

Confidentiality

Key questions for families, friends and advocates

The Queensland Law Reform Commission is independent of the Queensland Government. We have been asked to make recommendations about how to improve the guardianship laws. The Commission will report to the Attorney-General in 3 stages, looking at:

1. The role of **confidentiality** in the guardianship system. This report is due in March 2007.
2. The guardianship laws' **General Principles** (which are the guidelines for how decisions for adults with impaired capacity should be made). This report is due in September 2007.
3. The rest of Queensland's **guardianship laws**. This report is due in December 2008.

In this paper, we want to ask your views on the first stage—**confidentiality**.

What is guardianship about?

Queensland has two laws about guardianship: the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998*. The guardianship laws apply to adults—that is, people 18 years or older—who are unable to make some or all of their decisions.

The law calls this having 'impaired capacity'. Someone has impaired capacity if they cannot go through the process of reaching their own decision (free from inappropriate influence), having understood what that decision will mean for them, and then communicate that decision. The guardianship laws treat decisions about personal, health and financial matters differently, although in real life these sorts of decisions overlap.

For most adults with impaired capacity, decisions are usually made **informally** within the adult's network of family and friends. But sometimes problems occur. When this happens, families might seek **formal decision-making** help from the guardianship system. Other people, such as service providers, may also involve the guardianship system.

This might mean going to the Guardianship and Administration Tribunal, which is like a court but is less formal. The Adult Guardian might also be involved. This is an independent official whose role is to protect the rights and interests of adults with impaired capacity.

What information is confidential?

The guardianship laws currently make certain personal information confidential. This is because the guardianship system is intended to protect the rights and interests of adults with impaired capacity. It does this by:

1. **Protecting the confidential information** that a person has access to because they are involved in some way with guardianship. This covers, for example, members of the Tribunal, the Adult Guardian and an adult's administrator or guardian. But this duty of confidentiality applies only if the information disclosed is likely to identify the person involved.
2. **Stopping people publishing information** about what happens at the Guardianship and Administration Tribunal. This includes information such as who was at a hearing, what they said, and what documents were given to the Tribunal.
3. **Letting the Tribunal make a 'confidentiality order'** at some hearings to:
 - Stop people from attending a hearing, or part of a hearing;
 - Stop people from looking at documents being considered by the Tribunal; or
 - Stop people from seeing a copy of the Tribunal's decision and the reasons it gives for that decision.

What might you think about confidentiality?

There are three important ideas that might affect the way we think about confidentiality in the guardianship system.

1. **Open justice** is the principle that our courts (like the Tribunal) should be open to the public. This improves the accountability of decision-makers and increases public understanding of the law and how decisions are made.
2. **Procedural fairness** is a legal rule that says everyone should have a chance to present their case and tell their side of the story before a decision that affects them is made. This includes allowing people to comment on negative things that other people may have said about them.
3. **The protective nature of the guardianship system** means that its whole purpose is to safeguard the rights and interests of adults with impaired capacity, including their right to privacy. During a Tribunal hearing, or in the guardianship system generally, very private information about an adult (and people close to the adult) may be disclosed. Just because an adult needs the help of the guardianship system, however, may not mean their private life should then be made public.

What questions are we asking?

The Commission is asking five main questions about confidentiality in the guardianship system:

1. Under what circumstances, if any, should the Tribunal be able to keep a person out of a hearing?
2. Under what circumstances, if any, should the Tribunal be able to stop a person from seeing documents that the Tribunal is considering?
3. Under what circumstances, if any, should the Tribunal be able to refuse to give its decision or the reasons for that decision to a person?
4. To what extent, if at all, should Tribunal proceedings be able to be openly discussed by people outside those proceedings?
5. Apart from the situations referred to in questions 1–4 (which deal with Tribunal proceedings), are there other circumstances in which information that is revealed within the guardianship system should be required to be kept confidential?

Other issues

Each of our five questions raises other issues. If you want to think more about these issues, you might like to look at some of the other documents the Commission has written:

- *Confidentiality in the Guardianship System: Public Justice, Private Lives*—this is the Commission’s full Discussion Paper that discusses the issues and law in detail.
- *Public Justice, Private Lives: A Companion Paper*—this is a shorter version of the Discussion Paper that discusses the issues without all of the legal detail.
- *Public Justice, Private Lives: A CD-ROM Companion*—this explores the issues raised in the Discussion Paper, without all of the legal detail, in an accessible CD-ROM format.
- *Confidentiality: Key questions for people who may need help with decision-making*—this is a pamphlet, like this one, that specifically asks people who may need help with decision-making to tell us what they think.

You can obtain these documents by contacting the Commission in the ways set out on the next page.

Have your say

The Commission wants your ideas about confidentiality in the guardianship system. You can tell us what you think by writing to us. You may wish to use the attached answer sheet. Or you can contact the Commission by email, by telephone, or make a time to meet with one of our staff.

Postal address: Queensland Law Reform Commission
PO Box 13312, George Street Post Shop Qld 4003

Fax: (07) 3247 9045 [marked 'Attention: Guardianship Review']

Telephone: (07) 3247 4544

Email: qlrcguardianship@justice.qld.gov.au

For more information about the Commission's Guardianship Review or about guardianship generally, visit our **website** at: <http://www.qlrc.gov.au/guardianship/>

SEND TO:

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Answer sheet

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5. Apart from the situations referred to in questions 1–4 (which deal with Tribunal proceedings), are there other circumstances in which information that is revealed within the guardianship system should be required to be kept confidential?

Is there anything else you want to tell us?

Name: _____

Address: _____

Telephone: _____

Email: _____

The closing date for submissions is 31 October 2006.

CONFIDENTIALITY

The Commission may refer to or quote from submissions in future publications. If you do not want your submission or any part of it to be used in this way, or if you do not want to be identified, please indicate this clearly.

The Commission also lists in an appendix the names of those people who have made a submission. Please indicate clearly if you would not like your name to be included in this list.

Unless there is a clear indication from you that you wish your submission, or part of it, to remain confidential, submissions may be subject to release under the provisions of the *Freedom of Information Act 1992* (Qld).

Any information you provide in a submission will only be used for the purpose of the Commission's review. It will not be disclosed to others without your consent.