



**Justice**  
Law Reform  
Commission



# Review of the Guardianship Act

## Question Paper 1

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.



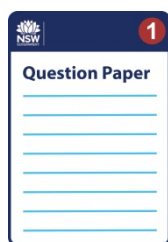
This Easy Read document is a summary of another document.



You can find the other document on our website at [lawreform.justice.nsw.gov.au](http://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.



This is the first question paper. There will be other papers as well.



We suggest that you look at our Easy Read Background Paper. It explains many of the ideas in this question paper in more detail.

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# What we are trying to do



At the moment, we are reviewing the law about **guardianship**.



Guardianship is when another person makes decisions for you. This is usually because you can't make decisions on your own.



The law we are reviewing is called the *Guardianship Act 1987*.



We want to make sure that the law is fair.



We also want to make sure it is right for the community today.



Our community has changed a lot since the law was written in 1987.



Having someone else make a decision for you is a big thing. We shouldn't just treat this lightly.



It's important for everyone to agree about:

- When it's right to make decisions for another person.
- How to work this out.
- Who the best people are to help, or to actually make the decisions.



We'd really like to know what you think about the changes we are making.

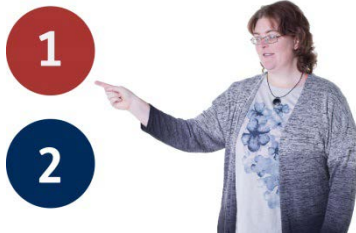


This document has some questions for you to think about.

# When is it right for someone to make decisions for another person?



A lot of the time when we talk about making decisions, we use the word '**capacity**'.



Capacity is the ability to make choices and decisions.



The law says that people who do not have capacity cannot make their own decisions.



This might be because of injury, illness or disability.



Some people say that they are happy for others to make decisions for them.



Others would prefer to make their own decisions.



Every person is different, and so is every situation.



So it's really hard for the law to make it clear when it's right for a person to make decisions for someone else.



What do you think?



Here are some questions to think about.

### Question 1: What do you think of the idea of ‘capacity’?



In some areas of Australia, the law says that capacity is the ability to:

- understand information
- keep the information in your mind
- use the information to make a choice or decision
- communicate the decision.



Do you agree?



Yes



No

You can use the space below to share your thoughts.

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## Question 2: Does capacity only relate to people with disability?



In some places in Australia, the law says that reduced capacity must be caused by a disability.



Some people don't agree. They think that disability is not relevant to whether a person has capacity.



Instead, they believe we should think about whether a person needs help to make a decision.

**What do you think?**

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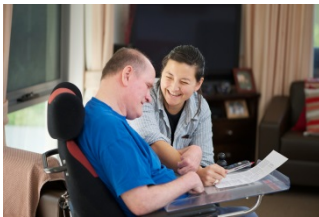
### Question 3: What types of disability should matter when it comes to capacity?



If disability matters when it comes to capacity, we need to know what types of disability.



For example, someone with a mental illness might be able to make decisions.



But someone with an intellectual disability or dementia might need more support.

**What do you think?**

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### Question 4: What happens when someone's capacity to make decisions changes?



We know that capacity can change.



For example, someone might be better at making decisions in the morning than they are at night.



Or, they might be able to make decisions about where they live, but not about how to invest their money.



We think that the law should say that capacity can change.

**What do you think?**

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# How can we work out someone's capacity?



Not everyone agrees about the ways to know if someone has capacity.



At the moment, the law doesn't explain how we can work this out.



There are some guidelines in a document called the *NSW Capacity Toolkit*.

They say:



- Always start by thinking that the person does have the capacity to make a decision on their own.



- Just because the person can't make a decision about 1 thing doesn't mean they can't make decisions about other things.



- The capacity to make decisions is not based on the way the person looks.



- Assess the person's ability to make decisions, do not assess the decisions they make.



- Respect the person's privacy.



- Only make a decision for someone else as a last resort.

Some laws in other places also say that:



- All practical steps must be taken to help a person make a decision before you can decide they can't make a decision for themselves.



- Experts can be used to help work out if someone can make a decision or not.



In NSW, people can ask for experts to help work out someone's capacity if they want to. But they don't have to get experts to help.

**Question 5: How do you think we should work out if someone has the capacity to make decisions?**

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**Question 6: Which things should we consider to work out capacity?**

Do you agree with the list of things to consider on pages 12 and 13?



**Yes**



**No**

What other things we should include?

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What things should we leave out?

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## Question 7: When is it right to make decisions for someone else?



At the moment, the law says that decisions can be made for someone else if a group of people called the Tribunal says this needs to happen.



Some places say this must happen if a person is at risk. This means that their health or welfare may suffer if no one helps them to make a decision.



Some places also say we must only make decisions when it is in a person's 'best interest'.



An important document called the *UN Convention on the Rights of Persons with Disability* says that we must look at this a different way.

We must think about what people actually want.



However, not everyone will agree with what a person actually wants.



It's sometimes not easy to work out what some people want.



Some people find it hard to communicate.



Some people may not understand at all.

**When do you think it's ok to make a decision for someone else?**

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### Question 8: Should we apply the same rules for all decisions?



Some decisions are harder to make than others.



For example, deciding what to have for breakfast is a lot easier than deciding where you want to live in the future.

Do you think we should treat decisions differently?



Yes



No

You can use the space below to share your thoughts.

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## Question 9: What rules should we have for different types of decisions?

Rules	
1.	_____
2.	_____
3.	_____
4.	_____
5.	_____

If you think there should be different rules, based on Question 9, what should the rules be?

You may like to think about the rules for decisions about:



- How and where you live.



- Managing your money.



- Visiting a doctor or dentist and agreeing to the treatment you'll receive.

You can share your thoughts on the next page if you like.



## Question 10: What should the Tribunal think about?

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Usually, the Tribunal decides if someone needs to have decisions made for them.

They have to think about the following things when they do this:



- The person's welfare – meaning their options for staying well and safe.



- The person's interests – the things that are important in their life.



- The person's views.



- The person's freedom to make their own decisions.



- The person's relationship with their family.



- The person's culture.



- People should be encouraged to manage their own choices and their own day-to-day lives.



- People should be protected from harm.

Other things that the Tribunal might think about include:



- What family members or carers want.



## What's next?



Thank you for taking the time to answer our questions.



We will ask more questions in the future.



We will think about all the answers that people give us. We will do this when we write down our ideas for making changes to the law.

If you'd like more information, please contact us. Our contact details are on page 26.

## How to tell us what you think

You can send your answers to us by email or post.



[nsw\\_lrc@agd.nsw.gov.au](mailto:nsw_lrc@agd.nsw.gov.au)



GPO Box 31

Sydney

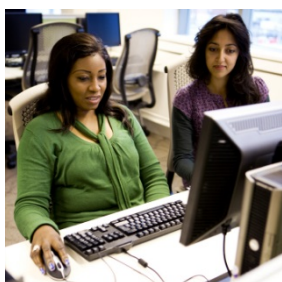
NSW 2001



We need to receive your answers by  
10 October 2016.



We may publish your answers on our website,  
or include them in things that we write.



If we do this, people will be able to read  
your answers.



Please tell us if you don't want us to publish some,  
or all, of your answers.



## Word list



### **Capacity**

Capacity is the ability to make choices and decisions.



### **Guardianship**

Guardianship is when another person makes decisions for you. This is usually because you can't make decisions on your own.



### **Tribunal**

The Guardianship Division of the NSW Civil and Administrative Tribunal (the Tribunal). A group of people appointed by the Government who work together to make decisions about guardianship.

## Contact us



+ 61 2 8346 1263



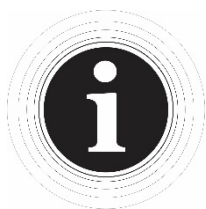
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