Outline of session

- Decision making
- The three separate agencies
- Who is the Public Guardian?
- Need for a guardian
- How a guardian is appointed in NSW
- Role and functions of the PG
- Alternatives to guardianship
- Contact us
Decision making spectrum

INDEPENDENT

SUPPORTED

SUBSTITUTE
The three agencies

Guardianship Division of NCAT
makes and reviews guardianship orders

Office of the Public Guardian
Guardian of last resort for health and lifestyle decisions

NSW Trustee and Guardian
Personal Trustee and financial management services
Who is the Public Guardian?

Represents over 2,600 people across NSW

- Provides support to private guardians
- Guardian of last resort
- Provides information to the community about guardianship
- Health and lifestyle decision making
- 12% dementia
- 16% mental illness
- 29% intellectual disability
Information and Support

- Community Education
- Information/Private Guardian support
- Complaints and reviews of decision
  - conduct of Public Guardian
  - Internal reviews of decisions
When is a guardian needed?

- A decision needs to be made and the person does not have capacity
- The person objects to the decision and is at risk
- Supporting the person to make their own decision has not worked
- There is a legal requirement for a decision
- Conflict with others
- There are no other options for making the decision
How is a guardian appointed in NSW?

Enduring Guardian

Enduring Power of Attorney
How is a guardian appointed in NSW?

**NCAT appointed Guardian**
- No longer has capacity
- Application to Guardianship Division of NCAT
- Can appoint a private guardian or the Public Guardian as last resort

**NCAT appointed Financial Manager**
- No longer has capacity
- Application to Guardianship Division of NCAT
- Can appoint the NSW Trustee and Guardian or a private FM who is overseen by NSW TG
What does NCAT consider when appointing a guardian?

- Can they make their own decision with or without support?
- Is there a need?
- Who should be appointed and for how long?
Who should be appointed by Tribunal?

Private Guardian

- Personality compatible
- No undue conflict of interests
- Demonstrates a close and continuing relationship
- Proposed Guardian is willing and able (must be at Hearing)

Public Guardian is appointed as a last resort
Role and functions of the Public Guardian

“...the guardian of a person... has the power, ... to make the decisions, take the actions and give the consents (in relation to the functions specified in the order) that could be made, taken or given by the person under guardianship if he or she had the requisite legal capacity.”

Section 21 (2A) the Guardianship Act 1987
Role and Function of the PG

Proposal

Guardianship Principles

- Welfare and interests – paramount consideration
- Freedom of decision & action are restricted as little as possible
- Normal life in the community
- Views taken into account
- Preserve family relationships, cultural & linguistic environments
- Encourage self-reliance
- Protection from neglect, abuse and exploitation
- Community encouraged to apply & promote principles
## Major decisions made by the PG

<table>
<thead>
<tr>
<th>Decision type</th>
<th>2017-18</th>
<th>2016-17</th>
<th>2015-16</th>
<th>2014-15</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accommodation</td>
<td>418</td>
<td>704</td>
<td>685</td>
<td>492</td>
</tr>
<tr>
<td>Authorise others</td>
<td>243</td>
<td>352</td>
<td>361</td>
<td>288</td>
</tr>
<tr>
<td>Services</td>
<td>1,975*</td>
<td>1,729</td>
<td>959</td>
<td>456</td>
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<tr>
<td>Health care</td>
<td>276</td>
<td>335</td>
<td>241</td>
<td>198</td>
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<tr>
<td>Restrictive Practices</td>
<td>64</td>
<td>105</td>
<td>79</td>
<td>64</td>
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<tr>
<td>Total Major Decisions</td>
<td>3,094</td>
<td>3,318</td>
<td>2,434</td>
<td>1,561</td>
</tr>
</tbody>
</table>

*the increase of ‘service’ decisions since 15/16 reflects the roll out of the NDIS*
# Public Guardian and the NDIS

<table>
<thead>
<tr>
<th>Decisions</th>
<th>We Will</th>
<th>We Won’t</th>
</tr>
</thead>
<tbody>
<tr>
<td>NDIS Access</td>
<td>Planning meetings</td>
<td>Manage plans</td>
</tr>
<tr>
<td>Release of Info</td>
<td>Provide info to NDIS</td>
<td>Access portal</td>
</tr>
<tr>
<td>Support Coordination</td>
<td>Advocate as required</td>
<td>Deal with $$ matters</td>
</tr>
<tr>
<td>Other services</td>
<td>Seek plan reviews</td>
<td>Evaluate services</td>
</tr>
<tr>
<td>Complaints about service providers</td>
<td>Speak to the NDIS Q&amp;S Commission &amp; advocate</td>
<td></td>
</tr>
</tbody>
</table>
Need a guardian for NDIS?

Clare is a young woman with an intellectual disability. Her sister has been involved in her life since their mum passed away.

She is an NDIS participant and new accommodation has been found for her, can she make the decision to move?
Need a guardian for NDIS?

Have you considered:

- Can the person be supported to make their own decision?
- Is there any conflict around the decision?
- Is individual advocacy an option?
- Can the person be supported to sign their own service agreement?
- Exploring a nominee
Alternatives to Guardianship

- Supported Decision making
  - Mitigate Risks
  - Build Networks
  - Build Ability
- Resolve Conflict
- Identify Person Responsible
- Nominee arrangements
- Plan Ahead
Medical treatment and ‘Person Responsible: Part 5 of the Guardianship Act
Who can consent to medical and dental treatment?

Before giving treatment medical practitioners must seek valid consent from patients by discussing:

- the general nature & effects of treatment
- the risks
- alternative treatments or no treatment

If the person does not understand the treatment or able to give consent, the practitioner must seek consent from the ‘person responsible’
Person Responsible Hierarchy

The medical practitioner identifies who the Person Responsible is:
1. Guardian with medical/dental function
2. Spouse or *de facto partner*
3. Unpaid carer
4. Close relative or friend
Planning ahead for future decisions

1. Prepare a Will
2. Make a Power of Attorney
3. Appoint an Enduring Guardian
SDM & Risk Enablement workshops

The NSW Public Guardian is offering free SDM and Risk Enablement workshops for disability services staff to promote the decision making rights of People with Disabilities.

**Supported Decision Making workshop**
Cover building the ability of people with disability to make their own decisions
Focus on effective steps and strategies for providing support for decision making
Discuss dilemmas and tensions, as well as strategies to address these

**Risk Enablement workshop**
Focus on Risk Enablement within the context of supported decision making
Focus on enabling risk to apply to daily practice
Focus on interaction, building on knowledge and experience

**For info and to express your interest:** Information Support Team 02 8688 6070 or informationsupport@opg.nsw.gov.au. Sessions are catered &free.
Contact Public Guardian

Office of the Public Guardian…………………………1800 451 510

Information & Support Branch…………………..8688 6070
Private Guardian Support Unit…………………..8688 6060

Email: informationsupport@opg.nsw.gov.au
www.publicguardian.justice.nsw.gov.au

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Northern Team……….. 4320 4888 or pgnorthern@opg.nsw.gov.au
Western Team………..8688 2650 or pgwestern@opg.nsw.gov.au