



Re: Elder Abuse Prevention Unit - Teleconference 8 August 2007

1. STRUCTURE OF THE GUARDIANSHIP AND ADMINISTRATION TRIBUNAL

1.1 What is the Guardianship and Administration Tribunal (GAAT)? What do they do?

The Guardianship and Administration Tribunal is an independent Tribunal supported by the Department of Justice and Attorney General. The Tribunal is comprised of two (2) inter-related but separate bodies.

- The Registry which is comprised of public servants who provide administrative support to the Tribunal; and
- The Tribunal who are judicial officers with decision making authority.

The Tribunal's main job is to determine whether or not a person with impaired decision-making capacity needs a guardian or administrator and, if necessary to make an appointment. If you want to make formal arrangements to act as someone's guardian or administrator, it is the Tribunal that you apply to. The Tribunal will hold a hearing to consider your application and come to a decision. If it decides to appoint you, it will set out the terms of your appointment—that is, it will describe the powers you will have—and how long the appointment will last.

The Tribunal also:

- gives directions and advice to guardians and administrators (for example, it may give directions to resolve a disagreement between joint guardians or administrators)
- monitors, reviews and amends orders
- ratifies and approves decisions by informal decision-makers
- makes declarations about the decision-making capacity of adults, guardians, administrators and attorneys (people given enduring power of attorney or a statutory health attorney)
- sorts out issues related to documents dealing with enduring powers of attorney and advance health directives

- registers orders made in other States and some other countries
- gives consent for special health care (certain medical procedures).

2. CAPACITY

2.1 What constitutes impaired decision making ability? Can you tell us what is a declaration of capacity and under what circumstances can you request one from GAAT?

Capacity is defined in the *Guardianship and Administration Act 2000* as the inability to go through the process of reaching a decision and putting it into effect.

There are three parts to this process:

- understanding the nature and effect of the decisions about the matter; and
- freely and voluntarily making decisions about the matter; and
- communicating the decisions in some way.

If a person is unable to carry out any of these, he/she is said to have impaired decision-making capacity, whether the impairment is the result of congenital intellectual disability, acquired brain injury, dementia, mental illness or some other cause.

A Declaration about Capacity can be lodged by the adult or an interested party in various circumstances. An application for a Declaration about Capacity are most often lodged in the following circumstances:

- where an adult is subject to an Order of the Tribunal and the adult or an interested party are of the view that an Order is no longer required as the Adult's has recovered or their decision making capacity has improved. For example, recovery from a brain injury due to a stroke or an increase in their mental health due to compliance with medication.
- There is dispute between parties about whether the adult has capacity.

3. ROLE OF THE TRIBUNAL

3.1 What is a tribunal hearing and what happens at one? What are the types of issues that the tribunal hears?

A Tribunal hearing is a meeting of parties (including the adult where possible) to discuss the application and having regard to the submissions made prior to and at the hearing, make a decision/s which is in the best interest of the adult.

The Tribunal's primary role is to determine whether the adult needs the appointment of a substitute decision maker (ie guardian and/or administrator). There are other types of matters which the Tribunal also hears which are detailed in 1.1

3.2 Is a decision made at the hearing? What is a tribunal order? Who can attend a hearing?

In most instances the Tribunal will make a decision on the day and inform the parties of that decision. However, in certain circumstances the Tribunal may reserve the decision and hand down the decision at a later stage or adjourn the matter. An Order of the Tribunal is a legally binding document which amongst other things gives authority to a decision maker to make certain decisions on behalf of the adult or give directions to parties to undertake certain actions by specified dates. Anyone who is interested in the well-being of the adult with impaired capacity can be invited to attend, including:

- the applicant
- the adult
- members of the adult's family
- any of the adult's primary carers
- all current guardians, administrators and attorneys for the adult
- the Adult Guardian
- the Public Trustee
- anyone else who is given permission by the Tribunal to attend

3.3 If the tribunal wants to appoint a family member for a guardian or administrator and no one wants the responsibility, can this role be forced upon the family?

A party has to be willing to accept the appointment and are required to sign a form known as an "appropriateness consideration" where the proposed appointee undertakes to act in the best interest of the adult and makes certain disclosures. For example, that they have a criminal history or are or have been a bankrupt. Where no one is willing or able to act, then the Adult Guardian can be appointed as guardian and the Public Trustee of Queensland can be appointed as administrator.

3.4 If GAAT decided that a family member is not suitable for either the role of a guardian or an administrator, who gets these roles?

As discussed above, the Act provides for the appointment of the Adult Guardian as guardian and the Public Trustee of Queensland as administrator. A private trustee company may also be appointed as an administrator. However, the Public Trustee of Queensland will accept appointment for estates which are not commercially economical.

3.5 Can GAAT instruct a service provider to present evidence?

Yes, the Tribunal does have the authority to compel parties to attend hearings and also produce a document/s. This authority is only used in limited circumstances but is an important element in protecting the rights of vulnerable citizens.

3.6 How does GAAT perform in rural and remote areas where service providers and family members cannot come into Brisbane for a hearing? Can GAAT come to them? If GAAT does come out to the town do they use people in the town to make decisions or do neutral tribunal members come?

Hearings are held throughout Queensland in both metropolitan and regional centres. If the people concerned live in a remote area, the hearing may be conducted via telephone or video conferencing. All decisions are made by Tribunal Members. Currently there are 40 Tribunal Members who live across Queensland and have diverse backgrounds including lawyers, doctors, a professor and members with personal experience.

3.7 Are GAAT hearings publicly advertised in the community or do they remain confidential?

Due to the personal nature of hearings, hearings are not currently advertised in the published press. However, hearings are open which means that anyone can attend a hearing with the permission of the Tribunal. Any person attending the hearing who has no connection or interest with the adult would be attending the hearing as an "observer".

4. THE DIFFERENCE BETWEEN THE GUARDIANSHIP AND ADMINISTRATION TRIBUNAL AND THE OFFICE OF THE ADULT GUARDIAN

4.1 What is the difference between GAAT and the Adult Guardian (AG)?

The Guardianship and Administration Tribunal is an independent Tribunal which has the authority to make decisions as detailed in 1.1. The Adult Guardian is an independent statutory officer appointed to protect the rights and interests of adults who are not able to make decisions for themselves. These adults have impaired decision-making capacity caused by intellectual or psychiatric disability, dementia, acquired brain injury or temporary impairment such as delirium or unconsciousness. The Office of the Adult Guardian is separate and distinct from the Tribunal and performs functions as stipulated in chapter 8 of the Act.

The main ways that the Adult Guardian assists an adult are to:

- act as the adult's decision-maker in certain circumstances (eg. as guardian for personal matters, acting under an order by GAAT).
- consent to health care issues for the adult (eg. acting as the adult's guardian, personal attorney or Statutory Health Attorney of last resort).
- investigate allegations of neglect, exploitation or abuse against the adult by his/her guardian, attorney, administrator or others acting under informal decision-making arrangements.

The Adult Guardian also:

- makes representations (on behalf of the adult) to service providers, government and non-government agencies, and may seek help from them

- can informally mediate or help resolve disputes between people formally appointed to make decisions for the adult, eg. health care disputes
- may act as a personal attorney under an Enduring Power of Attorney or Advance Health Directive (this appointment should be as a last resort)
- educates and gives general advice about the operations of the *Powers of Attorney Act 1998* and the *Guardianship and Administration Act 2000* (especially the functions of the Adult Guardian).

4.2 When is it more or less appropriate to make a referral to GAAT as opposed to the AG?

Generally a referral is made to the Adult Guardian where there are grounds to suspect the adult has a decision making impairment and is being abused, neglected (including self-neglect) or exploited. This may be under informal arrangements or through the misuse of an enduring power of attorney. The Adult Guardian has investigative powers and can use their powers to establish the veracity of the allegations.

An application is generally made to the Tribunal where an appointment appears necessary, an urgent decision needs to be made and there is strong evidence in support of the concerns. For example, the adult's has significant nursing home arrears and the decision makers have not responded to requests to pay or reduce the arrears.

5. DECISION MAKERS

5.1 What is a guardian and what is an administrator and what roles and responsibilities do they have?

A guardian is someone appointed by the Tribunal to deal with the day-to-day affairs of an adult with impaired decision-making ability. Guardians make decisions about personal matters, such as medical treatment, accommodation, employment and support services. A guardian must be over eighteen years of age and not a paid carer (this does not include someone in receipt of a carers payment or allowance) or health provider for the adult. They can be a family member or friend as long as, in the Tribunal's opinion, they are appropriate and competent.

An administrator is someone appointed by the Tribunal to manage the financial matters of an adult who is unable to make these decisions or whose informal management arrangements are inadequate. Administrators must be over eighteen, and not a paid carer (this does not include someone in receipt of a carers payment or allowance) or health provider for the person in question.

They can be a family member or friend as long as, in the Tribunal's opinion, they have the skills and ability to carry out their duties responsibly.

A guardian and administrator have a number of requirements. Both are required to apply what is known as the "general principles" which are provided to the appointees. A guardian must also apply what is known as the "health care principles". An administrator is required to keep and maintain records, have regard to the "Prudent Person Rule" when making financial decisions and may be required to lodge annual accounts of administration.

Whilst this may sound overwhelming, the Tribunal has developed a range of information to assist people through this process and the Registry is also available to speak directly with a guardian or administrator in regard to any queries they may have. It is important to remember that these processes are put in place to protect people who due to their decision making impairment are vulnerable.

6. CLIENTS AT RISK

6.1 Is it preferable to go to GAAT in an emergency situation rather than the AG? I've heard about something called an interim order? How does this work?

Depending on the type of decision that has to be made will determine who you should contact. For example, if an urgent health care decision needs to be made and no one is willing or available to make the decision or the decision made by the person is contrary to the "health care principles", the Adult Guardian can be contacted to give consent for the decision.

The Tribunal can make an interim order where on face value the adult has impaired capacity and is at immediate and imminent risk of personal or financial harm. For example, the adult has an advanced level of dementia and has been coerced into selling their family home to an unknown party for an amount considerably below market value.

6.2 You are a service provider or a family member who has made a referral to GAAT but you are afraid of the family member retaliating if the referrer is disclosed. What protection is offered?

The act provides for the Tribunal to make a confidentiality order. However, such orders are only made in certain circumstances. For example, there is strong evidence to support that disclosure of the document/s may result in harm to the adult or other parties. The Tribunal may make a confidentiality over all or part of the document and to all or some of the parties. It is important to note that only "active parties" have a right to inspect the Tribunal file.

6.3 A son who has his father's EPOA, which is also registered with the land titles office, has put his father's property on the market to be sold, this is not in the best interests of his father, can GAAT do anything to prevent the sale of the property?

The Tribunal has the same power as the Supreme Court in regard to enduring power of attorney documents.

If the Tribunal is of the view that the attorney has not acted in the best interest of the adult, the Tribunal can make a number of orders including an order which overtakes the enduring power of attorney document. The Adult Guardian may also have a role on this matter by way of investigation and can suspend an attorney for a period of not greater than three (3) months.

The Adult Guardian would act as attorney for personal matters where a personal attorney/s has been suspended and the Public Trustee of Queensland would act as financial attorney where a financial attorney/s has been suspended.

6.4 What can a service provider do if they feel someone who has been appointed by the tribunal is misusing their power?

If a service provider has concerns that a guardian and/or administrator is misusing their powers, the Tribunal can direct the appointee to provide certain documentation and/or respond to the concerns and if not satisfied with the response initiate a review of their appointment.

7. REVIEW AND APPEAL RIGHTS

7.1 How often is an order reviewed (audited) if a family member is appointed and what happens in a review?

An order is reviewed shortly before the order expires. With the exception of the Public Trustee of Queensland and private trustee companies the maximum period an order can be made is for five (5) years. As detailed in 5.1, an administrator may also be required to lodge annual accounts of administration for examination.

If for some reason you believe that an existing order is unsatisfactory, you or the adult subject to the order can apply to the Tribunal to have it reviewed. This can be done at any time during the term of the order if there is new information that could affect the order, or if the circumstances have changed.

For example, you can apply for a review if you believe that there is no longer a need for a guardian or administrator, or that the existing guardian or administrator is not acting in the adult's interests.

7.2 What happens if you believe the tribunal has made an inappropriate decision? Can it be appealed? What is GAAT's complaints process?

In most cases there are two courses of action open to you:

- You can ask the Tribunal for a written Statement of Reasons for the decision (this must be done within 28 days after the notice of decision has been given)
- If you are an eligible person you can appeal to the Supreme Court.

The Guardianship and Administration Tribunal has a complaint process and considers, analyses, addresses and responds to all complaints. The Tribunal views this as an important element in continually improving and providing a high level of client service. The complaint process is broken into two (2) parts as detailed below:

COMPLAINTS ABOUT REGISTRY STAFF AND PROCESSES

The Tribunal's Registry, which carries out its administrative functions, is part of the Department of the Justice and Attorney-General.

1. If you have specific issues, concerns or complaints about a registry staff member and/or processes, you are encouraged to initially contact the staff member who you have been dealing with and attempt to resolve the problem.
2. If you remain dissatisfied, you should write to the Tribunal's Registrar (GPO Box 1639, Brisbane Qld 4001), who will investigate your concerns and reply to you in writing.
3. If you feel that your complaint has not been satisfactorily handled by the Registrar, you may wish to outline your concerns in writing to the Deputy Director-General, Department of Justice and Attorney-General (GPO Box 149, Brisbane Qld 4001).

You can write to the Registrar or Deputy Director-General regarding administrative matters or complaints about staff. However, because the Tribunal is an independent legal entity, they cannot comment about individual decisions or instruct it on how to conduct its proceedings.

COMPLAINTS AGAINST TRIBUNAL MEMBERS

Like all judicial officers, members of the Tribunal are independent of the State Government in order to ensure justice is administered fairly and impartially. If you are concerned about the conduct of a member of the Tribunal (as distinct from a decision he/she has made), you concern write to the Tribunal's President (GPO Box 1639, Brisbane Qld 4001). The President will determine how your concerns should be addressed and take whatever action is appropriate in the circumstances.

The consideration of such a complaint will not affect any decision that the Tribunal has made. The President will not take any action if the complaint is about the decision made by the member appointed to decide a particular proceeding. Reviewing decisions made by other members of the Tribunal is not one of the President's roles.

CONTACT DETAILS

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