



Justice
Law Reform
Commission



Review of the Guardianship Act

Background paper

Easy Read version



How to use this document



This information is written in an easy to read way. We use pictures to explain some ideas.



This document has been written by the Law Reform Commission.

When you see the word 'we', it means the Law Reform Commission.



This Easy Read document is a summary of another document.



You can find the other document on our website at lawreform.justice.nsw.gov.au



You can ask for help to read this document. A friend, family member or support person may be able to help you.

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The *Guardianship Act 1987*



The Attorney General has asked us to look at the law about guardianship in NSW.



This is called a review.



The law we need to look at is the *Guardianship Act 1987*.



This law says who can make decisions for people with disability.



You may need someone to make decisions for you if you can't make decisions on your own.

The decision might be about:



- your life and how you live



- your money



- medical treatment you need



- dental treatment you need.



The law also gives the NSW Civil and Administrative Tribunal (the Tribunal) the power to:

- choose a guardian for you if they think you need one
- make decisions for you.

About the law



The law has some important ideas that everybody needs to follow.



What a person with disability wants and needs are the most important things to think about.

A person with disability should:



- have freedom to make their own choices



- be encouraged to live an ordinary life in the community



- be allowed to keep important family relationships



- be allowed to stay connected with their culture



- be protected from –
 - neglect – being ignored or left alone
 - abuse – being treated badly.

Other parts of the law

Enduring guardians



Under the law, if you can still make your own decisions, you can choose someone to be your guardian.



This is called an enduring guardian.



Your enduring guardian will make decisions for you when you can't make decisions anymore.

Guardianship orders



Under the law, the Tribunal can say you need someone to make decisions for you if you:

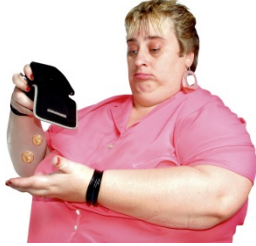
- have a disability
- are 16 years or older
- can't take proper care of yourself.



This is called a guardianship order.

Financial management orders

Under the law, the Tribunal can also say you need someone to make decisions for you if you:



- can't manage your own money



- need help managing your own money



- getting help is in your best interests.



This is called a financial management order.

Medical and dental treatment



A doctor or dentist must have consent before they can give you any treatment.



If you consent to medical or dental treatment, it means you agree to have the treatment.

Consent can be given by:



- you
- someone who can make decisions for you.



Somebody else needs to give consent if you can't give consent yourself.



In special cases only the Tribunal can say it is okay for you to have treatment.

A changing environment



The way people think about disability has changed a lot since NSW first introduced the law.



Changes to the types of people who live in NSW have also changed who the law applies to.



In the beginning, the law mostly applied to people with an intellectual disability.

Now there are more cases of the law applying to other people. For example:



- people who have dementia



- people with a mental illness or brain injury.



They make up a large number of matters that the Tribunal gets told about.



We need to think about whether the law works well for these new types of cases.

The UN Convention



In July 2008 Australia signed the *United Nations Convention on the Rights of Persons with Disabilities*.



The *UN Convention* give us a new way of thinking about disability.



It has important ideas about the rights of people with disability to:



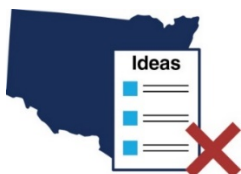
- dignity – every person has value and deserves respect



- independence
- take part in society



- equality under the law.



NSW hasn't put these important ideas in its guardianship laws yet.

The social model of disability

The *UN Convention* says that people with disability face barriers that stop them:

- taking part in society
- being treated equally.



This is called the *social model*.

The social model says that people with disability:

- have the ability to make their own decisions – we call this capacity



- should be supported to make decisions, not have decisions made for them.



Capacity



Capacity is about whether a person can make decisions in their everyday life.



We should think everybody can do this unless they show us they can't.



A person's capacity to make decisions can:

- depend on what sort of decision needs to be made
- change from time to time.

Supported decision-making



Supported decision-making is when a person makes their own decisions with help from someone else.



Substitute decision-making is when a person makes decisions for someone else.



The social model talks about how supported decision-making is a better way than substitute decision-making.

Changing Guardianship law in NSW



People believe the law should change to match the new way of thinking about disability.



Many people have said they support changing our law to include the important ideas of the *UN Convention*.

Other parts of Australia



All Australian states and territories have guardianship laws like the one in NSW.



People all over Australia have said they support changing the laws to include the important ideas of the *UN Convention*.



This has not happened yet.



Some parts of Australia have tried supported decision-making.



Australians move around the country a lot, so our guardianship laws need to cover them wherever they are.



It is also important that decisions the Tribunal makes in NSW still count in other states.

Overseas



Other countries like Canada, England, Wales and Ireland have already made changes to their laws to include the important ideas of the *UN Convention*.

National Disability Insurance Scheme (NDIS)



The NDIS aims to give people with disability greater choice and control over:

- the disability services they use
- the support they receive.



We need to think about whether we will need to change our guardianship law because of the NDIS.



We need to make sure that we:

- look after the safety of people with disability
- prevent abuse.

Our approach



This paper is the first paper we have released. It has background information in it.



Other papers we will release will ask people to give us their ideas about specific questions.



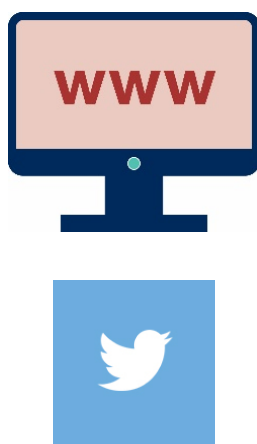
As well as papers like this one, we have made:

- videos about our review
- surveys you can fill out.



We will also be talking face to face with people about their ideas.

For further information and updates:



- visit our website
- follow us on Twitter @NSWLawReform.

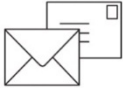
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