

Position statement

Protecting the human rights of adults with decision-making disabilities

Role of the Public Advocate as guardian of last resort with authority to make accommodation decisions

The *Guardianship and Administration Act 1990* (the Act) recognises that people who are not capable of making reasoned decisions for themselves may need additional support and assistance not only to ensure their quality of life is maintained, but also to protect them from the risk of neglect, exploitation and abuse.

Under the Act, the State Administrative Tribunal (the Tribunal) may appoint a guardian for a person with a decision-making disability. Guardians are substitute decision-makers who make personal, lifestyle and treatment decisions in the best interests of people who are not capable of making reasoned decisions for themselves due to conditions such as dementia, intellectual disability, mental illness or an acquired brain injury.

The Tribunal can appoint the Public Advocate as guardian of last resort only when there is no one else suitable, willing and available to act as the person's guardian. The decision-making authority of the Public Advocate may be limited to specific areas such as accommodation, treatment or health care (limited order) or it may apply to all areas of the person's life (plenary order).

When appointed guardian of last resort with the authority to make **accommodation decisions**, the Public Advocate is responsible for making decisions about where or with whom the person lives. The specific tasks the Public Advocate undertakes in the process of decision-making about accommodation are listed below.

The Public Advocate as guardian must:

- ensure that interested parties are advised of the Public Advocate's accommodation authority and are told about their own responsibilities in relation to seeking consent for accommodation decisions from the Public Advocate
- gather relevant information and decide where the represented person will live, either on a permanent or temporary basis. This information may be gathered from the person affected, family members, service providers, other government agencies and administrators, or attorneys where appropriate.

The Public Advocate as guardian may also:

- seek advice from community-based services to review and vary their management and support strategies, to maintain the person in their own home
- seek assistance from agencies to develop appropriate strategies to maintain the person in accommodation consented to by the Public Advocate
- attend case conferences and other meetings to discuss accommodation issues
- seek access through relevant funding bodies for more appropriate accommodation and support for the person
- advocate for other accommodation options, to avoid the person being placed in poor standard accommodation
- make complaints on behalf of the person to managers of accommodation services or relevant complaints, monitoring or funding bodies
- negotiate, or request that the case manager negotiates, with the person about accommodation alternatives, before any decision is taken to move the person against her/his wishes
- attempt to locate suitable accommodation for the person. This will only occur when there is no case manager, family member or other interested party who can undertake this task.

The Public Advocate does not take the place of relatives, friends, carers or other service providers, but works with them to arrange suitable accommodation for the person with the decision-making disability. It is important that the person continues to receive the services, support and care provided by these people.

The Public Advocate does not:

- make the professional assessment of the person's accommodation and support needs
- provide accommodation for the person
- take or transport the person to new accommodation
- normally visit or view the new accommodation before consenting to the person living there (however this may occur in certain circumstances)
- locate the person (e.g.: when the represented person has absconded) and/or return them to the accommodation
- pay or negotiate fees for accommodation.

The Public Advocate publishes position statements on:

- Decisions about treatment
- Restrictive Practices
- **The role of the Public Advocate as guardian of last resort with authority to make accommodation decisions**
- The role of the Public Advocate as guardian of last resort with authority to make treatment decisions
- The role of the Public Advocate as guardian of last resort with authority to make contact decisions
- The role of the Public Advocate as guardian of last resort with authority to make treatment decisions: palliative care
- Decisions about medical research
- The role of the Public Advocate as guardian of last resort with authority to make decisions about restrictive practices
- Role of the Public Advocate as guardian of last resort with authority to make decisions about services: NDIS

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