



Supported by Department of Communities (Disability Services)

# SC's, Guardianship & Advocacy



# About DDWA

Developmental Disability WA (DDWA) was established in 1985 and is a trusted source of independent information, advocacy, education and support for people with intellectual and other developmental disability, their families and the people who support them.

## Our Vision

People with developmental disabilities and their families live their lives their way.

## DDWA works in three main ways:



To support people with developmental disabilities and their families to have a strong voice and seek change where needed.

To influence government and other decision makers to make positive and lasting change.



To build the expectations and capacity of people with developmental disability and their families.

To inform people and families about their rights, choices and options to equitable services and supports.



To support people with developmental disabilities and their families to live their everyday lives.

To partner with others to develop more connected and inclusive communities.



# Objectives

Raise awareness of Natural Guardianship

Use case examples to illustrate key issues

Encourage involvement of independent advocacy

Affirm that there are absolutely times when an application for Guardianship is needed





# Natural Guardianship

Natural Guardianship is where a parent's Guardianship authority continues beyond the age of 18 for their child with Intellectual disability, in the making of general life decisions, and until there is an apparent reason\* for seeking formal Guardianship through a legal process.

*\*apparent reason*

*Significant life decisions where there may be conflicting opinions or concerns about the mis-use of Natural Guardianship authority*

Formal Guardianship *does not* need to be applied for as soon as a young person turns 18.



# What is Guardianship under WA law?

Guardianship is having decision-making authority over another person's affairs

Under the Guardianship law in WA, it can cover the following areas

- Where person lives and with whom
- Who a person associates with
- Whether a person should work and what that work should be
- Treatment (health) decisions
- Education and training
- Next Friend in court if there are legal proceedings
- Legal Guardian if the person is facing charges before a court

Now, with NDIS on the scene, there is often the added function of

- Services a person should receive



# Human Rights

1990 Guardianship Act requires:

- Assume capacity unless there is evidence of lack of capacity, &
- The *least restrictive option* to be applied, so that people can retain as much Choice and Control as possible

Having support in hearings is a Right, so involving independent parties like an advocate can help a person be heard

The State Administrative Tribunal (SAT) hears applications within the Human Rights stream, so we are in fact 'all on the same side'

# About the examples being used...



These are real and current stories



I hope that the examples illustrate the role of Advocacy in supporting families and SC's in this area



This is a complex area and there will always be back-stories that we can't get into





# A gentle example...

Tim is 17 (nearing 18) with a rare genetic disorder and cognitive and learning difficulties

Tim's parents are told by people in their lives that they 'should be going for Guardianship' and so put in an application for Guardianship (lifestyle decisions) and Administration (finances)

Someone suggests that they call DDWA about this.

After some discussion with an advocate, it was clear that

- The current supported financial arrangements are working well
- NDIS Nominee status of parents allows for decisions to be made
- Health is the only area needing a Guardianship authority



## A disruptive example...

Jack became depressed after finishing school, stopped eating and was admitted to a mental health unit.

A Disability Services worker advised Jack's mother to apply for Guardianship over health decisions so that she could stop the hospital from discharging him.

A Guardianship application led to a plenary (total) order being made that appointed a public servant from the Office of the Public Advocate to the role. The mother lost all control of decisions.

An advocate may have been able to assist in the dealings with the hospital, when Jack was going to be discharged.

An advocate needed to support the family to challenge the order and eventually a family member was appointed as Guardian and Administrator (this took many months and 3 further hearings)



## A catastrophic example...

Tara was nearly 18 and her father was told by Centrelink that a Guardianship and Administration order were needed.

The father was appointed as both Guardian and Administrator at a SAT hearing.

Shortly afterwards, an explosive behaviour event at a DSO led to transport to hospital.

The psychiatrist called to assess Tara admitted her to a mental health unit and when he couldn't get to speak to the father, applied for an urgent hearing and on the same day had the orders overturned.

Tara was held in isolation in a wing of the MHU, under 3:1 or 5:1 supervision, heavily medicated, secluded and restrained for behaviours related to her Intellectual Disability, not mental illness.

It took nearly 8 months for her to be discharged after her father was again appointed as Guardian and Administrator

No follow-up MH care has ever been needed. This was in 2020.

cont.



## A catastrophic example...cont.

Tara's father's Natural Guardianship could have continued.

A conversation with an advocate before making an application would likely have avoided the need to apply

Once the application was in, the advocate can help to give this the best chance of succeeding, which happened in this case

Tara was held under the Mental Health Act, with an OPA Guardian, so all discussions excluded the father, including on management of her on the ward

Advocacy argued that this was challenging behaviour as a result of disability, not mental illness, and

That it was unlawful to detain her in a MHU, and

That the father should be involved, and;

There was a severe risk of death from restraint, both chemical and physical, as well as trauma and depression from severe social isolation

After discharge, medications were stopped and Tara resumed her life at home and in the community



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## SC's, Guardianship & Advocacy

### Questions, discussion

Gentle example – Tim

Disruptive example – Jack

Catastrophic example – Tara

Any other issues





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## Next webinar

‘When there is a Guardianship application in at the SAT...’

Monday 14<sup>th</sup> December 2020, 12.30pm

