

Welfare guardianship under the PPPR Act

Care Matters
Learning & Wellbeing

The Protection of Personal and Property Rights Act 1988 (PPPR Act) provides a way to legally assist people who do not have the capacity to look after their own affairs.

Under the PPPR Act, you can apply for a Welfare Guardian Order for yourself or someone else.

Welfare guardian

A person appointed by the Family Court to look after the personal care and welfare of a person who is unable to do this for themselves.

A welfare guardian can only be appointed when a person “...wholly lacks the capacity to make or to communicate decisions relating to any particular aspect or particular aspects of the personal care and welfare of that person...” (PPPR Act 1988). The person doesn't have to be completely and totally incapacitated to have a welfare guardian. Many people can make simple, child-like decisions but don't understand the consequences and may still get a welfare guardian because their lack of understanding of consequences, or lack of understanding of complex decisions, can make them very vulnerable.

The Family Court's baseline is that everyone **does** have the capacity to do these things, so it must be proven that a person cannot. For example, a welfare guardian cannot be appointed just because a person makes decisions that may not seem reasonable to other people.

The Family Court judge will not make an order unless they believe that the appointment of a welfare guardian is absolutely necessary for the person's safety and to ensure that the right decisions are made for this person.

The role of a welfare guardian is to:

- > make decisions on the person's behalf that relate to health, care and living. For example, where you live, and the medical treatment that you receive.
- > always promote the person's best interests.
- > encourage the person to develop and be as self-reliant as possible.
- > help the person to live in their community.
- > always consult with the person.
- > consult with other people who are involved in the person's welfare, such as their property manager or hospital caregiver.

Welfare guardians do **not** control any money or property; this is done through a separate Order to Administer Property or an Order to Manage – which is determined by the level of income and assets the disabled person has. Legally, they are also **not** allowed to:

- > make decisions for the person about getting married or divorced, or putting children up for adoption.
- > agree to the person having electro-convulsive treatment (ECT) or brain surgery, or being part of a medical experiment.
- > refuse standard medical treatment for the person when it's necessary.
- > request, on behalf of the person, the option of receiving assisted dying under the End of Life Choice Act 2019.

Once a child turns 18, they become legally responsible for their own decisions. Parents are no longer their guardians and cannot legally make any decisions for them or give/refuse consent. Equally, being 'next of kin' does not allow any legal rights to information on the person.

If you believe that your child does not have the capacity to understand the nature and consequences of their decisions and they are unable to communicate them, then well before a child's 18th birthday we recommend considering, as a family, if you will apply for welfare guardianship on their 18th birthday.

It is worth noting that from the age of 16 in New Zealand, an individual can legally give or refuse consent for medical or surgical procedures. If the medical practitioner believes that the person does not have the capacity to consent in that instance, they can however refer to the guardian, but the child should always be informed about their treatment. See [Nan Jensen's](#) video resource for more information on this.

People applying to be a welfare guardian need to be at least **20 years old**. Before a law change in 2018, it was difficult to have more than one welfare guardian except in exceptional circumstances.

Now—if it can be shown to be in the best interests of the person—**two welfare guardians can be appointed**. For example, where it is more practical as two people have been involved in the person's care and wellbeing for several years. This would be an application for a joint and several appointment, which means both people need to consult each other regularly but they are able to act separately.

Supported decision-making

"Supported decision-making for disabled persons means making your own decisions about your lives. Sometimes you need support to make this happen. Supported decision-making assists disabled persons to have control and choice in your lives." Auckland Disability Law

To understand supported decision-making, the following resources may be helpful:

[Whaimana – Support my decisions](#) – an informative website with a range of information, examples and resources around supported decision making.

[IHC](#) – A Guide for Supporters of People with an Intellectual Disability.

[People First](#) – A free information and advice service on rights and decision-making

[Nan Jensen](#) – A video introduction to the Protection of Personal and Property Rights Act 1998.

Note: Supported decision-making currently has no legal standing in New Zealand. As we do not have legislation on supported decision-making, if a bank, doctor, lawyer or others ask to see legal authority when you are supporting a disabled person, you will be unable to provide any.

An example: John and Marie

John is 17 and has a physical and learning/intellectual disability, he lives at home with his mum Marie who cares for him full-time. As Marie is John's mother, she is his guardian so can currently make decisions about his property, personal and medical care. However, on John's 18th birthday he legally becomes an adult. At this point, Marie will no longer be his guardian and will not be able to make any decisions or give/refuse consent on his behalf.

Marie wants to be able to continue to support John with medical, personal and property decisions because John is unable to understand the consequences of his decisions or to communicate decisions. Therefore, Marie applies for both welfare guardianship regarding decisions about his personal and medical care and an order to appoint a property manager or administer property for John's property and financial affairs.

It is important to note that the law requires that Marie does not just make decisions on John's behalf but that she encourages him to make his own decisions as much as possible and, if forced to give or refuse consent on his behalf, always consults him about the decision. Marie will be expected by the court to put John's best interests first in every decision as well as help him be as self-reliant as possible and to support him to develop in his life.

What does lacking capacity mean?

This is something that parents often ask. Unfortunately, this isn't an easy question to answer with examples of when it does and doesn't apply. The Law Foundation writes:

"23. The Act provides no single test for incapacity, which makes it complex legislation to follow and apply. 54. In general terms, however, the Act says a person lacks capacity if they do not understand the nature or cannot foresee the consequences of decisions, or are unable to communicate them. 55. As the Family Court can only intervene where a person lacks capacity, this concept of capacity and how it is assessed and considered by the court is central to the workings of the Act."

If Marie is granted welfare guardianship, then she will be able to make decisions about John's personal care, including deciding where he lives, consenting to standard medical care and dentistry. Marie will have no authority to refuse resuscitation for John. She has to make decisions in the best interests of John and despite the new euthanasia law, it is still considered in a person's best interests to keep them alive.

If Marie is also granted an order to administer property, then the court will determine the limits of what this applies to in regard to what John owns. This could include some or all decisions about his finances such as his bank account, KiwiSaver, and any belongings that he may have, all known as his property.

For further examples of an application walked through step-by-step, Whitireia Community Law Centre Trust has created a [Guide to Making Applications under the PPPR Act](#).

Welfare guardianship application process

Download application forms from [Ministry of Justice website](#) & print single-sided.

You can complete the application yourself. If you feel you need advice you will need to hire a lawyer at your own cost. If you need legal services and are eligible for them, Legal Aid, [YouthLaw](#) or [Community Law](#) may be able to assist you or point you in the right direction. The Citizens Advice Bureau also has good information on '[Finding a Lawyer](#)'.

Forms include an affidavit, consent form, medical form to be signed by a doctor, and an information sheet.

The court appointed lawyer will contact you the applicant, to talk with you and other interested parties. They will then make a report to the court.

The Family Court will appoint a lawyer for the subject person (the person for whom welfare guardianship is sought) to ensure there are no conflicts of interest and that the person is properly represented. The court has the power to direct that the subject person pay for the court appointed lawyer.

File forms at the [local Family Court](#) with the court registrar. There are no filing fees.

The file goes before a judge who may make a decision based on the paper reports or ask for more information. The applicants are then informed of the decision.

A court hearing is **not** usually necessary unless there is a dispute with other family members or if there is a lack of clarity around capacity or some other aspect of the application. The court will try other things first before going to a hearing. In this instance it is recommended to use a lawyer.

The first application lasts for a maximum of 3 years. The review date must be before the 3 years end. As a welfare guardian, you have responsibilities that are different from being a guardian of a child. The court wants to ensure that the person's rights are being upheld and that any changes in the person's situation have been taken into account.

For further information the [Ministry of Justice](#) provides information on 'what a welfare guardian does' and how to 'apply for welfare guardianship'.

If the review does not happen, then the welfare guardianship ends. If the review happens and is approved, welfare guardianship can then become a 5-year order. This is supposed to be the norm but ensure you request this length of order, as it is not always automatic.

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