

QCAT Practice Direction No. 3 of 2026

Dealing with a matter which has been referred to QCAT's guardianship jurisdiction by a Court or Tribunal

INTRODUCTION

1. This Practice Direction is effective from 31 July 2026.
2. This Practice Direction applies to:
 - a. a referral of a matter by order of a court in the State of Queensland.
 - b. a referral of a matter by the Registrar of a court in the State of Queensland to the Principal Registrar of QCAT by direction of the court.
 - c. a referral of a QCAT matter as ordered by the tribunal.
3. This Practice Direction **does not apply** to a criminal proceeding before a court.

BACKGROUND AND PURPOSE

4. In a proceeding before a court or the tribunal, the question of a party's capacity to understand the conduct of the relevant proceeding sometimes arises. Sometimes a Court or Tribunal, or a Registrar of the Court or Tribunal will refer a matter to QCAT's guardianship jurisdiction, to determine the question of whether to appoint a guardian for a personal matter or an administrator for a financial matter for the relevant party.
5. For the purpose of this Practice Direction, that party will be referred to as the "adult".
6. The purpose of this Practice Direction is to set out the process that QCAT will follow when such a matter has been referred to it by a Court or Tribunal.
7. The Practice Direction also provides some examples of orders which can assist QCAT in progressing the referral as expeditiously as possible.

DEFINITIONS FOR THIS PRACTICE DIRECTION

8. 'Proceeding' means a current matter other than a criminal matter before a Queensland court, or tribunal (other than a proceeding in the guardianship jurisdiction), or a Federal Court hearing and determining a matter in Queensland.
9. 'Referral' of a matter means a referral for consideration of a declaration about the capacity of a person (also known as the adult) for a matter, for the appointment of a guardian under section 12 for a 'personal matter', for the appointment of an administrator for a 'financial matter', as provided under the *Guardianship and*

Administration Act 2000 (Qld) that is filed in the tribunal in compliance with the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) and *Queensland Civil and Administrative Tribunal Rules 2009* (Qld).

10. 'Guardian' means a guardian appointed under section 12 of the *Guardianship and Administration Act 2000* (Qld) for a personal matter for an adult who is found to have impaired capacity for the matter.
11. 'Administrator' means an administrator appointed under section 12 of the *Guardianship and Administration Act 2000* (Qld) for a financial matter for an adult who is found to have impaired capacity for the matter.
12. 'Capacity' is defined under schedule 4 of the *Guardianship and Administration Act 2000* (Qld).
13. 'Declaration of capacity' is a declaration made under section 146 of the *Guardianship and Administration Act 2000* (Qld).
14. 'Matter' includes a type of matter as provided under schedule 4 of the *Guardianship and Administration Act 2000* (Qld) and categorised under section 10.
15. 'Personal matter' is defined under schedule 2 of the *Guardianship and Administration Act 2000* (Qld) including, for example and amongst other things, a legal matter not relating to the adult's financial or property matters.
16. 'Legal matter' is defined under schedule 2 of the *Guardianship and Administration Act 2000* (Qld).
17. 'Financial matter' is defined under schedule 2 of the *Guardianship and Administration Act 2000* (Qld) including, for example and amongst other things, a legal matter relating to the adult's financial or property matters.
18. 'Adult' is the person to whom a proceeding under the *Guardianship and Administration Act 2000* (Qld) relates to and is the 'relevant party' (or person) in a proceeding before the court or tribunal.

REFERRAL OF A MATTER TO QCAT'S GUARDIANSHIP JURISDICTION

19. Whether a matter is referred to QCAT's guardianship jurisdiction:

- to determine an adult's capacity to understand the conduct of a proceeding
- for the appointment of a guardian and / or for the appointment of an administrator

is considered necessary is entirely a matter for the presiding judicial officer of the Court or Tribunal constituted for the proceeding, and not a matter for QCAT.

20. Some examples of the circumstances in which the tribunal has received referrals include:

- a. there is a guardianship matter before QCAT involving an adult who is also a relevant party in a proceeding before a court or tribunal;
- b. there is evidence before the presiding judicial officer constituted for the proceeding before a court or tribunal that raises a question about the adult's capacity to understand the conduct of the proceeding; and
- c. the adult is not represented by a litigation guardian or an appointed representative for the relevant person who is a party to the proceeding.

SOME EXAMPLES OF ORDERS WHICH CAN ASSIST QCAT IN PROGRESSING THE REFERRAL AS EXPEDITIOUSLY AS POSSIBLE

21. Whether, or how, a matter is referred to QCAT's guardianship jurisdiction is entirely a matter for the presiding judicial officer or tribunal member for the relevant proceeding. It is not a matter for QCAT.

22. However, given that it may be of some assistance, this Practice Direction sets out some examples of orders which QCAT have found to be of assistance in helping QCAT to progress the referral as expeditiously as possible:

EXAMPLE ONE: Where the Court or Tribunal considers it has power to refer the matter to QCAT

WHEREAS:

- X is the [plaintiff/applicant or defendant/respondent] in [proceeding number];
- The proceeding concerns [brief explanation of nature of proceeding];
- An issue has arisen about X's capacity;

and

- The proceedings have been adjourned until [state date].

IT IS ORDERED THAT:

- 1 The following questions be referred to the Queensland Civil and Administrative Tribunal for hearing and determination:

- a. Whether X has the capacity to understand the nature and content of the proceeding;

and, if not

- b. Whether a guardian or administrator ought to be appointed for X.

- 2 The Registrar [of the relevant court or tribunal] is to provide a copy of the following documents to the Deputy Principal Registrar of the Human Rights Division by email to QCATHuRD.SeniorRegistrars@justice.qld.gov.au:
 - a. This order;
 - b. [Any evidence or material filed in the proceeding which may assist QCAT to understand the nature of the proceeding or to determine capacity, including but not only:
 - i. The pleadings;
 - ii. A relevant report of a medical or health professional;
 - iii. Any document which is relevant to the issue of capacity;or
 - iv. for a QCAT matter, the relevant QCAT matter.]

EXAMPLE TWO: Where the Court or Tribunal considers that it has power to direct the Registrar of that Court or Tribunal to refer the matter to QCAT

IT IS ORDERED THAT:

- 1 The Registrar of [the relevant court] refer the following questions to the Deputy Principal Registrar of the Human Rights Division of the Queensland Civil and Administrative Tribunal:
 - a. Whether X has the capacity to understand the nature and content of [the proceeding];

and, if not
 - b. Whether a guardian or administrator ought to be appointed for X.
- 2 The Registrar [of the relevant court or tribunal] is to provide a copy of the following documents to the Deputy Principal Registrar of the Human Rights Division by email to QCATHuRD.SeniorRegistrars@justice.qld.gov.au:
 - a. This order;
 - b. [Any evidence or material filed in the proceeding which may assist QCAT to understand the nature of the proceeding or to determine capacity, including but not only:
 - i. The pleadings;
 - ii. A relevant report of a medical or health professional;
 - iii. Any document which is relevant to the issue of capacity;or

iv. for a QCAT matter, the relevant QCAT matter.]

EXAMPLE THREE: Where it is QCAT that is referring the matter to the Guardianship division for consideration

IT IS ORDERED THAT:

- 1 The Deputy Principal Registrar of CAD refer the following questions to the HuRD division:
 - a. Whether X has the capacity to understand the nature and content of [the proceeding];
 - and, if not
 - b. Whether a guardian or administrator ought to be appointed for X.
- 2 The Deputy Principal Registrar is to provide a copy of the following documents to the Deputy Principal Registrar of the Human Rights Division by email to QCATHuRD.SeniorRegistrars@justice.qld.gov.au:
 - a. This order;
 - b. [Any evidence or material filed in the proceeding which may assist QCAT to understand the nature of the proceeding or to determine capacity, including but not only:
 - i. the initiating application, response or counter-application together with any supporting document filed in the tribunal];
 - ii. A relevant report of a medical or health professional;
 - iii. Any document which is relevant to the issue of capacity;
 - or
 - iv. for a QCAT matter, the relevant QCAT matter.]

23. Please note that the date the matter has been adjourned until will inform the triaging by QCAT of the referral.

WHAT QCAT WILL DO ONCE IT RECEIVES THE REFERRAL

24. The Tribunal will be able to progress the matter once the registrar of the referring court or tribunal has provided the Deputy Principal Registrar of the Human Rights Division of QCAT a copy of the relevant order of the court or tribunal, together with any evidence or documents as ordered by the referring court or tribunal.
25. Upon receipt of a referral of a relevant matter (or a direction to refer) from a court or tribunal, the Deputy Principal Registrar of the Human Rights Division of QCAT will:

- a. initiate the relevant applications (or referral) and allocate a guardianship file number for the relevant party (known as the adult);
- b. for referrals from a Court or Tribunal other than QCAT, consider whether further information from the register of the relevant court or tribunal is necessary, including and amongst other things, any medical or health professional reports and any supporting documents relevant to the issue of capacity;¹
- c. refer the guardianship matter/s to the tribunal to make any directions or orders necessary prior to a final hearing;
- d. issue notices of the application and the hearing to the adult and relevant persons as required by the *Queensland Civil and Administrative Tribunal Rules 2009* (Qld) and *Guardianship and Administration Act 2000* (Qld).

26. Prior to a final hearing of the guardianship matter, the tribunal may consider it necessary to:

- a. raise and determine an application for a confidentiality order and non-publication order under sections 108, 109 and 110 of the *Guardianship and Administration Act 2000* (Qld);
- b. make a direction to obtain a current health professional report or other evidence from a health professional addressing the person's capacity to make decisions about the relevant matter under section 130 of the *Guardianship and Administration Act 2000* (Qld);
- c. appoint a representative for the person (also known as the adult) under section 125 of the *Guardianship and Administration Act 2000* (Qld) to represent the adult's views, wishes and interests.

27. The *Human Rights Act 2009* (Qld) applies to an application for the appointment of a guardian and administrator under section 12 of the *Guardianship and Administration Act 2000* (Qld).

28. After the tribunal has heard and finally decided the guardianship matter, a copy of any final order and written reasons for the decision will be given to the registrar of the relevant court or tribunal who referred the matter, or the Deputy Principal Registrar of CAD for QCAT referrals, about a relevant party to the proceeding.

¹ See section 244A of the *Guardianship and Administration Act 2000* (Qld) that applies if the court (Supreme Court or the District Court) has not made an order under section 245 (settlements or damages awards). The tribunal may request from the registrar of the court a copy of the part of the record of proceedings relevant to the tribunal's consideration if the tribunal is considering making an appointment or reviewing the appointment of a guardian or an administrator for an adult and the adult has been a party to a civil proceeding in a court.

OTHER MATTERS

29. For access to documents and who may access a document filed in a guardianship proceeding, see QCAT Practice Direction No. 8 of 2021.
30. For participation in a guardianship proceeding (and for other matters), see QCAT Practice Direction No. 11 of 2022 and QCAT Practice Direction No. 8 of 2010.



*Hon Justice Kerri Mellifont
President
31 July 2026*