

PROTOCOL

Between the Department of Family and Community Services and the NSW Public Guardian

for the

appointment of the Public Guardian with an Advocacy Function for a young person with disability who is planning to transition from statutory care to adult disability services

Version 2 – Effective from 2015¹

1. Introduction

- 1.1 This protocol has been developed within the framework guidelines for the ADHC *Leaving Care Program: Building good transitions for young people with a disability leaving care*. The Guidelines define the pathways for young people to transition from statutory out-of-home care² to adult disability services. This protocol provides further detail on the processes of guardianship as set out in the Guidelines at Section 5.7.
- 1.2 This protocol is applicable **only** to the specific subgroup of young people aged 16-17 years who have disability and will require a Public Guardian or who have had a Public Guardian appointed to make decisions on their behalf by the Guardianship Division of the NSW Civil and Administrative Tribunal (NCAT) or Supreme Court of NSW under the Guardianship Act 1987.

2. Purpose

The purpose of this protocol is to:

- 2.1 where necessary, assist the early involvement of the Public Guardian in the transition planning process for a young person with disability who will be transitioning from statutory out-of-home care to adult disability services.
- 2.2 specify the Advocacy Function of the Public Guardian and how it can be used by the Public Guardian in the transition planning process.
- 2.3 facilitate interagency collaboration between the parties to the protocol in order to achieve a successful transition for a young person transitioning from statutory out-of-home care to adult disability services and legal guardianship by the Public Guardian after the young person has attained the age of 18 years.

3. Target Group

This protocol is directed at young people who have attained 16 years of age, are under the parental responsibility of the Minister for Family and Community Services and who:

¹ The Protocol was first implemented in 2011, prior to the introduction of the NDIS Act 2013

² Including young people under the parental responsibility of the Minister after parental responsibility has been delegated or where case management responsibility has been transferred to another designated agency, including OOHC non-government organisations (NGOs).

- 3.1 have impaired decision-making capacity because of disability and as a result are unable to make personal and life choices and decisions on their own, and
- 3.2 do not have adequate informal arrangements for decision making, either because there are insufficient social supports such as family, friends and service providers, or the available social supports hold conflicting views in relation to the young person's future care and support arrangements; and are therefore in need of a guardian who is a legally appointed substitute decision-maker, and
- 3.3 has no other person who is available or suitable to be the legally appointed guardian including a family member, friend or unpaid carer (The Public Guardian is only appointed as the guardian of last resort when the Guardianship Division of NCAT considers that no other private guardian can be appointed), and
- 3.4 will be transitioning from statutory out-of-home care into adult disability and other funded support services.

4. Procedure for making an application to the Guardianship Tribunal

- 4.1 FACS will identify young persons who meet the criteria of the target group (see Section 3).
- 4.2 FACS will prepare an Application for Guardianship Form, with this protocol attached, and submit the Application to the Guardianship Division of NCAT.
- 4.3 Where the young person is in the care of an OOHHC NGO, the NGO will gather the relevant information for the application to be completed, and submit this information to the relevant Child & Family District Unit (CFDU). FACS will then prepare an Application for Guardianship Form as previously mentioned.
- 4.4 FACS, relevant NGO representatives and where possible the young person subject to the application will attend the hearing held by the Guardianship Division of NCAT and will seek an initial guardianship order for the appointment of a Public Guardian with an Advocacy Function.
- 4.5 Where possible FACS should make the application to the Guardianship Division of NCAT two years prior to the young person's transition from the care of the Minister, has after the young person has attained the age of 16 years (applications cannot be made for young people under 16 years).
- 4.6 In cases where an early application was not made because at the time the young person was 16 years of age and they did not meet the criteria required in section 3, but later require that a Public Guardian be appointed, FACS will expedite an application to the Guardianship Division of NCAT in order to maximise the time for involvement of the Public Guardian in the transition planning process before the young person leaves statutory OOHHC to adult disability services.
- 4.7 Although the term of the initial guardianship order has effect for a period not exceeding 12 months, the Guardianship Division of NCAT may specify that the initial order has effect for a period not exceeding 3 years. FACS will make application for an initial order that has effect for a 2 year period to enable the Public Guardian to remain involved with an Advocacy Function at least until the young person attains the age of 18 years and has transitioned from statutory out-of-home care to adult disability services.

5. Case Management and decision-making

- 5.1 The Minister for Family and Community Services will retain the legal parental responsibility for the young person after the Public Guardian is appointed until the young person attains the age of 18 years. The delegates of the Minister for Family and Community Services³ will

³ At present the delegates for the Minister of Family and Community Services include officers of FACS and Barnardos.

retain lead case management responsibilities until the young person attains the age of 18 years.

- 5.2 FACS Divisions or the designated non-government organisations will collaborate to take shared responsibility for case management and facilitate regular reviews of the young person's individual needs to ensure currency and ongoing relevance of proposed placement design.
- 5.3 The Public Guardian will have an Advocacy Function from the making of the guardianship order until the young person attains the age of 18 years and is no longer under the parental responsibility of the Minister.

6. Advocacy Function

- 6.1 The parties to the protocol acknowledge that the Guardianship Division of NCAT might create its own Advocacy Function on a case by case basis. Subject to the express directions of each individual Guardianship Order; this protocol represents the general and agreed understanding between the parties as to the nature and operation of the Advocacy Function.
- 6.2 The Public Guardian considers advocacy to be an integral part of a guardian's role. Often, advocacy is a necessary prerequisite to making a major decision.
- 6.3 Advocacy may also be necessary in continuing to highlight a young person's need for services, accommodation or other supports. Advocacy seeks to elicit from the service sector, on behalf of the young person under guardianship, access to appropriate service and support options.
- 6.4 Decision-making for young people in the care of FACS rests with the Minister, however the Public Guardian will have a specific advocacy role in planning for the transition of a young person from the care of the Minister to adult life, and case management and support from adult disability services.
- 6.5 A guardian with an Advocacy Function may focus on advocating on behalf of the young person in regard to specific matters such as:
 - (a) leaving care transition planning
 - (b) future accommodation needs
 - (c) support service planning, and
 - (d) funding.
- 6.6 When appointed with an Advocacy Function for a young person under the care of the Minister for Family and Community Services, the Public Guardian may use the Advocacy Function to:
 - (a) advocate for the development and follow up of an appropriate Transition Plan
 - (b) advocate to ensure that the young person's Transition Plan meets the assessed needs of the young person
 - (c) advocate for the involvement of appropriate support services
 - (d) attend Transition Planning meetings as an advocate for the young person
 - (e) request for FACS Divisions to convene joint transition planning meetings which should occur as a minimum every three months, to ensure timely and targeted planning is in place for the young person
- 6.7 Using an Advocacy Function, the Public Guardian is also able to act as an independent facilitator in planning, discussion and negotiation between FACS divisions and other potential service providers, including OOHG NGOs. The Public Guardian then represents a consistent party in a time of major change in the young person's life.

- 6.8 In the event that the guardian does not consider that the guardian can properly exercise the Advocacy Function because of any action or omission on the part of the delegated officer with lead case management responsibility then the Public Guardian will raise this concern by means of the dispute resolution process set out in clause 8.
- 6.9 The Advocacy Function does not give the Public Guardian authority to make health or welfare decisions on behalf of a young person while the young person is under the care of the Minister. However, the Public Guardian may advocate for access to information on prior assessments on the young person leaving care or for new health assessments that may inform support planning.

7. Capacity Building of Staff

- 7.1 The parties to the Protocol are committed to increasing the capacity of FACS, NGO and Public Guardian staff to increase their skills around a range of practice and application issues. This includes, but is not limited to, training, resource development and other systems changes that will facilitate the implementation of the protocol between FACS, NGO staff and guardians employed by the Public Guardian.
- 7.2 The Public Guardian may provide training on the following practice topics:
- The Advocacy Function.
 - The role of the Public Guardian in general and in relation to the Advocacy Function in the transition planning process.
- 7.3 FACS may provide training on the following practice topics:
- Characteristics of the target group,
 - Casework practice issues relevant to working with the client target group in particular the impact of trauma on young people,
 - Person Centred Planning, and
 - The Leaving Care Program (LCP)
- 7.5 Staff training, where deemed necessary, will occur in a planned and coordinated way and will be reviewed by the Protocol Working Group in accordance with Section 9.
- 7.6 Parties to the protocol will review all internal casework practice policy and procedures in relation to the client target group to ensure consistency with this protocol.


8. Dispute Resolution

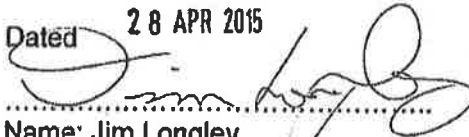
- 8.1 The parties to the protocol will exhaust all avenues to ensure the timely resolution of disputes regarding the agencies roles and responsibilities by those officers primarily responsible for the young persons transition planning.
- 8.2 Where resolution is not possible, the issue will be escalated to the next level of management.
- 8.3 Where agreement can not be reached at this level, the issue will be escalated to be resolved between the District Directors of the agencies.
- 8.4 Where the District Directors are not able to resolve the dispute, the issue will be escalated to the nominated official of each agency:
- (a) Relevant FACS Deputy Secretary
 - (b) Public Guardian: The Public Guardian.

9. Alteration and review of the Protocol

- 9.1 To ensure an effective implementation of the revised protocol, a Protocol Working Group comprising representation from FACS divisions and the Public Guardian will monitor the protocol and hold meetings as agreed.
- 9.2 Any of the parties to the protocol can call a meeting of the Protocol Working Group.
- 9.3 Proposed alterations to the protocol may be notified by any of the parties to the protocol at any time. These will be negotiated by the Protocol Working Group. Any proposed changes agreed to by the Protocol Working Group will be subject to approval by the Deputy Secretary, Programs and Service Design; the Deputy Secretary, Ageing, Disability and Home Care; and the Public Guardian.
- 9.4 The Protocol Working Group will undertake a review in 2016. The review will include:
- (a) number of young people who have been appointed a Public Guardian with an Advocacy Function
 - (b) the age of the young person when the application for a Public Guardian was submitted to the Guardianship Division of NCAT
 - (c) the process and outcome of applications made to the Guardianship Division of NCAT
 - (d) Interagency collaboration in the transition planning process
 - (e) number of young people under the Protocol to have a leaving care plan completed and approved by the time they leave the care of the Minister for Family and Community Services.

EXECUTIVE AGREEMENT


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Name: Maree Walk
Position: Deputy Secretary, Programs and Service Design

Dated 28 APR 2015

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Name: Jim Longley
Position: Deputy Secretary, Ageing, Disability and Home Care

Dated

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Name: Graeme Smith
Position: NSW Public Guardian

Dated