



Justice
Law Reform
Commission



Review of the Guardianship Act

Question Paper 2: Decision Making Models

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.



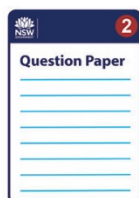
This Easy Read document is a summary of another document.



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.



This is the second 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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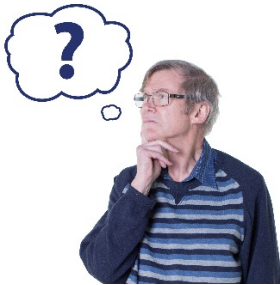
What we are trying to do



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



Guardianship is when a person makes decisions for another person.



This usually happens if a person can't make decisions on their own.



When someone makes a decision for someone else, we call it **substitute decision making**.



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.



These days, quite a lot of people disagree with the idea of someone making decisions for someone else.



Instead, they think that people who find making decisions difficult should have support to make their own decisions.



This is called **supported decision making**.



The law doesn't recognise supported decision making in NSW at the moment.



We we'd like to know what you think about having this in NSW.



This document has some questions for you to think about.



We hope that you can use the questions to think about making decisions in your life, or for someone you know.



You might need support to make decisions now or in the future.

Should we have supported decision making in NSW?



At the moment in NSW, if someone can't make or communicate their own decisions, the court, or a group of people called a Tribunal, can choose someone to make decisions for them.



This means that they can no longer make their own decisions.



Some people think that people need support to make decisions, rather than having someone make decisions for them.



What do you think?



Here are some questions to think about.

Question 1: Should NSW law allow a supporter to be chosen to help people make their own decisions?

Some good things about supported decision making are:

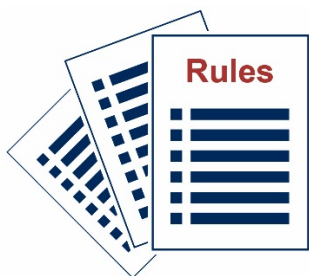


- If someone finds making decisions difficult, having a supporter means they don't have to give up their right to make their own decision.



- There would be clear rules about how the supporter has to work with the person to help them make a decision.

Some possible bad things about supported decision making are:



- There might be too many rules and this might put people off supporting others.



- Supporters might go ahead and make a decision for someone, even though they are only supposed to be helping them make the decision.

What do you think?

You can use the space below to share your thoughts.

Question 2: Should the person be allowed to choose their supporter?

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In some places, supported decision making is already part of the law.



In these places, people can choose the person who will support them.



This means they get to decide who their supporter is.



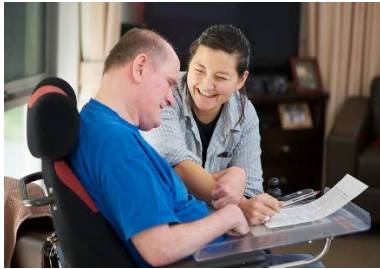
And they can also choose what kind of decisions they want support with.

What do you think?

Question 3: Should a court or tribunal be able to choose the supporter?



There may be a time when someone is no longer able to make a decision about who their supporter should be.



But they might still be able to make other decisions with the help of the right supporter.



If this happens, it may be good for a court or tribunal to have the power to choose the supporter.

What do you think?

Question 4: Who can become a supporter?



In other parts of Australia, there are rules about who can become a supporter.

For example, in many places, the person should:



- be at least 18 years old



- know how to think about interests and views of the person they are supporting



- not have been convicted of a crime.



What rules do you think are important?

What do you think?

Question 5: How many supporters do you think people should be able to choose?

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Should people be able to choose as many supporters as they like, or should there be a limit?

What do you think?

Question 6: Should the Public Guardian or NSW Trustee be allowed to be supporters?

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Sometimes, government agencies could act as supporters.



This includes the Public Guardian or the NSW Trustee.



Some people think that these agencies should not be supporters.



This might be because they might not understand what people want.



Other people say that agencies should be able to be a supporter where no one else is available to be a supporter.

What do you think?

Question 7: Should paid workers and volunteers be allowed to be supporters?



In some places, paid workers and **volunteers** can be supporters as well as family and friends.



Volunteers don't get paid. They work for free because they want to help people.



This means there are more people to take on the job if family or friends are not available to support people to make decisions.



However, some people think that working with paid workers or volunteers might get complicated.



There might be times of conflict between what the person needs and what the worker or volunteer wants.



And some people think that paid workers or volunteers might not know a person well enough to help them make the decisions that are right for them.

What do you think?

Question 8: What types of decisions should a supporter be able to help with?



In some places where they already have supported decision making, support people can help with personal decisions.



This might include decisions about where to live and what medical treatment to have.



In other places support people can also help with financial decisions, for example, where to invest money.



Some people think that financial decisions are too complicated for a supporter to help with.



They say that a supporter may make decisions for their own financial benefit.



Others say that extra protections should be put in place to make sure the right financial decisions are made.

What do you think?

Should we have co-decision making in NSW?



If someone has trouble making their own decisions, some places allow for a **co-decision maker** to be used.



A co-decision maker makes decisions with the person they are supporting.



They must both agree on the decision.



This is different to supported decision making.

Question 9: Should NSW law allow someone to be chosen to make decisions together with another person?



Some people say that co-decision making is good because the person still gets to take part in the decision making.



Others are worried that co-decision making could lead to people forcing others to make decisions they don't want to make.

What do you think?

Question 10: Should people be able to choose their own co-decision maker or should a court or tribunal choose?



In some places, people can decide who to have as a co-decision maker.



In other places, a court or tribunal can choose a co-decision maker so long as the person agrees with the choice.



In other places, a court or tribunal can choose a co-decision maker without the person's agreement.

What do you think?

Question 11: When should a court or tribunal be able to choose a co-decision maker?



The choice about using a co-decision maker affects a person's right to make a decision on their own.



This means that it is important that a co-decision maker is only chosen when needed.

Here are some ideas about when a co-decision maker could be chosen:



- When the person has a lot of trouble making decisions.



- When the person would be able to make decisions if a co-decision maker was used.



- When a decision can't be made by other methods.



- When it is in the person's **best interests**.
This means that a decision must be made to keep the person safe and well.

What do you think?

Question 12: Who can become a co-decision maker?

In other places in Australia, there are rules about who can become a co-decision maker. For example, the person should:



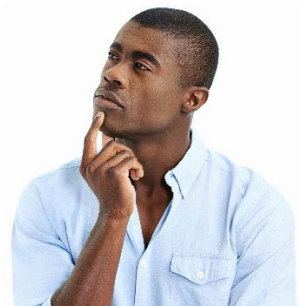
- be at least 18 years old



- be able to think about the other person's interests and views



- not have been convicted of a crime.



What rules do you think are important?

What do you think?

Question 13: How many co-decision makers do you think people should be able to choose?



Should someone be able to have more than 1 co-decision maker?



Should there be a limit on how many co-decision makers a person has?

What do you think?

Question 14: Should the Public Guardian or NSW Trustee be allowed to be a co-decision maker?



Some people think that government organisations like the Public Guardian or NSW Trustee are not suited to being co-decision makers.

This might be because they:



- don't understand people's interests or opinions well enough



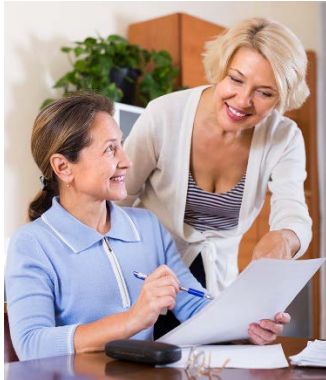
- cannot spend time with a person to find out what they think.



Other people say that these organisations should be able to be a co-decision maker where no one else is available.

What do you think?

Question 15: Should paid workers and community volunteers be allowed to be co-decision makers?



In some places, paid workers and community volunteers can be co-decision makers.

This means there are more people to take on the job if family or friends are not available.

However, some people think that working with paid workers or volunteers might get complicated.



There might be times of conflict between what people need and what the worker or volunteer wants.



And some people think that paid workers or volunteers might not know a person well enough to help them make the decisions that are right for them.

What do you think?

Question 16: What can a co-decision maker make decisions about?

In some places, co-decision makers can only make personal decisions.

This might include decisions about:



- where someone lives



- the medical treatment they receive.



In other places, co-decision makers can make financial decisions as well.

What do you think?

Question 17: Should NSW still have substitute decision making?

Some people think that we should have all 3 types of decision making in NSW:



- supported decision making



- co-decision making



- substitute decision making.

They think we need substitute decision making in some cases.



For example, if someone is in a coma.

In these cases, it might be better if someone makes a decision for that person.

What do you think?

Question 18: When should we use substitute decision making?



If we decide that we should still have substitute decision making in NSW, we need to decide when it should be used.

Some people say that it should only be used if there are no other options, for example when a person:



- cannot understand the consequences of their decisions



- cannot explain what they want



- would prefer someone to make the decision for them, instead of getting help to make their own decision



- is at risk of harm if a decision is made any other way.

What do you think?

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 41.

How to tell us what you think

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



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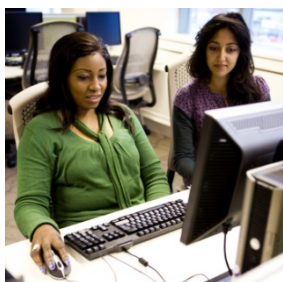
NSW 2001



We need to receive your answers by
31 January 2017.



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



Best interests

Actions or choices that someone else thinks will keep you safe and well.



Substitute decision making

When someone makes decisions for you.



Supported decision making

When someone supports you to make your own decisions.



Co-decision making

When you make a decision together with someone else.



Co-decision maker

Someone who makes decisions with you.



Supporter

Someone who helps you make decisions



Volunteer

Volunteers don't get paid. They work for free because they want to help people.

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