

PROFESSIONAL GUARDIANSHIP IN AUSTRALIA
Is guardianship a profession and who cares anyway?

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Professional Guardianship in Australia.

“A guardian is the representative of a person with a disability, appointed to stand up for them, represent their interests in the world and ensure that their rights and dignity are respected and promoted.

In order to foster a civil society in which people with disabilities are accepted and included it is essential that guardians maintain the highest possible professional skills, knowledge and standards in carrying out their important role”

So reads the program abstract for this presentation. But before we turn to the questions of whether statutory guardians in Australia can claim to be part of a profession and the secondary question of what needs to be done to enhance professionalism, I want to begin by addressing the assumption that guardians ought to be professionals.

Guardians should be professionals.

We assume that it is a good thing for guardians to be professionals, based on the importance of their role and the authority and power they have in the lives of vulnerable people.

When we look at Australian legislation and that of many other countries we find that the same principles and responsibilities apply to all legally appointed guardians, be they family members or public professional guardians. Also, Australian legislation provides that family members or friends should be appointed wherever possible and that the appointment of the public guardian is a “last resort” - the last resort of the last resort as the appointment of a guardian is itself a last resort. In many countries there is no provision to appoint anyone other than a family member or friend who will act on a voluntary basis. In other countries a professional person may be appointed only if the person with a disability is able to pay their fee – there is no publicly funded guardianship. In some countries there is a mix of paid and state-funded professional guardians. Australia is unusual in having all its professional guardians state-funded.

Leaving aside the issue of whether the lack of publicly funded guardianship overseas is a matter of economics or principle we must consider the questions:

- Why does our legislation prefer the appointment of a family member/friend if there is one who is available and suitable?
- Should public guardians strive to be more professional or should they strive to be more like a good parent / family member?

The subsidiary questions are:

- What are the differences between being a good family member or parent and being professional?
- Is it possible for a guardian who is involved for only a short time in the person’s life to act like a good parent for that time?

- Do professional guardians use knowledge, standards, skills and ethics to compensate for the bonds, shared history and understanding of the person’s life narrative of a family member who will be there long after the guardianship order is revoked?

Family member	Professional/public guardian
Has known the person over a long period	Knows the person during the course of the order
Has a personal relationship that goes beyond the terms of guardianship.	Has a professional relationship based on guardianship role.
Relationship based on personal trust and respect.	Relationship based on professional trust and respect.
Makes decisions based on knowledge gained in the relationship with person	Makes decisions based on evidence and professional judgment.
Likely to me more subjective and emotionally committed / involved.	Strives to be objective and keep interests of client paramount
Interdependence – support. More likely to operate on common sense rather than legislative principles.	Independence, autonomy and best interests are paramount principles.
Maintains personal boundaries	Maintains professional boundaries and distance.
Is generally freely available and there is very regular contact.	Available during business hours but each guardian has many other clients.
Relies largely on life knowledge	Relies largely on professional knowledge.
Carries authority of the Board or Tribunal only in relation to client.	Carries the authority of the Public Advocate and the Board or Tribunal.
Is not paid.	Receives a salary.
Time under guardianship is generally longer. -	Time under guardianship is shorter – test of whether there are decisions still to be made more firmly applied.
Often appointed where guardianship not likely to jeopardise relationship with family member.	Likely to be appointed in more difficult situations and where the client is opposed to guardianship.

It seems to me that guardianship by family and guardianship by professionals are two very different things and should be recognised as such. A public guardian cannot be the same as a family guardian. However both family and professional guardians should both possess the personal qualities that enable them to stand in the shoes of the person with a disability and adopt a philosophy of “You are one of us, I am only one step away from your situation” or “There, but for fortune go I”.

Is guardianship a profession?

A quick Google search of the characteristics of a profession resulted in 28 possibilities. I have selected nine that in my view apply to the human service / welfare fieldⁱⁱⁱ

- Skill based on a body of knowledge
- Knowledge informed by research and evidence

- Responsibility placed on the professional to maintain currency of knowledge.
- Extensive period of education.
- Professional association / licensing and accrediting authority.
- Work autonomy and the exercise of professional judgment.
- Operate within a code of professional conduct or ethics.
- Operate on an internalised set of values on principles of public service and altruism.
- Professionals have power and authority.

If we set these characteristics beside the work of statutory guardians at the Office of the Public Advocate in Victoria we find that in many ways guardianship in Australia has the characteristics of a profession.

- Most guardians have an appropriate university degree. Current staff members have degree qualifications in social work, psychology, law, disability studies, education, medical sciences and social sciences/humanities.
- They have five to ten years' relevant professional experience and are paid accordingly. Other States have a range of salary grading but guardianship is not seen as a graduate entry position.
- Guardians do their work under the direct delegation of the Public Advocate in accordance with the legislation, policies and guidelines of the Public Advocate.
- They accept accountability to the Public Advocate and to VCAT for their work.
- They work in accordance with the professional ethics and standards of the organization.
- They participate in professional supervision within the organization.
- They participate in case discussions with colleagues.
- Guardians exercise a high level of professional judgment and autonomy in their work and take responsibility for their actions, conduct and decisions.
- They acquire and apply a wide body of knowledge that includes knowledge of legislation and Court processes and knowledge of services and systems for people with disabilities.
- They contribute to the systemic work of the Public Advocate of facilitating, promoting and encouraging a community in which people with disabilities are fully included and valued.
- They engage with broader policy and philosophical issues and debates.

There are, however, several ways in which statutory guardianship in Australia does not yet measure up as a profession:

- Guardianship in Australia and elsewhere lacks a sophisticated / developed underpinning theory, framework and philosophy.
- The field has not identified a body of knowledge and skill in any systematic way.
- There is no recognised university education that specifically equips a person to become a guardian.
- Offices of the Public Advocate and Public Guardian struggle to provide and/or access relevant professional development programs.
- Guardians vary in the extent to which they take responsibility for the maintenance of their knowledge and skills.

- There is no professional association at a national level. Most countries in Europe and North America have professional guardianship associations.
- There is no registration or accreditation of guardians. It could be argued, however, that this “quality control” mechanism is effectively provided through the employing organization of the Public Guardian or Public Advocate in each State.

What needs to be done?

We come to the second question posed in the abstract. What, if anything, needs to be done for guardianship to legitimately claim to be a profession and to meet the high expectations and trust placed in guardians by people with disabilities, community and government?

In my view we need:

- A professional association. A professional association would develop standards and ethics for the work that are consistent across the States and to some degree independent of the employing organization. It should promote professional development, run conferences and provide a focus for research and writing by publishing a bulletin/journal. It should facilitate the exchange of ideas and foster amongst its members the sense of being part of something bigger than the employing organization. The current AGAC could come under its umbrella and it could be developed by an expansion of the existing AGAC structure / website etc. It should be open to all those working in the field, including Tribunal members and staff and those working as administrators. Membership should also be open to those with an academic or other identified interest in the field. Australia is too small for demarcation disputes and narrow specialisation. The questions of accreditation and registration are secondary but could be addressed in time.
- Underpinning theory, framework and philosophy. It is extremely difficult to develop this from within the professional practice area. Universities generally develop the theory and provide the research base for the recognised professions and the lack of recognised university education in this area means that those contributing to the theory and philosophy of guardianship are scattered across the disciplines, are often writing only on associated issues and their contributions are almost accidental.
- An identified body of knowledge and skill to form the basis for the professional development of those working in the field. By its nature, it would be dynamic and developing and certainly not rigid or prescriptive.

Body of knowledge and skills for guardianship.

Rationale

Each profession has a body of knowledge and identified skills that are generally agreed upon as necessary and relevant for a person working in the area. For most professions that basic knowledge is defined and acquired at a university by studying an undergraduate degree course that is accredited by the university and the relevant professional organization. This provides entry into the profession. Once within the

profession, on-going professional development is generally required to maintain currency of knowledge and skill. Some professions, such as law and medicine require yearly professional development to retain professional registration.

The area of guardianship, both in Australia and overseas has no such academic base although a university degree is usually required for entry into the field. A university degree indicates that the person has acquired the ability to read, analyse, consider, research, write and present at an appropriate intellectual level. It is important to note that guardianship is not graduate entry work and a person entering the field also needs considerable life and work experience. Every guardian will bring different knowledge, skills and qualities into the job, based on their previous education, work background and personal qualities. This provides richness, breadth and energy in the workplace and allows people to learn from each other. However people should not remain, conceptually, where they were when they started. The challenge is to build on each person's academic base and previous experience and help them to develop the knowledge, understandings and experience relevant to guardianship that they did not have before they started.

Australia does not have a National Guardianship Association to provide for professional development and/or accreditation. Because Australia's professional guardians are located only in public statutory offices in each State, it becomes the responsibility of the Office of the Public Guardian or Public Advocate, in conjunction with the guardians and advocates who are working there, to ensure that staff are professionally equipped to meet the requirements of the work and that they maintain currency of knowledge, skill and understanding.

In any profession, it is important that the professional knows not just the particulars of their area but also understands the wider framework of the work, its theoretical basis and philosophy, its historical background and can engage with the current and emerging issues within their own and associated fields. This is what separates training from education.

In my view, however, it would be a mistake to seek to develop an accredited course for the work of guardianship and locate such a course within the University system, possibly at Post-graduate Diploma or Masters level. Such an approach risks completion of the course becoming the pre-requisite for employment or a requirement for progression thus losing the richness of diverse backgrounds. An alternative is for the identified areas to be covered by means of a reading program and study groups within the organisation, in conjunction with more formal professional development opportunities and tailor-made programs. The organization should have a real commitment to making these programs available and staff should have a personal commitment to their own professional development.

It is suggested that an audit against the framework could be conducted with each new member of staff to identify where their professional development needs lie and a program be developed to be completed over the first year of employment. Every staff member should also undertake appropriate professional development in each year of their employment to go deeper into some areas, ensure that they keep up-to-date with developments in the field and continue to grow professionally.

The following provides my attempt to suggest a framework for education and professional development relevant to the work of a guardian and advocate. The only thing I am sure of is that it is not exhaustive or complete although I was surprised when I sat down and thought about it of how many areas there are to cover. Instead I hope it might trigger your ideas about the fundamental areas of knowledge and skill for a guardian. If we do not have a developed framework / body of knowledge our professional development can appear random, ad hoc and somewhat chaotic. We grasp the nearest tree without ever seeing the forest in which it grows.

By its nature, an education framework is broad and covers theory and ideas as well as knowledge and practice skills. In my experience, one of the hurdles we need to overcome in engaging and enthusing people about professional development is the insistence by some (at any level in any organization) that professional development is of direct, immediate, articulated relevance to their current work.

A Professional Development Framework for Guardianship.

Disability and guardianship

1. Historical perspectives-approaches towards people with disabilities in Australia and overseas.
2. What is community? Ideas of community development and the contribution of people with disabilities within the community. The civil society.
3. Paradigms and models of disability and their effects on policy, service provision and community participation. Issues regarding social attitude, stigma and labelling, integration and social roles in relation to current approaches to service delivery. Specific philosophies of normalisation, social role valorisation and the developmental model should be understood.
4. Knowledge of different types of disability and the range of effects of these disabilities on individuals, including medical, personal, social and community impact. In particular, knowledge of the major disabilities of people who may come under guardianship: intellectual disability, acquired brain injury, psychiatric disability and dementia.
5. Principles and practice of service provision for people with disabilities. The interaction between service providers and guardians.
6. Knowledge of the service systems, both government and non-government available to support people with disabilities with the guardianship jurisdiction (the relevant Australian State).

Medical matters and guardianship

1. Bioethics and disability.

2. Knowledge and understanding of medical consent principles and the responsibilities of a guardian.
3. Knowledge and understanding of the law relating to medical decisions, (including in Victoria the *Medical Treatment Act 1992*.)
4. Knowledge and understanding of medical guidelines, policies and established practice relevant to people with disabilities.
5. Knowledge and understanding of the medical, legal and ethical dimensions of end-of-life issues.
6. Major legal cases pertaining to medical matters.

Law and guardianship

1. Basic understanding of the history, principal legal concepts and institutions of law.
2. Evolution of the common law; the division between law and equity; theories of law; basic concepts, values and assumptions. Statute law and the interpretation of statutes. Administrative law: concepts and operation in Australia.
3. The *parens patriae* principle: its origins in the Western legal tradition, its operation and relation to guardianship.
4. An understanding of contemporary human rights with a focus on human rights law and United Nations conventions.
5. Legal obligations and ethical responsibilities applying to guardians and other professionals.
6. Detailed knowledge of the relevant State legislation (in Victoria the *Guardianship and Administration Act 1986* and in particular the sections on guardianship, medical consent and the Public Advocate.)
7. An understanding of the role of statutory positions, such as the Public Advocate, within legislation.
8. Knowledge of legislation directly relevant to people under guardianship: (in Victoria the *Guardianship and Administration Act*, the *Mental Health Act*, the *Disability Act*, *Disability Discrimination Act*).
9. Knowledge of other legislation that people with disabilities are likely to encounter: (in Victoria the *Instruments Act*, the *State Trustees Act*, the *Crimes (Family Violence) Act*, *VCAT Act*).
10. Detailed knowledge of enduring powers of attorney and their intersection with guardianship.

11. Knowledge of guardianship systems operating in other Australian States and overseas
12. Court and Tribunal processes:(in Victoria the operation of the Victorian Civil and Administrative Tribunal – Guardianship List.)
13. Report writing and presentation before the relevant Tribunal (in Victoria the Victorian Civil and Administrative Tribunal.)
14. Knowledge of major legal cases relevant to guardianship.

Theory, Philosophy and Ethics of Guardianship and Advocacy.

1. Traditions of Western philosophy and ideas of freedom, autonomy and the individual. Development of rights theory. Paradigms and challenges to the paradigms.
2. Knowledge and understanding of the principles and history of human rights, best interests and protection.
3. Ideas of dependence, independence and interdependence.
4. Ideas of the person – what does it mean to be human?
5. Principles and practice of ethics and ethical thinking and processes.
6. Decision-making theory. Knowledge and understanding of the principles and operation of substitute decision-making. Knowledge and understanding of principles and operation of supported or assisted decision-making.
7. The ethics of state intervention in the lives of citizens.
8. The significance of culture and religion in peoples' lives.
9. Power: sources, location and operation of power in society, systems and relationships. Powerlessness and disadvantage.
10. Advocacy: general principles, its operation within guardianship. Self-advocacy.
11. Basic understanding of theories of knowledge: alternative paradigms. How knowledge is formed and used in relation to people with disabilities.

Professional skills

1. Skill in understanding and working with people with disabilities and with their families.

2. Skills in communicating, mediating, negotiating and working constructively with other professionals.
3. Skills to negotiate with a range of stakeholders, identify and develop community-based opportunities, manage organizational resources and workload, assess client needs and aspirations, and to plan, implement and evaluate clients' guardianship plans.

Organisation and administration.

1. Operation of the case management system, record- keeping requirements.
2. Requirements and processes of the organisation, its links to the State public Service and the latter's requirements.
3. Accountability requirements.
4. Skills to work within an organization and work constructively and harmoniously with colleagues.
5. Computer and word processing skills

Conclusion

We may conclude that guardianship is professional work, fulfilling many of the criteria of a profession. Those entering the work generally bring relevant tertiary education and experience from another established profession.

The challenge for guardianship is to build on this background by providing creative, challenging professional development opportunities and setting up a National Association to develop and promote the field so that guardianship may legitimately and confidently take its place as a profession.

We work with vulnerable people, many of whom do not have strong family or community support. By developing and maintaining professional guardianship, we can fulfil the trust placed in us by people with disabilities, the community and the State and help to foster a civil society in which people with disabilities are accepted and included.

ii

There are, of course downsides to the professions that need to be guarded against. The most common criticism is that professionals receive excessive fees. You may remember the children's song, "Miss Polly had a dolly who was sick, sick, sick" It ends up: "He (the doctor) wrote on his paper for a pill, pill, pill, I'll be back in the morning with my bill, bill, bill". Unfortunately, the Wiggles have become politically correct and now sing "I'll be back in the morning, yes I will, will, will" but children still sing the old version. Professionals are also criticised for using "expert"

knowledge to exclude others and there is a real danger of a profession fostering a concept of people with disabilities as “other”. There are many different ways of knowing and the knowledge of a family member or friend about a person is qualitatively different to that of a professional.