

Position statement

Protecting the human rights of adults with decision-making disabilities

ROLE OF THE PUBLIC ADVOCATE AS GUARDIAN OF LAST RESORT WITH AUTHORITY FOR CONTACT DECISIONS

The *Guardianship and Administration Act 1990* (the Act) recognises that adults 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.

A guardian is a substitute decision-maker who makes personal, lifestyle and treatment-related decisions in the best interests of someone incapable of making reasoned decisions for themselves because of 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 treatment and contact (limited order) or it may apply to all areas of the person's life (plenary order).

A person under guardianship should be able to see or to have contact with anyone, whenever they wish, but the Public Advocate should also ensure that a person under guardianship is protected from harm, conflict, undue influence or other unreasonable pressures.

The Public Advocate may be given the authority to make decisions about contact with the person where there is significant conflict between people close to the person or where the person is vulnerable and at possible risk of being influenced unduly by a particular person or persons.

This may involve consenting to proposals about who a person should see, visit, be visited by, or have other contact with, for example, through writing or by telephone. Decision-making in this area may also involve consenting to where, when and how this contact may occur.

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The Public Advocate as guardian must:

- advise interested parties about the Public Advocate's contact authority and their responsibilities in relation to seeking consent for contact decisions from the Public Advocate
- gather relevant information and decide who the represented person will have contact with and when, either on a permanent or temporary basis. This information may be obtained from the person, family members, service providers, other government agencies and administrators and attorneys, where appropriate.

The Public Advocate as Guardian may also:

- decide to limit contact or in certain circumstances, deny contact with any person of significance to the person affected (for example where the person is at risk of serious abuse)
- request, on the person's behalf, that they are assisted to change the locks to their home, change their telephone number or seek a restraining order to ensure their safety and security
- ask service providers to implement and monitor visits (outlined in a contact plan) and provide support to the affected person during those visits, if necessary
- request reports of, or data collection relating to, the impact of these visits on the person where service providers facilitate contact arrangements
- request or attend case/other meetings to discuss contact issues
- request that others assist the person to obtain a misconduct or violence restraining order
- make representation to the Police Service, requesting that a complaint be made and a restraining order sought from a Local Court.

Note: where a person is clearly at risk from unwanted contact and a crime has been or may be committed, anyone aware of such danger to the person has a duty to seek Police assistance.

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

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The Public Advocate does NOT:

- facilitate or supervise contact or visits between the person and others (however this may occur in exceptional circumstances)
- take the person to or from contact visits
- assess the clinical impact of contact visits on the represented person
- pay or negotiate fees for assistance to avoid unwanted contact (for example, the changing of locks or phone numbers), where such fees apply
- take out a Restraining Order on a person behalf (however, this may occur in certain circumstances).

The Public Advocate cannot compel the Police Service to intervene regarding breached contact conditions. The Guardian may request such assistance, but cannot guarantee that it will be forthcoming.

THE PUBLIC ADVOCATE ALSO PUBLISHES POSITION STATEMENTS ON:

- Decisions about treatment
- Restraint
- 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 accommodation decisions

FOR FURTHER INFORMATION CONTACT

Office of the Public Advocate

PO Box 6293, EAST PERTH WA 6892

Telephone: 1300 858 455

Facsimile: (08) 9278 7333

Email: opa@justice.wa.gov.au

Web: www.publicadvocate.wa.gov.au

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