

Respecting confidentiality in consultation: A guide

Queensland's guardianship legislation requires that certain information be kept confidential. This document explains how people can participate in the Commission's review of that legislation without inappropriately disclosing confidential information. You should ask two questions before sharing information with the review:

1. Is the information confidential?
2. If yes, who will be present when the information is disclosed?

Is the information confidential?

The guardianship legislation makes three types of information confidential:

1. Information gained through being involved in the guardianship regime. This includes people like Guardianship and Administration Tribunal members and the Adult Guardian, but it also includes people who act as guardians, administrators and attorneys for adults with impaired capacity. This sort of information is only confidential if it could reasonably be expected to identify the person involved. However, care must be taken because information disclosed may still identify a person, even if he or she has not been named.
2. Information about a Tribunal proceeding, such as who was involved in a proceeding (for example, witnesses), evidence or documents given to the Tribunal and the Tribunal's decision or reasons for its decision.
3. Sometimes, the Tribunal may additionally make a specific 'confidentiality order' (for example, protecting a document because it would only be given in confidence).

These are rarely made so are not discussed further in this guide. (For more information, see the Protocol discussed below.)

If the information is not confidential, then it can be legally disclosed.

If the information is confidential, who will be present when the information is disclosed?

Information that is confidential may be disclosed to the Commission. This could occur during a meeting, when making a written submission or when discussing issues over the telephone.

Limitations apply if other people are present, for example, during a public forum or a focus group. Confidential information cannot be disclosed in these circumstances. If you want to disclose information that would be confidential, you would need to contact the Commission to arrange a private meeting.

How can I share information publicly but still respect confidentiality?

It can be difficult to separate information which is confidential from information that is not. If you are participating in a public consultation process where other people are present, such as at a public forum, the following suggestions might help you share that information whilst still respecting confidentiality.

- You may be able to share your views about the guardianship legislation without referring to a specific situation. For example, rather than discuss the details of your situation, you may wish to think about what were the issues that concerned you and discuss them generally.
- Apart from information about Tribunal proceedings, the requirements of confidentiality only apply where the information disclosed could identify the people involved. It may be possible to share information without people being able to work out who you are talking about. You should be careful though, because information disclosed may still identify a person even if the person is not named. For example, the identity of a person may be revealed if someone tells a story which refers to 'my son'.

- You may wish to share your views during a public consultation process but then note that you are leaving out certain confidential information that you would like to discuss further with the Commission privately.

This document is only a general guide to respecting confidentiality in consultation and the Commission suggests that you read its 'Confidentiality in consultation protocol' for more detailed information.

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