

Office of the Public Guardian

SUBMISSION

To the

**LEGISLATIVE COUNCIL
STANDING COMMITTEE ON SOCIAL ISSUES
INQUIRY INTO THE INEBRIATES ACT 1912**

December 2003

Guardianship and the Inebriates Act

The Role of the Public Guardian

The NSW Public Guardian can be appointed by the Guardianship Tribunal under the NSW Guardianship Act 1987 to be the legal substitute decision maker for a person with a disability, an incapacity to make his/her own decisions and a need for a guardian. The Public Guardian can be given the authority (functions) in a guardianship order to make lifestyle decisions on behalf of the person such as where the person should live, what services and healthcare the person should receive and to consent on behalf of the person to medical or dental treatment.

Guardianship orders appointing the Public Guardian as guardian are limited orders, in time and function and relate solely to the taking of one or more decision or action on behalf of the person. The guardianship order also has the effect of the Public Guardian having the custody of the person in relation to the functions specified (16.2).

The Public Guardian may, in certain circumstances, be given the authority to authorise others to take measures and actions to ensure the person under guardianship is able to comply with a decision of the guardian (21A.[1]). In practice this can involve the Public Guardian giving authority to service providers to confine the person under guardianship to their accommodation, return the person to accommodation and transfer the person to new accommodation. The Public Guardian can only act in these circumstances when it is in the person's best interests to do so and the option is the least restrictive option available.

Interface with other legislation

The NSW Guardianship Act makes reference to the Mental Health Act 1990 in respect of a person under guardianship who is, or becomes, a patient within the meaning of the Mental Health Act 1990. Guardianship is effective only to the extent that the terms of the order or instrument are consistent with any determination or order made under the Mental Health Act 1990 in respect of the patient. (3C. [1]).

The NSW Guardianship Act does not make reference to the Inebriates Act 1912.

The Inebriates Act 1912 does not make reference to any possible interface with the NSW Guardianship Act 1987 nor does it make reference to a guardian within the meaning of the words used by the NSW Guardianship Act 1987.

People under guardianship for whom the Inebriates Act might apply

The Public Guardian is currently the guardian of 1504 people with a range of disabilities. 56 people are people who have a disability relating to drug and or alcohol abuse. The percentage of people under the guardianship of the Public Guardian who have a disability related to drug and or alcohol abuse has remained relatively consistent and below 10% of the total number since the inception of the Office in 1989.

In general people who have a disability related to drug and or alcohol abuse are appointed the Public Guardian as their guardian because of necessary decisions that need to be made on the person's behalf. For current clients the Public Guardian has been commonly appointed with a significant number of functions particularly accommodation, services, healthcare and to give consent to medical and dental

treatment. This suggests that the needs of the individuals are complex and require significant service responses.

Only 25% of clients currently under the guardianship of the Public Guardian have a coercive function as part of the guardianship order. This coercive function commonly relates to accommodation with the Public Guardian appointed to authorise others to confine the person to accommodation, have them returned to the accommodation should the person leave it and to over ride the person's objections to necessary medical and dental treatment.

None of the clients currently under the guardianship of the Public Guardian for whom drug and alcohol dependencies may exist receive a service primarily for the purposes of rehabilitation. Nor do the services in which people currently reside have particular expertise to relate to the disability needs created by long term drug or alcohol abuse and accompanying disability. Approximately 63% of current clients live in general nursing homes and aged care hostels. A further 11% live in boarding houses. 9% live at home. Only 7% are accommodated in psychiatric facilities. 4% are homeless.

None of the 56 clients have a current involvement with the criminal justice system. There are three people currently under guardianship for whom the Inebriates Act has been invoked, only one during the course of the guardianship order.

Response to the Terms of Reference

The Public Guardian would like to offer the following comments in relation to the terms of reference of the Standing Committee on Social Issues.

1) The Inebriates Act 1912 and the provision of compulsory assessment and treatment under that Act

- The Public Guardian does consider that for a very small number of clients whose disability is associated with drug and alcohol abuse that it is in the best interests of the person to receive treatment and accommodation against his/her wishes.
- The Public Guardian will seek authority from the Guardianship Tribunal to authorise others to admit a person to a service against his/her will and to keep the person within the facility for a period of time whereby the effect of alcohol or drug abuse can be alleviated and the person's health needs addressed.
- Service providers have the option of using the Inebriates Act to admit a person for compulsory treatment. It is the experience of the Public Guardian that services providers in the health arena are reluctant to use the Inebriates Act in such a way, perhaps considering the Guardianship Act and the involvement of a guardian as a less restrictive alternative.
- The benefit of the Guardianship Act and the involvement of a guardian in relation to admitting a person against their wishes for care and treatment is that the guardian is obliged to ensure that such action is in the best interests of the individual, that it represents the least restrictive alternative and there can be flexibility in response to individual need.
- The Public Guardian would also view the Inebriates Act as an option of last resort to support a person with a disability and drug and alcohol dependencies. It is the experience of the Public Guardian that the option of last resort becomes necessary only after a significant period of service failure. A history characterised by homelessness, temporary accommodation, lack of case management, long term service planning as well as chronic medical conditions are common.
- At present there are no dedicated public services for the care and treatment of a person with a disability associated with drug and alcohol abuse should the person not be able to voluntarily admit himself or herself. The availability of such services is predicated in the Inebriates Act and used to exist by way of the 5th Schedule

institutions. The Inebriates Act is difficult to invoke without the existence of dedicated services based on best practice in the area of rehabilitation.

- In situations where a guardianship order with coercive functions is available, services are not obliged to admit a person nor provide treatment. There are some services that question the legal authority on which the Public Guardian makes a decision to accommodate a person against his or her wishes.
- Most of the individuals currently under the guardianship of the Public Guardian with alcohol and drug dependencies have complex health and lifestyle circumstances. A holistic response to their needs in association with detoxification and rehabilitation are required. An emphasis on detoxification and rehabilitation only will not serve to ensure that the person has a quality of life over the long term.

3) The effectiveness of the Act in linking those persons to suitable treatment facilities and how those linkages may be improved in necessary.

- The effectiveness of the Inebriates Act, and similarly a guardianship order inclusive of coercive functions is dependent on the availability of suitable treatment facilities and services that provide the link between the community and facilities. The experience of the Public Guardian in this regard is outlined.
 - Rural and regional areas have a lack of clinical expertise, dedicated beds and/or facilities to provide treatment to people under guardianship who have a drug or alcohol dependency. A number of people under the guardianship of the Public Guardian have had to relocate to other areas to receive a service that meets their needs, depriving them of easy access to family support, work and social networks.
 - Facilities that can respond to an individual's long term needs are also extremely scarce.
 - Aged care facilities, where the majority of people under the guardianship of the Public who have drug and alcohol dependencies currently reside on a long term basis are not designed to support residents who may be physically able, younger than the average resident and requiring a high level of supervision. Staff are typically unskilled in the management of people with acute and chronic substance dependency and the range of appropriate diversionary activities is limited.
 - Psychiatric facilities can offer high levels of supervision and containment when necessary but may not be appropriate accommodation for a person with a drug and alcohol dependency, unless the person also has a mental illness.
- The Public Guardian has experienced significant difficulties, where a person has a disability such as mental illness or brain injury with resulting alcohol or drug dependency, requesting on behalf of the person a comprehensive service to meet the whole of the person's needs. Services may be reluctant to accept a person into a facility where complex needs are present and where dispute exists over the person's primary diagnosis.

Illustrative Case Example

One

The Public Guardian was appointed as the guardian for a Mr X who is 62 years old with a history of homelessness, temporary accommodation, long term alcohol abuse resulting in a disability and chronic medical problems. Service providers had been unable to support him within a community setting despite attempts to do so over a 10-year period.

The Public Guardian was appointed to make decisions Mr X's behalf in the areas of accommodation, medical and dental treatment and healthcare. The Public Guardian sought extra authority from the Guardianship Tribunal to make an accommodation decision for Mr X against his wishes.

The medical practitioners involved considered the Inebriates Act and the Mental Health Act to enable Mr X to be treated against his wishes but did not view either Act as appropriate.

Mr X voluntarily admitted himself to a rehabilitation centre. Following discharge the Public Guardian made an accommodation decision that admitted Mr X to a facility against his wishes. The facility is not able to supervise or prevent Mr X from further substance dependence and this may in future place his accommodation at risk.

Two

The Public Guardian was appointed as guardian for Mr K who is aged 45, has an intellectual disability, a long history of alcohol dependence, an acquired brain injury arising from his involvement in motor vehicle accidents whilst inebriated and a significant medical condition. Supported community accommodation had been unsuccessful and he is homeless.

Service providers involved recommended that a decision be made for Mr to reside in an institutional setting. The Public Guardian agreed that Mr K required long term placement in a contained and secure environment with 24-hour staffing. The Public Guardian advocated for the use of the Inebriates Act to facilitate an admission to a psychiatric facility. The facility would not admit Mr K as he did not have a psychiatric illness.

Three

The Public Guardian was appointed as guardian for Mr S who is 58-years old and who has been chronically dependent on alcohol for 20 years resulting in alcohol related brain damage, and has long term medical conditions. Mr S has also a history of homelessness, and frequent short-term admissions to hospitals and rehabilitation centres.

The Public Guardian made the decision for Mr S to be accommodated at a nursing home. This placement was unsuccessful due to a lack of supervision and the ongoing level of care required for Mr S.

The Public Guardian is currently seeking to have Mr S placed under the Inebriates Act. However as a psychiatric facility is the only accommodation available to Mr S if the Court rules in favour of confinement, health professionals have raised concerns regarding the appropriateness of the accommodation and the potential deleterious effect it may have for Mr S.