

Guardianship for adults

Guardianship for adult matters were previously decided by the Guardianship and Administration Tribunal.

A guardian is a person appointed by QCAT to help adults with impaired decision making capacity to make certain personal decisions, such as where to live or with whom they have contact, and health care decisions. This ensures the adult's needs are met and their interests are protected.

Guardians are not allowed to make decisions about:

- financial or property matters unless they have also been appointed as the adult's administrator or as attorney for financial matters under an enduring power of attorney or a general power of attorney.

See the **QCAT administration for adults fact sheet**.

- special health care matters including sterilisation or tissue donation
- special personal matters including making or revoking a will or consenting to marriage or relinquishing a child for adoption.

Impaired decision making capacity explained

There are three elements to making a decision including:

- understanding the nature and effect of the decision,
- freely and voluntarily making a decision, and
- communicating the decision in some way.

If an adult is unable to carry out any part of this process for decision making, the adult is said to have impaired decision making capacity.

QCAT decisions about adults

QCAT can decide a range of matters about adults including:

- making a declaration about an adult's decision making capacity for some or all matters
- that the informal arrangements in place are adequate to protect the adult
- appointing a guardian to make some or all personal and health care decisions
- making a temporary decision to deal with an urgent situation
- making a declaration about the execution and appointment of an enduring power of attorney.

When appointing a guardian may not be necessary

While an adult still has capacity they can appoint someone to make decisions on their behalf by making an enduring power of attorney.

An enduring power of attorney remains in effect until the death of the adult. It does not lapse when the adult loses decision making capacity. Adults can of course cancel their enduring power of attorney when they still have capacity.

For personal matters, an enduring power of attorney begins only if the adult becomes incapable of making decisions. An adult can choose to give an attorney immediate power or can set a particular time when the power starts.

If an adult loses capacity to make decisions before the enduring power of attorney takes effect, then the enduring power of attorney begins as soon as the attorney is notified of the adult's condition.

This fact sheet provides general information and is not legal advice.

QCAT cannot give advice about completing an enduring power of attorney but can make a declaration about whether an adult has capacity to make an enduring power of attorney. QCAT may also make a decision about the validity of an appointment or the administrator's actions.

Advance health directive

While an adult still has decision making capacity they can record their wishes about their health and any medical treatment, and appoint an attorney for personal and health matters in an advanced health directive.

This means that if the adult becomes seriously ill, unconscious or cannot communicate their health care wishes, critical decisions can be made, which reflect their wishes.

An advance health directive remains in effect until the death of the adult. It does not lapse when the adult loses decision making capacity.

Statutory health attorney

A statutory health attorney is someone with automatic authority to make health care decisions on behalf of an adult whose ability to make decisions is permanently or temporarily impaired.

There is no need to formally appoint a statutory health attorney. A person can automatically be a statutory health attorney when the need arises because of their relationship with the patient for example, a spouse or primary carer.

QCAT does not make decisions about an advance health directive or statutory health attorney. For further information about any of these alternative arrangements contact the Department of Justice and Attorney-General, the Office of the Adult Guardian or a lawyer.

Who can be appointed as a guardian

Family members, close friends, professionals or anyone who has a genuine and continuing interest in the welfare of an adult with impaired decision making capacity can apply for a guardian to be appointed. Adults with impaired decision making capacity can also apply on their own behalf.

Appointed guardians must be over 18 years of age and not a paid carer for the adult. A paid carer performs services for the adult's care and receives remuneration other than a carer payment or benefit from the Commonwealth or State Government.

Appropriateness and competency to act as guardian

Before appointing a guardian, QCAT considers their appropriateness and competency to act in this role. The proposed guardian must be willing to:

- act honestly and with reasonable diligence
- act according to the decisions made by QCAT
- consult with the other guardians and administrators regularly to ensure that the adult's interests are protected.

Guardians must also apply the health care principle by making sure that whenever they are called to make a decision about health care that:

- the health care is necessary and appropriate to maintain or promote the adult's health or well-being, and
- is in the adult's best interests and to greatest extent possible, reflects the adult's views.

QCAT will also consider whether they have a criminal history or have previously been refused or removed from appointment as a guardian, administrator, attorney or other person making a decision for someone else.

Length and status of appointment

QCAT appoints guardians generally for a five year period on the following basis:

- a single guardian to make decisions either on all personal matters or on a specified personal matter only, such as where the adult is to live and with whom
- more than one guardian, giving each guardian specific decision making authority. Each guardian then has the authority to make decisions on a different personal matter.
- two or more guardians to make personal decisions together or to make personal decisions separately on behalf of the adult.

When the Adult Guardian can be appointed

Sometimes there is no one close to the adult who is willing to accept the responsibility of being their guardian.

There may also be a dispute about who should act as guardian or concern about the suitability or competence of a proposed guardian. In these situations, QCAT may appoint the Adult Guardian to act on the adult's behalf.

The Adult Guardian is an independent statutory authority who is responsible for protecting the rights and interests of adults who are unable to make decisions for themselves

Decisions guardians make

Generally, guardians are given the authority to make decisions on behalf of the adult such as:

- where they live
- what support services they receive
- with whom they have contact or visits
- general health care matters
- the approval of chemical, physical or mechanical restraint
- the approval of containment and seclusion in certain limited circumstances
- restricting access to objects
- other day-to-day issues.

If the adult can communicate their views and wishes, guardians should take these into account when making any decisions.

Guardians can only be appointed for adults over the age of 18 years. However advance appointments for children aged 17-and-a-half or older, which take effect when they turn 18 years of age, can also be made.

Guardian powers

Guardians have a right to access all the information that the adult would have been entitled to when making a decision about a matter.

Guardians are provided with copies of the QCAT order appointing them as guardian which they can show as evidence of their role. This makes sure that organisations and companies provide the information necessary for the guardian to make a sound decision.

Guardians are entitled to reimbursement from the adult for any reasonable expenses incurred. However, they may not be paid for services. For example, if the guardian drives the adult to the shops, they are entitled to reimbursement for motor vehicle costs such as petrol but not for the time it took to drive them there.

Reviewing an appointed guardian

During the five year appointment period the adult or an interested party may apply for a review of the appointment of the guardian. QCAT will also conduct random or periodic reviews of these appointments on its own initiative.

The review will consider the performance of the guardian and any new or relevant information about the adult's circumstances that may affect the appointment.

Removing an appointed guardian

Being a guardian for an adult is a very serious role and guardians can be removed when:

- the adult's needs have not been met according to the decision made by QCAT
- the guardian has neglected their duties or abused their decision making authority, either generally or for a specific matter
- the guardian has otherwise contravened the *Guardianship and Administration Act 2000*
- the need for a guardian no longer exists
- the guardian is no longer competent to act as a decision maker
- another person is more appropriate to be the adult's guardian
- they no longer wish to act.

In some situations the appointment of a guardian may automatically end for example, if the guardian or the adult dies or the guardian becomes a paid carer for the adult.

Confidentiality in guardianship matters

Hearings about the appointment of guardians are generally open to the public and information about proceedings can be published.

However information that identifies or is likely to identify the adult cannot be published unless QCAT approves this. QCAT will only do this in situations where it is satisfied that the publication of the adult's identity is in the public interest or in the interests of the adult.

In some limited circumstances QCAT can make a limitation order, that:

- restricts access by another party to a relevant document or information
- prevents publication of proceedings, or
- limits who may attend a hearing.

QCAT must be satisfied that the limitation order is necessary to:

- avoid harm or injustice to any of the parties, or
- obtain information that might not otherwise have been given in some specific cases.

Limitation orders are only approved in exceptional cases and any person involved in the application for the appointment of guardian can apply for one. QCAT may also make a limitation order on its own initiative.

Guardianship for restrictive practices

Some adults with a cognitive or intellectual disability may show 'challenging behaviour' which could cause harm to themselves or others.

To manage this behaviour a range of restrictive practices may be required and a guardian appointed to make decisions about their use.

The following are examples of restrictive practices:

- containment – locking doors, windows and gates so the adult is physically unable to leave
- seclusion – the adult is placed on their own at any time and cannot leave a room or area
- chemical, physical or mechanical restraint – the use of medication, a person's body or device to control the adult's behaviour
- restricting access to an object to reduce harm to the adult or other persons.

A guardian for restrictive practices can only be appointed for twelve months.

Generally only QCAT can approve the use of containment and seclusion. However, if a guardian for restrictive practices (respite) has been appointed, they can approve the use of containment and seclusion if the adult only receives respite and/or community access services.

If the adult receives services provided or funded by the Department of Communities (the department), only the department can apply for approval to use containment and seclusion. If a service provider is also involved, the application can be made jointly with the department.

The use of restrictive practices must be accompanied by a positive behaviour support plan that emphasises the development of positive, socially valued skills as well as strategies for reducing challenging behaviour.

The objective of this plan is to eliminate as much as possible the need for the restrictive practice in the life of the adult.

Special health care matters

A range of medical procedures go beyond the boundaries of ordinary health care because they are intended for the benefit of someone else or they have a crucial effect on the adult's rights and freedoms.

The following medical procedures are considered special health care matters:

- donation of tissue from the adult to someone else for transplant
- sterilisation of the adult
- termination of a pregnancy of the adult
- participation by the adult in special medical research or experimental health care
- prescribed special health care.

Only QCAT or the Supreme Court can give consent for these procedures - an attorney or guardian cannot.

Before giving consent to special health care matters QCAT must decide whether or not the procedure is necessary for the adult's health and well-being.

In addition, QCAT will consider:

- the principle of keeping treatment to the minimum necessary to preserve the adult's health and wellbeing
- the wishes of the adult
- the views of any guardians appointed by QCAT
- the views of anyone appointed as attorney for personal matters for the adult
- the views of the adult's statutory health attorney
- the adult's situation including their medical condition
- any alternative procedures that may be available in either the short or long term
- specific reports from relevant health professionals.

Applying for a guardian to be appointed

Complete and lodge:

- Form 10 Application for administration/guardianship appointment or review - *Guardianship and Administration Act 2000*
- Report by medical and related health professionals

Once your application and forms have been received QCAT will review the information you provided.

You will then be contacted by QCAT about the next steps that will happen in relation to your case.

Application forms related to guardianship matters are available from the QCAT registry, www.qcat.qld.gov.au or local Magistrates Court (excluding Brisbane Magistrates Court).

Contact information

QCAT

Address: Level 9, Bank of Queensland Centre,
259 Queen Street, Brisbane, 4000
Post: GPO Box 1639, Brisbane Qld 4001
Phone: 1300 753 228
Email: enquiries@qcat.qld.gov.au
Website: www.qcat.qld.gov.au

Contact details for **local Magistrates Courts** are available in the phone book or at www.courts.qld.gov.au.

Department of Justice and Attorney-General

Website: www.justice.qld.gov.au

Office of the Adult Guardian

Phone: 07 3234 0870 or 1300 653 187 (local calls outside of Brisbane)
Website: www.justice.qld.gov.au