

NSW Public Guardian

24 July 2019

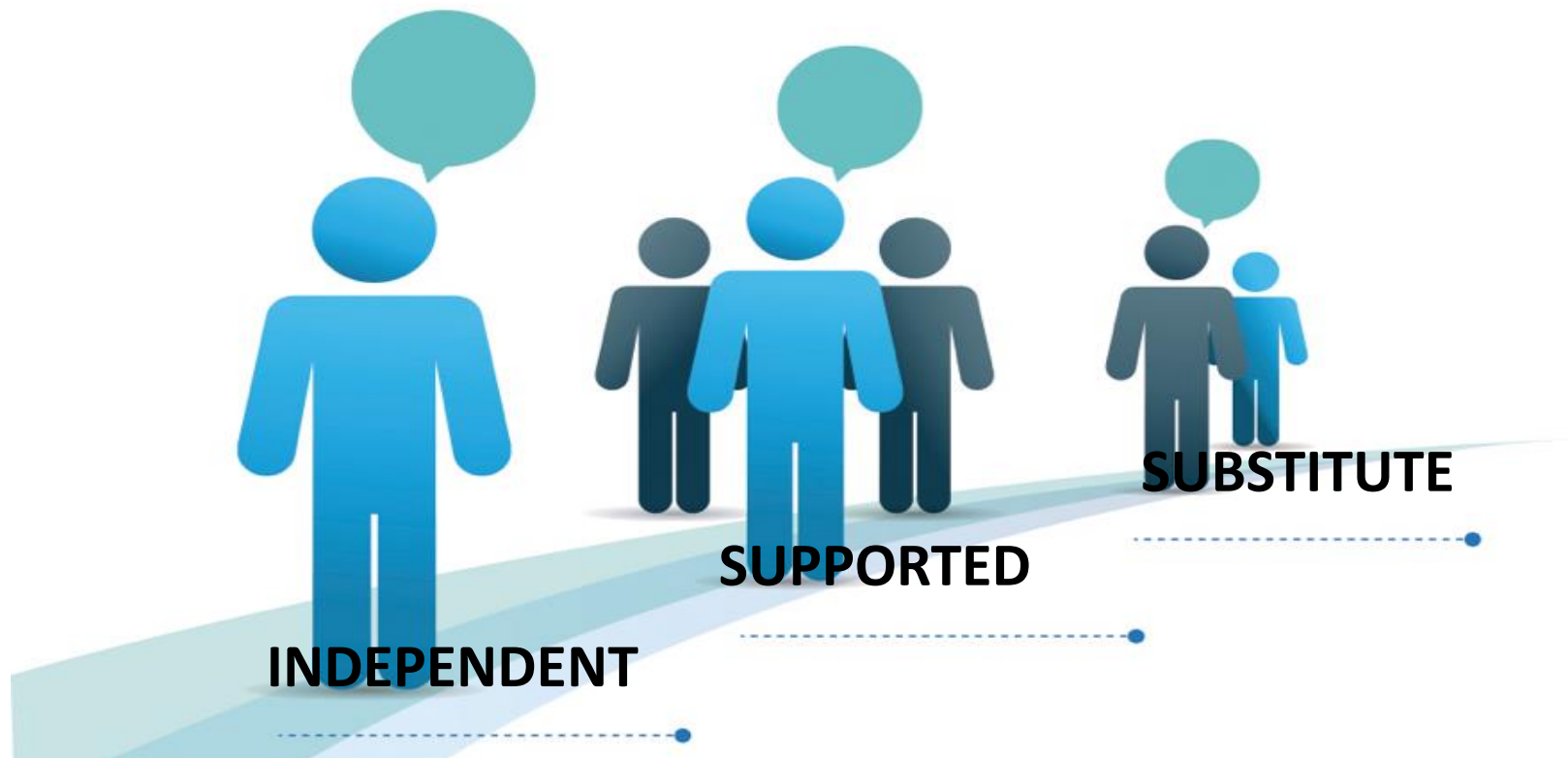
Genetic Alliance Australia

Jessica Butz

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



The three agencies



NCAT
NSW Civil &
Administrative Tribunal



Justice
Public Guardian



NSW Trustee
& Guardian

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?



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

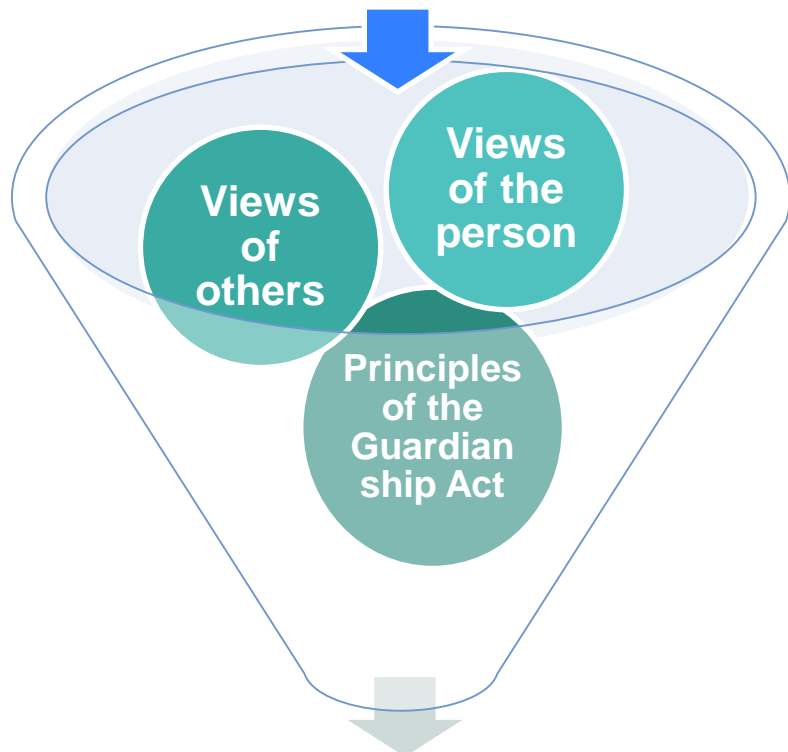
Role and functions of the Public Guardian

“...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



Decision

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

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

*the increase of 'service' decisions since 15/16 reflects the roll out of the NDIS

Public Guardian and the NDIS

Decisions	We Will	We Won't
NDIS Access	Planning meetings	Manage plans
Release of Info	Provide info to NDIS	Access portal
Support Coordination	Advocate as required	Deal with \$\$ matters
Other services	Seek plan reviews	Evaluate services
Complaints about service providers	Speak to the NDIS Q&S Commission & advocate	

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

Guardianship Teams:

Southern Team.....9692 1533 or pgsouthern@opg.nsw.gov.au

Northern Team..... 4320 4888 or pgnorthern@opg.nsw.gov.au

Western Team.....8688 2650 or pgwestern@opg.nsw.gov.au