



**Justice**  
Law Reform  
Commission



# Review of the Guardianship Act

**Our report on changing the law**

**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.

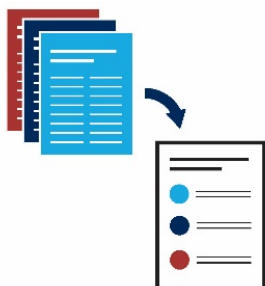


This document has been written by the NSW Law Reform Commission.

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



Some words are written in **bold**. We explain what these words mean. There is a list of these words on page 27.



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.

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## About the *Guardianship Act 1987*



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



This is called a review.



The law we reviewed is the *Guardianship Act 1987*.



This law says who can make decisions for you if you can't make decisions on your own.

You might not be able to make decisions because you have:



- an **intellectual disability** – a disability affecting the way you think



- **dementia** – an illness that affects your memory and how well you can:
  - concentrate
  - communicate
  - solve problems



- a brain injury



- mental illness.



The law should follow what's in the United Nations *Convention on the Rights of Persons with Disabilities* (UN Convention).



This is a document that says people with disability should be able to make their own decisions so far as possible.



Many countries around the world have agreed to the UN Convention, including Australia.



The law should also be based on the best ways to make decisions for you if you can't make decisions on your own.

## Important ideas about decision-making



Everyone needs to know and understand some important ideas about decision-making.

Any decision made for you should:



- include you



- be what you would want



- show respect for you



- show respect for your
  - age
  - sex or gender
  - sexual preference
  - culture and language
  - religion
  - privacy



- promote your health and wellbeing



- allow you to take part in your community



- protect your rights



- keep you safe.



## Changing the law



Our community has changed a lot since the law about guardianship was written 30 years ago.



In the past, it was people with intellectual disability who needed help to make decisions the most.



Now it is people with dementia who need help to make decisions the most.



We want to make sure the law is right for our community today.



The National Disability Insurance Scheme (NDIS) is also changing things for people with disability.



People with disability are now getting supports and services in new and different ways.



We need to make sure people with disability are:

- safe
- protected from **abuse** – when someone hurts you.



This report is about some changes we want to make to the law.



During our review, we shared question papers with the community.



We asked questions about changing the law and people told us what they think.



We want to thank everyone who shared their ideas with us.

Their ideas helped us write our report about changing the law.

## A new law



We want to create a new law called the *Assisted Decision-Making Act* (the Act).



We don't think words like 'guardian' and 'guardianship' are the right words to use anymore.



The Act should be written so everyone can understand it.



The words in the Act should match the best ways to help you make decisions if you can't make decisions on your own.

The Act would cover decisions about:



- personal matters



- money



- health



- **restrictive practices.**

Restrictive practices are ways to stop a person from:



- hurting themselves
- hurting others
- damaging something.

## Some important ideas for the Act

The Act needs to be based on some very important ideas, including:



- there are different ways to help people make decisions



- you should take part in decision-making that affects you as much as possible



- you should be able to choose your own:

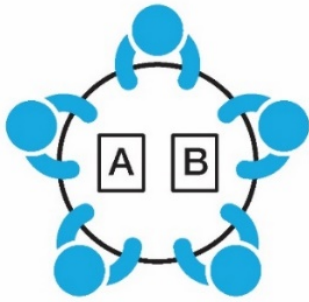


- **supporter** – someone who helps you make your own decisions



- **representative** – someone chosen to make decisions for you

Your representative should make decisions for you based on what you want, if possible.



- the **Tribunal** should only choose people to make decisions for you, or make decisions for you itself, as the very last option

The Tribunal is:



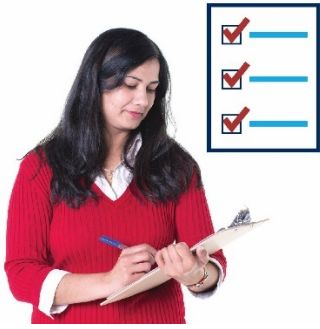
- the Guardianship Division of the NSW Civil and Administrative Tribunal



- a group of people appointed by the government to help with decision-making problems



- if you already have a way that works well for you, you should be able to keep using it



- there should be really good ways of making sure things work well



- the Act should work well with other laws and how things are done all around Australia



- we need to understand and think about what Aboriginal and Torres Strait Islander people need.

## Making your own decisions

You can make your own decisions if you:



- understand the decision you need to make



- understand and remember the information you are given about the decision



- can use the information you are given to make the decision



- understand what the results of your decision will be



- can communicate what your decision is.





If you can do these things, we say you have **decision-making ability**.

The Act should explain:



- when someone has decision-making ability
- how to work out if someone has decision-making ability.

## **Supported decision-making**



Supported decision-making is when you make decisions on your own but use a supporter to help you.

It is your supporter's job to:



- get all the information you need and give it to you



- help you make your decision



- help you communicate what your decision is.



You might already have people in your life who support you with the decisions you make.

These are called **informal arrangements**.

The Act will not change those.

The Act needs to talk about:



- personal support agreements



- tribunal support orders.



A **personal support agreement** would allow your supporter to be part of your decision-making.

You could choose your own supporter if you:

**18+**

- are 18 or older



- can make the decision to have a supporter on your own



- are choosing to take part in the personal support agreement.

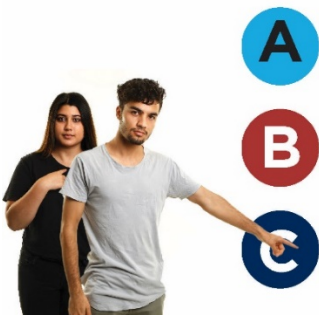


A **tribunal support order** would mean the Tribunal helps you choose a supporter.



You must still be happy with the person the Tribunal chooses.

## Substitute decision-making

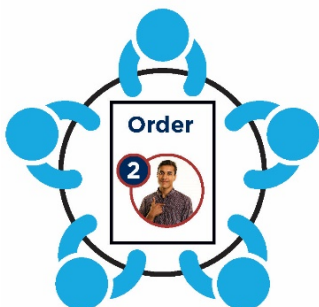


When a representative makes a decision for you we call it **substitute decision-making**.

The Act needs to talk about 2 ways to do this:



- an **enduring representation agreement** – you choose someone to make your decisions when you can't



- a **representation order** – the Tribunal chooses a representative to make decisions for you.

The Act needs to say all types of decisions are covered by these arrangements, including:



- personal matters
- money
- health
- restrictive practices.

## Health care



If you give **consent**, you say it is ok for somebody to do something.



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



Consent isn't needed now for:

- first aid
- some types of medicine
- emergency treatment.

This should stay the same.

The Act needs to change so it covers the health care given by:

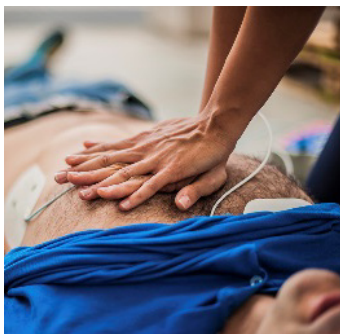


- nurses



- **paramedics** – people trained to give you treatment in an emergency.

The Act needs to let the Tribunal give consent to special types of treatment, or treatment a person says they do not want, only if it will:



- save a person's life



- stop a person from getting very sick.

## Medical research



Medical research is a way of testing new medicines or medical treatments.



Sometimes, people who can't give consent take part in medical research.



In NSW, only the Tribunal can give consent for them.



In other parts of Australia, a person's representative can decide.



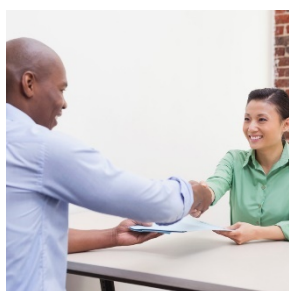
The Act should make the law in NSW the same as other parts of Australia.

## The Public Advocate



We need a **Public Advocate** in NSW – a person who speaks up for people who need support with decision-making.

We already have a Public Guardian.



We should have an Office of the Public Advocate where the Public Advocate and the Public Guardian work together.



The Act needs to clearly explain what the role of the Office of the Public Advocate should be.

Their jobs would include:



- speaking up for people who need support with decision-making



- helping people fix decision-making problems





- giving people information, support and advice about decision-making



- finding out more when they are told about:
  - abuse
  - **neglect** – when you aren't given what you need.

## Other things the Act needs to say

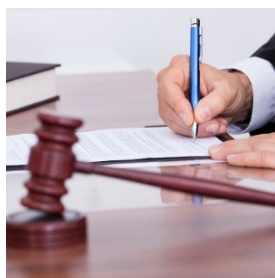
There are some other important things the Act needs to say, including:



- agreements and orders don't need to be registered



- all information needs to be kept private



- the Supreme Court still has the same powers



- people who need decision-making support can be taken to a safe place if they are in danger



- representatives who were given their powers in other states keep the same powers in NSW



- agreements and orders made under the old law will be kept the same under the new law until they are reviewed.

## What happens next?



We have given this report to the NSW government.



The NSW government will now decide what changes they will make to the law.

## Word list



### Abuse

When someone hurts you.



### Consent

You say it is ok for somebody to do something.



### Decision-making ability

You can make your own decisions.



### Dementia

An illness that affects a person's memory and how well they can:

- concentrate
- communicate
- solve problems.



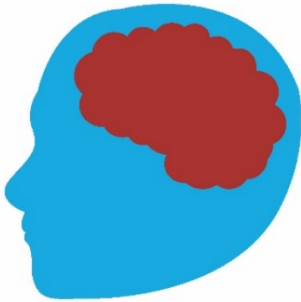
### Enduring representation agreement

You choose someone to make your decisions when you can't.



### **Informal arrangements**

When you have people in your life who support you with the decisions you make.



### **Intellectual disability**

A disability affecting the way you think.



### **NDIS**

National Disability Insurance Scheme



### **Paramedics**

People trained to give you treatment in an emergency.



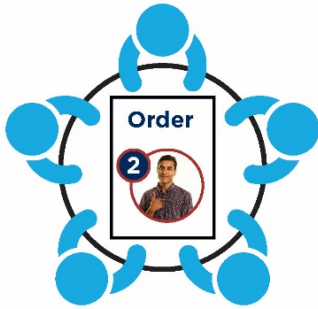
### **Personal support agreement**

An agreement to allow your supporter to be part of your decision-making.



## Public Advocate

A person who speaks up for people who need support with decision-making.



## Representation order

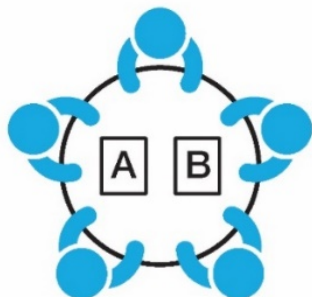
The Tribunal chooses a representative to make decisions for you.



## Restrictive practices

Ways to stop a person from:

- hurting themselves
- hurting others
- damaging something.



## Tribunal

The Guardianship Division of the NSW Civil and Administrative Tribunal.

A group of people appointed by the government to help people fix decision-making problems.



## Tribunal support order

The Tribunal helps you choose a supporter.

## Contact us



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