

A new approach to confidentiality

A guide for people who may need help with decision-making

The Queensland Law Reform Commission has been asked by the Government to help make Queensland's guardianship laws better. The first issue we looked at was **when should information be kept confidential?**

We spoke to hundreds of people about what the law should be, including many people who may need help making decisions. We want to tell you what we found out and what we think the law should be.

What is guardianship?

The guardianship laws apply to adults who can't make some or all of their decisions. The law calls this having 'impaired capacity'.

Most adults with impaired capacity make their decisions informally, with the help of family and friends. But sometimes this doesn't work and you or your family or friends might want formal help from the guardianship system.

This might mean going to the Guardianship and Administration Tribunal. The Tribunal is like a court. It can appoint people, called guardians and administrators, to help you make decisions. The Tribunal will do this only if it is really needed.

What information is confidential?

The guardianship laws keep some information in the guardianship system confidential. The laws do this in 3 ways.

1. They sometimes let the Tribunal:
 - Stop people from being at a hearing.
 - Stop people from seeing documents the Tribunal is using.
 - Stop people from knowing the Tribunal's decision or the reasons it gives for the decision.
2. They stop people from reporting what happens at the Tribunal, for example, by putting a story in a newspaper.
3. They stop people telling others personal information that is shared in the guardianship system.

What did people say?

The Commission listened to hundreds of people, including many people who may need help with decision-making. Some people wanted confidentiality because it helps to protect rights. In the guardianship system, personal information might be told in public. Just because a person might need help with some decisions does not mean they should lose their right to privacy.

But more people thought there was too much confidentiality. They wanted the guardianship system to be more open. Decisions made in public are usually better decisions. Public decisions also mean that people can know more about the law and how it works.

It is also unfair to make decisions about people without telling them what has been said about them. Everyone should have a chance to have their say. This usually leads to better decisions too.

What ideas do we think are important?

After listening to what people said, we think the guardianship system should be more open because:

- If people know what goes on at the Tribunal, they will trust it more. This means that people will not be afraid to use the guardianship system when they need it.
- When people don't have all the facts, they can make the wrong decision. To help the Tribunal make the right decision, you may have to share some very personal things about yourself. But in the end, it is more likely you will get a decision that suits you best.

Other ideas that we think are important are:

- A person who needs help making decisions should have access to their personal information.
- People who play a big role in the life of a person who needs help making decisions should get more information about him or her than other people.

How should the law change?

1. The guardianship laws should say that people involved in a case are allowed to see documents the Tribunal is using. They should also say that these people can know any other information the Tribunal is using.
2. But the Tribunal should keep its powers to:
 - Stop people from being at a hearing.
 - Stop people from seeing documents the Tribunal is using.

These powers are needed sometimes in guardianship cases. They might be used if the Tribunal wants to ask you some questions without other people there.

These powers should hardly ever be used. To check that using these powers is the right thing to do, the Tribunal should first ask people involved in the case what they think.

3. People involved in a case should always have a right to know the Tribunal's decision and why it made that decision.
4. People should be able to talk in public about what happens at the Tribunal. But they should not identify the person who the case is about. However, people can talk about this in private.
5. People acting under the guardianship laws should only use any information they get for the purposes of the guardianship laws. There are also other times when sharing information should be allowed. One example is when a person agrees to information about them being told to others.

We still need your help

We have finished looking at confidentiality. But this is not the end of our work on the guardianship laws. We are now looking at the other parts of these laws.

Later on, we will ask you again what you think about the guardianship laws. If you give us your contact details, we can tell you when we want your views.

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www.qlrc.qld.gov.au/guardianship