed to their financial manager.

4 You might be asked to sign the aged care client record. This form provides approval for the person to access support or accommodation. If the person cannot sign the form themselves due to incapacity, you have this authority.
Functions of a guardian

What if the person under guardianship refuses to move from their current home?

Moving from one home to another is very stressful, especially if it is not a move the person really wants to make. If possible, give the person as much time as you can to get used to the idea. It may also be helpful for the person to visit the new accommodation a few times before the actual move is made. If there are any people that the person under guardianship particularly likes or trusts, ask them to talk about the move with the person and explain why the move is best for their safety and well-being.

Sometimes, a person’s objection is because of his or her disability or lack of insight into their treatment needs. They may object verbally but not in any coherent or strenuous way. When it is time for the move to take place, they may go along with the decision and move without objection.

It is very important that you stay honest and open with the person and don’t try to move them by deception. Such action would be contrary to the principles of the Guardianship Act.

The last resort is for the person to be physically moved by others. This is an extremely serious thing to do and will be most distressing for the person. It should only be considered if it is urgent, the person needs to move for their safety and well-being and the person clearly objects, physically objects or will otherwise require coercion to guarantee his or her compliance. If you do need to consider this action, you must first be sure you have the authority to carry it out.

Do I have the authority to move a person against their wishes?

You only have the authority to move someone against their wishes if you have been appointed with a ‘coercive’ accommodation function in the guardianship order. This will be written as ‘accommodation and authorise others’ and includes the authority to request the assistance of police and ambulance to take a person to their accommodation, and retrieve them if they leave.

If this situation was anticipated at the hearing, this function may already be part of the order. If not, you may need to apply to the Tribunal for this extra authority.

Case study

Nora, 80, has dementia. Her guardian, Anne, has accommodation, health care and services functions. Over the past year Nora’s health has deteriorated and services tell Anne that they are struggling to keep Nora safe at home, even with maximum support.

After a fall, Nora is taken to hospital. The treating team recommend low level dementia specific aged care for Nora.

Anne talks with Nora about how she has been managing at home and seeks her views about moving to an aged care facility. Nora denies receiving any assistance at home and refuses to discuss alternatives to living at home. Anne asks the Occupational Therapist to do a home assessment.

Nora doesn’t recognise her house and cannot participate in the assessment. Later, she does not remember going home.

Anne agrees to Nora’s placement in an aged care facility when she leaves hospital.
What happens if the person attempts to leave the new accommodation?

It is completely normal for a person to take time to settle into their new place. Staff should be aware of this and as part of their duty of care, they should help the person to settle in. Sometimes, staff may be able to distract a person who wants to leave by engaging with them in activities or conversation.

It is also important to talk with the person about why they want to leave. Where possible, consider the person’s thoughts and the reasons they give you for wanting to leave and then talk with the staff. Staff may be able to make changes that improve the situation and help the person to feel comfortable and happy.

If the person remains very unhappy, you may need to consider if the accommodation is the best place for them and whether there are any alternatives.

If the person keeps trying to leave, and there are concerns for their safety if they do leave, then a service provider may be able to keep the person in accommodation under their ‘duty of care’.

You do not have the authority to ensure the person remains in the accommodation unless you have been appointed with a coercive accommodation function in your guardianship order. This function gives the guardian the authority to ensure the person remains within a place and/or to assist the person to return to the accommodation if they leave. If you do not have this function, but you think you need it, you can apply to the Tribunal for this authority.

What can I do if I am not satisfied with information I am getting about accommodation options?

If you are unhappy with the accommodation options given, you could:

> discuss your concerns with the staff member or service provider
> suggest other accommodation options you would like them to consider
> make a formal complaint to the service provider on behalf of the person under guardianship.

If you think that the service provider does not understand or respect your role as guardian, you can suggest they request an education session from the Public Guardian.

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5. ‘Duty of care’ is the obligation a service provider has to provide care and protection of the person in their care and to take whatever action necessary to ensure this.
4.2 Coercive accommodation function

A coercive accommodation function is given to a guardian when there is a need to ensure the safety of the person under guardianship and in some cases, to override any objections the person may have to accommodation decisions.

What does a coercive accommodation function authorise me to do?

A coercive accommodation function gives you all the same authorities as the standard accommodation function plus the additional authority to:

- decide that an accommodation decision should be enforced even if the person disagrees or forgets about it; and
- request assistance from others including police and ambulance in enforcing the decision.

Implementing the coercive accommodation function

Before giving the extra authority contained in a coercive accommodation function, the Tribunal may ask you what has been done to help the person understand why the accommodation decision has been made. When it comes time to make a decision to use this coercive authority you will need to consider this again. Coercive decisions can be very distressing for the person under guardianship and should only be undertaken as a last resort, even if you have the legal authority to do it.

Before enforcing compliance of an accommodation decision you will need to:

- weigh up the benefits of the decision against the burdens of implementing it. That is, while the accommodation decision might be in the person’s best interests, will the impact of the steps necessary to enforce the decision be worse than the existing risk?
- consider how the decision will be enforced and by whom, and
- consider whether all other less restrictive options have been tried.
You don’t have to make these decisions alone. You can consult with relevant service providers or health or other professionals if this input is useful for you.

If you do decide that the person needs to be moved by force, you are not legally required to attend during the removal. You can ask other people to attend such as the case manager or key worker from the service the person is leaving or alternatively, from the service the person is going to.

**Can I get help from the police and/or ambulance services?**

A coercive accommodation function authorises you to request assistance from police or ambulance officers. However, this function is only given as a last resort and is not very common, so many police and ambulance officers are not familiar with this authority. If you have a coercive accommodation function, it is a good idea to write to or visit the relevant police and ambulance stations (probably the ones that are closest to the place where the person under guardianship is living) as soon as you can. Provide them with a certified copy of the order and explain the meaning of the function and the type of help you may need from them. Then, if things do get to a crisis point, they will know what you need them to do and that you have the authority to ask them to do it.

Ambulance officers are not able to force people to travel with them. However, with a request from an appropriately authorised guardian and assistance from police, ambulances can help with transportation.

**What if the police or ambulance officers won’t help me?**

If police or ambulance officers still won’t help you, or they are unsure about what you are asking them to do, you could suggest they contact the Guardianship Tribunal or Private Guardian Support Unit (PGSU) to confirm the legitimacy and meaning of the order and the function.

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**Case study**

Paul, 23, has an acquired brain injury after a motor vehicle accident. Paul is in a rehabilitation program but is unwilling to stay and tries to leave.

Paul’s friend Dave was appointed as guardian with the functions of medical/dental consent, health care and coercive accommodation. The coercive accommodation gave Dave extra authority to ask other people, such as the nursing staff, to keep Paul within the unit and to bring him back if he left. This meant Paul could complete the rehabilitation program.
4.3 Health care function

A health care function is given to a guardian when the person with a disability needs to have decisions made about their health care.

How is this function explained in my guardianship order?

If you have this function, you may find it worded in the order like this:

‘To determine what health care, and major or minor treatments, the person may receive’.

What does a health care function authorise me to do?

A health care function gives you the authority to determine what health care the person should receive. For example, with this authority you can make decisions about:

- assessments, non-invasive examinations, investigations, diagnostic procedures; health care monitoring and observation; generalist nursing or personal care; nursing care plans
- whether the person should attend medical or other health care appointments (as an out-patient, in the community or at home)
- whether the health care information about the person should be released if requested
- whether specialist medical (non-invasive) assessments/reviews, such as those by a psychiatrist or a neurologist, should be undertaken
- whether the person should be admitted to an acute general hospital for the purpose of investigation or treatment, where the person is not objecting to the admission
- whether the person should be discharged from an acute general health care facility
- whether the person should receive non-invasive treatments such as: massage, physiotherapy, speech therapy, and/or use non-ingested agents (such as creams, lotions or alternative/complimentary therapies) which are not subject to Part 5 of the Guardianship Act 1987 (NSW)
> the need for a case conference or review meeting with health care professionals or service providers to discuss health care matters relating to the person

> which health care services or professionals the person under guardianship will receive a service from, such as the person’s general practitioner, dentist, psychologist, psychiatrist, and also whether it is necessary to change a practitioner

> dietary matters (following recommendations by a dietician) if this will have an impact upon the person’s health.

**Please note:** this function does not give you authority to consent to or decline medical or dental procedures or treatments, which are outlined within the provisions of Part 5 of the Guardianship Act. To consent to or decline medical or dental treatment, you need a medical and dental consent function.

**Making decisions about a person’s health care**

In some instances, you will need to make decisions that respond to requests or recommendations made by health practitioners or service providers about the person’s health care. In other instances, you may make requests for things to be done that you believe are needed. If you feel that the person is not receiving the care they need, you can request that things such as tests or check-ups are done. If necessary, you can make a decision to change practitioners.

To help you with your ongoing management of the health care function, you can ask the service providers who are involved in the health care of the person you are guardian for to:

> provide a treatment plan (if the person is admitted to a health care facility, or elsewhere because major health concerns have been raised or diagnosed)

> provide you with written reports following medical (or other) reviews and/or assessments

> arrange for check-ups for the person with their dentist, general practitioner, optometrist, audiologist

> provide a health care management plan if the person is at risk of self-harm.
Accessing health care records

Health records belong to the health practitioner but you have the right to access the records of the person you are guardian for when you have a health care function. You can request access to information about the person’s health care or medical history from treating doctors, health care facilities, accommodation (aged care facility) and/or other services.

While this is not something you would do routinely, you might need to access the person’s medical records from time to time to help you understand your role more fully or if you have a major health care decision to make on behalf of the person or if you are concerned about the care the person is currently getting. There is further discussion about this issue on page 22.

For more information about how to access health records, refer to the brochure Your Health Information (2008) published by the Health Care Complaints Commission.

What can I do if I am not satisfied with the health care options I have been given?

If you are not satisfied with the health care options you have been given, you might:

- let the staff worker / service provider know of your concerns
- suggest any other options you would like them to consider.

If this does not achieve the desired outcome, you can make a formal complaint to the service provider on behalf of the person under guardianship. For more information about making a complaint, see Chapter 5, Making a Complaint.
4.4 Medical and dental consent function

A medical and dental consent function is given when the person under guardianship needs medical and dental treatment and they are unable to provide their own consent.

How is this function explained in my guardianship order?

If you have this function, you may find it worded in the order like this:

‘To consent on the person’s behalf to medical and dental treatment to which they are not capable of consenting for themselves, subject to the provisions of Part 5 of the Guardianship Act 1987.’

What does a medical and dental consent function authorise me to do?

This function gives you the authority to give or decline consent to medical or dental treatments and procedures. With this authority you may:

> give or decline consent to major or minor medical or dental treatments
> give or decline consent to the use of medications for the purposes of sedation or chemical restraint
> give consent for a limited time.

In this instance, a substitute decision-maker is appointed to ensure:

(a) that people are not deprived of necessary medical or dental treatment merely because they lack the capacity to consent to the carrying out of such treatment, and

(b) that any medical or dental treatment that is carried out on such people is carried out for the purpose of promoting and maintaining their health and well-being.
What is consent from a ‘person responsible’?

The Guardianship Act 1987 (Part 5, Section 33 (2)) states that a person is incapable of giving consent to the carrying out of medical or dental treatment if the person:

(a) is incapable of understanding the general nature and effect of the proposed treatment, or
(b) is incapable of indicating whether or not he or she consents or does not consent to the treatment being carried out.

When a person lacks capacity to consent the treating practitioner must seek consent from the patient’s person responsible.

A guardian with a medical and dental function is a person responsible. There can also be other persons responsible who are involved by virtue of their relationship to the person and do not have to be appointed by the Guardianship Tribunal. In this instance, person responsible is the term that replaces next of kin. The person responsible hierarchy only applies to medical and dental decision-making and not other life areas.

The person responsible is:

> a guardian who has the function of consenting to medical, dental and health care treatments
or, if there is no guardian appointed with this authority

> a spouse, de facto spouse or same sex partner with whom the person has a close, continuing relationship
or, if there is no such spouse, de facto spouse or same sex partner

> an unpaid carer who is now providing support to the person or who provided this support before the person entered residential care
or, if there is no carer

> a relative or friend who has a close personal relationship with the person.

It is up to the medical or dental practitioner to determine who the person responsible is.
What types of treatment can the person responsible consent to?

The Guardianship Act 1987 (NSW) refers to four categories of treatment, which are urgent, minor, major and special. Under Part 5 of the Act, doctors and dentists are required to obtain a valid consent before treating. The Act also states who can provide valid consent to these treatments when the person receiving the treatment is unable to provide their own consent.

**Urgent treatment**

If a doctor or dentist urgently needs to treat the person to save his or her life, to prevent serious damage to his or her health, or to prevent or alleviate significant pain or distress, they can do so without consent.

**Minor treatments**

Any treatment not listed below as a major or special treatment is a minor treatment, unless it involves significant risk to the person. The person responsible can consent to minor treatments and consent can be made verbally or in writing. If the person responsible cannot be located and the patient is not objecting, the doctor or dentist may treat without consent. The doctor/dentist is required to write in the person’s medical record that the treatment was necessary to promote their health and well-being and that the person did not object.

**Major treatments**

The person responsible can consent to these types of treatments. If they cannot be contacted, only the Guardianship Tribunal can then consent. The doctor or dentist must request consent to major treatments in writing, and consent to the treatment must also be provided in writing. Treatment can be discussed over the phone or in person, but consent needs to be sought and provided, in writing.

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**Case study**

Tom has an intellectual disability. When Tom develops a toothache he goes to the dentist who explains to Tom and his father that his tooth is decayed and needs to be removed. With the support of the dentist and his father, Tom is able to understand what the proposed treatment will mean for him and provide his own consent to the treatment. However when Tom’s dentist recommends a general anaesthetic to remove a number of teeth, Tom does not understand the risks of the anaesthesia. Tom’s dentist assesses that Tom is not able to give consent for the treatment and talks to Tom’s father, as person responsible, instead...
Major treatments include:

> any treatment that involves long-lasting injectable hormone for contraception or menstrual regulation

> any treatment that involves the administration of a drug of addiction

> treatment involving general anaesthetic or other sedation but not treatment involving:
  - sedation used for the management of fractured or dislocated limbs
  - sedation used to facilitate the insertion of an endoscope into a person’s body for diagnostic purposes unless the endoscope is inserted through a breach or incision in the skin or mucous membrane

> any treatment for the purpose of eliminating menstruation

> any treatment that involves the administration of a restricted substance for the purpose of affecting the central nervous system, but not treatment:
  - involving a substance that is intended to be used for analgesic, antipyretic, antiparksonian, antihistaminic, antiemetic, antinauseant or anticonvulsant purposes; or
  - that is to be given only once; or
  - that is a PRN (which means as and when required, according to the person’s need) but not more than three times a month; or
  - given for sedation in minor medical procedures.

> any treatment that involves a substantial risk to the person, that is, a risk that amounts to more than a mere possibility of:
  - death; or
  - brain damage; or
  - paralysis; or
  - permanent loss of function of any organ or limb; or
  - permanent and disfiguring scarring; or
  - exacerbation of the condition being treated; or
  - an unusually prolonged period of recovery; or
  - a detrimental change of personality; or
  - a high level of pain or stress.

> any treatment involving testing for HIV

> any dental treatment involving the administration of a general anaesthetic or simple sedation

> any dental treatment resulting in the removal of all teeth or which will significantly impair the person’s ability to chew food.
**Special treatment**

Only the Guardianship Tribunal can consent to any of the following ‘special’ treatments:

- sterilisation
- termination of pregnancy
- drugs of addiction used for more than 10 days in 30 (except if the person has cancer or is dying)
- aversive measures - mechanical, chemical or physical
- experimental treatments, including
  - any new treatment that has not yet gained the support of a substantial number of doctors or dentists specialising in the area
  - use of medication that affects the central nervous system when the dosage, duration or combination is outside accepted norms
  - androgen-reducing medications for behavioural control (eg, androcur).

**Making decisions about medical and dental consent**

*The Guardianship Act 1987* states that before a medical or dental practitioner can ask you for consent on behalf of another person, they must be sure you are informed of all the details of the treatment, including its risks and benefits. If you have been provided with all the relevant information, and you consent to the treatment or medication, this is known as giving informed consent or valid consent.

If you are asked to consent to a treatment or medication on behalf of someone else, it is essential that you have as much information as possible to help you decide. These are some questions you could ask the practitioner:

- what is the person’s diagnosis?
- what does this mean?
- how does the doctor/dentist plan to treat the person?
- what is the purpose of the procedure - to cure, relieve symptoms or investigate further?
- what will be the likely outcome of the procedure?
- will there be pain or discomfort for the person?
- are there any risks involved and how likely are they?
- are there any side effects and how likely are they?
- are there any alternatives?
- what would happen if the treatment wasn’t given?
If you are asked to consent to medication on behalf of someone else, these are some questions you could ask:

- what is the name of the medication (brand name and/or generic name)?
- how does it work?
- what are the benefits?
- what happens if the person does not take it?
- is it habit/addiction forming?
- how important is it that the person takes the medication?
- how long will it take to work and how will you know it is working?
- what will happen if it doesn’t work?
- when and how should it be taken?
- for how long should it be taken?
- what are the side effects?

You can ask the practitioner to provide you with a treatment plan and ask for an annual assessment of the person and the impact of the treatment. Attend a consultation with the person under guardianship if you feel this will help you to make your decision.
What if the person objects to the treatment?

The person responsible should always consider the views (if any) of the person who will be receiving the treatment and ensure the person does not object to the proposed treatment.

If the person under guardianship does object to the treatment, you as their guardian with medical and dental consent function can override their objections if, and only if:

- the person has minimal or no understanding of what the treatment involves; and/or
- the treatment will cause them no distress, or if it will cause distress, this is likely to be reasonably tolerable and only transitory.

In all other circumstances, if you are asked to provide consent to a medical or dental treatment and the person under guardianship objects, you will need to ask the treating practitioner to apply to the Guardianship Tribunal for consent.

The Tribunal may then either:

- provide consent to the treatment (overriding the person’s objections) as a one-off matter, as permitted under Part 5 of the Guardianship Act 1987; or
- extend your decision-making authority to include the authority to consent to medical/dental treatment overriding the person’s objections. This is called a Section 46A power under the Guardianship Act 1987 (NSW).

DID YOU KNOW?
A doctor may also choose to make an application to the Tribunal to consider consent to a treatment if the guardian or ‘person responsible’ is objecting to the proposed treatment.
Use of medication to restrain or control the person’s behaviour

Sometimes medications designed to treat mental illness (a group of drugs commonly called psychotropic medications) are suggested for someone who is considered to have challenging or difficult behaviour, for example an elderly person with severe dementia who becomes agitated and aggressive toward others.

As guardian, you can only provide consent when the treatment will promote and maintain the person’s health and well-being. Medication which is used to restrain or control someone’s behaviour should only be consented to when it is part of a behaviour management plan.

Useful resources:

- Best Practice Model for the Use of Psychotropic Medication in Residential Aged Care Facilities NSW Health 2001
- Behaviour Support: Policy and Practice Manual: Guidelines for the provision of behaviour support services for people with an intellectual disability DADHC 2009
- The Guardianship Tribunal has a booklet about behaviour management

Case study

Mr Salgado, 79, has dementia and lives in a nursing home in a small rural town. His granddaughter is his guardian with medical/dental consent and health care functions.

As Mr Salgado’s dementia has increased he has become more agitated at particular times of the day, and is occasionally aggressive towards staff and other residents. He is assessed at a unit designed for people who are confused and have dementia and positive interventions and changes to his environment are made. However, there are times for which Mr Salgado’s GP has recommended sedative medication to ensure that his distress does not seriously put at risk his general health and well-being.
End-of-life decisions

Sometimes guardians are asked to consent to medical treatment that has the potential to affect the timing of a person’s death and the person’s quality of life immediately before death. The guardian can consent to end-of-life treatment provided the treatment has therapeutic value, is not burdensome, traumatic or intrusive and can be brought to an end if required.

These sorts of decisions are different to euthanasia, which directly and intentionally causes the death of a person in order to relieve that person’s suffering. Euthanasia is illegal in New South Wales.

If you are asked to consent to treatment that relates to end-of-life, the practitioner making the request should provide you with the information described on pages 45 and 46.

Advance care directives

An advance care directive (ACD) contains instructions that consent to, or refuse to consent to, specified medical treatments in the future. They become effective in situations where the person is no longer able to make decisions. Advance care directives can be useful for people with recurring illnesses. ACDs allow the person to ‘have a voice’ and participate in treatment planning while they have capacity and insight, for a time when they may not have capacity, insight or much power.

Guardians cannot make advance care directives on behalf of a person under guardianship but can be involved in advance care planning. If you are aware that the person under your guardianship has written an ACD, you should draw it to the attention of the treating team. Depending on the content, the ACD may affect your decision-making when considering whether to provide or withhold consent to medical/dental treatment. NSW Health has a useful publication titled Using Advance Care Directives, 2004.
What can I do if I am not happy with the treatment proposed or satisfied with the medical care of the person under guardianship?

If you are unsure about the necessity of a proposed treatment, you can get a second opinion from another practitioner or ask for a review by a specialist. Similarly, if you feel the person is not getting the service or treatment they need, you can change the person’s doctor or dentist. You may wish to discuss this with the person, as well as any relevant support staff and the practitioner themselves if appropriate.

If you as guardian decide to decline consent to a treatment, it is important to know that the doctor may then choose to apply directly to the Guardianship Tribunal and ask them to consider consenting to the treatment. The Tribunal may override your decision if it decides the treatment will be in the best interests of the person under guardianship.

If these actions do not resolve your concerns, you may wish to make a complaint to the Health Care Complaints Commission (HCCC) on behalf of the person. You can also express your concerns about non-compliance with, or alleged breaches of, the provisions of Part 5 of the Guardianship Act 1987.
4.5 Services function

A services function is given to a guardian when the person under guardianship needs to have decisions made on their behalf about what services they need to support or assist them.

How is this function explained in my guardianship order?

If you have this function, you may find it worded in the order like this:

‘To make decisions concerning the major services the person should access’.

What does a services function authorise me to do?

This function gives you the authority to make decisions about (including giving or declining consent) the types of services and support the person gets and/or which agencies will provide them. The type of services required, and the agencies that provide them, will vary depending on the person’s needs. Some examples of the services you may need to make decisions about include:

> case management
> direct personal or attendant care
> house cleaning, shopping, Meals on Wheels, practical home-support services
> service plans, including assessment and review
> counselling and therapy services to assess the person under guardianship
> employment, training, vocational or education services
> skills development and/or recreational activities.

Other things you may have to decide about if you have this function is whether to release personal information about the person under guardianship if it is requested by service providers and whether the person can be involved in a positive behaviour intervention and support program not involving restrictive practices.

If the person under your guardianship is currently not receiving any support from service providers, it may be worth getting the person’s situation assessed just to confirm that they are still able to function adequately unsupported. If the person is leaving the criminal justice system, an acute care hospital, or a psychiatric facility, make sure they have all the necessary discharge planning. As well as making
decisions about what services the person should receive, you may also have to advocate on behalf of the person to make sure that they get these services and in a way that is satisfactory to meet their needs.

**Case managers**

Identifying a case manager early can make your job as guardian a lot easier.

Agencies that provide services to people with a disability or with a brain injury or who are aged, usually employ people to coordinate and/or deliver the care and services that their clients might need or want.

When a case manager begins working with a client, they will usually review and assess the person’s circumstances and make recommendations about their support needs. As the person’s guardian, you can ask the case manager to discuss these recommendations with you and together you can work out a case plan for the person under guardianship. You can also request a review of the person’s case plan at a later date if you think it is necessary.

The case manager has an on-going responsibility for the care and support of the person, including coordinating other direct service providers if relevant. They will monitor the delivery of services and how the person is responding to the help and can notify you if there are any concerns or if changes need to be made. They may also be available to assist in times of crisis or emergency.

If the person under guardianship currently does not have a case manager, and you feel that they (or you) would benefit from having one, contact the service that is most relevant to the circumstances of the person under your guardianship. If you are not sure which service to contact, call the PGSU and talk it over with them.

**What if the services available are not adequate to meet the person’s needs?**

If the person has the financial resources, you could consider using private operators to provide additional services if those available through funded agencies are not sufficient to meet the person’s needs. You will need to discuss this with the person’s financial manager.

If the person does not have additional financial resources, then you will need to discuss the options further with the person’s case manager.
What if the person objects to the services?

Sometimes, the person under guardianship may object to a service provider coming into their home. This usually occurs because they are unfamiliar with the service provider and have not had a chance to build rapport with them.

If someone needs to come into the home of the person under guardianship, try to do this in a sensitive way. Talk to the person about why the support is necessary and wherever possible, give them time to get to know the service provider who will be visiting them. If you are able to, it may be useful for you to come with the service provider, at least for the first few visits. You can help the person under guardianship to get to know them and you can demonstrate your trust in them and with what they are doing.

If possible, the person under guardianship should also have some choice about who comes into their home, when they come and how long they stay.

If the person continues to refuse to let anybody into their home, and it becomes vital that the person receive the service, (for example they may be faced with eviction if the property is not cleaned), then the service provider will need to be given access to the property without the person’s consent. In this circumstance, you or the person’s case manager will need to consult with the person’s attorney or financial manager to authorise entry into the house. Only these people can authorise the entry of staff members of a service into the property. A guardian cannot authorise entry into a locked property.

What can I do if I am not satisfied with the service options given?

If you are unhappy with the service options given, you might:

> let the worker/agency know of your concerns
> suggest any other options you would like them to consider

If this does not achieve the desired outcome, you can make a formal complaint to the service provider or the relevant external complaints body.


4.6 Restrictive practices function

A restrictive practices function is given when the person under guardianship may need to be protected from self-harm by the use of physical restraint for a limited time.

**How is this function explained in my guardianship order?**

If you have this function, you may find it worded in the order like this:

‘To make decisions about the use of the following restrictive practices’

or

‘To give or withhold consent to a behaviour intervention and support program’

**What does a restrictive practices function authorise me to do?**

This function gives you the authority to consent or refuse consent to the use of restrictive practices that are aimed at managing or controlling the person’s behaviour. The function will usually include special conditions that specify the type of restrictive practices that you may consent to. With this authority you may:

- give or decline consent to the use of restrictive practices within the context of a positive behaviour intervention and support program
- give or decline consent to any further authority granted in the special conditions of the order.

This function does not authorise you to use restraint to overcome objections to medical treatment (as outlined in Part 5 of the Guardianship Act) or to consent to chemical restraint.

The decision to restrain someone within the mental health system is a decision for the clinician involved and Mental Health Review Tribunal and under the Mental Health Act 2007. Guardians cannot consent to a person being restrained within a mental health unit.
What are restrictive practices?

Restrictive practices are techniques used to control or change a person’s behaviour. The techniques used include personal physical restraint or restrictions to the physical environment. Without consent, these practices may be considered to be an assault or wrongful imprisonment.

Restrictive practices should only be consented to:

> as a last resort;
> within the context of a positive behaviour and intervention support plan; and
> according to best practice.

Some restrictive practices may be used in a crisis situation, and as a last resort, as part of a service provider’s duty of care to the person. This should only occur when it is clear to the service provider that if they did not take this action the person would be at risk of harming her/himself or others.

If restrictive practices are proposed or are in use, and you do not have a restrictive practices function, you or the service provider must apply for this extra authority from the Guardianship Tribunal.

Practices such as punishment, the loss of privileges, seclusion, aversive treatment, the denial of access, manacles and posey vests are prohibited practices and should never be used.

Use of restrictive practices within services

In order to use restrictive practices, service providers need to follow an internal process for consent that usually includes a written policy authorisation at a senior level to the restrictive practices consent, as well as seeking the consent of the guardian.

To help you make decisions about restrictive practices, you can ask service providers to provide you with their policy on using restrictive practices and on their internal processes for gaining consent and monitoring the use of the practice.

How do I know if physical restraint is necessary?

In some circumstances, the use of restraint may be required under duty of care if a particular behaviour could lead to the harm of the person or of others, or to respond to the behaviour in an emergency for the safety of all. In these situations, restraint should be considered a last resort and should only be used for as short a time as possible.
Deciding to use physical restraint to change a person’s behaviour continually is a serious decision. A number of studies and reports have questioned its effectiveness and there is evidence to suggest it can have negative consequences for a person. Studies show that restraint does not assist a person to change their behaviour in those areas. It has also been found that physical restraint can increase (not reduce) the risk of a person falling, that it can result in the development of pressure sores, constipation and incontinence as well as other serious injury if the person tries to remove the restraint. Being restrained may also lead to the person feeling frustrated and powerless, to the point of becoming distressed, agitated, upset and confused.

It is important for guardians to think carefully about:

- the reasons for physical restraint
- the possible consequences for the person
- how it directly benefits the person
- whether it is the least restrictive alternative

Some of the questions you might ask service providers are:

- how serious is the communication or behaviour of concern and does it pose a threat to the person or to others?
- what are the health, medical, environmental and communication factors which could contribute to, or cause, the behaviour?
- has an assessment of the person’s behaviour been done? If yes, ask to see a copy.
- what else is being done to manage the behaviour of concern, for example, can extra staff be provided to assist the person?
- how will the restraint benefit the person?
- what might be the consequences of the restraint and how will the comfort and safety of the person being restrained be ensured?
- how long is the person expected to be restrained (i.e. how many hours per day, how many hours per week)?
- what changes do people expect to see in the person’s behaviour?
- how will they know if it is working or not?
- when and how will the restraint be reviewed?

Ask service providers to put any proposal to use restraint or restrictive practices in writing.
Can I request an assessment of the person’s behaviour?

Yes. If you are being asked to consent to a service provider using restrictive practices and they haven’t conducted as assessment of the person and the behaviour, you can ask them to do one and then for them to use this to develop a behaviour plan. There are many reasons why a person may be communicating or acting in a particular way. It is important that every possibility be considered.

An assessment might consider:

- what recent or past changes have occurred for the person?
- have they moved to live in another place?
- have other people come to live in the same home as them?
- have new people recently come into their life (including people who the person lives with, or who support them or who are staff members)?
- have people left who were important to the person?
- has there been any change in medication?

The person might be reacting to:

- boredom
- difficulty communicating with other people
- sadness, loss, fear, anger, illness
- being confused about something in their life
- not having any choices or control over what happens to them
- remembering a recent or past trauma
- poorly or inappropriately diagnosed or managed physical and/or psychiatric illness

Assessments need to include contributions from all the main people in the person’s life, for example, family, friends, the guardian, health care professionals and relevant staff.

Plans need to be written after a lot of discussion and investigation of the reasons why the person may be acting the way they are. A behavioural practitioner, programmer or social educator will usually be involved in helping to develop appropriate strategies. If not, you can ask that someone with those skills be involved.
Functions of a guardian

Making a decision about the use of restrictive practices

To help you make your decision, you may ask a health care professional from outside the service to review and comment on the restrictive practices plan that is proposed. You could also talk to the person under guardianship about what they would think about possible use of restrictive practices.

Based on the information you are provided with, you may decide to:

- refuse consent to use restrictive practices
- provide (when absolutely necessary) consent to the use of restrictive practices as a short-term (crisis) measure, with the expectation that a comprehensive support plan is developed at the earliest opportunity
- consent to use restrictive practices as outlined in a support plan prepared by a suitably qualified professional, where consent is valid for a particular period of time, and that the use of the practice is reviewed at regular (specified) intervals with particular attention to the impact it is having on the person under guardianship. You may also ask the service provider to give you regular updates on how effective the use of the restraint is, how often it is used, in what circumstances and with what results.

What can I do if I am unhappy/not satisfied with the restrictive practices proposed or being used?

- suggest any other options you would like them to consider
- discuss your concerns about the use of restraint with the worker or agency
- make a complaint to the agency, funding body or a complaints body such as the Ombudsman
- contact the Disability Abuse and Neglect Hotline
- contact the Guardianship Tribunal for further powers so you can arrange alternative support services or accommodation.

Refer to chapter 6 for contact details. If you feel that the service provider does not understand or respect your role as guardian, you can suggest they request an education session from the Public Guardian.
4.7 Access function

An access function is given to a guardian when there is a need to decide who the person with a disability should have contact with.

How is this function explained in my guardianship order?

If you have this function, you may find it worded in the order like this:
‘To make decisions regarding access/contact arrangements’.

What does an access function authorise me to do?

An access function gives you the authority to decide:

- who the person under guardianship should have visits from and who they should visit
- who the person should have contact with (including written and telephone contact)
- when such visits/contact should occur, for how long, and in what circumstances.

Such decisions may involve you consenting to, and sometimes placing limits upon, requests by others for visits to (or contact with) the person under guardianship. These decisions can sometimes be difficult to make, as you need to consider what will be in the best interests of the person for whom you are guardian. The person under guardianship has the right to see (or have contact with) those people he or she wishes to, and not to see those they do not wish to. However, the person also has the right to be protected from harm, conflict, undue influence or pressure from others.

In some instances, restricting access or stopping someone from visiting the person under guardianship may require some safety actions such as changing the locks. If this is required, you will need to discuss the expenses with the person’s financial manager.

For some people the intention of an access function is to allow or facilitate greater rather than lesser access. An access protocol should be developed and distributed to all parties.
Can I apply for an Apprehended Violence Order on behalf of the person under guardianship?

No. An apprehended violence order (AVO) can protect someone if there are concerns for their safety and they need to be protected from someone else. However, under the Crimes Act, only the person in need of protection or the police can apply for an AVO. A guardian cannot apply for an AVO on behalf of the person under guardianship.

You can deny contact with someone if you are very concerned for the safety or well-being of the person under guardianship when they are with that person. If this raises concerns, or there are repeated breaches of an access arrangement, you might need to consider if an AVO is required.

If you are concerned for the safety of the person under guardianship, you can discuss this with the person’s case manager and the police. If required, the police can make an application for an AVO on the person’s behalf. Most police stations have a Domestic Violence Liaison Officer who will be able to help you.

Making decisions about access

When you are making decisions about access, you need to consider whether:

- the person (under guardianship) wants to have contact with a particular person/persons
- this contact will benefit the person under guardianship and if so, under what conditions
- the contact will have a negative consequence for the person under guardianship.

It is a good idea to seek an informal, and negotiated, arrangement for visits and/or contact whenever possible. Remember however, that you can give or decline consent to visits or contact at given times and locations, and you can insist on certain conditions (for example, supervised access only).

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’.
To help you to manage the access function, you could ask service providers (where relevant) to:

- meet with you and the person under guardianship to discuss access issues
- develop an access plan in consultation with the person under guardianship, you, family and/or friends
- ensure this access plan includes advice about what to do if things go wrong or not as planned
- monitor visits that have been consented to as part of an access plan and provide support to the person under guardianship during those visits, if necessary
- write reports for you on how things are going
- assess the person’s capacity to make decisions about visits, or to consider the impact of these visits
- assist a person to change the locks to their house or change their telephone number, to improve their safety and security.

To help develop the access plan, ask the people who wish to visit the person under guardianship when they want to visit or have contact with the person. If you consent to the access plan, make sure a copy of your consent is sent to senior staff for their records. If the person lives in a residential facility or group home, ask staff to share information about the access plan with other staff.

**What can I do if I am concerned about a lack of cooperation with my access decisions?**

If you are unhappy about a lack of cooperation with your access decisions, you need to:

- let the person/worker-agency know your concerns
- suggest any other options you would like them to consider
- make arrangements for greater supervision
- talk to a Domestic Violence Liaison Officer (police) about an AVO

If this does not achieve the desired outcome, you can make a formal complaint to the service provider on behalf of the person under guardianship.

If you feel that the service provider does not understand or respect your role as guardian, you can suggest they request an education session from the Public Guardian.
4.8 Admission of a person to a mental health facility

When a person with a disability needs to have treatment in a psychiatric facility, and they are unable to request their own voluntary admission, a guardian may request their voluntary admission to the facility.

The authority governing this action comes from Section 7 of the Mental Health Act 2007, which states:

1. A person under guardianship may be admitted to a mental health facility as a voluntary patient if the guardian of the person makes a request to an authorised medical officer.

2. A person under guardianship must not be admitted as a voluntary patient if the person’s guardian objects to the admission to the authorised medical officer.

3. An authorised medical officer must discharge a person under guardianship who has been admitted as a voluntary patient if the person’s guardian requests that the person be discharged.

Section 8 of the Mental Health Act 2007 further states that:

1. An authorised medical officer may discharge a voluntary patient at any time if the officer is of the opinion that the patient is not likely to benefit from further care or treatment as a voluntary patient.

2. A voluntary patient may discharge him or herself from or leave a mental health facility at any time.

3. An authorised medical officer must give notice of the discharge of a voluntary patient who is a person under guardianship to the person’s guardian.

Case study

Amanda, age 49, has significant memory problems, often appears to experience hallucinations and has become increasingly confused. Amanda’s brother, Peter, who is her guardian with functions of services, accommodation and medical/dental consent, requested her voluntary admission to a psychiatric hospital, under the Mental Health Act. Amanda’s admission was required to allow for a thorough review and assessment.
Functions of a guardian

For you as guardian, this means:

- you can make a request to the medical superintendent for the voluntary admission of the person for whom you are the guardian. The medical superintendent will decide if he or she will accept your application for admission.

- you can consent to the person under your guardianship being discharged from a psychiatric facility at any time, unless they have been made an involuntary patient under the Mental Health Act.

- the person cannot be held as a voluntary patient without your consent.

- you cannot consent to the person, as a voluntary patient, being held against their wishes in the hospital or psychiatric facility.

However, also under the Mental Health Act, if a voluntary patient asks to leave the hospital, and it is felt that to do so would place them in an ‘at risk’ situation, the treating psychiatrist may consider changing their status to involuntary.

If the person does not have a guardian, an application may need to be made to appoint a guardian who will then be able to request their voluntary admission.