

# 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 TREATMENT DECISIONS

The *Guardianship and Administration Act 1990* recognises that adults who are not capable of making reasoned decisions for themselves may need additional support and assistance. This is 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-related decisions in the best interests of people incapable of making reasoned decisions for themselves due to conditions such as dementia, intellectual disability, mental illness and 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 treatment and accommodation (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 **treatment decisions**, the Public Advocate is responsible for making decisions about any treatment proposed for the person.

In the Act, the term 'treatment' refers to any medical, surgical or dental treatment or other health care, including life-sustaining measures and palliative care.

A 'treatment decision' is defined as a decision to consent or refuse consent to the commencement or continuation of any treatment of the person.

### **When appointed as guardian with the authority to make treatment decisions, the Public Advocate will:**

- advise health care professionals that the Public Advocate has been appointed with authority to make treatment decisions for the represented person and must therefore be contacted to make such decisions on their behalf
- advise all allied health staff and carers who are providing treatment for, or administering medication to the represented person, of the Public Advocate's treatment authority

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- gather relevant information to assist in making decisions about the person's treatment or health care and the cost of such treatment or care, including the expressed views of the represented person or such views as can be gained by their previous actions (this information may be gathered from the person, family members, the treating practitioner, carers, service providers, the administrator or attorney of the represented person and other interested parties)
- make decisions about the person's treatment or health care.

## **The Public Advocate may also:**

- request and/or attend case conferences and review meetings to discuss health care matters
- attend a medical appointment between the represented person and their treating doctor to gain more information regarding complex treatment decisions and the views of both parties
- request written reports following medical (or other health) reviews and assessments
- consider a second medical opinion as part of the process of making the treatment decision
- request a treatment plan, when the represented person is admitted to a health care facility or when major health concerns have been raised or diagnosed
- make complaints to appropriate authorities, on the person's behalf, about health care matters
- seek directions from the State Administrative Tribunal regarding a person's treatment and health care, where appropriate.

The Public Advocate does not take the place of relatives, friends, carers or other service providers assisting the person with the decision-making disability in day to day activities, or attending medical appointments. It is important that the person continues to receive the services, support and care provided by service providers, family and friends.

## **The Public Advocate does not undertake the following in relation to treatment and health care decisions:**

- make a treatment decision without information from the treating health professional about the proposed treatment
- make practical arrangements for medical appointments, such as transport arrangements
- attend routine medical appointments with the person
- provide or administer medications or treatments
- supervise the taking of medication or ensure medication/treatment compliance
- develop treatment or health care plans, or provide detailed referral information to new health care providers
- pay for medical reports or services, or negotiate fees for health care interventions, where such fees apply.

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## FOR FURTHER INFORMATION CONTACT

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