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# NATIONAL STANDARDS FOR GUARDIANS

## Introduction

Guardianship provides an important mechanism for the promotion and protection of rights, interests and dignity of people with impaired decision-making ability, known as protected persons.

The Public Trustee and Guardian (PTG) is responsible for making decisions on behalf of a protected person when acting as an emergency guardian or guardian of last resort.

The National Standards for Public Guardians were prepared by the Australian Guardianship and Administration Council (AGAC) and provide the minimum expectations of public guardians in making substitute decisions on behalf of people with decision-making disabilities.

## Human Rights

The United Nations Convention on the Rights of Persons with Disabilities informs the 2009 review of the minimum standards for public guardianship. The convention promotes, protects and ensures the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities.

For all people, including those with disabilities, there is a presumption of capacity and all possible efforts should be made to assist a person exercise their own capacity. When a

person does not have full legal capacity, such incapacity is decision specific, and therefore a person's decision-making capacity needs to be considered for each and every decision. The *Human Rights Act 2004* (ACT) requires PTG to consider human rights when making decisions.

## The Standards

The following eight standards set out the principles for a guardian to observe when making decisions on behalf of a person.

### 1. Provide Information

Agencies with a statutory mandate of guardianship decision-making will ensure information about their vision or mission, their services and the legislative and ethical principles and policies underlying their services are accessible to all consumers, stakeholders and staff.

Staff making guardianship decisions will ensure that:

- Information is made available to the protected person and other key people in their life, including about:
  - The role of the office
  - The principles of the legislation



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AND GUARDIAN**

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- The authority of the guardian in relation to the protected person
  - Customer services standards
  - Appointment of an interpreter
  - How to request reasons for a decision
  - How to make a complaint or have a decision reviewed
  - How to apply for a review of an Order
  - Other complaints processes
  - Freedom of Information provisions
  - Information about substitute consent and the guardian's authority in respect of the protected person is provided to all relevant service providers, including medical and dental practitioners providing services to the protected person
  - Information is made available on request in appropriate formats to ensure it is accessible.
- ## 2. Seek Views
- Staff making guardianship decisions will:
- Seek and consider the views of the protected person, giving effect to the wishes of the protected person where possible
  - Make personal contact with the protected person a minimum of one visit each year
  - Seek and consider the views of key parties involved with the protected person in regard to any proposed significant decisions
  - Seek and consider the views of relevant medical and other professionals, as the proposed decision requires
  - Consider the strengths and weaknesses of advice from service providers, and if there is reason to consider the advice inadequate in some way, seek a second opinion on behalf of the protected person
  - If the protected person objects to the proposed decision, make reasonable attempts to ascertain the reasons for their objection and consider ways to achieve their wishes or resolve the dispute if possible
  - If any key person objects to the proposed decision, make reasonable attempts to ascertain the reasons for their objection and consider these prior to making a decision



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- Consider and advocate for the least restrictive alternative that meets the needs of the protected person.

### 3. Advocacy

Protected persons have a right to access housing or accommodation, health care, support services, and assistance to participate in the community.

Staff making guardianship decisions will:

- Assess whether all options have been presented to the decision maker by service providers, and seek to recognise when a preferable option has not been presented.
- Make all possible attempts to advocate for the best option so that a decision can be made between meaningful options that improve both quality of life and opportunity for the protected person.

### 4. Protection

Guardianship can serve an adult protection function for protected people at risk of harm by third parties. People with a decision making disability may be vulnerable to physical, sexual, emotional and financial abuse, as well as exploitation and neglect.

Staff making guardianship decisions will:

- In both the initial assessment and subsequent reviews, consider whether a person is safe, and if they have experienced abuse, exploitation and/or neglect
- Further investigate and take action including the referral of the protected person to an appropriate authority where there is any reasonable suspicion that a protected person has experienced abuse, exploitation and/or neglect, taking into account their wishes.

### 5. Making decisions

Staff making guardianship decisions will make decisions following agency policy and procedures. Written reasons for a decision can be provided upon the request of the protected person or a key party.

### 6. Record Information

Staff making guardianship decisions will:

- Record guardianship decisions including the views of the protected person and other relevant parties, timeframes, conditions and the reasons for them
- Record significant information obtained
- Record significant details of contacts made and decisions taken.



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## 7. Participate in Guardianship Reviews

Staff participating in guardianship reviews will:

- Request a review of the current Order by Tribunal if at any time there is a need to extend, review or revoke the powers given under the Order or where the Order is not working in the best interests of the protected person
- Recommend continuation of the Order for the shortest time possible and only when there is evidence that the protected person lacks legal capacity and needs decisions to be made for them in those areas
- Consult with the protected person as far as possible to ascertain their views
- Consult with relevant key parties and professionals and include their comments in the report
- Provide a written or verbal report detailing their assessment and recommendation regarding the continuing need for a guardianship order to the Board, Tribunal or Court.

## 8. Privacy and Confidentiality

Agencies with the statutory mandate of guardianship decision making will:

- Develop policies and procedures that protect the privacy and confidentiality of the protected persons and the key people in their lives and comply with legislative requirements.

All staff making guardianship decisions will ensure:

- That only information relevant to the performance of their statutory authority and in the best interests of the protected person is released
- That they comply with other relevant government requirements including Codes of Conduct.