



# GUARDIANSHIP AND THE PUBLIC ADVOCATE

## INFORMATION FOR FAMILIES & FRIENDS

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Now that the Public Advocate has been appointed guardian for your friend or relative, there are some things you might like to know.

### WHO WILL BE THE GUARDIAN?

The Public Advocate is the guardian, and delegates responsibility for people under guardianship to experienced professional staff employed in the Office of the Public Advocate (OPA). A person under guardianship will be allocated a particular advocate/ guardian who will get to know their circumstances and concerns. Unfortunately, we are not currently able to allocate each person as soon as guardianship commences, and it may take several weeks. We allocate as quickly as possible using a priority rating system.

### WHAT IF THERE ARE URGENT DECISIONS?

We offer a 'duty response' to calls or contacts about clients who are waiting for allocation. The duty worker can make decisions on behalf of these clients, in consultation with senior staff when necessary. Please contact the office and ask for a duty worker if you have concerns about a change in someone's circumstances which might require more urgent attention or allocation.

### WHAT DECISIONS CAN THE GUARDIAN MAKE?

The South Australian Civil and Administration Tribunal decides which decision making areas the guardian is responsible for. This is listed on the guardianship order and may include:

- **Accommodation:** decisions about the appropriateness of current living arrangements, any/or suitable alternative accommodation options.
- **Health:** decisions about health care needs, preferred treatment options, consent to medical or dental treatment, consent to palliative care approaches and/or withdrawal of treatment under certain circumstances.
- **Access:** decisions about contact between a protected person<sup>1</sup> and other people if there are risks for the protected person or others.
- **Lifestyle:** decisions about appropriate support programs, social activities, social contacts, education or employment.
- **Full Guardianship:** decisions in all major personal decision making areas that affect health and wellbeing.

## Office of the Public Advocate

The Public Advocate is an independent statutory officer accountable to the South Australian Parliament

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## DECISION MAKING PRINCIPLES

Section 5 of the *Guardianship and Administration Act 1993* sets out principles which must be followed by the Tribunal, and by guardians and administrators appointed by the Tribunal, when making decisions under that Act.

### Principles:

- (a) consideration (and this will be the paramount consideration) must be given to what would, in the opinion of the decision maker, be the wishes of the person in the matter if he or she were not mentally incapacitated, but only so far as there is reasonably ascertainable evidence on which to base such an opinion; and
- (b) the present wishes of the person should, unless it is not possible or reasonably practicable to do so, be sought in respect of the matter and consideration must be given to those wishes; and
- (c) consideration must, in the case of the making or affirming of a guardianship or administration order, be given to the adequacy of existing informal arrangements for the care of the person or the management of his or her financial affairs and to the desirability of not disturbing those arrangements; and
- (d) the decision or order made must be the one that is the least restrictive of the person's rights and personal autonomy as is consistent with his or her proper care and protection.

## HOW WILL DECISIONS BE MADE?

The guardian will try to develop an understanding of the person's history and personal circumstances, their wishes, assessments of their treatment and support needs and any risks or need for protection. This may involve meetings, gathering of assessment reports and written requests for information. If the protected person is capable of participating in the decision making then their views will be sought and the person supported to make their own decision (if possible).

Wherever practical, opinions will be gathered from those family members and friends who have an active and positive role in the life of the protected person. Urgent decisions may, however, have to be made without consultation.

The legislative decision making principles will be applied. The protected person's previous lifestyle and their current wishes will be supported by the guardian unless the risks to their health and wellbeing are so great that protection is required.

## WHAT IF I DISAGREE WITH WHAT IS HAPPENING?

If you disagree with decisions made by the delegated guardian you can request that the decisions are reviewed by senior staff in the Office of the Public Advocate. [See Information Sheet 20: OPA Complaints Policy.](#)

You can also seek the assistance of an advocacy service.

You can apply to the Tribunal for variation or revocation of the orders.<sup>2</sup> This can be done on-line or by contacting the Tribunal.

You can apply for the order to be reviewed by senior members of the Tribunal.<sup>3</sup> [See Information Sheet 18 Reviews and Appeals](#)

### DO GUARDIANS DO MORE THAN MAKE DECISIONS?

A guardian may advocate for access to services or promote coordination of services. The guardian may also encourage effective communication and conflict resolution between all interested parties involved with a protected person if it is relevant to the protected person's wellbeing.

### OTHER LANGUAGES

**Interpreter:** If you need an interpreter please let the guardian know.

### OPA OFFICE ACCESS

**Access:** Parking for disabled persons in front of building, lifts to the 7th floor, accessible toilet on that floor and equipment to assist the hearing impaired.

<sup>1</sup> **Protected Person:** the person under guardianship order