

Welfare Guardians and Enduring Power of Attorney Protection for Vulnerable People

- Margaret Morrison
- Community Law Canterbury

Why do we need them?

- Recognition of rights
- Decisions need to be made
- Provides protection for vulnerable
- Responsibilities as well as rights
- Guardianship of children ends at 18

The Protection of Personal and Property Rights Act 1988

- Passed to protect and promote the personal and property rights of persons who are not fully able to manage their own affairs

Who does the Act apply to?

A person who

- Lacks wholly or partially the capacity to understand the nature and foresee the consequences of decisions in respect of matters relating to his/her personal care and welfare, or
- Who has the capacity to understand but wholly lacks the capacity to communicate decisions in respect of such matters

Principles used by the Court to decide under the PPPR Act

- A person is presumed competent until evidence proves otherwise
- The Court will make orders that infringe on the person's rights to the least extent possible
- The Court must encourage and enable the person to develop their capacity as much as possible
- "the welfare and best interests of the subject person are paramount"

- Case study of
Bob Smith



- Comparison of
- Court process
- and
- Enduring Power of Attorney



Who can be a welfare guardian?

- 20 years of age
- Capable
- Acts in best interests
- Has no conflict of interest
- Only one



What must they do?

- Make and carry out decisions
- Promote best interests
- Develop capacity
- Encourage to act in their own interest and be part of community
- Consult person and others
- Limits and no pay



What about property?

- Property administrator
- Property less than \$5000 or income less than \$20000
- Property manager
- Duty to report
- Review
- No Liability
 - Good faith
 - Disclosure
 - Reasonable care



How do you apply?

- Family Court
- Forms
- Lawyer for subject person
- Hearing
- Review
- Guide
- www.communitylaw.org.nz
- commlaw@wnc.quik.co.nz

Enduring Power of Attorney

- Different from ordinary POA
- Legal document
- Donor gives power to attorney
- Personal Care and Welfare and Property



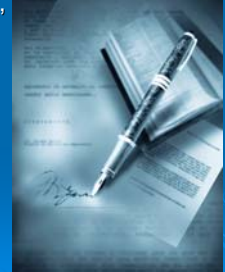
Who can be attorney?

- Over 20 with capacity
- Not bankrupt
- Trustee corporation for property
- Only one for personal care
- Desirable qualities



Legal requirements

- independent witnessing of EPA by lawyer, legal exec, or officer of Trustee Corporation
- certification of capacity at time of signing
- Relevant health practitioner must certify donor's lack of capacity



Attorney's responsibilities

- Act in best interests of donor
- Consult and share information with people named on EPA
- Encourage competence
- Property attorney must financially support welfare attorney's decisions
- Keep financial records

Review and change

- Family Court can review
- Range of people can ask
- Donor can revoke or suspend

