

FINANCIAL AND PERSONAL MANAGEMENT OF AGING CLIENTS - POWERS OF ATTORNEY, ENDURING GUARDIANS, FINANCIAL MANAGEMENT ORDERS AND GUARDIANSHIP ORDERS

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1. Australia's population is aging. Australia's life expectancy in 2008 was 81 years old,¹ and the proportion of Australia's population over 65 is increasing. Inevitably, a significant proportion of older Australians will lose their decision-making capacity.
2. The Power of Attorney Act 2003 ("**POA Act**"), Guardianship Act 1987 ("**G Act**") and NSW Trustee and Guardian Act 2009 ("**NSWTG Act**") provide a legislative framework for securing substitute decision-making. These allow people who have capacity to put mechanisms in place by appointing substitute decision makers to manage their financial and personal affairs, and provide mechanisms for substitute decision makers to be appointed by the Supreme Court or the Guardianship Tribunal if the person has already lost capacity.
3. In 2009 / 2010, the Guardianship Tribunal received over 7000 new applications - 47% related to the appointment of a financial manager, 42% related to the appointment of a guardian. 60% of all the applications were for people aged 65 years or over. 49% of all the applications related to dementia. The Tribunal anticipates these trends to continue. 49% of the applications were made by a family member or friend, and 46% by someone in a professional relationship such as health professional or professional carer.²

FINANCIAL MANAGEMENT

Power of Attorney

4. A power of attorney is a cheap effective and accessible means by which a person's financial affairs can be managed when they are not present, not competent or not interested. A power of attorney may not need to be registered, and there is a prescribed form.
5. A power of attorney is a form of agency. A power of attorney confers authority, and does not affect title, rights or obligations.³
6. A power of attorney only covers financial decisions not lifestyle decisions – the attorney has power to pay for services and medical treatment, but has no determine where a person may live or consent to medical treatment.
7. A person must have capacity when they execute the power of attorney. However, there are circumstances where the Supreme Court may confirm the operation of

¹ World Bank, World Development Indicators 2010, extracted from Google public data

² Guardianship Tribunal Annual Report 2009/2010 available on Guardianship Tribunal website <http://www.gt.nsw.gov.au>

³ *Gibbons v Wright* (1954) 91 CLR 423 per Dixon CJ, Kitto, Taylor J.

the power of attorney even though the donor did not have capacity when it was executed.⁴ If there may be a doubt about capacity, it is prudent to obtain a doctor's report that the person had capacity at the same time as the power is executed.

8. The power can be limited – it may apply to limited specific assets, or may apply to all of the principal's assets and powers of appointment. If the power is intended to cover dealings with land, the power must be registered with the Office of Land and Property Information.
9. There are two types of powers of attorney, revocable and irrevocable.

Irrevocable

10. An irrevocable power of attorney is common in commercial documents such as loan facilities, leases and mortgages. An irrevocable power of attorney must be expressed to be irrevocable and given for valuable consideration.⁵
11. The attorney of an irrevocable power of attorney owes no duty to the principal, may act independently of the principal and contrary to the principal's directions.⁶
12. An irrevocable power of attorney can still be reviewed by the Supreme Court, and may be terminated if the court is satisfied that objects have been carried out, the objects have become incapable of being carried out, or the attorney is otherwise exhausted.⁷

Revocable

13. A revocable power of attorney is a species of agency.⁸ The attorney owes fiduciary duties to the principal and must follow the principal's instructions.

- fiduciary duties

14. The attorney owes fiduciary duties to the principal and must act in the principal's best interests. The attorney must not exercise their authority contrary to the principal's interest, and cannot profit from the donor, unless the instrument allows it or the donor gives informed consent.
15. The power cannot be used to divide the principal's estate according to the will before death, even though the principal may lack capacity and cannot make another will.

- gifts

16. At common law, an attorney could not use the power to confer benefits or give gifts to himself or herself or third parties unless the instrument included clear

⁴ Division 1, Part 4 and Division 3, Part 5, POA Act - Supreme Court ability to confirm operation of power despite mental incapacity of principal at time power was given.

⁵ s15, POA

⁶ *Quest Rose Hill Pty Ltd v White* [2010] NSWSC 939 (Ward J)

⁷ s28, POA Act

⁸ *Saad v Doumeny Holdings Pty Ltd* [2005] NSWSC 893 per Burchett J at para 24

and unambiguous terms. The POA Act provides that the attorney cannot confer benefits on himself or herself or give a gift unless the instrument expressly authorises it.⁹

17. The prescribed form Power of Attorney¹⁰ includes a clause that allows the attorney to give reasonable gifts, and confer benefits on himself or herself and third parties. The person drafting the power of attorney should carefully explain this clause and confirm that the principal is comfortable with it. The prescribed expression for reasonable gifts includes gifts to close friends and relatives of a seasonal nature or for a special event, or a donation that the principal would have been reasonably likely to make if they had capacity, and the gift is reasonable given the size of the estate and the principal's financial circumstances.¹¹ The prescribed expression for the attorney to confer benefits on himself or herself or a third party to meet the attorney's or third party's reasonable living and medical expenses is limited to housing, food, education, transport and medical care, and it is reasonable given the size of the estate and the principal's financial circumstances.¹²
18. It is not clear to what extent the attorney's right to confer benefits on himself or herself overrides the attorney's fiduciary duties to act in the principal's best interests and avoid a conflict of interest. In any case, if the attorney confers too many benefits on himself, it may be grounds for reviewing the power of attorney or for making a financial management order. In *Re R*¹³, the attorney had power to confer benefits on himself. He borrowed \$4,000,000 from the estate, at no interest, secured by an unregistered mortgage on a house that the attorney bought with the money. The attorney argued he was merely continuing the principal's tax arrangement strategies. Other interested parties successfully applied to the Guardianship Tribunal for a financial management order. Young J dismissed the attorney's appeal from the Guardianship Tribunal and said at para 52

“the Tribunal directed itself to the key question. This was whether there was going to be a danger of exploitation in the existing arrangement. Would there be a danger that even though he might be authorised to do so, the plaintiff might breach his fiduciary duties, perhaps taking the view that he was not breaching his fiduciary duties if he managed the estate in such a way that he would eventually inherit more than he had at the moment?”

19. It has been argued that the gifts are in the principal's interest because the gifts preserve the principal's pension. In *Moylan v Rickards*,¹⁴ the children sold the home pursuant to an enduring power of attorney, invested part of the proceeds to cover nursing homes fees and paid the balance to themselves as gifts. They argued that the gifts were in the principal's interest because they preserved the principals' pension and associated medical entitlements. The argument was not successful, in part because there was insufficient evidence that they discussed the matter with Centrelink.

⁹ s11 (gifts), s12 (confer benefits on attorney), POA Act

¹⁰ Schedule 2, POA Act

¹¹ Schedule 3, para 1, POA Act

¹² Schedule 3, para 2 and 3, POA Act

¹³ *In Re R* [2000] NSWSC 886 (unreported, 17 August 2000, Young J)

¹⁴ *Moylan v Rickards* [2010] QSC 327

- *follow instructions*

20. The donor must exercise his or her authority consistently with the donor's instructions. An attorney who fails to do so or who acts in excess of their agency commits a breach of the agency.¹⁵
21. In *Watson v Watson*¹⁶, the attorney distributed certain assets including the family house to himself for nominal consideration. This was against the donor's intention as disclosed in the will (which was executed after the power of attorney) that said that the children could live in the house and proceeds of sale were to be divided equally between four children. Berecny AM held that the house and moneys on trust and said (at para 49)

“any exercise by the defendant (attorney) of his authority under the power of attorney was to be done in a manner which was not inconsistent with the known intentions of the deceased as expressed in the will or contrary to the interests of the deceased”

Enduring

22. At common law, a power of attorney terminates when donor no longer has the mental capacity to revoke the appointment. The POA Act creates an enduring power of attorney, a revocable power of attorney that survives the donor's incapacity.¹⁷
23. An enduring power of attorney is only created if¹⁸ –
- the instrument expressly includes an intention that it continues to be effective even if the principal loses capacity
 - the instrument's execution is witnessed by a prescribed witness who is not the attorney
 - the instrument includes a certificate that the prescribed witness explained the effect of the instrument and the principal appeared to understand the explanation
24. Interstate enduring powers of attorney are recognised in NSW if they meet the criteria set out in section 25 of the POA Act. It is necessary to check interstate legislation whether they recognise a NSW power of attorney.

Attorney

25. A principal should not take too much comfort from the legislative framework. An attorney has fiduciary duties, but is not generally supervised (unlike trustees) and the attorney may not appreciate their fiduciary obligations. It may be possible to apply to the court on the basis that the attorney has breached their fiduciary duties or for the court to review the power of attorney.¹⁹ However, this requires effort, evidence and expense - the other stakeholders may not be willing to take steps, and the person most affected, the principal, may not have capacity.

¹⁵ Dal Pont “Law of Agency” 2008 para 11.4

¹⁶ *Watson v Watson* [2002] NSWSC 919

¹⁷ Part 4, Division 2, POA Act

¹⁸ section 19, POA Act

¹⁹ Part 5, POA Act

Even if the court impugns the attorney's behaviour, the attorney may have already dissipated the assets.

26. The attorney may not be malicious. They may have no consciousness of the wrongdoing and may be able to reconcile and rationalise their behaviour – the will gives it to me anyway, mum is in a nursing home and won't miss it, its just a loan that will be paid back, if dad knew my current circumstances this is what he would have wanted.
27. The principal needs to trust the attorney, trust their judgment, and trust their ability to navigate the interests (and opinions!) of the principal's family and other interested persons. The principal and his or her advisers should carefully explain to the attorney the nature of the power of attorney and the attorney's fiduciary obligations.
28. Further, the instrument itself should include checks and balances and integrity measures.
29. First, appointing two or more attorneys, and requiring at least two signatures for all transactions or for significant transactions.
30. Second, the principal may instruct his or her advisers only to release the power when circumstances arise such as when the principal is travelling overseas or when the principal loses capacity. Notably, the attorney does not have to be present when the power is originally executed, although the attorney needs to accept the power by signing the document before it can operate.²⁰
31. Third, requiring the attorney to consult other interested parties (or seek approval from other interested parties) before dealing with certain property.
32. Fourth, restricting the attorney from dealing with certain assets such as binding death benefit nominations or selling the family home. However, restrictions reduce the attorney's flexibility to deal with unforeseen circumstances.
33. This is illustrated by *Moylan v William*²¹. The testator gave her husband a share of the value of her home at the date of death, but her children argued he was not entitled to anything because her children from a previous relationship sold the house before her death pursuant to an enduring power of attorney. Sounds brutal. However, the testator had Alzheimers and lived in a nursing home. Her husband had a serious heart attack and couldn't look after himself and was living with a son from a previous relationship. So no-one was living in the house. The house was in bad repair. The children could not afford to pay the nursing home fees *and* maintain the house. So they paid for some necessary repairs to the house and then sold it.

Ademption

34. A gift in a will is *adeemed* (that is, the gift fails) if the property that is the subject of the gift no longer exists – for example, if the testator bequeaths her house in

²⁰ section 20, POA Act

²¹ *Moylan v Rickards* [2010] QSC 327

Dubbo to her grand-daughter but she no longer has a house in Dubbo, or the testator bequeaths his Volvo car to his son but he sold his Volvo 20 years ago.

35. These issues may be addressed by careful drafting of the will (refer to a car rather than a make of car, refer to principal residence rather than a street address, provide a legacy if the asset is disposed of), or by regularly updating the will. However, if an attorney disposes of property pursuant to an enduring power of attorney the principal may not have capacity to update the will. Providing a copy of the principal's will to the attorney may prevent inadvertent ademption and inadvertently defeating the principal's testamentary intentions. However there may be circumstances where the attorney needs to dispose of the property such as a compulsory acquisition or because the principal can no longer afford to maintain the property or service the mortgage.
36. The POA Act provides that if an attorney deals with property that is specifically devised to certain legatees pursuant to an enduring power of attorney, then the gift is not adeemed and the legatees are entitled to any "surplus moneys".²²

Death

37. The power of attorney ceases on the principal's death. Thereafter, the only person who is entitled to deal with the principal's financial affairs is the executor. It may take some weeks for probate to come through so it may be prudent for a person to be a second signatory on the bank account so that they access the account to pay expenses such as the funeral.

Review

38. The Guardianship Tribunal and the Supreme Court may review an enduring power of attorney²³.
39. The people who can apply for review include any other person who in the tribunal's opinion has a proper interest in the proceedings or a genuine concern for the principal's welfare²⁴
40. The tribunal may make orders if it is satisfied that it would be in the best interests of the principal or that it would better reflect the wishes of the principal²⁵
41. The orders that the tribunal may make include removing a person as an attorney²⁶, appointing a substitute attorney if an attorney has been removed or otherwise vacated office²⁷, or requiring the attorney to furnish accounts or other information to the tribunal or other person nominated by the tribunal and the accounts be audited,²⁸ or requiring the attorney to prepare a financial management plan.²⁹

²² section 22, POA Act

²³ section 26 and 33(2), POA Act

²⁴ section 35 POA Act

²⁵ section 36(4), POA Act.

²⁶ Section 36(4)(b), POA Act

²⁷ section 36(4)(c), POA Act

²⁸ section 36(4)(e), POA Act

²⁹ section 36(4)(e)(iv), POA Act

42. However, the Supreme Court or the Guardianship Tribunal may treat the application as an application for a financial management order.³⁰

Financial Management Orders

43. A financial management order may be made by the Guardianship Tribunal³¹ or the Supreme Court.³² The Guardianship Tribunal may be cheaper and more expeditious, but legal representation only allowed with leave and the procedure is informal and does not follow the rules of evidence.
44. The strength of a financial management order is that it *deprives* the person of their capacity to deal with their financial affairs. If a principal makes an enduring power of attorney, the principal may still continue to deal with their finances so they may be vulnerable to people who say they had no notice of their lack of capacity.
45. Further, a financial management order may be made where the person has lost capacity without having mechanisms in place to manage their financial affairs. For example, a person may suddenly lose capacity because of a stroke and the family may not have access to bank accounts.
46. A financial management order may be made over all of the assets or may exempt some of the assets. For example, it may exempt the pension.
47. An application for a financial management order cannot be withdrawn just because disputing family factions have reached a compromise. One of the principles of the Guardianship Act is that the welfare and interests of the person should be given paramount consideration,³³ so the Tribunal may continue to hear an application even if no one is pushing for the order.
48. The Supreme Court will only make the order if they are satisfied that the person is incapable of managing his or her affairs.³⁴
49. The Guardianship Tribunal will only make the order if has considered the person's capability to manage his or her own affairs and is satisfied that³⁵
- a. the person is not capable of managing those affairs, and
 - b. there is a need for another person to manage those affairs on the person's behalf, and
 - c. it is in the person's best interests that the order be made.
50. In *PY v RJS*³⁶, Powell J considered "incapable of managing affairs" and said at 702

³⁰ section 37, POA Act

³¹ section 25E, G Act, although section 25K provides that the Guardianship Tribunal can only make interim financial management orders if the question of the person's capacity to manage their affairs is already before the Supreme Court, and section 25L provides that the Tribunal may refer the matter to the Supreme Court

³² section 41, NSW TG Act

³³ section 4(a), G Act

³⁴ section 41(1)(a), NSW TG Act

³⁵ section 25G, G Act

“It is my view that a person is not shown to be incapable of managing his or her own affairs unless, at the least, it appears:

(a) that he or she appears incapable of dealing, in a reasonably competent fashion, with the ordinary routine affairs of man; and

(b) that, by reason of that lack of competence there is shown to be a real risk that either:

(i) he or she may be disadvantaged in the conduct of such affairs; or

(ii) that such moneys or property which he or she may possess may be dissipated or lost

...it is not sufficient, in my view, merely to demonstrate that the person lacks the high level of ability needed to deal with complicated transactions or that he or she does not deal with even simple or routine transactions in the most efficient manner”

51. However, they must know more than how to pay a bill. In *H v H*,³⁷ Young J said

“The ordinary affairs of mankind do not just mean being able to go to the bank and draw out housekeeping money. Most people’s affairs are more complicated than that, and the ordinary affairs of mankind involve at least planning for the future, working out how one will feed oneself and one’s family, and how one is going to generate income and look after capital. Accordingly, whilst one does not have to be a person who is capable of managing complex financial affairs, one has to go beyond just managing household bills”

Manager

52. The court or tribunal may appoint a suitable person as manager or commit the management of the estate to the NSW Trustee.³⁸ A private manager cannot interfere with the estate and can only protect the estate, unless they obtain instructions from the Supreme Court or are authorised by the NSW Trustee.³⁹

53. The NSW Trustee and Guardian will impose fees for managing the estate.

54. The manager may not do what the family wants them to do. In *Stirling v Stirling*,⁴⁰ all of the assets were in the husband’s name. The Protective Commissioner (as it then was) was appointed financial manager of the wife who had dementia, and applied to the Family Court for 50% of the combined assets even though the husband and wife were not separated. The Family Court awarded her 40% and dismissed the husband’s appeal.

Review

³⁶ *PY v RJS* [1982] 2 NSWLR 700, quoted with approval in *Guthrie v Spence* [2009] NSWCA 369 by Campbell JA (Basten JA and Handley JJA concurring)

³⁷ *H v H*, unreported, 20 March 2000

³⁸ section 41(1)(b), NSWTG Act; section 25M G Act

³⁹ section 25M, G Act

⁴⁰ *Stirling v Stirling*, Family Court, unreported 15 September 200

55. The Tribunal may order that the order is to be reviewed at a specified time, may itself review the order at any time, and must review the order if there is an application⁴¹ by the manager, the NSW Trustee, the protected person or a person genuinely concerned for the welfare of the protected person.⁴² The Tribunal may revoke, confirm or vary the order on a review.⁴³ The Tribunal may only revoke the order if it is satisfied that the protected person is capable of managing their affairs or if it is in their best interests that the order be revoked.⁴⁴
56. The Tribunal may also review the appointment of the manager. The Tribunal may itself review the appointment, and must review the appointment if there is an application by the NSW Trustee or a person genuinely concerned for the welfare of the protected person.⁴⁵ The Tribunal may revoke or confirm the appointment, and may revoke the appointment if the person appointed seeks the revocation, if it is in the best interests of the protected person or the underlying financial management order is revoked.⁴⁶

PERSONAL MANAGEMENT

Enduring Guardians

57. A person who is competent may appoint a person as his or her guardian by instrument in writing.⁴⁷ This covers lifestyle decisions such as where a person will live, what doctors they consult, what services they receive and consent to medical treatment or where a person should live.
58. A pro forma enduring guardian form is available on the Guardianship Tribunal's website, on the Publications page, under the heading "Planning for your future".⁴⁸
59. The guardian arrangements only apply when the person needs a guardian,⁴⁹ that is, they have a disability and because of the disability are totally or partially incapable of managing their affairs.⁵⁰ If there is a dispute about capacity, a doctors' certificate to the effect that a person was, on that day or during that period, totally or partially incapable of managing his or her person because of a disability, is evidence of the fact that the person needed a guardian.⁵¹
60. The guardian cannot be authorised to act illegally. They can only consent to medical and dental treatment to promote and maintain the health and well being of person who lost capacity. However, they are entitled to refuse treatment.

Guardian

⁴¹ section 25R, G Act

⁴² section 25N, G Act

⁴³ section 25P(1), G Act

⁴⁴ section 25P(2), G Act

⁴⁵ section 25S, G Act

⁴⁶ section 25U, G Act

⁴⁷ section 6, G Act

⁴⁸ <http://www.gt.nsw.gov.au/information/publications.cfm#Planning%20for%20Your%20Future>

⁴⁹ section 6A, G Act

⁵⁰ section 3 "person in need of a guardian"

⁵¹ section 6N, G Act

61. The protected person may appoint any person to be a guardian provided they are over 18 and provided the person is not involved in a professional or administrative capacity in providing medical, accommodation or any other services to the protected person for fee or reward (or their spouse, child, brother, sister or parent)⁵²
62. The protected person may appoint people to act jointly, but then they must all agree on any decisions. This may cause deadlock, which may be difficult if a critical urgent decision needs to be made at 3am in a hospital. If the protected person wants different people to exercise different functions, the protected person needs to make a separate appointment, specifying functions want particular guardian to exercise.⁵³

Revoke

63. The guardianship may be revoked by
 - a. a person revoking the appointment by instrument in writing, in the prescribed form, signed by the appointor, witnessed by eligible witness who certifies the appointor executed voluntarily and appeared to understand, when the appointor has legal capacity⁵⁴
 - b. the appointor marrying⁵⁵
 - c. the appointee resigning⁵⁶
 - d. the tribunal making a guardianship order that suspends the guardian's authority⁵⁷
 - e. the tribunal reviewing the appointment and revoking the appointment⁵⁸

Review

64. The Guardianship Tribunal and the Supreme Court⁵⁹ may review the appointment of an enduring guardian. The Tribunal may review the appointment on its own motion or at the request of a person who in the tribunal's opinion has a genuine concern for the appointor's welfare. The tribunal must serve a notice on each party to the review before carrying out the review specifying the date, time and place of the review, and may suspend the appointment pending the review.⁶⁰ The Tribunal may revoke or confirm the appointment (with or without varying the functions of the guardian), and must not revoke the appointment unless the guardian requests it or the Tribunal is satisfied that it is in the interests of the appointor to revoke the enduring guardianship.⁶¹
65. If a person applies to revoke an enduring guardian, the Tribunal may proceed as if it was an application for a guardianship order or a financial management order.⁶²

⁵² section 6B, G Act

⁵³ section 6D, G Act

⁵⁴ section 6H, G Act

⁵⁵ section 6HA, G Act

⁵⁶ section 6HB, G Act

⁵⁷ sections 6I, 14 and 16, G Act

⁵⁸ section 6J and 6K, G Act

⁵⁹ section 6L, G Act

⁶⁰ section 6J, G Act

⁶¹ Section 6K, G Act

⁶² section 6K(3), G Act

Medical Consents

66. If a person has already lost capacity, the person responsible for the protected person or the Guardianship Tribunal may give consent to medical or dental treatment.⁶³ Consent is not required if the medical practitioner or dentist considers the treatment is necessary as a matter of urgency to save the patient's life, prevent serious damage to the patient's health, or to prevent the patient from suffering or continuing to suffer significant pain or distress (except for "special treatment").⁶⁴
67. Minor treatment can also be carried out without consent if there is no responsible person or the responsible person either cannot be contacted or is unable or unwilling to make a decision, and the medical practitioner or dentist certifies in writing that the treatment is necessary and a form of treatment that will most successfully promote the patient's health and well-being and the patient does not object.⁶⁵

Guardianship Orders

68. If a person has already lost capacity, the Guardianship Tribunal and Supreme Court may appoint a guardian and make a guardianship order. Further information about the Guardianship Tribunal is available on their website <http://www.gt.nsw.gov.au/>
69. The Guardianship Tribunal may make a guardianship order if they are satisfied that the person is in need of a guardian.⁶⁶ A person is in need of a guardian if the person has a disability and because of the disability they are totally or partially incapable of managing his or her person.⁶⁷
70. A person has a disability if they are⁶⁸
- a. intellectually, physically, psychologically or sensorily disabled
 - b. of advanced age
 - c. mentally ill person within the meaning of the Mental Health Act 2007; or
 - d. otherwise disabled.
71. The Guardianship Tribunal was originally established for people with intellectual disabilities, but in 2009/2010 around 49% of the applications were for people with dementia. Notably however, an older person may be disabled even if they have no dementia – they may have been "kidnapped" and moved against their will.
72. In considering whether or not to make the order, the Tribunal will have regard to⁶⁹

⁶³ section 36, G Act

⁶⁴ section 37(1), G Act

⁶⁵ section 37(2) and (3), G Act

⁶⁶ section 14(1), G Act

⁶⁷ section 3 "person needing a guardian"

⁶⁸ section 3(2), G Act

⁶⁹ section 14, G Act

- a. The views of the person, their spouse and their carer;
 - b. The importance of preserving family relationships;
 - c. The importance of preserving the person's particular cultural and linguistic environments; and
 - d. the practicability of services being provided to the person without the need for the making of such an order.
73. The guardianship order may be limited or plenary, continuing or temporary, and may be made subject to conditions.⁷⁰

Guardian

74. The Tribunal can only appoint a person as a guardian if⁷¹
- a. The person is over 18;
 - b. The personality of the guardian is generally compatible with the protected person;
 - c. There is no undue conflict of interest (including financial interest) between the guardian and the protected person;
 - d. The guardian is willing and able to exercise the functions

Alternatively, the Tribunal may appoint the Public Guardian.

Functions

75. The Tribunal determine what functions to give a guardian including⁷²
- a. deciding the place (such as a specific nursing home, or the appointor's own home) in which the appointor is to live;
 - b. deciding the health care that the appointor is to receive;
 - c. deciding the other kinds of personal services that the appointor is to receive;
 - d. giving consent to the carrying out of medical or dental treatment
 - e. any other function relating to the appointor's person that is specified in the instrument (such as for example, access to the person)
76. If the guardian has the power to consent to medical and dental treatment, the guardian cannot override the protected person's objections to treatment unless the Tribunal has specifically authorised the guardian to override the protected person's objections.⁷³
77. The guardian has custody of the person to exclusion of any other person to the extent the order provides, has such of the functions of a guardian of that person's person to the exclusion of any other person, to the extent that the order provides, and has the power to make the decisions, take the actions and give the consents (in relation to the functions specified in the order) that could be made, taken or given if the protected persons had legal capacity.⁷⁴ They are also

⁷⁰ section 16, G Act

⁷¹ section 17, G Act

⁷² section 6E, G Act

⁷³ section 46A, G Act

⁷⁴ section 21(2), G Act

empowered to take such measures or actions as specified in the order to ensure person under guardianship complies.⁷⁵

Term

78. The initial term of the order will be 1 year, and may be renewed for up to 3 years.⁷⁶ However, the initial order may be up to 3 years and it may be renewed up to 5 years if the protected person has permanent disabilities, it is unlikely that the person will become capable of managing his or her person, and there is a need for an order of longer duration.⁷⁷

Review

79. The order may be reviewed by the Tribunal at any time, and must be reviewed at the request of a person who is entitled to a review (guardian, the Public Guardian, the person who is the subject of the review, and any person who has a genuine concern for their welfare⁷⁸) and just before the order expires.⁷⁹ On review, the order may be varied, revoked or confirmed.⁸⁰

⁷⁵ section 21A, G Act

⁷⁶ section 18(1), G Act

⁷⁷ section 18(1A) and (1B), G Act

⁷⁸ section 25B, G Act

⁷⁹ section 25, G Act

⁸⁰ section 25C, G Act