PURPOSE

The purpose of this minute is to seek further support for the Justice of the Peace Pilot Community Guardian Scheme which commenced operation in 2011.

BACKGROUND

The Guardianship Board of South Australia is a State tribunal operating as the mental health review tribunal as well as being tasked with making decisions about people with impaired decision-making capacity, including those suffering from mental illness or dementia.

The Board has two separate functions:

(1) appointing Guardians and Administrators for people with a mental incapacity; pursuant to the Guardianship and Administration Act 1993, and

(2), in certain circumstances making compulsory treatment orders for people with a mental illness, pursuant to the Mental Health Act 2009.

HOW IT WORKS? GUARDIANSHIP & ADMINISTRATION

The Board receives applications to make legal orders appointing a guardian and/or administrator for a vulnerable person with impaired decision-making capacity.

Such applications may be made by a range of interested parties, including the Public Advocate, family members of the vulnerable person, as well doctors, nurses or social workers involved in the person’s treatment and care.

A guardian may be needed for the vulnerable person for a variety of reasons, for example, if there needs to be a change in the person’s accommodation, or if medical treatment is required and there are matters about which the vulnerable person cannot make decisions independently due to their mental incapacity.

Guardianship involves decision-making about a vulnerable person’s personal affairs, for example, accommodation, lifestyle and health. Administration entails decision-making in respect of a vulnerable person’s financial, legal and business affairs.
The Board, upon receiving applications for guardianship and administration orders will ‘fast-track’ them for hearing before the Board generally within 14 days – on the basis of the principle: ‘Justice Delayed is Justice Denied’.

This 14 day timeframe was introduced by the Board in 2009 which had previously seen timeframes ordinarily of between 4 to 6 weeks. This achievement in reducing the time between application and hearing has led to the saving of at least 4000 acute bed days per year.

THE OFFICE OF THE PUBLIC ADVOCATE

The introduction of the Guardianship and Administration Act in 1993 allowed the Guardianship and Administration system to be removed from the Mental Health Act and established under its own legislation. Its focus was to maintain family and local support for individuals with a mental incapacity and to provide a sound balance between an individual’s right to independence as well as the need for protection from neglect, harm and abuse. Furthermore, the Act established a clear philosophy on how matters are to be dealt with, through the establishment of a set of principles to guide the decision makers.

The Act’s major initiative established a statutory position of the Public Advocate. The role of the Public Advocate was to resolve problems, so that the legal processes of the Board need not be invoked, and if invoked, the Public Advocate would provide significant assistance. The Office of the Public Advocate continues to provide support to their clients and carers. It plays a watchdog role, by investigating issues and concerns raised by any member of the community about a person with mental incapacity. Where the Board is unable to locate a suitable guardian in the community the Public Advocate is to be the guardian of last resort. The legislation makes this clear.

THE CURRENT SITUATION – VULNERABLE PERSON WITH NO FAMILY OR FRIENDS

The Guardianship Board, when faced with a case where a vulnerable person has a mental incapacity and needs a guardian, will consider the options of who to appoint as a suitable guardian for the person. In the case where the vulnerable person has
no friends or family willing and able to take on the role of guardian, it will appoint the Public Advocate. The Board can appoint the Public Advocate as guardian “but only if the Board considers that no other order....would be appropriate”. ¹ The Public Advocate is therefore the guardian of last resort.

Once the Board appoints the Public Advocate as guardian of a vulnerable person, the Public Advocate will determine how the case should be allocated, and if considered non-urgent, it may take some time before the vulnerable person is allocated a delegated guardian.

The Public Advocate delegates authority to make decisions to one of his professional staff, all of whom are trained social workers.

The delegate guardian, subject to work pressures;
• Gets to know the protected person as best as they can
• Determines the wishes of the protected person (both past and present)
• Makes immediate decisions that need to be made for the protected person

Once major decisions have been made, such as accommodation decisions (and palliative care plans) for older people in nursing homes, the delegate guardian tends to respond to requests for decisions from care providers.

When there has been a period of time where there are no requests for decisions to be made often the Guardianship Board is approached by the Public Advocate asking for the revocation of the guardianship order on the basis that the Director of Nursing has statutory authority to consent to medical treatment.

The Public Advocate will therefore often limit involvement to primary decision-making and will seek to have orders revoked once these essential decisions are in place.

BACKGROUND AND BASIS FOR THE COMMUNITY GUARDIAN SCHEME

There are a number of vulnerable people in the community who have lost the ability to make their own decisions and furthermore, they do not have friends or family

¹ Guardianship and Administration Act 1993, section 29(4)
willing and able to take on the role of being a guardian for them.

Such vulnerable people find themselves in hospitals, nursing homes, homeless or in compromised situations where their basic needs are not being met as they have lost (or never had) the ability to advocate for themselves.

This is an increasing issue in our community for the following reasons:

- People are living longer.
- There are over 321,600 Australians living with dementia. This number is expected to increase by one third to 400,000 in less than ten years.
- Each week, there are 1,700 new cases of dementia in Australia;
- One in four people over the age of 85 have dementia.
- Dementia impacts upon a person’s ability to make decisions.
- There is an increase in people needing guardians.
- There has been a very low take up rate of people creating their own enduring powers of guardianship or advance care directives.
- There is a contraction in the amount of public monies being made available for guardianship services.

The Public Advocate has for some time had a significant backlog of vulnerable people in respect of whom the Board has made an order appointing the Public Advocate to be the guardian. Such cases form part of list awaiting allocation to a delegated guardian within the Office of the Public Advocate. The current backlog is unsatisfactory because it places vulnerable people in a situation where they are not seen and properly case-managed.

In addition, the Office of the Public Advocate’s metropolitan based service means that it can only maintain a limited presence in regional and rural locations.

A number of these and related issues were identified by Mr Ted Chapman, former MP, who in 1998 conducted the Operational Review of the Guardianship Board and the Office of the Public Advocate. In particular, he supports the remarks in the Public Advocate’s 1996-97 Annual Report:
"The OPA (Office of the Public Advocate) regards it as a priority that alternative guardians are found, if not in the person’s immediate family, then from within the cultural, ethnic and regional area that the protected person comes from. It is important that greater effort be made by applicants, by the Guardianship Board and by the OPA to identify potential guardians and to encourage them to nominate themselves for appointment. Clearly, people prepared to accept this responsibility deserve support and assistance in understanding and fulfilling the role, and this office would regard the provision of such support and advice as an important part of its role".²

The Operational Review went further in not only supporting the development of greater efforts by Applicants to the Guardianship Board, the Guardianship Board and the Public Advocate to identify potential alternate guardians, but also recommending “that the matter be pursued as a high priority”.

As the rates of dementia and disability continue to rise and in light of the current fiscal environment, arguably it is of even greater importance that steps be taken to address the alternatives available to the appointment of the Public Advocate.

PROJECTS

In 2011, the Guardianship Board launched a pilot Community Guardian Scheme. The Scheme (whose partners include the Guardianship Board, the Royal Association of Justices South Australia Incorporated, and hospital social workers) involves the training and appointment of select community-minded citizens to become Community guardians for people with impaired decision-making capacity who do not have family or friends available or willing to assist. Community Guardians are volunteers, as well as being Justices of the Peace, and are able to make accommodation, lifestyle and health decisions for people in need of a substitute decision-maker. They are not involved in the vulnerable person’s financial affairs.

HOW THE COMMUNITY GUARDIANSHIP SCHEME WORKS

(1) TRAINING
Potential guardians undergo and complete appropriate training to become guardians.

² OPA Annual Report 1996-97 referred to at page 24, Operational Review of the Guardianship Board and the Office of the Public Advocate
They need to understand:
- The framework of the South Australian Guardianship system
- The role of guardians
- The role of the Guardianship Board
- The role of the Public Advocate
- The role of administrator/power of attorney
- Why guardians are appointed
- How guardians are appointed

(2) MATCHING PROCESS

Step 1
The Guardianship Board will arrange for a social worker in a hospital (or a suitably qualified person involved in vulnerable person's life), to meet with a trained Justice of the Peace from the locality, to meet and discuss the needs of the potentially protected person.

Step 2
If the social worker is satisfied that the trained Justice of the Peace is likely to be a compatible guardian for the vulnerable person, they then set up a meeting for the vulnerable person and the trained Justice of the Peace in his/her presence.

Step 3
If the social worker is satisfied that the trained Justice of the Peace is suitable to be the guardian for the vulnerable person then they will let the Guardianship Board know this.

Step 4
The Guardianship Board will then invite the Justice of the Peace to the hearing for the vulnerable person as well as let the Public Advocate have details of that development.

Step 5
If the Public Advocate wants to meet with the Justice of the Peace before the hearing, the Guardianship Board will arrange a meeting.

Step 6
The Guardianship Board will conduct the hearing with the trained Justice of the
Peace, the social worker, the vulnerable person, the Public Advocate (or his representative) and, if appropriate, appoint the trained Justice of the Peace as Guardian for an initial period of say, 6-12 months.

**Step 7**
The Guardianship Board will then conduct a review of the Guardianship Order within 6-12 months and obtain all the relevant information from those who are then involved in the vulnerable person’s life. During this review hearing the Board will have the opportunity to hear evidence and submissions from the vulnerable person, the Community Guardian, the Public Advocate, and the health professionals involved in the person’s care, for example, the Director of Nursing at the aged care facility, the nursing staff and GP.

The Board can then determine and take steps to make inquiry of any matters or concerns relevant. The Board has the ability to do a number of things, including revoking or varying the Guardianship Order, or continuing the appointment of the Community Guardian. The Board is then able to order a further review take place in another period of time (for example, 12 months).

This review mechanism provides important checks and balances and a significant oversight of all Community Guardianship appointments.

**INVolVEMENT OF THE PUBLIC ADVOCATE IN THE COMMUNITY GUARDIAN SCHEME**

1. To let the Public Advocate know of each case where it is proposed a Community Guardian will be considered for appointment as a Guardian.
2. To provide the Public Advocate with a copy of the Application and all supporting documents before the Guardianship Board hearing takes place.
3. To give the Public Advocate an opportunity to check the suitability of the proposed Guardian.
4. To ensure the Public Advocate has an opportunity to attend the hearing.
5. To ensure the Public Advocate is informed of any review of the Guardianship Order and be able to make submissions.
6. The Public Advocate will retain the right to appeal to the District Court any or all Community Guardian appointments.

---

2 Guardianship and Administration Act 1993, section 57
7. The Board will maintain a Register of Community Guardian appointments which the Public Advocate will have reasonable access to.

BENEFITS OF APPOINTING JUSTICES OF THE PEACE AS COMMUNITY GUARDIANS

- Justices of the Peace (JPs) have been appointed by the Government and are seen as responsible individuals.
- They have police checks
- They have a reputation as being community minded
- They are ready, willing and able to undergo education and training
- They are well respected people in the community
- They are generally older people with a wealth of life experience
- They are supported by a network of fellow Justices of the Peace.
- They have expressed a desire to meet community needs
- They will be able to make decisions expeditiously

It is likely the trained Justice of the Peace will be part of the broader life of the vulnerable person based on the Western Australian Community Model.

"The presence of a person in the represented person's (protected person's) life who is unpaid, independent and able to focus solely on the person's best interests has led to improved advocacy and outcomes for the represented person and a decrease in social isolation. Arguably better guardianship decisions are made for the represented person by someone who has an intimate understanding of the person and their needs" (Western Australia's Community Guardianship Program. Paper produced March 2009).

MANAGING RISK

The introduction of the Community Guardian Scheme creates minimal risks which are manageable. In particular, the Public Advocate has a watchdog role. His office will have access to all the information about each Community Guardian matter. If the Public Advocate has any concerns he and his office have the capacity to bring the matter to the Board for a review quickly.
Any person involved in a matter where a Community Guardian is appointed who has concerns has the capacity to make contact with the Guardianship Board whereby a review of the guardianship order can be considered quickly.

Guardians generally make decisions about accommodation, lifestyle and health care matters. The Board’s experience is that if medical professionals have a significant concern about a guardian’s decision making then they can and do make contact with the Office of the Public Advocate, which is contactable 24 hours a day.

Likewise, the Guardianship Board is also available 24 hours a day for urgent or emergency decision-making.

The reality is that the people who are interested in being Guardians are good and experienced citizens and can be generally characterized as being “safe hands”.

Furthermore, the Guardianship Board is the decision maker who decides if a proposed Guardian is a suitable person to take on the role of being a guardian for a particular person, and in this regard, the Board has extensive experience in determining the suitability of a proposed guardian.

The views of a medical professional are only one of the factors the Board takes into account in making a decision to appoint a Guardian. The Board is able to consider all of the evidence and submissions by a range of different parties in coming to a decision about guardianship. The Board is not aware of any case where a social worker from a hospital has been held to be negligent for giving an opinion about Guardianship matters.

The reality is that no guardians apart from the Public Advocate have an indemnity from being held personally liable for their actions. The Board is not aware of any private Guardian being found to be negligent for making a guardianship decision.

PRESENT SITUATION – THE RESULTS SO FAR

Since the launch of the Community Guardian Pilot Scheme last year, the Board has appointed 3 Community Guardians. Each appointment so far has proven successful.
Bill* (not his real name) is a ( ) year old man living in town on the Eyre Peninsula. He spent many years isolated with no family or close friends. He lived in a small unit and spent his days collecting bottles and cans. Bill's health deteriorated and he was unable to cope at his home. His living conditions became squalid and his health and safety was at risk. He ended up in hospital and was diagnosed with dementia.

Once treated he was ready to be discharged from hospital, however, hospital staff considered it was no longer appropriate that he live at his property. Bill was unable to make a decision about where he should live or what medical treatment he should have. There were no relatives or friends who could assist him in this regard. The treating team at the hospital (in particular, the social worker) applied to the Guardianship Board, requesting consideration of the appointment of a guardian for Bill. They nominated the Public Advocate as the guardian of last resort. A hearing took place shortly after the Application was lodged with the Board. The Board on that occasion identified this matter as one which may be appropriate for the appointment of a Community Guardian.

During the Guardianship Board hearing, the Public Advocate indicated they would be prepared to be guardian for accommodation and health care decisions. (CHECK) The reality was however, as a matter considered non-urgent, it may have taken some weeks for the matter to be allocated to a delegated guardian within the office of the Public Advocate, during which Bill would have been waiting in hospital in acute bed.

The hospital social worker took steps to liaise with the President of the Network of Justices of the Peace who nominated Susan (not her real name), a Justice of the Peace and local resident, to be Bill's Community Guardian. In addition to her role as a Justice, Susan is the Chaplain of the local hospital and works in pastoral and palliative care. In addition, she had undergone guardianship training.

Several meetings followed, including with the hospital social worker, Susan and Bill. All agreed that Susan was suitable and appropriate for appointment as Bill's Guardian. The Board had the opportunity to hear from all of the interested parties and it was unanimous agreement that Susan become the Community Guardian for Bill.

Following her appointment, Susan made a decision that Bill go into a residential care facility. She was involved in the making of a Palliative Care Plan and assisted in the
preparation of a care plan. She has been involved in making health care decisions for Bill, including operations.

She visits Bill on a weekly basis and spends time talking to him, often bringing him chocolates— a favourite thing of Bill’s. She has arranged for new clothing and blankets for his bed. Susan has provided valuable and welcome friendship and social interaction, as well as ensuring that Bill’s needs are met.

In 2013, the Board conducted a review of Bill’s Guardianship Order. All parties involved in Bill’s life, including the Public Advocate, supported the continuation of the appointment of Susan as Bill’s Community Guardian.

SUMMARY

Bill and Susan’s story is a positive one. It provides the way for further good outcomes for our State’s vulnerable citizens.

The benefits of the Community Guardian Scheme are immense. It means that many more vulnerable people who need and are entitled to have a guardian, do in fact, get a guardian who is accountable for his or her actions.

The Network of the Justices of the Peace is a wide one and there are at least 300 Justices who are willing and able to become Community Guardians. It goes without saying that the need for Community Guardians is present and increasing. There are many more people, like Bill, who would benefit from having a Community Guardian in their lives.

WHERE TO FROM HERE?

Hospital social workers are frequent Applicants for Guardianship Orders. These are the people who frequently become involved in the process of appointing a Guardian for person who has come to be in hospital and now needs a decision-maker in their lives. The social workers are an important part of the Community Guardian Scheme and support for their continued role in the Scheme is critical.