



# Public hearing 30: Guardianship, substituted and supported decision-making

## Glossary of terms and expressions that may be used in the public hearing

Term/Acronym	Meaning
ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
Administration order	An order to appoint an administrator or financial manager to make decisions about the financial affairs on behalf of a person.
Administrator	A person or officer appointed, often by a tribunal, to make decisions about the financial affairs of another person. Also referred to under the <i>Guardianship Act 1987</i> (NSW) as a 'financial manager'.
AGAC	Australian Guardianship and Administration Council
ALSWA	Aboriginal Legal Service of Western Australia
Autonomy	A person's right and freedom to make their own decisions, to have control over their own lives, and to exercise choice.
CaLD	Culturally and Linguistically Diverse
Capacity	Means 'legal capacity' and/or 'mental capacity'
CEO	Chief Executive Officer
CID	Council for Intellectual Disability
CRPD	<i>Convention on the Rights of Persons with Disabilities</i> , opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008)
DDA	<i>Disability Discrimination Act 1992</i> (Cth)
Dignity of risk	Affording a person the right and dignity to take reasonable risks. <sup>1</sup>
DPOs	Disabled Persons Organisations

Term/Acronym	Meaning
DRCO	Disability Representative and Carer Organisations
DROs	Disability Representative Organisations
DSP	Disability Support Pension
Enduring appointments	Legal documents in which a person appoints another person to make certain decisions for them, such as decisions about financial and/or other personal matters. Enduring appointments can be made in documents called 'Enduring Powers of Attorney' and 'Enduring Guardianship'. Enduring appointments are prepared when a person has capacity to make the appointment, with the appointment usually taking effect when the person loses the capacity to make decisions specified in their enduring appointment document.
Financial management order	See definition of 'administration order' above.
Financial manager	See definition of 'administrator' above.
FM orders	Financial management orders
Guardian	Is a person or officer appointed, often by a tribunal, to make certain decisions on behalf of another person in relation to their health treatments, accommodation, services and other lifestyle matters.
Guardianship and administration law	Laws, found in both statute and at common law, that provide for the appointment, by a tribunal or court, of a substitute decision maker. The circumstances of this appointment are generally where it has been determined that the person does not have the capacity to make the particular decision that needs to be made, and that there is a need to appoint a substitute decision maker to make that decision on their behalf.
Guardianship order	An order to appoint a guardian to make certain decisions described in the order on behalf of a person.
LAC	Local Area Coordinator
Legal capacity	<p>A person's ability to hold rights and duties under the law, and to exercise those rights. In the context of guardianship and administration proceedings, a person's legal and decision-making capacity may be assessed according to criteria specified in guardianship and administrative law.</p> <p>The descriptions of legal capacity are different in Australia laws, for example:</p> <ul style="list-style-type: none"> <li>• 'decision-making capacity' in Victoria and the NT</li> <li>• 'decision-making ability' in the ACT, and in Tasmania's proposed reforms</li> <li>• 'capacity' in Queensland</li> </ul>

Term/Acronym	Meaning
	<ul style="list-style-type: none"> <li>• ‘mental incapacity’ in SA</li> <li>• ‘incapable of managing their affairs’ in certain provisions in NSW and WA.</li> </ul>
LGBTIQA+	Lesbian, Gay, Bisexual, Transgender, Intersex, Queer, Asexual Plus
Mental capacity	A person’s decision-making ability and skills, which can vary for each person over time for a range of reasons.
MHRT	NSW Mental Health Review Tribunal
NCAT	The NSW Civil and Administrative Tribunal. NCAT’s powers include making decisions concerning the appointment of a guardian and/or financial manager for a person.
NCC	National Contact Centre
NCCP	National Community Connector Program
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
Nominee	Means a person appointed to be the correspondence nominee of a NDIS participant or the plan nominee of a NDIS participant.
NSW	New South Wales
NSW Public Guardian	An independent statutory officer in NSW, whose functions may include being the appointed guardian of a person.
NSW Trustee	A term occasionally used to refer to NSWTAG, particularly where performing financial management services.
NSWTAG	NSW Trustee and Guardian, being a corporation whose services include but are not limited to, financial management and guardianship services. The NSW Public Guardian reports to the CEO of NSWTAG.
NT	Northern Territory
OPA	Office of the Public Advocate
OPAN	Older Persons Advocacy Network
PACMAN	Public Advocate Case Management, which is the case management system used by the Public Advocate of Western Australia to record certain data
<i>Parens patriae</i> jurisdiction	The jurisdiction in which orders may be made for the protection of those who are determined unable to protect themselves. Also known as the ‘protective jurisdiction’.

Term/Acronym	Meaning
Public Advocate of Victoria	An independent statutory officer in Victoria, whose functions may include being the appointed guardian of a person.
Public Advocate of WA	An independent statutory officer in WA, whose functions may include being the appointed guardian of a person.
Public Guardian of Queensland	An independent statutory officer in Queensland, whose functions may include being the appointed guardian of a person.
Public Trustee of Queensland	An independent statutory officer in Queensland, whose functions may include being the appointed administrator of a person.
QAI	Queensland Advocacy for Inclusion
QCAT	The Queensland Civil and Administrative Tribunal. QCAT's powers include making decisions concerning the appointment of a guardian and/or administrator for a person.
Represented person	A term sometimes used to refer to a person who is the subject of a guardianship and/or administration order.
SA	South Australia
SAT	The Western Australian State Administrative Tribunal. SAT's powers include making decisions concerning the appointment of a guardian and/or administrator for a person.
SOP	Standard Operating Procedure
State Trustees	Refers to State Trustees Limited, a statutory corporation, which may perform functions as an appointed administrator for a person.
Substitute decision-making	Refers to a range of processes and regimes that involve a person making decisions on another person's behalf. Substitute decision-making includes appointments of guardians, administrators and financial managers who are appointed to make certain decisions on another person's behalf.
Supported decision-making	Refers to processes and approaches that assist people to make a decision, including by giving them the tools they need to make the decision for themselves. Supported decision-making does not mean making a decision for or on behalf of another person.
Supportive administrator	A person appointed in a supportive administration order under the <i>Guardianship and Administration Act 2019</i> (Vic) to be a supportive administrator guardian in relation to one or more specified financial matters.

Term/Acronym	Meaning
Supportive guardian	A person appointed in a supportive guardianship order under the <i>Guardianship and Administration Act 2019</i> (Vic) to be a supportive guardian in relation to one or more personal matters.
Supportive guardianship	A formal process under the <i>Guardianship and Administration Act 2019</i> (Vic) in which a person may be appointed a supportive guardian for another person.
VCAT	<p>The Victorian Civil and Administrative Tribunal. VCAT's powers include making decisions concerning the appointment of:</p> <ul style="list-style-type: none"> <li>• a guardian and/or administrator for a person</li> <li>• supportive guardian and/or supportive administrator for a person.</li> </ul>
WA	Western Australia
Will and preferences	<p>This expression appears in Article 12(4) of the CRPD but is not defined or explained. We use this expression in a manner that reflects the approach in <i>Good Practice in Supported Decision-making for People with Disability</i>, prepared for the Australian Government, Department of Social Services, the following meaning of the terms were cited:<sup>2</sup></p> <ul style="list-style-type: none"> <li>• 'will' means larger life goals, political perspectives, emotional and spiritual development and views, gender and sexuality identity for example</li> <li>• 'preferences' means choices regarding day-to-day-activities, aesthetic preferences, and similar</li> <li>• 'will' and 'preferences' is also regularly connected with 'rights' in the sense that supported decision-making is about giving effect to the will, preferences and rights of a person requiring decision-making support.</li> </ul>

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<sup>1</sup> Joseph E Ibrahim & Marie-Claire Davis, 'Impediments to applying the 'dignity of risk' principle in residential aged care services', (2013) vol 32 (3), *Australasian Journal of Ageing*, pp 188-93. See also: Robert Perske, 'The dignity of risk and the mentally retarded', (1972), vol 10 (1), *Mental Retardation*, pp 24-7.

<sup>2</sup> Julian Laurens, Shona Bates, Rosemary Kayess, Karen R Fisher, for the Australian Government, Department of Social Services, *Good Practice in Supported Decision-making for People with Disability*, June 2021, p iii.