



Justice
Law Reform
Commission



Review of the Guardianship Act

Question Paper 6: Remaining issues

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.



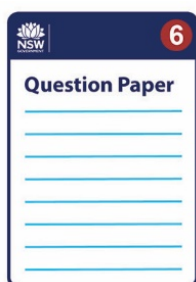
This Easy Read document is a summary of another document.



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 sixth and final question paper.



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*.

It is now 30 years old.



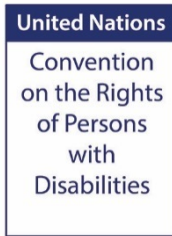
We want to make sure that the law is fair.



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.



There is an important document called the *United Nations Convention on the Rights of Persons with Disabilities (UN Convention)*.



It has changed the way we think about people with disability.



We want to include these changes in the new law.



We'd like to know what you think about our ideas for new laws.



We have already published 5 question papers as part of our review.



This is the last one.

In it we talk about issues that aren't in the other question papers.



We ask some questions for you to think about.



We've included space for you to write your ideas.

What do you think?

We want to know if there are any more issues you think we should deal with.

Use this space to let us know about them.

Goals of guardianship law

1

Question 1: What should the goals of guardianship law be?



A list of goals helps people know what the government wants the law to achieve.



At the moment, the *Guardianship Act* does not have a list of goals.

It could have a list of goals such as:



- to promote the human rights of people with disability



- to help people with disability:
 - be independent
 - take part in society



- to support what the *UN Convention* says.

What do you think?

What goals should be in the *Guardianship Act*?

You can use the space below to write your ideas.

General principles

Question 2: What things should people think about when they make decisions for or about someone else?

2



The *Guardianship Act* has a list of things people need to think about when they make decisions for or about someone else.

We call them **general principles**.

The general principles people must think about are:



- the person's welfare – their options for staying safe and well



- their interests – the things that are important in their life



- their views



- their freedom to make their own decisions



- their relationship with their family



- their culture



- encouraging them to manage their own choices and day-to-day life



- protecting them from harm.

Some people think there are other things to think about as well:



- helping someone stand up for their rights



- protecting their privacy



- recognising what they would like to do



- supporting someone to make their own decision



- living free from neglect, abuse and being taken advantage of.



Some people think we also need to make sure we talk about people from Aboriginal and Torres Strait Islander backgrounds when we talk about culture.

What do you think?

What do you think the general principles should be?

You can use the space below to write your ideas.

Language

Question 3: Which words used in the guardianship law should be changed?

3

There are some words in the *Guardianship Act* that are:



- out of date



- disrespectful to people with disability.

For example



The word 'guardian' can make someone think people with disability should be treated like children.

We could call them 'representatives' instead.



The words 'normal life in the community' can make someone think people with disability do not live normal lives.

What do you think?

What words in the law do you think need to be changed?

You can use the space below to write your ideas.

Relationship with Commonwealth laws



The Commonwealth government has introduced the National Disability Insurance Scheme (NDIS).



It will help people get the support they need to live as they choose.



The NDIS allows you to have a **nominee**.



A nominee is someone who can:

- help you deal with people from the NDIS
- sometimes make decisions for you.



They sometimes have to make the same types of decisions made by:

- guardians
- financial managers.



Nominees can also be appointed to help people under:

- aged care laws
- social security laws.

Question 4: When should the NDIS recognise guardians or financial managers appointed under state laws?

4



An NDIS nominee does not have to be a:

- guardian
- financial manager.



An NDIS nominee can be someone who is:

- already a guardian or financial manager
- not a guardian or financial manager.



Some people think that, if someone already has a guardian or financial manager, they should be the NDIS nominee.

Then people won't get confused.



Some people think the NDIS should apply to the Tribunal to make someone a guardian first, before they can become a nominee.



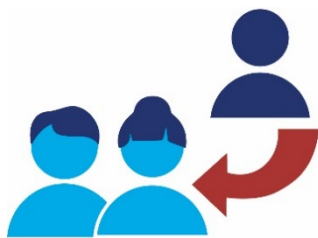
This might be the only reason some people need a guardian.

It could be a waste of time.

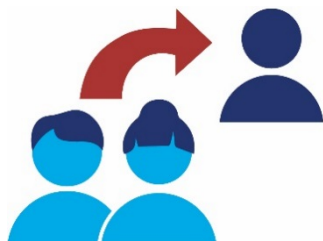
What do you think?

You can use the space below to share your thoughts.

What if someone was adopted?



Someone who is adopted can only contact their birth parents if the birth parents want them to.



A birth parent can only contact the child who was adopted if the child wants them to.

Question 5: Are there any problems with the Tribunal making decisions about adoption information?

5



The Tribunal can make decisions about contact between adopted children and birth parents if one of them has a disability.

They can choose someone to act on their behalf to either:



- contact them and find out about them



- stop them from making contact.



The Tribunal needs to think about what the person with disability wants.



We don't think there are any problems with this law.

What do you think?

Are there any problems with this law?

You can use the space below to share your thoughts.

Age

6

Question 6: How old should you be to have a guardian?



You must be 18 years old before you can appoint an enduring guardian.



You must be 16 years old before the Tribunal can appoint a guardian for you.



NSW is the only state in Australia that lets someone who is 16 have a guardian.



In other states you need to be 18.



The Children's Court can appoint a guardian for someone younger than 18.



Some people think it's confusing that orders can be made for people from 16 to 18 by:

- the Tribunal
- the Children's Court.

What do you think?

You can use the space below to share your thoughts.

Question 7: How old should you be to get a financial manager?

7



The Tribunal can appoint a financial manager for you whatever age you are.



The Children's Court can make decisions about people younger than 18.



Some people think only the Children’s Court should be able to make decisions for people younger than 18.



There are no other Tribunals in Australia that can appoint a financial manager for people younger than 18.

What do you think?

You can use the space below to share your thoughts.

Question 8: How old should you be to become a guardian or a financial manager?

18+

You must be 18 or older to become a:

- guardian
- financial manager.



Some people think someone aged 16 or 17 should be able to be a guardian for someone they already care for.



They already know what that person needs.

What do you think?

You can use the space below to share your thoughts.

Guardians and financial managers from outside NSW



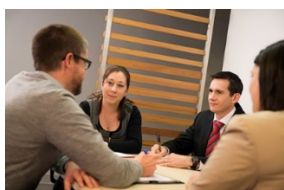
Some people already have guardians or financial managers when they move to NSW.

Question 9: Are there problems for people in NSW who have guardians and financial managers from other states?

9



There are different ways guardians and financial managers outside NSW need to do things.



Things are different for guardians appointed by:

- a tribunal
- the person.



At the moment, guardians chosen by tribunals in other states have to apply to the NSW Tribunal before they can do anything in NSW.

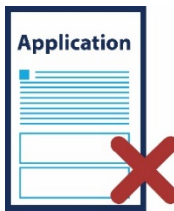


This only applies to guardians chosen by tribunals.



Some people think applying to the Tribunal in this way:

- costs too much
- doesn't need to happen.



When someone has chosen their own guardian – an enduring guardian – that guardian doesn't need to apply to the Tribunal.



But it's hard for enduring guardians to know if they have the same powers in NSW as they do in another state.



The law in NSW is not clear.



Some people have suggested that enduring guardians could register in NSW.

This would help them understand the powers they have in NSW.

What do you think?

Do you know of any problems for people with guardians or financial managers who have moved to NSW?

You can use the space below to write your thoughts.

Orders for guardianship and financial management

Question 10: Should there be one order for guardians and financial managers?

10



Sometimes the Tribunal chooses 1 person to be a guardian and a different person to be their financial manager.



Sometimes the Tribunal chooses 1 person to be both because it makes sense for the same person to do both jobs.



If they do this, there need to be separate orders.



Some people think:

- this is confusing



- this is wasteful



- 1 order is enough for both jobs.



Other places allow 1 order for both jobs.



Some people think the jobs are different so there should be separate orders, even if the jobs are done by the same person.

What do you think?

You can use the space below to write your thoughts.

Question 11: How could different guardians work together?



Sometimes the Tribunal will choose a guardian or financial manager for someone who has already chosen the people they want to do these jobs.



The Tribunal might do this because it does not agree with a decision made by the guardian or manager.



If this happens, the guardian chosen by the person cannot do anything at all.

They can't make any decisions.



Another option would be to let a guardian chosen by the Tribunal make some decisions.



The guardian chosen by the person could keep making decisions but not about things the Tribunal's guardian takes care of.

What do you think?

What should happen when the Tribunal appoints a guardian for someone who has one already?

You can use the space below to share your ideas.

Question 12: How should problems between decision-makers be solved?

12



Sometimes a person will have more than one:

- guardian
- financial manager.



Sometimes they don't agree with each other about what to do.



For example, the guardian might want the person to move house but the financial manager won't give them the money they need to move.



Some people think the law should say that the guardian's decision wins.



Other people think the law should make guardians and financial managers use a **mediator** to help them agree.



A mediator is an independent person who helps people to agree.

When the guardian and financial manager need a mediator, they could:



- find one themselves



- go to the Tribunal for help.

What do you think?

You can use the space below to share your ideas.

Search and removal powers

13

Question 13: Should we change the laws that let a person search someone's home and take them away to another place?

At the moment, guardianship laws let some people, such as Tribunal staff or police:



- go to the place someone lives



- search for them



- take them to another place where they can be cared for.



This can happen when people think someone is being hurt or harmed.

It can only happen if:



- they don't already have a guardian



- someone has asked the Tribunal to choose a guardian.



The police and Tribunal staff can use 'all reasonable force' when they search for someone and take them away.



It is not clear how much force they mean when they say 'all reasonable force'.

What do you think?

You can use the space below to share your thoughts.

Enforcing guardians' decisions

Question 14: What should a guardian be allowed to do to make sure their decision is followed?

14



Guardianship law makes sure a person does what their guardian decides.

The law lets the Tribunal give the guardian this power.



The guardian can get help from other people such as:

- police
- ambulance officers.



For example, if a guardian decides a person needs to move out of their house and they don't want to, the guardian can use force to make them move out.



In other places, tribunals let guardians enforce their decisions but also put limits on their power.

Limits might include:



- reviewing the power as soon as possible



- only using force as the very last option



- only using force when the person's health and safety is at very high risk.

What do you think?

You can use the space below to share your thoughts.

Using private information

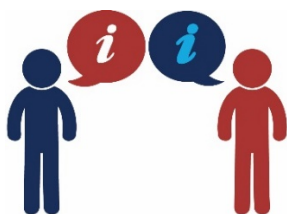


Sometimes guardians and financial managers need to know a person's private information before they can make a decision.



This might include:

- health records
- bank account details.



They might need to share that information with other people.

Question 15: When should a guardian be able to use someone's private information?

15

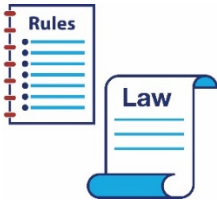


At the moment, guardianship law does not say anything about when someone's private information can be used by:

- guardians
- financial managers.



The people who have the information, such as doctors or bank staff, need to decide if they can give it to the guardian.



They need to think about the rules and laws that affect them before they decide.



In other parts of Australia, guardians and financial managers can get private information as long as it is needed for a decision they have to make.

What do you think?

When should guardians or financial managers be able to get someone's private information?

You can write your thoughts in the space below.

Question 16: When should a guardian be able to share someone's private information?

16

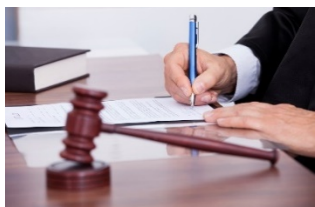


The *Guardianship Act* makes it a crime for a guardian or financial manager to share private information unless they have been told they can by:

- the person
- the law.

The laws are the same in other parts of Australia.

Other reasons they could share the information might be:



- a court or tribunal has told them to



- their life, health or safety is at serious risk



- a crime needs to be reported.

What do you think?

When should guardians or financial managers be able to share someone's private information?

The Supreme Court

Question 17: Should the Supreme Court's guardianship powers be changed?

17

Supreme Court



The Supreme Court is the highest court in NSW.



It has the power to make decisions about people who need care and protection.



This is called the court's **protective jurisdiction**.

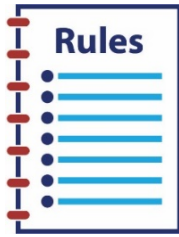


It only uses this power when the Tribunal can't do something to protect a person.



The Tribunal makes nearly all of the decisions about:

- guardians
- financial managers.



There are special rules about what happens when the Supreme Court uses its power.

For example:



- If it chooses a guardian, the Tribunal can't choose a different guardian unless the court agrees.



- The Tribunal can't choose a financial manager if the court is trying to make a decision about someone's money or finances.

The Supreme Court can also:



- review who someone has chosen as their enduring guardian



- make orders about how to manage someone's property



- review decisions made by:
 - the Tribunal



- the NSW Trustee.



We have not found any problems with the Supreme Court's powers.

What do you think?

What do you think about the Supreme Court's powers?

You can use the space below to write your ideas.

What's next?



Thank you for taking the time to answer our questions.



We will think about all the answers that you and other 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 46.

How to tell us what you think

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



nsw-lrc@justice.nsw.gov.au



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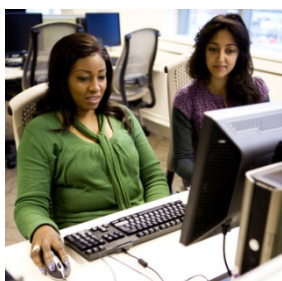
Sydney

NSW 2001

We need to receive your answers by
Friday 12 May 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



General principles

A list of things people need to think about when they make decisions for or about someone else.



Mediator

An independent person who helps people to agree.



Nominee

Someone who can:

- help you deal with people from the NDIS
- sometimes make decisions for you.



Protective jurisdiction

The Supreme Court's power to make decisions about people who need care and protection.

Contact us



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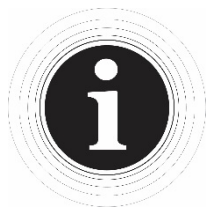
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