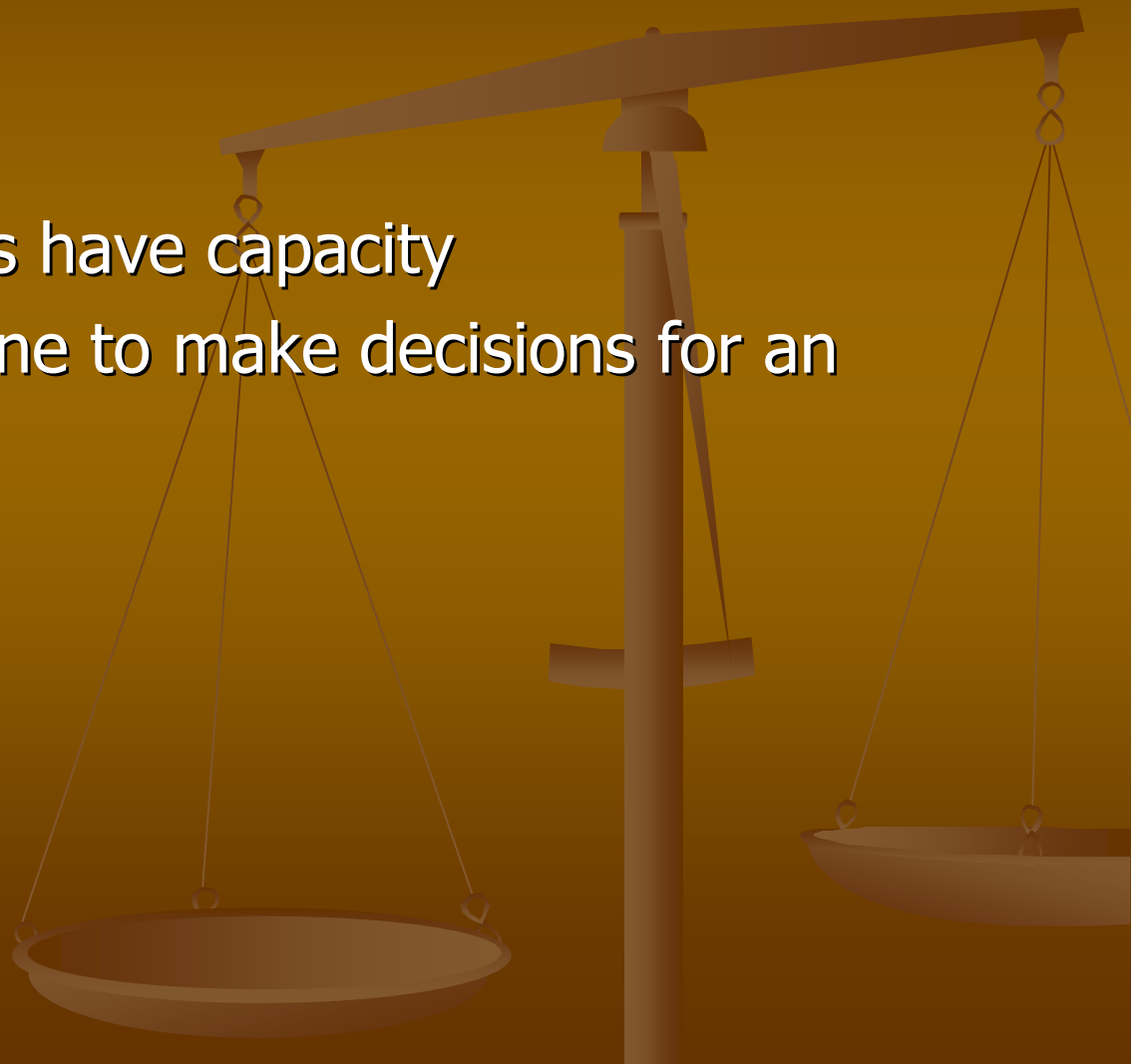


The Role of the Guardianship Tribunal

- Court-like body
- Determines if adults have capacity
- Can appoint someone to make decisions for an incapable adult



The Role of the Guardianship Tribunal

- Guardians make lifestyle decisions
 - Accommodation
 - Consent to medical/dental treatment
 - Services
- Financial Managers
 - Legal authority to manage property and finances

Limits of the Tribunal's Jurisdiction

- Tribunal cannot make orders to protect people from abuse per se
- No jurisdiction to make orders for people who are capable who are in an abusive relationship

The Role of the Guardianship Tribunal

- There are situations where the Tribunal has jurisdiction to make orders
- The making of orders can help to break a cycle of abuse
- Can help to remove a vulnerable person from an abusive situation

Guardianship

- Tribunal must be satisfied of legislative criteria
 - Disability (broadly defined)
 - Incapacity (needs supervision or support to undertake activities of daily living)
 - Need (matter cannot be resolved informally)

Guardianship

- Elderly woman,
 - cognitively impaired as result of dementia or stroke
 - limited mobility
 - dependent for care
- Son/carer
 - over-invested in carer role
 - refusing or limiting access by services
- Often issues for the carer,
 - substance abuse
 - psychiatric issues, financially dependent

Guardianship

- In extreme cases:
 - Woman had gangrenous ulcers
 - Woman had contractures and pressure sores after left on couch for months following a fall
- Guardian appointed to decide accommodation, health care and consent to medical treatment
- Move to hospital to assess and treat

Sexual Assault

- If sexual assault investigated by police, forensic examination may be required
- Two step process: examination and collection of samples and decision to release samples and information to police
- ‘Person Responsible’ can consent to examination if an adjunct to medical treatment
- Only a guardian can consent to release of information

Enduring Guardianship

- People can appoint their own enduring guardian
- This is not supervised by the Tribunal
- Tribunal can review appointment of enduring guardian if concerns they are not acting in best interests of the person who appointed them

Financial Management

- Most common form of abuse that generates application to the Tribunal
- Legislative criteria
 - Incapable of managing finances
 - Need for formal management
 - Best interests of the person

Financial Management

- Elderly person living alone in community
- “Befriended” by person who helps with banking and other affairs
- Soon making regular, uncharacteristic withdrawals
- Maybe signing documents, will, loan, EPA
- Attorney may be using funds for themselves

Financial Management

- Financial management order
 - Suspends a power of attorney
 - Person not capable of entering contracts
 - Only appointed manager can act
 - Does involve fees for the person

Enduring Powers of Attorney

- Tribunal can review Enduring Power of Attorney
- Can revoke an Enduring Power of Attorney
- Can require attorney to furnish accounts
- Can declare the person is not capable and therefore, only their attorney can act

Medical Treatment

- Tribunal can consent to medical treatment if the person is objecting or ‘person responsible’ will not provide consent
 - Woman with dementia, septic ulcers, required amputation
 - She objected, but no understanding of consequences
 - Family said, “let her die”

Medical Treatment

- Had been in a hostel
- Not end-stage dementia, still recognised family, wheelchair bound for some months
- Death by gangrene/septicemia likely to be slow and painful
- Tribunal consented to amputation, but no authority to compel treatment- Supreme Ct.

Conclusion

- Tribunal cannot prevent all abuse
- Does not have jurisdiction in every case
- When it has jurisdiction, bound to act in best interests of the person with a disability
- In appropriate situations, making orders to consent to treatment or appoint guardians or financial managers is effective tool

Guardianship Tribunal

www.gt.nsw.gov.au

Telephone enquiries

(02) 9555 8500

1800 463 928

