



## **Guidelines relating to public guardians and NDIS participants in Western Australian hospitals**

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## **Guidelines relating to public guardians and NDIS participants in Western Australian hospitals**

### **Purpose statement<sup>1</sup>**

- To provide estimated timelines for appointment of a public guardian by the State Administrative Tribunal (SAT) and engagement between the hospital and the delegated guardian from the Office of the Public Advocate (OPA).
- To provide guidance for hospital staff working with delegated guardians representing National Disability Insurance Scheme (NDIS) participants.

### **The role of a guardian**

The role of a guardian is to “...make personal, lifestyle and treatment-related decisions in the best interests of a person with a decision-making disability. Guardianship orders specify the areas in which the guardian can make decisions.”<sup>6</sup>

This role *excludes* decisions about *financial matters*. An administrator can be appointed by the SAT to “make financial and legal decisions of a financial or estate nature...”.<sup>6</sup>

### **Decision-making without a public guardian**

#### **Alternatives to the public guardian for certain decisions**

*Informal decision-making arrangements:* family, carer or other significant person; advocate; or hospital staff.

*Formal decision-making arrangements:* National Disability Insurance Agency (NDIA)-appointed plan nominee<sup>2</sup>; private guardian (family or friend); administrator (either private or the Public Trustee); or attorney (enduring power of attorney).

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<sup>1</sup> These guidelines are primarily related to public guardians but also include some issues relevant to other decision makers.

<sup>2</sup> A plan nominee may be appointed by the NDIA for a person with impaired decision-making capacity, at the person’s own request or at the initiative of the NDIA.

## Appointment of a public guardian

The SAT may appoint the public advocate as guardian for a person with a 'decision-making disability' in the absence of an alternative private guardian and is considered 'guardian of last resort'.

### **Can the NDIS access request be submitted before a guardian is appointed?**

- It is not necessary to wait for a guardian to be appointed before an access request form or documentation relating to a change in situation is submitted.

## Timelines

### **Timeline to SAT decisions**

*Standard process:*

- 8 to 12 weeks from application for guardianship to appointment.

*Expedited process<sup>6</sup>:*

- Can be used for applications for hospitalised persons.
- Takes 2 to 6 weeks (minimum of 2 weeks).
- Must be marked 'urgent' in the 'immediate decisions' section of the application.
- Include a [medical report](#) dealing with the person's capacity.
- Include a [report by social worker](#) to provide context about family situation.
- Include contact details of family and nominated contact person at hospital.
- Hospital must submit the application and supporting evidence (not the family or support coordinator).

*Applications that do not follow the above instructions will not be prioritised.*

### **OPA timelines regarding hospital engagement**

- Once the SAT has made a ruling, the order takes effect immediately.
- Appointment of a delegated guardian is made within 24 hours of the order being received.

The time required for a delegated guardian to be ready to engage with the hospital team depends on:

- The amount of information available initially;
- The amount of information that the guardian must familiarise themselves with;

- How long it takes to obtain the views of the person and their family; and
- Prioritisation of other persons who require more urgent decisions by the guardian.

Because the process takes time, it is very important that the hospital team make an application for guardianship *as early in the hospital admission as possible* to avoid delays and enable the guardian to participate in the discharge planning process.

### **On-call, duty and alternative guardians and escalation**

#### *On-call guardian:*

- *Contact number: 9278 7300.*
- *After hours service from 4:30pm to 8:30am, Monday to Friday, and from 4.30pm on Friday until 8.30am on Monday; 24 hours a day over weekends and public holidays.*
- Support is available from the on-call manager.
- Decisions made by the on-call guardian are usually about treatment and generally exclude decisions about accommodation.

#### *Duty guardian:*

- Available during office hours to make decisions when the delegated guardian is on leave or out of the office.
- Duty guardian will decide if the decision is urgent: can it wait until the delegated guardian returns?
- Can make an accommodation decision or refer this to someone senior (see escalation below).
- A duty guardian may refuse to make a decision if they are not sufficiently familiar with the case to make an informed decision and/or do not consider that it is urgent.

#### *Alternative guardian:*

- Occasionally, an alternative guardian is temporarily appointed if the delegated guardian is on long service leave or there is an urgent or complex decision to be made.
- It is unlikely that an alternate guardian will be appointed to participate in discharge planning.
- In some cases, another guardian may be asked to be part of a discharge planning meeting if the delegated guardian is unavailable.

#### *Escalation*

- The duty guardian may choose to refer decisions about accommodation to a senior guardian or manager.
- Hospital staff can also request escalation if the duty guardian is not prepared to make a decision.

## NDIS plans

### Receiving the NDIS plan

- The plan is not routinely provided to the hospital team by the guardian. However, it is shared with the support coordinator.
- The delegated guardians generally do not consider it necessary to provide the plan to the hospital. This is because delegated guardians consider that hospital staff will only require the plan for a short period of time.
- The hospital team can request that the guardian share the plan (and other information) using the NDIA Consent to Share Your Information form.
- Alternatively, if the guardian is not willing to share the full plan, the hospital team should *email specific questions* to the guardian who will provide the necessary information.

### NDIS plan reviews

- The guardian, participant and the support coordinator are notified of the plan review date.
- Hospital staff will not be routinely notified but may discuss with the guardian where the admission is related to the reason the plan needs to be reviewed.

## Decisions about services

### Who chooses support coordinator and why

- NDIS participants often already have a support coordinator when the guardian is appointed. In these cases, the support coordinator may be retained.
- *Chosen by guardian*: if a support coordinator is required, the guardian makes this decision.
- *Chosen on basis of specific needs*: the guardian chooses a suitable support coordinator based on the needs of the patient including type of disability, complexity, age-group of the patient etc. and level of experience of the support coordinator with people with similar disability.
- A guardian may choose a specific support coordinator (or service provider) that they have previously worked with because they know that their skills and experience will fit the patient.

## **Decision by a delegated guardian about accommodation and service providers**

- The guardian will only refuse a request for a service or accommodation if it is considered not reasonable and cannot be rationally justified.
- The guardian will always consider whether to return someone to their own home with services (or to transitional care for rehabilitation) and will rarely approve a move to residential care if it can be avoided in people under 65 years.
- The social worker or family should complete accommodation applications. The reasons for requesting a certain type of accommodation should be provided *in writing* by the social worker to the guardian.
- Once there is an offer of accommodation, the guardian will make the decision on behalf of the represented person.
- The Public Trustee needs to complete an income and assets assessment, and consent to the cost involved in accommodation.

## **Who can negotiate and sign a service agreement on behalf of participant?**

- Plan nominee, guardian, administrator and attorney can *negotiate or sign* service agreement (only if within the scope of their authority).

### **Reasons why public guardian may refuse to consent to discharge**

- All services are not in place yet; and/or
- Risk mitigation is not adequate.

For example, if a homeless person is discharged with no accommodation arranged.

### **What won't a guardian do?**

- Manage the participant's plan.
- Act as support coordinator or case manager.
- Make any payments or receive invoices.
- Formally evaluate the quality of care or standards of registered providers.
- Complete applications for access, housing or Centrelink.

## **References and resources**

1. Webpage of the Western Australian (WA) Office of the Public Advocate (OPA):  
<https://www.wa.gov.au/organisation/departments/department-of-justice/office-of-the-public-advocate/national-disability-insurance-scheme-ndis-opa-information>

2. Expediting applications for the State Administrative Tribunal for the appointment of guardians and administrators:



SATexpedited  
guardian decision

3. WA OPA position statement on restrictive practices:  
<https://www.wa.gov.au/system/files/2022-11/OPA-position-statement-2.pdf>
4. WA OPA position statement on role of guardian with authority to make accommodation decisions:  
<https://www.wa.gov.au/system/files/2022-11/OPA-position-statement-3.pdf>
5. Website of the WA State Administrative Tribunal (SAT), outlining the application procedure and roles of a guardian and an administrator:  
[https://sat.justice.wa.gov.au/A/appoint\\_a\\_guardian\\_or\\_administrator.aspx](https://sat.justice.wa.gov.au/A/appoint_a_guardian_or_administrator.aspx)
6. Website of the WA Public Trustee:  
<https://www.wa.gov.au/organisation/departments/department-of-justice/public-trustee>

This information is correct as at 14 November 2022.

The Ready to Go Home project is funded by the Australian Government Department of Social Services. Go to [dss.gov.au](https://dss.gov.au) for more information.