

Making residential aged care decisions for guardianship clients

The Office of the Public Guardian (OPG) may consider a residential aged care placement for a person if all community-based options for their proper care and support have been exhausted, and if they would be placed at unacceptable risk of harm or neglect if they were to remain living in their current accommodation arrangements.

The General Principles

As with all substituted decisions, the Public Guardian is required to apply the **General Principles** of the *Guardianship and Administration Act 2000* when making a residential aged care decision (attached).

These include:

- The person should be encouraged and supported to live a life in the general community, take part in activities enjoyed by the general community, and perform valued social roles.
- The person should be encouraged and supported to achieve their maximum physical, social, emotional and intellectual potential, and to become as self-reliant as possible.
- The person has a right to participate in decisions that affect their life, to the greatest extent practicable, and should be given the necessary support to do so.
- The person's existing supportive relationships should be maintained.
- The person's cultural and linguistic environment, and set of values (including religious beliefs) must be taken into account.



Contact Us

If you want to speak to the Office of the Public Guardian about a residential aged care decision, you can contact us by phone, Fax, or email.

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Considerations in making residential aged care decisions

OPG guardians are required to apply the following when considering a residential aged care placement for a client:

- a) The person's **views and wishes**, and their ability to participate in the decision-making process.
- b) Whether all reasonable attempts to source and trial **in-home supports** have been made.
- c) The appropriateness of the proposed facility to meet the person's:
 - **medical/support** needs
 - **cultural/linguistic/religious** needs
 - ability to access and participate in **community life** and activities.
- d) The views and wishes of the person's **family and friends**.
- e) The **location** of the facility and its proximity to family and community supports.
- f) The **accreditation** status of the aged care facility.
- g) Any **specialist advice** from doctors or other health professionals.
- h) The person's **ability to pay** (as advised by their financial administrator).
- i) For people under 65 years of age, whether all options for them to remain living in the community, in more age-appropriate settings, have been exhausted.

Complex decisions

A number of other factors may impact on the OPG's decision-making process and timeframe, for example in cases where:

- the person or their family is objecting to the nursing home placement
- there is conflict within the person's family about the decision
- there are delays in the person's financial administrator being able to confirm that the person has the funds to pay for the proposed facility
- the person has complex behavioural issues which require specialist support
- the person has specific cultural/religious needs
- it is highly desirable that the person should be placed in a particular locality.

Information required to make residential aged care decisions

A guardian has a right to all information necessary to make an informed decision (as per s.44 of the *Guardianship and Administration Act 2000*). For residential aged care decisions, the information required commonly includes:

- ACAT assessment
- medical history including any functional, OT or specialist assessments
- social history including family/other supportive relationships in the person's life, their accommodation history, and their views and wishes about their accommodation and care
- current or previous community supports received, either funded or unfunded
- details of any *return-to-home* trials undertaken and/or other accommodation options explored
- approval for home care package or other in-home supports
- eligibility for funded disability supports (people under 65 years)
- confirmation from the financial administrator about ability to pay.

If any of the above information can be provided to QCAT upon applying for the appointment of a guardian, or immediately upon the Public Guardian's appointment, this will be of great assistance.

The General Principles

Anyone who exercises a function or power under guardianship legislation, including the Public Guardian, must apply the General Principles of the legislation.¹

1. Presumption of Capacity

An adult is presumed to have capacity for a matter.

2. Same human rights

- (1) The right of all adults to the same basic human rights regardless of a particular adult's capacity must be recognised and taken into account.
- (2) The importance of empowering an adult to exercise the adult's basic human rights must also be recognised and taken into account.

3. Individual value

An adult's right to respect for his or her human worth and dignity as an individual must be recognised and taken into account.

4. Valued role as a member of society

- (1) An adult's right to be a valued member of society must be recognised and taken into account
- (2) Accordingly, the importance of encouraging and supporting an adult to perform social roles valued in society must be taken into account.

5. Participating in community life

The importance of encouraging and supporting an adult to live a life in the general community, and take part in activities enjoyed by the general community, must be taken into account.

6. Encouragement of self-reliance

The importance of encouraging and supporting an adult to achieve the adult's maximum physical, social, emotional and intellectual potential, and to become as self-reliant as practicable, must be taken into account.

7. Maximum participation, minimal limitations and substituted judgment

- (1) An adult's rights to participate, to the greatest extent practicable, in decisions affecting the adult's life, including the development of policies, programs and services for people with impaired capacity for a matter, must be recognised and taken into account.
- (2) Also, the importance of preserving, to the greatest extent practicable, an adult's right to make his or her own decisions must be taken into account.
- (3) So, for example –
 - (a) the adult must be given necessary support, and access to information, to enable the adult to participate in decisions affecting the adult's life; and
 - (b) to the greatest extent practicable, for exercising power for a matter for the adult, the adult's views and wishes are to be sought and taken into account; and

¹ Schedule 1, Part 1, *Guardianship and Administration Act 2000*

- (c) a person or other entity in performing a function or exercising a power under this Act must do so in the way least restrictive of the adult's rights.
- (4) Also, the principle of substituted judgment must be used so that if, from the adult's previous actions, it is reasonably practicable to work out what the adult's views and wishes would be, a person or other entity in performing a function or exercising a power under this Act must take into account what the person or other entity considers would be the adult's views and wishes.
- (5) However, a person or other entity in performing a function of exercising a power under this Act must do so in a way consistent with the adult's proper care and protection.
- (6) Views and wishes may be expressed orally, in writing or in another way, including, for example, by conduct.

8. Maintenance of existing supportive relationships

The importance of maintaining an adult's existing supportive relationships must be taken into account.

9. Maintenance of environment and values

- (1) The importance of maintaining an adult's cultural and linguistic environment, and set of values (including any religious beliefs) must be taken into account.
- (2) For an adult who is a member of an Aboriginal community or a Torres Strait Islander, this means the importance of maintaining the adult's Aboriginal or Torres Strait Islander cultural and linguistic environment, and set of values (including Aboriginal tradition or Island custom) must be taken into account.

10. Appropriate to circumstances

Power for a matter should be exercised by a guardian or administrator for an adult in a way that is appropriate to the adult's characteristics and needs.

11. Confidentiality

An adult's right to confidentiality of information about the adult must be recognised and taken into account.