6. Guardianship and Financial Administration Orders

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Summary

6.1 The proposals in this chapter focus on protecting and safeguarding older persons subject to guardianship or financial administration orders.

6.2 The majority of people subject to guardianship and financial administration orders are older persons with dementia. There are existing safeguards in place to protect persons subject to orders, yet statistics and case studies supplied to the ALRC demonstrate that older persons subject to guardianship or financial administration orders are not sufficiently protected from abuse.

6.3 The ALRC envisages that the proposed National Plan on elder abuse will provide a platform for the Commonwealth to work with states and territories to develop and implement best-practice models, including for guardianship and financial administration. The ALRC proposes a practical program of reform for guardianship and financial administration schemes to enhance safeguards. This includes the proposal that guardians and financial administrators be better educated to act in accordance with the obligations and responsibilities of their appointments. There may also be an opportunity to require the use of surety bonds.

6.4 Reform in this area aims to safeguard and protect older persons, but implementation would necessarily benefit all adults subject to guardianship or financial administration.

Guardianship and financial administration orders

6.5 Laws and legal frameworks for guardianship and financial administration are the responsibility of the states and territories. Every state and territory has a relevant tribunal and a statutory body that constitutes the guardian or administrator of last resort—appointed where the tribunal considers that a person requires a guardian or administrator but there is no other suitable person that is willing or able to fulfil the appointment.[1]

6.6 Guardianship and financial administration, also referred to as 'financial management' orders, are orders of a court or tribunal which confer guardianship or financial administration over a person with diminished decision-making ability, usually for a set period of time.[2] Guardianship orders refer to the transfer of decision making for a person's health and wellbeing from the person to another person or to the public guardian. Guardianship orders are usually limited to decision making in certain areas of a person's life, although they can be plenary to provide for unlimited decision making related to the health and wellbeing of the person.

6.7 An order for the financial administration of a person's property grants power to an administrator to conduct certain types of transactions on behalf of the person. A financial administration order may include the requirement to receive directions from the state trustees.[3] Financial administrators are generally required to submit a financial management plan, keep records of financial transactions, and lodge accounts annually with tribunals or state trustees, depending on the state or territory. Financial administrators can be professional accountants, trustee companies, state trustees or equivalent, or non-professional persons.[4]

6.8 There are various eligibility criteria of which the tribunal needs to be satisfied before a non-professional person is appointed guardian or financial administrator. For example, in NSW, the tribunal must be satisfied that the proposed guardian is compatible with the person; has no undue conflicts; and is willing and able to perform the functions of guardian.[5] There are similar criteria for guardian appointments in other states and territories.[6]

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1 For a discussion of the different guardianship bodies see John Chesterman, 'The Future of Adult Guardianship in Federal Australia' (2013) 66(1) *Australian Social Work* 26, 27–28.

2 Guardianship orders are usually reviewed by the relevant tribunal at the end of the ordered term. Guardianship and financial management orders can also be made by the Supreme Court. For the purposes of this inquiry, the ALRC focuses on tribunal orders.

3 See, eg, *NSW Trustee and Guardian Act 2009* (NSW) s 66.

4 See, eg, *Guardianship and Administration Act 2000* (Qld) s 14.

5 *Guardianship Act 1987* (NSW) s 17.

6 See, eg, *Guardianship and Administration Act (1986)* (Vic) s 23; *Guardianship and Administration Act 2000* (Qld) s 15.

6.9 Some states require the financial administrator to be a 'suitable person', or to demonstrate sufficient expertise, knowledge or competency before an appointment is made.[7]

6.10 Guardians and financial administrators are generally obliged to act in the 'best interests' of the person, with reference to statutory guiding principles to observe the interests, freedom, participation and family life of the person, and to protect the person from abuse.[8] There are some statutory provisions preventing financial administrators from conducting conflict of interest transactions, or combining or using the estate to their own benefit.[9]

6.11 An appointment may be revoked by the tribunal where:

- the enduring guardian, attorney under power or tribunal-appointed guardian or administrator (appointee) requests a revocation of the appointment;[10]
- the appointee has died;
- it is alleged that at the time of making the enduring instrument the person lacked the legal capacity to do so;[11] or
- it is alleged the appointee is not meeting their obligations under the relevant act.[12]

Abuse of older persons

6.12 In some states and territories the number of new applications for guardianship or financial administration orders has been steadily increasing. In NSW, for example, over 9,000 new applications were finalised in the Guardianship Division of the NSW Civil and Administrative Tribunal (NCAT) during 2014–2015. The number of new applications received has increased over 23% since 2010–2011.[13]

6.13 The NSW Trustee and Guardian (NSWT&G) advised that, as of 31 December 2015, 11,162 people were subject to direct financial management with the NSWT&G, and 3,913 were subject to the financial management of a private manager.[14]

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7 See, eg, *Guardianship Act 1987* (NSW) s 25M; *Guardianship and Administration Act (1986)* (Vic) s 47; *Guardianship and Administration Act 2000* (Qld) s 15; *Guardianship and Management of Property Act 1991* (ACT) s 10(4)(f).

8 *Guardianship Act 1987* (NSW) ss 4, 21A(2); *NSW Trustee and Guardian Act 2009* (NSW) s 39; *Guardianship and Administration Act (1986)* (Vic) ss 28, 49; *Guardianship and Administration Act 2000* (Qld) sch 1; *Guardianship and Administration Act (1990)* (WA) 1990 ss 51, 70; *Guardianship and Administration Act 1995* (Tas) s 6; *Guardianship of Adults Act 2016* (NT) s 4.

9 See, eg, *Guardianship and Administration Act 2000* (Qld) ss 37, 49, 50.

10 See, eg, Ibid s 27(1).

11 See, eg, *Powers of Attorney Act 2014* (Vic) s 23.

12 See, for eg, *Guardianship Act 1987* (NSW) s 25P.

13 NSW Civil and Administrative Tribunal, *Annual Report 2014–2015* (2015) 40.

14 NSW Trustee and Guardian, *Submission 120*.

6.14 Guardianship and financial administration orders are increasingly being made for older people,[15] with the majority of current orders applying to persons over 65 years with dementia.[16] The NCAT stated in its 2014–2015 Annual Report, that the increased workload of the Division has been 'directly impacted by the ageing of the population'.[17]

6.15 In Issues Paper 47, the ALRC asked for evidence regarding the abuse of older persons by guardians and financial administrators.[18] Stakeholders confirmed that, in their experience, while abuse of older persons had been perpetrated by guardians or financial administrators,[19] it was not in the same numbers as abuse by enduring attorneys.[20] The Office of the Public Advocate (Vic) noted:

> Elder abuse may also be experienced by people subject to a guardianship or administration order of VCAT (or relevant state/territory court or tribunal). While tribunal oversight when making the order makes it less likely, OPA has occasionally been appointed guardian following allegations of elder abuse against a private guardian or has seen a professional administrator appointed after a private administrator failed to present VCAT with adequate records and was suspected of financial mismanagement.[21]

6.16 The NSWT&G advised that, in 2015, it litigated 521 matters on behalf of represented persons. Of these, 65 were identified as containing financial abuse of an older person; and six related to financial abuse by a private financial administrator (9%).[22] The proportion of matters litigated for the financial abuse of an older person was similar in previous years. The NSWT&G advised that there had been

> a few cases where close family members are appointed financial manager and misappropriate the funds of those whom they manage. There have been cases involving misappropriation of a client's funds by a mother, another involving a client's father and others have involved misappropriation by siblings.[23]

6.17 As NSWT&G state, the figures represent only matters that they litigated. There may be innumerable matters that are undetected or not acted on. Even where financial abuse was identified, there may have been valid reasons why litigation did not proceed, including that the client had expressed contrary wishes or funds were not recoverable; the client may not have had the funds to proceed in the Supreme Court; or it may have been difficult to obtain the evidence required to meet the civil standard of proof in the court.

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15 Chesterman, above n 1, 28–29, 34.

16 NSW Civil and Administrative Tribunal, above n 13, 40–41.

17 Ibid 40.

18 Question 32.

19 Seniors Rights Service, *Submission 169*; ADA Australia, *Submission 150* 'Abuse by Administrators and Guardians does occur and it something that we often witness'; State Trustees Victoria, *Submission 138*; NSW Trustee and Guardian, *Submission 120*; Office of the Public Advocate (Vic), *Submission 95*.

20 ACT Disability, Aged and Carer Advocacy Service, *Submission 139*; The Public Trustee of Queensland, *Submission 98*; TASC National, *Submission 91*.

21 Office of the Public Advocate (Vic), *Submission 95*.

22 NSW Trustee and Guardian, *Submission 120*. 23 matters (35%) related to alleged financial abuse by an attorney.

23 NSW Trustee and Guardian, *Submission 120*.

6.18 State Trustees Victoria submitted statistics from a case review conducted in February 2016. Of the 128 cases of financial abuse reviewed, 49% of abusers had no legal authority to act for the victim; 27% held a power of attorney; and 20% had acted under a financial administration order.

6.19 State Trustees Victoria provided an example of an administrator who lent himself $20,000 of his parent's money which was then not repaid, and noted there to be

> plenty of evidence that VCAT appointed administrators are guilty of financial abuses of represented persons. State Trustees has no reason to assume that VCAT appointed guardians are not also equally guilty of offending.[24]

6.20 Stakeholders referred to the case of *Woodward v Woodward* [2015] NSWSC 1793.[25] In this case, the tribunal had appointed one of Mrs Woodward's sons as her financial manager. Acting in this capacity, the son had transferred funds from his mother's account and used the money to repay some debts, buy a car and carry out building works on his home. Mrs Woodward, who was living with her son and reliant on him for care, was said by the son to have given him the large sum of money, even though he was her financial administrator and this was a conflict of interest transaction. After the mother died, the matter was taken to the Supreme Court by the executor of her estate, where the Court observed that the financial manager had been totally 'oblivious to the restrictions on his authority and to his obligation to account'.[26]

6.21 The ALRC has also heard about appointed guardians blocking the access of family members, friends or care-givers to older persons. Access may be denied so that the guardian can keep control over the person and the flow of information, particularly regarding the guardian's conduct. The Law Council of Australia provided the following case study:

> A professional Guardian arranged for the admission of an elderly woman into residential care. The Guardian gave directives to the facility that the woman would not be able to receive visitors, including her relatives and neighbours. The Guardian did not want the woman to know that her house was being sold and to get upset.[27]

Current safeguards

6.22 There are three key practices already in place that operate to protect older persons from abuse by guardians or financial administrators.[28]

6.23 First, tribunals must hold hearings in order to appoint guardians or administrators. Tribunals are required to refuse unwarranted applications, and appoint appropriate persons, companies, or state trustees or guardians, where needed.[29] As

24 State Trustees Victoria, *Submission 138*.
25 NSW Trustee and Guardian, *Submission 120*; Law Council of Australia, *Submission 61*.
26 *Woodward v Woodward* [2015] NSWSC 1793 (3 December 2015) [12].
27 Law Council of Australia, *Submission 61*.
28 Office of the Public Advocate Victoria, *Submission 95*.
29 See, eg, *Guardianship and Administration Act 2000* (Qld) ch 3; *Guardianship Act 1987* (NSW) pt 3; *Guardianship and Administration Act (1986)* (Vic) 1986 pt 4, 5; *Guardianship and Administration Act (1990)* (WA) 1990 pt 4.

discussed above, certain eligibility criteria must be satisfied before tribunals can confer an appointment and make orders. Orders need not be plenary, and can relate only to particular decision making.[30]

6.24 Legal Aid (ACT) submitted that the process of holding a hearing before any appointment is made, and the 'option of appointing the public advocate and Trustee if no other guardian or manager is available or suitable', means that there are fewer incidences of elder abuse by an appointed guardian or financial administrator.[31]

6.25 Secondly, there are pre-existing oversight mechanisms for guardians and financial administrators. This includes statutory review of orders, required in most states and territories. Legal Aid (ACT) observed that the requirement for regular tribunal reviews of guardianship and financial administration orders acts as a safeguard against abuse.[32]

6.26 Tribunals can review appointments where guardians or administrators have not acted in accordance with the stated principles of the relevant legislation, or did not exercise their powers as directed by the order. Tribunal appointments can be reviewed at the request of the appointed person, the person, the state trustee/guardian, or by a concerned third party.[33] There are also ongoing obligations for financial administrators to report, including the requirement to submit a financial plan and provide annual records to tribunals or state trustees.[34] These requirements provide key safeguards against abuse.

6.27 Thirdly, public guardians/advocates and state trustees produce accessible material in print and online to help people understand their roles and responsibilities, and to make decisions as guardians or administrators. Many state bodies also provide telephone support lines and offer community education.[35]

6.28 Chapter 3 discusses investigation of abuse or neglect by public guardians/advocates, including the conduct of guardians or administrators. This clearly also has a protective function.

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30 Under the safeguarding principle recommended by the ALRC, appointments should be a last resort; limited in scope; proportionate; and apply for the shortest possible time: Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, Discussion Paper No 81 (2014) rec 3-4.

31 Legal Aid ACT, *Submission 58*.

32 Ibid.

33 See, eg, *Guardianship Act 1987* (NSW) pt 3, 3A; *Guardianship and Administration Act (1986)* (Vic) 1986 pt 4, 5; *Guardianship and Administration Act 2000* (Qld) ch 3; *Guardianship and Administration Act (1990)* (WA) 1990 pt 5, 6; *Guardianship and Administration Act (1993)* (SA) div 2, 3.

34 See, eg, *Guardianship and Administration Act (1993)* (SA) s 44.

35 For example, in NSW, the Private Guardian Support Unit provides an information line service; In Victoria, the Victorian Civil and Administrative Tribunal provides a phone line for administrators seeking advice and the Office of the Public Advocate has an advice line.

Reducing the risk

6.29 Stakeholders suggested that more could be done to prevent abuse by guardians and financial administrators, with particular emphasis on education and redress.[36] The ALRC views the provision of information to proposed guardians and financial administrators to be a key safeguard against elder abuse, and asks below how best to achieve this.

Enhanced understanding of roles and responsibilities

Proposal 6–1 Newly-appointed non-professional guardians and financial administrators should be informed of the scope of their roles, responsibilities and obligations.

6.30 Understanding the scope and limits of guardian and financial administration appointments is paramount to reducing abuse. Abuse of older persons by guardians or financial administrators can be inadvertent. For example, administrators may be unaware of the requirement to keep assets separate from their own. Informal arrangements in place prior to the commencement of the order may persist, which may involve conduct in breach of the appointment.

6.31 Abuse can also happen where the representative is indifferent or reckless as to their legal responsibilities. There may also be a small cohort of people who deliberately set out to exploit or abuse persons.[37]

6.32 UnitingCare observed that 'better educating persons to whom powers are granted should be a fundamental step towards the prevention of abuse'.[38] The ALRC considers that better understanding is a necessary safeguard against abuse, and proposes that newly-appointed guardians and financial administrators be better informed about the scope of their appointments, the limits of their powers and their obligations under statute. Greater education would complement the requirement for an undertaking in Proposal 6-2.

6.33 The ALRC is interested to hear about the best way to provide such education, and invites submissions on whether training should be compulsory, at the discretion of the tribunal or incorporated into tribunal processes.

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36 See, eg, Seniors Rights Service, *Submission 169*; UnitingCare Australia, *Submission 162*; Townsville Community Legal Service Inc, *Submission 141*; Legal Services Commission SA, *Submission 128*; Law Council of Australia, *Submission 61*.

37 See examples given by NSW Trustee and Guardian, *Submission 120*; Law Council of Australia, *Submission 61*.

38 UnitingCare Australia, *Submission 162*.

Question 6–1 Should information for newly-appointed guardians and financial administrators be provided in the form of:

(a) compulsory training;

(b) training ordered at the discretion of the tribunal;

(c) information given by the tribunal to satisfy itself that the person has the competency required for the appointment; or

(d) other ways?

Compulsory

6.34 Stakeholders strongly supported training all newly-appointed private guardians and financial administrators about their roles, obligations and responsibilities.[39] Training was said to have a two-pronged effect. First, training may help inform those decision makers who are unaware of their obligations.[40] For the small number of people who deliberately set out to exploit or abuse a person, training would reinforce the seriousness of their role and the consequences of any breach.[41]

6.35 The Townsville Community Legal Service suggested a 'school' for attorneys/administrators and guardians—perhaps in the form of an online training forum uniquely adapted to the issues of each jurisdiction and appointment.[42] The Office of the Public Advocate (Vic) suggested that education and training for private guardians and administrators could be provided in Victoria by the Office of the Public Advocate and State Trustees.[43]

6.36 A program of mandatory training for guardians and financial administrators may not be a practical solution. There may be issues of access for people who live in regional areas and for people from culturally and linguistically diverse backgrounds. The ALRC has been advised in consultation that there is little efficacy in forcing people to undergo training. Where training has been provided and attendance has been voluntary, the ALRC has heard that only the people already informed and not in need of training attended.

Discretionary

6.37 In its Guardianship Report, the Victorian Law Reform Commission (VLRC) recommended that the tribunal be able to appoint a guardian or financial administrator,

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39 See, eg, Seniors Rights Service, *Submission 169*; ARAS, *Submission 166*; Townsville Community Legal Service Inc, *Submission 141*; Legal Services Commission SA, *Submission 128*; Australian Bankers' Association, *Submission 107*; The Public Trustee of Queensland, *Submission 98*; Office of the Public Advocate Victoria, *Submission 95*; Advocare Inc (WA), *Submission 86*; Law Council of Australia, *Submission 61*.

40 Office of the Public Advocate (Qld), *Submission 149*; Advocare Inc (WA), *Submission 86*.

41 Office of the Public Advocate (Qld), *Submission 149*.

42 Townsville Community Legal Service Inc, *Submission 141*.

43 Office of the Public Advocate (Vic), *Submission 95*.

subject to the condition that the person undertakes a designated training program, with state trustees and the public guardians appropriately funded to undertake the training.[44] This recommendation aimed to 'promote understanding of the responsibilities and duties of substitute decision makers',[45] and focused on educating only people that the tribunal identified to be in need of further training.

Tribunal processes

6.38 Education could be incorporated into tribunal processes without the need for external training.

6.39 Generally, the tribunal must be satisfied of a person's suitability, competency or ability to act in the appointment.[46] It has been suggested that, as part of that requirement, the tribunal could seek confirmation that the person understands the scope of the role and their obligations under statute. Where the tribunal is not satisfied that the person has the requisite knowledge, it could be incumbent on the tribunal to outline the key obligations and responsibilities of the person's appointment, if it does not already.

Acknowledging obligations

> **Proposal 6–2** Newly-appointed guardians and financial administrators should be required to sign an undertaking to comply with their responsibilities and obligations.

6.40 Case studies supplied to the ALRC indicate that the seriousness of guardian or financial administrator appointments can go unrecognised.[47] This may be likely where a care arrangement had been in place prior to the order and the guardian or administrator continues the informal, often familial, arrangement.

6.41 The VLRC recommended that all 'tribunal-appointed substitute decision makers' undertake in writing to act in accordance with their responsibilities and duties.[48] The ALRC agrees that an undertaking should be signed following an appointment of all tribunal-appointed guardians and financial administrators (including those acting for state bodies of last resort). The proposed undertaking would serve to solemnise the appointment and reinforce the obligations of the guardian or administrator. It may also be available for use in any subsequent proceedings concerning failure of a decision maker to comply with their obligations.[49]

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44 Victorian Law Reform Commission, *Guardianship*, Final Report No 24 (2012) rec 294.

45 Ibid [18.48].

46 See, eg, *Guardianship Act 1987* (NSW) s 25M; *Guardianship and Administration Act (1986)* (Vic) 1986 s 47; *Guardianship and Administration Act 2000* (Qld) s 15; *Guardianship and Management of Property Act 1991* (ACT) s 10(4)(f).

47 NSW Trustee and Guardian, *Submission 120*; Office of the Public Advocate (Vic), *Submission 95*; Law Council of Australia, *Submission 61*.

48 Victorian Law Reform Commission, *Guardianship*, Final Report No 24 (2012) rec 296.

49 Ibid [18.56].

6.42 This small act could have a large impact on the mindset of people undertaking these appointments.

Providing security

Question 6–2 In what circumstances, if any, should financial administrators be required to purchase surety bonds?

6.43 In Chapter 5, the ALRC proposes to vest tribunals with compensatory powers. This aims to deter people from acting outside of their power, while also providing an avenue for redress when that occurs. State Trustees Victoria, however, observed that

> [o]ne of the more distressing features of State Trustees' investigations into allegations of financial abuse is that often, by the time the issue has been identified, an application made to VCAT, and an administrator appointed, the offender has squandered what was misappropriated and there are no assets to recover.[50]

6.44 The ALRC asks whether the surety bond scheme of the NSWT&G should be adopted nationally, to address situations where compensation orders cannot restore the person to their original state because misused funds have been totally depleted.

6.45 Statutes in NSW and Queensland permit the public trustee to require that security be lodged with state trustees.[51] NSW introduced a surety bond scheme in March 2015. Under the relevant provision, all private financial managers are required to obtain a surety bond over the managed person's estate.[52] The cost of the bond depends on the value of the estate. An estate valued at under $25,000 attracts a one-off fee of $150. Estates valued from $25,001 to $50,000 attract a one-off fee of $350. Where assets of the estate are worth over $50,001, an ongoing annual fee is charged at 0.04% of the value of the estate.[53]

6.46 NSWT&G explained that the bond system was introduced because of the limited protections in place for people whose affairs are managed by a financial manager:

> The current process of civil action to recover losses is long and costly, and may not result in the full recovery of funds. NSW Trustee & Guardian introduced the Surety Bond Scheme to make sure that all privately managed estates are adequately protected.
>
> Cases of mismanagement and fraud are rare, but they do occur. The Surety Bond scheme protects against mismanagement and fraud and can also be applied in circumstances where managers suffer ill-health, or develop dementia and make decisions that lead to material loss.[54]

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50 State Trustees Victoria, *Submission 138*.

51 *NSW Trustee and Guardian Act 2009* (NSW) ss 64, 68; *Guardianship and Administration Act 2000* (Qld) s 19.

52 <www.tag.nsw.gov.au>.

53 NSW Trustee and Guardian, *Surety Bond: Frequently asked questions* (2015) q 4.

54 Ibid q 2.

6.47 The NSW scheme is in its infancy, and there is no available evaluative material. The Public Trustee of Queensland suggested that consideration be given to implementing the surety bond program nationwide.[55] The ALRC is interested in hearing whether this program would be useful in other states and territories. Some considerations include:

- How would this scheme interact with the proposal to extend the jurisdiction of tribunals to make compensation orders (see Proposal 5-5)? In Queensland, for example, the *Guardianship and Administration Act 2000* (Qld) makes provision for the security to be applied in satisfaction of the order for compensation.[56]
- Are there any unintended consequences attached to the scheme? For example:
  - would it act as a deterrent for potential financial administrators to accept the appointment; and
  - would an administrator be more inclined to take funds and assets where the administrator considers that the funds would be recuperated by the person subject to orders?

Ascertaining will and preferences

Question 6–3 What is the best way to ensure that a person who is subject to a guardianship or financial administration application is included in this process?

6.48 Tribunal processes safeguard against guardianship or financial administration orders being made against persons where they are unaware of the application. Tribunals endeavour to make sure that a person is aware when an application is made for guardianship or financial administration against them. Tribunals generally advise the person when an application for guardianship or financial management has been made by providing copies of the application to the person's address. Some states will provide persons who are the subject of an urgent hearing with a verbal notice of hearing.[57]

6.49 Tribunals are generally required by statute to consider the views of the person prior to making an order.[58] All tribunals encourage attendance of the person at the hearing, where attendance is possible. Where required, interpreters or other communication aids may be provided to aid the person's participation.

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55 The Public Trustee of Queensland, *Submission 98*.

56 *Guardianship and Administration Act 2000* (Qld) s 59(6).

57 See, eg, NSW Civil and Administrative Tribunal, Guardianship Division, *What to Expect at a Hearing* <www.ncat.nsw.gov.au>.

58 See, eg, *IF v IG* [2004] NSWADTAP 3 (22 January 2004) [26]; *Guardianship Act 1987* (NSW) s 14(2)(a)(i); *Guardianship and Administration Act (1986)* (Vic) 1986 s 22(2)(ab).

6.50 There does not, however, appear to be any requirement for tribunals to speak directly with a person who cannot attend the hearing. The ALRC is concerned that this may amount to the will and preferences of an absent person not being obtained by the tribunal. Particularly, it may be difficult for the tribunal to accurately ascertain the need for guardianship and financial administration, and the scope of any order without first speaking with the person.

6.51 It is the preliminary view of the ALRC that a best-practice model should require the tribunal, where possible, to speak with the person regardless of attendance at the hearing before the tribunal appoints a guardian or financial administrator. The ALRC welcomes submissions on the processes of tribunals in this regard.