



**PUBLIC TRUSTEE  
AND GUARDIAN**

## GUARDIANSHIP FOR PRIVATE GUARDIANS

The information in this Fact Sheet is provided to assist guardians appointed as individuals by the ACT Civil and Administrative Tribunal (ACAT) under the *Guardianship and Management of Property Act 1991* (ACT) (GMP Act).

### Appointment of a guardian

All adults have the right to make their own decisions. However, if an adult has impaired decision-making capacity because of a disability, ACAT can appoint a guardian or manager (financial and property) when needed.

The person subject to a guardianship order is known as the 'protected person'.

ACAT must preferably appoint an individual of at least 18 years of age as a guardian for a protected person with a disability eg family member, friend or unpaid carer.

If there is no individual available or willing to act as guardian, or where there is conflict about decisions relating to the person, ACAT will appoint the Public Trustee and Guardian (PTG) as guardian of last resort.

Where appointed as guardian, PTG must endeavour to find a suitable person to be appointed as guardian and apply to ACAT to

have that person appointed in lieu of PTG (s.19C *Public Trustee and Guardian Act 1985*).

### Role of a guardian

The types of decisions made by a guardian depend on the order made by ACAT. A guardian does not take over the life of the protected person and cannot make decisions outside of the ACAT order eg what a person should eat or what they should wear. Each guardian can only make decisions in the area in which they have been appointed, according to the individual order. If appointed for that purpose, a guardian may be required to decide -

- where, and with whom, the protected person is to live
- what education or training the protected person is to receive
- whether the protected person can work and if so, the place and nature of the work
- if consent should be given on behalf of the protected person for a medical procedure or other treatment
- if consent should be given on behalf of the protected person for medical treatment involving treatment, care or support under the *Mental Health Act 2015* (ACT)



**PUBLIC TRUSTEE  
AND GUARDIAN**

# FACTSHEET

- to bring or continue legal proceedings for or in the name of the protected person.
- to make other personal decisions needed to ensure that the protected person's health and welfare needs are met and to protect him/her from unreasonable risks to his/her health and welfare.

The order may also provide the guardian with directions, conditions, recommendations and advice to take into account when making decisions.

The guardian cannot make decisions about the property and finances of the protected person. The appointed financial manager of the protected person makes decisions about property and financial matters (Refer PTG Fact Sheet 'Financial Management for Protected Persons').

There are also some decisions that you cannot make as a guardian (Refer s.7B GMP Act) including -

- Discipline the protected person
- Vote in an election
- Make a will or other testamentary instrument
- Consent to the adoption of a child

- Give a consent to a marriage or civil union
- Give a consent required for a prescribed medical procedure for the person (for example, psychiatric surgery or sterilisation).

As the guardian, you must not make decisions that control or coerce the protected person.

## Responsibilities of a guardian

Guardians must make decisions in accordance with the decision-making principles set out in s.4 of the GMP Act and in accordance with the National Guardianship Standards (Refer Fact Sheet 'National Standards for Guardianship').

These decision-making principles are set out below -

- the protected person's wishes must be given effect wherever possible, unless those wishes will significantly adversely affect the protected person's interests
- if the protected person's wishes cannot be given effect, the interests of the protected person must be promoted as far as possible
- the protected person's life and lifestyle must be interfered with to the smallest extent necessary



**PUBLIC TRUSTEE  
AND GUARDIAN**

# FACTSHEET

- the protected person must be encouraged to look after himself or herself as far as possible
- the protected person must be encouraged to live in the general community, and take part in community activities.

## Review of guardianship orders

ACAT can review a guardianship order at any time, but must review the order at least once every three years. At a review, ACAT will consider whether the order should continue and whether it should be changed.

## Period of appointment

The appointment of a guardian continues until one of the following occurs:

- ACAT revokes the order because the protected person regains capacity or there are no decisions to be made
- the guardian resigns in writing to ACAT
- the guardian is removed by ACAT because they are no longer suitable or competent
- the death of the protected person.

## Advice and Support

A guardian can apply to ACAT for direction or advice if they are unsure of the extent of their authority. You can contact ACAT on (02) 6207 1740 during business hours on working days.

You can also obtain general advice and information from the Public Trustee and Guardian on (02) 6207 9800 or by visiting our website at [www.ptg.act.gov.au](http://www.ptg.act.gov.au).