

***Western Australia's Community Guardianship
Program***

**Australian Guardianship and Administration Council
Conference
Brisbane, March 2009**

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INTRODUCTION

The Western Australian Public Advocate is guardian for a significant number of people, whose guardianship needs are relatively straightforward, as well as there being no one else suitable and willing to be appointed. The decision-making required in these cases is often in the area of medical treatment. A typical example would be a person who requires a general anaesthetic for dental treatment and consent to prescription medications. Under the Western Australian legislation there is no less restrictive alternative to the appointment of the Public Advocate for these people. As a result the Public Advocate is likely to be the appointed guardian for the rest of the person's life.

In March 2005 the Public Advocate established the Community Guardianship Program to meet the needs of some of these represented persons. Two experienced guardians share the coordination role and are responsible for the establishment and running of the program under the guidance of the Manager Guardianship. The focus of the program is to recruit and train volunteer guardians to provide guardianship services to people with decision-making disabilities in their local communities.

The Community Guardianship Program provides the opportunity for community members to take an active part in the lives of people with decision-making disabilities. The Program aims to reduce the isolation experienced by vulnerable people with decision-making disabilities who do not have anyone else in their lives willing and able to take on a decision-making role for them.

This paper provides an overview of the Western Australian Community Guardianship Program. It focuses particularly on the unique model developed in Western Australia which seeks the appointment of community guardians by the State Administrative Tribunal (the Tribunal) in their own right. This innovative model has many implications, not least of which is the need to ensure adequate safeguards are in place for the vulnerable adults with decision-making disabilities for whom the program was designed to benefit. The paper explores some of the issues that have had to be resolved in order for the model to be successfully implemented. The paper also outlines the benefits of the program to the represented persons in Western Australia who have had a community guardian appointed.

THE WESTERN AUSTRALIAN MODEL

At the commencement of the Western Australian program the only other Australian guardianship and administration jurisdiction with a Community Guardianship Program was Victoria where the program has been operating since 1989. In this model the Public Advocate delegates her authority to community guardians.

The Western Australian Public Advocate favoured an alternative model where community guardians would be appointed in their own right. This approach is consistent with the Western Australian *Guardianship & Administration Act 1990* (the Act). Section 97(1)(g) in the Act states the Public Advocate should promote family and community responsibility for guardianship, and Section 44(5) states that the Tribunal shall not appoint the Public Advocate as guardian unless there is no one else suitable and willing to act. The appointment of a community guardian is a less restrictive alternative to the Tribunal appointing the Public Advocate as guardian, which is considered an option of last resort.

Community guardians are recruited, selected and trained by the Office of the Public Advocate. Suitable volunteers are selected on the basis that they have a genuine commitment and ability to advocate for and protect the rights of a person with a decision-making disability.

IMPLICATIONS OF THE WESTERN AUSTRALIAN MODEL

1. Recruitment and Selection

Because Western Australian community guardians are appointed in their own right and are accountable to the Tribunal at review hearings, rather than being accountable to the Public Advocate as in the Victorian model, there is a need for an especially thorough recruitment and selection process.

Applicants submit a written application in which they detail their personal or professional experience with adults with decision-making disabilities; their motivation for applying and also outline what they will bring to the role.

At a compulsory half-day Information and Selection session participants are directly observed in small group work and assessed by Office of the Public Advocate staff against essential criteria (see **Box One** below). Applicants are provided with detailed information about the role of community guardian, and encouraged to make an informed decision about their suitability for the program. Some applicants self-select out at this point.

Applicants undergo a National Criminal Record check and provide personal and professional referees who the Coordinator contacts and asks a series of questions related to the essential and desirable criteria. Applicants may also be required to attend an interview if the Public Advocate determines that more information is required.

Box One: Who are the Community Guardians?

Community Guardians display the following qualities:

Essential Criteria

1. Belief in the potential of people with decision-making disabilities
2. Preparedness to advocate for the rights of someone with a decision-making disability
3. Good communication skills (body language/active listening/eye contact)
4. Assertiveness (ability to advocate/ articulate/ rights focus/ respectful)
5. Empathy (Compassion/ respect)
6. Tolerance (non-judgemental/ open-minded)
7. Problem-solving ability (clear thinking/conceptualisation)

Desirable Criteria

1. Professional or personal experience with people with decision-making disabilities

Case Example: a Community Guardianship Program volunteer.

Josephine has recently retired from her work with a disability services agency. She worked as an occupational therapist with adults with intellectual disabilities for over 20 years. She is looking for interesting volunteer work and feels strongly about the rights of people with disabilities.

2. The Represented Persons

The represented persons selected for inclusion in the Program have the Public Advocate appointed as guardian of last resort. A number of criteria are used to determine a represented person's inclusion in the Community Guardianship Program. Represented persons are selected on the basis that Section 43(1)(b) of the Act has clearly been met in that there is no doubt about the person's incapacity to make reasoned lifestyle decisions. Represented persons have either a static or progressive diagnosis and there is no likelihood of them regaining capacity.

Represented persons selected for inclusion in the program have an ongoing requirement for guardianship that is not complex in nature. Guardianship decisions required are relatively straightforward and there is an absence of conflict. They have minimal or no carers, family or friends in their life and as such would greatly benefit from the appointment of a community guardian.

Represented persons selected for matching with a volunteer live in supported accommodation. This provides an important support structure and safeguard for both the represented person and the volunteer.

Case Example: a represented person selected for inclusion in the Community Guardianship Program.

'George' is a 45 year old man with an intellectual disability. He has no family involved in his life. He lives in a hostel and is in relatively good health. He requires ongoing reviews of skin lesions, and reviews of medications for reflux. At the last periodic review hearing the Public Advocate was re-appointed as guardian for five years to consent to medical treatment.

3. Training and the Matching Process

Following successful completion of the recruitment process, community guardians are required to attend two days of training. Topics covered include the Guardianship and Administration system in Western Australia, guardianship decision-making and the Community Guardianship Program. Small group work on case scenarios forms a significant part of the training.

At the training, participants are asked to outline their preferences with regard to being matched with an individual with a decision-making disability. Geographical proximity is important. A number of other factors are taken into account by the Coordinators in an attempt to ensure that there is a match between the needs of the represented person and the ability of the prospective community guardian to meet those needs. Time commitment and the skills of the volunteer may be taken into account. Volunteer preference is taken into account, such as previous experience in working with older people.

Once the Coordinator has identified a suitable match, the volunteer is contacted to discuss the potential match. Proposed community guardians are asked to consider whether they are able to meet the needs of the particular represented person and are not obligated to accept a proposed match. The Coordinator and a representative of the accommodation facility attends the first meeting between the represented person and volunteer. Following this introductory meeting, and the volunteer's agreement to proceed with the match, the volunteer regularly visits the represented person. Generally, the volunteer spends 12 months getting to know the represented person and their care providers.

Once it is clear that the match is going well and the volunteer agrees to be considered as a prospective guardian for the represented person, the Coordinator applies to the Tribunal for a review of the guardianship order. The Public Advocate recommends that the volunteer be appointed as guardian on the grounds that they are suitable and willing and represent a more appropriate appointment than the Public Advocate.

The program currently has nine active volunteers from the first recruitment drive, seven of whom have been appointed community guardians by State

Administrative Tribunal. Applications to the Tribunal for the appointment of the two remaining volunteers, who have been matched for over 12 months, are imminent.

The program has just completed the second recruitment drive with six new recruits having begun the two-day training prior to being matched later in the year.

4. Support for Community Guardians

In addition to the two-day introductory training, ongoing training is provided by the Public Advocate twice a year. This training covers issues identified by the Coordinators as well as requests from the volunteers. They offer a valuable opportunity for volunteers to support one another and discuss their matches and any issues that have arisen in the course of their role.

A comprehensive policy and procedures document outlines all aspects of the program and a *Manual for Community Guardians* provides guidance to appointed guardians.

The manual is a comprehensive document which provides information on decision-making disabilities and the guardianship and administration system in Western Australia; guidance in how to make guardianship decisions; and Western Australian resources which may be of relevance to community guardians.

Regular newsletters update volunteers on developments and enable the Coordinators to keep in touch with volunteers in between face-to-face meetings.

Once a community guardian is appointed by the Tribunal, the program coordinator contacts the guardian at least every three months during the term of the initial order to discuss how the order is progressing. Community guardians are encouraged to contact the Coordinator at any time for one-to-one case consultation.

Twice a year social functions provide a valuable opportunity for volunteers to network and establish relationships with one another, which encourages further contact and mutual support outside the formal training and networking opportunities arranged by the Public Advocate.

The second group for volunteers, as they are matched with represented persons over the next 12 months, will have the benefit of the experience of the first group. The first group of volunteers are keen to provide a mentoring role. Five of the appointed community guardians participated in the recent Information and Selection session and the two-day training for new applicants.

RESOLUTION OF ISSUES THAT HAVE ARISEN WITH THE WESTERN AUSTRALIAN MODEL.

1. Why not delegate the Public Advocate's authority?

Since the Program's inception in May 2005 the Tribunal has appointed seven community guardians. Each of the hearings of these matters has provided an opportunity to explore issues related directly to the application of the Western Australian model where community guardians are appointed in their own right.

At the hearing of the first application for the appointment of a community guardian in May 2007 the Tribunal raised a number of issues of concern which ultimately led to some re-modelling of the program.

Firstly, the Tribunal questioned why the Public Advocate did not delegate her authority to community guardians, as is the case with the Victorian Community Guardianship Program. The Public Advocate had a strong view that volunteers should be appointed in their own right and had set-up the program accordingly. As well as promoting community responsibility for guardianship her focus was on creating a less restrictive alternative to the appointment of the Public Advocate as guardian of last resort.

Secondly, a Memorandum of Understanding had been developed by the Public Advocate in which community guardians would be required to, among other things, consult with the Public Advocate if more significant guardianship decisions were required. While the Public Advocate saw the Memorandum of Understanding as an extra safeguard to be employed at least during the term of the first order, the Tribunal saw this as "fettering" community guardians, something that is not consistent with the legislation.

Consequently, the Tribunal reappointed the Public Advocate with authority to delegate to the Community Guardianship Program volunteer. Following this decision, the Public Advocate chose not to delegate and instead made some changes to the Program in order to satisfy the concerns of the Tribunal and provide it with the confidence to appoint community guardians in their own right.

The Memorandum of Understanding was abandoned, and the matching process between the volunteer and the represented person was extended from six to 12 months. The rationale was that a longer matching process would establish that the volunteer had developed a relationship with the represented person and understood their needs, and that he or she had made a long term commitment to the person with a decision-making disability.

2. A Guardianship Order or Section 119?

Another issue the Public Advocate and the Tribunal have grappled with is whether the volunteers in order to make medical treatment decisions should be appointed as guardian, or whether they might act under *Section 119 of the Act*. *Section 119(3)(e)* established a hierarchy of people who can make treatment decisions without need for a formal guardianship order. To provide consent under this section, the volunteer would need to establish that a close personal relationship had developed between themselves and the represented person. This is similar to the concept of 'person responsible' used in states other than Western Australia.

So far the Public Advocate has advocated, and the Tribunal has determined, that a guardianship order is preferable to *Section 119* for a number of reasons. A guardianship order makes it very clear to service providers and medical professionals that the volunteer has authority to make treatment decisions. A guardianship order also provides the guardian with the guidance and protection of *the Guardianship & Administration Act*, including the obligation to act in the best interests of the represented person and the periodic reviews of guardianship orders by the State Administrative Tribunal. No such statutory obligations are in place for those acting under *Section 119 of the Act*.

3. The Length of the Guardianship Order

At each Tribunal hearing discussion has taken place about the length of the guardianship order. The Western Australian *Guardianship & Administration Act* enables the Tribunal to make an order for a maximum of five years. So far initial appointments for Community Guardians have been for 12 months. The rationale for this is that the matter can be reviewed within a relatively short timeframe to ensure it is working in the represent person's best interests.

Of the two community guardianship appointments that have been reviewed after the initial 12 month orders, the Tribunal has re-appointed the community guardian for five and two years respectively.

4. Release of Information to Community Guardians

Another issue for the Public Advocate and the State Administrative Tribunal related to the release of information to a volunteer once they were appointed guardian. The Public Advocate releases relevant written information it holds and is the author, such as information forms which summarise the important guardianship issues and decisions made during the time the Public Advocate has been the appointed guardian. The Public Advocate considers the release of such documents to be in the best interests of the represented person.

However careful consideration was needed of the most appropriate way for community guardians to access Tribunal documents. The Tribunal has

considered this issue at appointment hearings and in a number of recent orders has authorised the Public Advocate to allow the community guardian to inspect Tribunal documents. The Public Advocate now provides an opportunity for appointed guardians to inspect Tribunal documents such as Public Advocate reports for hearings, and medical and primary carer guides, enabling community guardians to have all relevant background information they might need to make decisions in a represented person's best interests.

5. Support of Community Guardians by the Public Advocate

Since the hearing of the initial application for the appointment of a community guardian in May 2007 the Tribunal has considered the issue of how community guardians are to be 'monitored' by the Public Advocate. Given that community guardians are appointed in their own right, the Public Advocate's view is that they are not directly accountable to the Public Advocate, but rather, are accountable to the Tribunal at review hearings.

Whilst it does not 'monitor' community guardians in a direct line management sense, the Public Advocate does consider it her role to provide considerable support to volunteers both prior to and following their appointment as guardian, as outlined earlier in this paper. It is also part of the Coordinator's role to ensure that the service providers involved are aware that they can contact the Public Advocate with any concerns about how the guardianship order is working.

At a hearing of an application for the appointment of a community guardian in December 2008, the Tribunal included a direction that the community guardian report to the Public Advocate every three months on the progress of the order, and directed the Public Advocate to report to the Tribunal at the review hearing in 12 months time on the progress of the order. This in effect formalises the Public Advocate's internal procedures which are to contact community guardians every three months and provide a recommendation at initial review hearings as to whether the guardianship order is operating in the represented person's best interests.

THE BENEFITS OF THE COMMUNITY GUARDIANSHIP PROGRAM TO THE REPRESENTED PERSONS

The benefits to a represented person who has no or minimal family involvement and who receives frequent visits by the volunteer they are matched with are clear. The volunteer gets to know the person, their care needs and the facility in which the person lives in a way that the Public Advocate cannot on her twice yearly visits.

The main role of volunteers is to get to know the person with whom they are matched with a view to eventually taking over as guardian from the Public Advocate, usually as medical treatment decision-maker. Another important part of their role is to act as advocate for the represented person. The extent to which they become further involved in the life of the person with a decision-

making disability beyond the two primary roles of guardian and advocate, is up to the individual volunteer.

What has been observed over the course of the last three years is that most of the volunteers have become involved in the broader life of the person with whom they are matched. The extent and the nature of their involvement varies depending on the volunteer's skills, aptitude and personality.

Some volunteers have become involved in the person's recreational pursuits such as swimming while others visit the represented person periodically at their work place in order to get to know them in a different context. The benefits of this to both the volunteer and the represented person are apparent. There are many heart-warming stories which illustrate the benefits: a volunteer who regularly goes swimming in the river with the represented person and is delighted to be joined by dolphins; and a represented person who has only ever spent Christmas with care staff enjoying the experience of spending Christmas day with a volunteer and her family.

The presence of a person in the represented person's life who is unpaid, independent and able to focus solely on the person's best interests has led to improved advocacy and outcomes for the represented person and a decrease in social isolation. Arguably better guardianship decisions are made for the represented person by someone who has an intimate understanding of the person and their needs.

The benefits to the represented person are illustrated in the following case study. Similar benefits in terms of improved community involvement, advocacy outcomes and decreased social isolation are present in each of the Program's matches.

Case Study: Patricia and Josephine

Before community guardianship involvement: Public Advocate as guardian.

Patricia is 60 years of age. She has an intellectual disability. She is completely dependent for all her care needs. She has resided in the same nursing home since she was 16. The Public Advocate had been her guardian for 10 years to make medical treatment decisions. Patricia had no family or friends in her life, with the exception of paid nursing home staff who have established a relationship with her over the years. Because her guardianship needs were relatively straightforward, the Public Advocate visited her biannually and otherwise responded to medical consent requests as they arose.

After the order appointing the Public Advocate was revoked: a community guardian appointed.

Community Guardianship Program volunteer Josephine was introduced to Patricia and nursing home staff in January 2006 by the Community

Guardianship Program Coordinator. Josephine was given verbal information about Patricia and her care needs. Josephine began fortnightly visits to Patricia. At these visits she spoke with staff in order to get to know Patricia, as Patricia had minimal ability to communicate. Patricia was bed-bound and rarely left the nursing home building. Josephine now takes her on walks around the grounds and local community. As she became more confident in knowing Patricia and her needs, Josephine became increasingly involved in health care issues and proved herself to be a strong advocate for Patricia. She has advocated for improved eating and seating regimes for Patricia, and has been involved in reviews of her medications.

Patricia had lost contact with her family many years ago. The Public Advocate and the Tribunal had written to the family but had not received any response. Josephine wrote to the family after her appointment as Patricia's guardian and received a response. This has led to ongoing communication between Josephine and Patricia's family including the provision of family photographs for Josephine.

Conclusion

The Western Australian Community Guardianship Program is testament to the fact that innovative approaches can be developed, revised and implemented to better meet the guardianship needs of some of our most vulnerable citizens.

The Community Guardianship Program in Western Australia is providing a community based alternative to the long term appointment of the Public Advocate for people who have relatively straight forward guardianship needs. A socially isolated represented person benefits from an enduring relationship with a committed individual who provides advocacy and informed consent on their behalf.

By appointing community guardians in their own right the Western Australian State Administrative Tribunal ensures a less restrictive alternative to the long term involvement of a government agency in the life of a vulnerable person. It raises community awareness of the rights of people with decision-making disabilities and promotes increased community responsibility for guardianship. It also enriches the lives of people with decision-making disabilities and the lives of the volunteers.

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March 2009