

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CHANGES FOR THE GUARDIANSHIP AND ADMINISTRATION TRIBUNAL

What did the Guardianship and Administration Tribunal do?

The Guardianship and Administration Tribunal had jurisdiction for matters relating to guardians and administrators for adults with impaired capacity.

Do the Guardianship and Administration Tribunal and the *Guardianship and Administration Act 2000* continue to exist?

The Guardianship and Administration Tribunal ceased to exist on 1 December 2009 when QCAT commenced operation.

The *Guardianship and Administration Act 2000* continues to exist, with amendments under the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009* to confer jurisdiction on QCAT for guardianship and administration matters. There are no changes to the provisions dealing with the Adult Guardian, community visitors and other matters under that Act that are unrelated to the Guardianship and Administration Tribunal.

Who hears these matters in QCAT?

The members who hear guardianship and administration matters in QCAT are appointed under the QCAT Act membership provisions.

Generally, the *Queensland Civil and Administrative Tribunal Act 2009* requires that members appointed to QCAT are either lawyers, or other people who have special knowledge, expertise or experience about particular matters dealt with by QCAT. The administrative arrangements supporting the Act require detailed specific expertise for the various jurisdictions, including for the guardianship and administration jurisdiction.

There are senior and ordinary members appointed to QCAT on a full time and sessional basis. Senior legal members and ordinary legal members are Australian lawyers.

The *Guardianship and Administration Act 2000* requires that the tribunal must be constituted by three members when hearing matters under that Act, unless the President considers it appropriate that the matter be heard by two members or a single member. This retains the current requirements for hearings in the Guardianship and Administration Tribunal.

When QCAT hears matters relating to the sterilisation of a child with impaired capacity (under Chapter 5A of the *Guardianship and Administration Act 2000*),

that Act will continue the current requirement to ensure three members always sit these matters.

The special requirements as to the qualifications of those members who hear Chapter 5A matters will also be retained, but reflect equivalent positions in QCAT (see section 80F of the *Guardianship and Administration Act 2000*).

What has happened to the current members of the Guardianship and Administration Tribunal?

All current sessional members of the Guardianship and Administration Tribunal were automatically appointed as sessional members of QCAT for a period of two years if they agreed.

What happened to the Guardianship and Administration Tribunal registry?

The Guardianship and Administration Tribunal registry is now part of the QCAT registry which is located on Level 9, Bank of Queensland building, 259 Queen Street, Brisbane. QCAT also has regional offices which operate through Magistrates Courts.

How does QCAT deal with Guardianship and Administration Tribunal matters?

There are no significant changes to the way that a guardianship and administration matter is dealt with.

QCAT has the same jurisdiction to make decisions as the former Guardianship and Administration Tribunal.

QCAT must make decisions under the *Guardianship and Administration Act 2000* in accordance with the principles that previously guided the decisions of the Guardianship and Administration Tribunal.

The *Queensland Civil and Administrative Act 2009* only has limited procedural provisions. Some specialist provisions are retained in the *Guardianship and Administration Act 2000* that override the generic provisions of the *Queensland Civil and Administrative Tribunal Act 2009*. However specific procedures that apply to these matters are detailed in the *Queensland Civil and Administrative Tribunal Rules 2009* and the President's practice directions.

Are guardianship and administration matters heard in the original or review jurisdiction of QCAT?

Guardianship and administration matters are heard in the original jurisdiction of QCAT and fall within its Human Rights Division.

Are there any special processes from the Guardianship and Administration Tribunal that continue to apply when QCAT hears a matter?

Specific provisions that detail specialist processes for guardianship and administration matters that override the *Queensland Civil and Administrative Tribunal Act 2009* provisions are contained in the *Guardianship and Administration Act 2000*.

Significant features retained include:

- guardianship and administration matters in QCAT will continue to be heard in the same inquisitorial way that they have in the Guardianship and Administration Tribunal. Specific provisions that give the former tribunal those powers have been retained (for example section 130(1) of the *Guardianship and Administration Act 2000*);
- the concept of active parties and interested persons, with their associated rights is retained;
- the tribunal registry continues to notify parties of the application and continue to take on its inquisitorial role;
- the special powers of the Guardianship and Administration Tribunal (for example, to order a person to undergo an examination and enter and remove a person) are retained;
- the recent amendments implemented following the Queensland Law Reform Commission's report on confidentiality of Guardianship and Administration Tribunal matters are retained and apply to QCAT for guardianship and administration matters;
- interim orders are made under the *Queensland Civil and Administrative Tribunal Act 2009*, but the more restrictive test for whether the order should be made is retained;
- the representation provision of *Guardianship and Administration Act 2000* (section 124) continues to apply (i.e. that an active party may, with the tribunal's leave, be represented by a lawyer or agent). Additional power to appoint a person to represent the views and wishes and interests of an adult with impaired capacity is also retained;
- costs can be awarded against a party under the *Queensland Civil and Administrative Tribunal Act 2009*, but the test as to whether to award those costs is a more limited test that currently occurs under the *Guardianship and Administration Act 2000*;
- the *Guardianship and Administration Act 2000* continues to ensure that no filing fees are payable for matters heard under the *Guardianship and Administration Act 2000* in QCAT.

Are there any changes to the way QCAT will deal with guardianship and administration matters?

There are two main changes:

- that reasons for decisions are provided in every case (instead of as directed by the President or only to aggrieved persons); and
- a person now appeals decisions to the QCAT appeal tribunal or the Court of Appeal (not the Supreme Court).

Appeals

The way a person can appeal depends on whether or not a judicial member heard the decision in QCAT.

If the decision was made by a non-judicial member, the appeal can be made to the appeal tribunal within QCAT. The appeal tribunal can be made up of the President, the Deputy President, another judicial member, or suitably qualified member or members chosen by the President.

If the decision is about an award of costs, or whether it is an appeal from a decision that is not the tribunal's final decision (an interim or interlocutory decision), then the permission of the President must be granted before the appeal can be heard.

If the decision to be appealed was made by a judicial member the appeal can be made to the Court of Appeal. The person must ask the permission of the Court of Appeal if the appeal is about a question of fact. The person does not have to ask the Court of Appeal for permission if the appeal is about a question of law.

Appeals to the Court of Appeal from a decision of the QCAT appeal tribunal may be made with the permission of the Court on a question of law only.

What happens to the current practice directions and/or rules of Guardianship and Administration Tribunal?

The current practice directions and rules of the Guardianship and Administration Tribunal ceased to exist on 1 December 2009.

The *Queensland Civil and Administrative Tribunal Rules 2009* apply. Practice direction 10 made by the President applies to guardianship and administration matters. The practice direction adopts the Guardianship and Administration Tribunal practice directions as practice directions under the *Queensland Civil and Administrative Tribunal Act 2009* with appropriate amendments.

What happens to applications in the Guardianship and Administration Tribunal when QCAT commences

The *Queensland Civil and Administrative Tribunal Act 2009* sets out the standard approach to how specific matters are dealt from 1 December 2009.

If a person is able to apply to the Guardianship and Administration Tribunal before 1 December 2009, and are still within time to apply but have not yet done so, the person may apply to QCAT. The functions, powers and procedures, including rights of appeal, are those set out in the *Queensland Civil and Administrative Tribunal Act 2000* and in the amended enabling Act.

If a person has already filed the application in the Guardianship and Administration Tribunal before 1 December 2009 but the matter has not yet begun to be heard, the matter will be heard in QCAT. The procedure is that of QCAT under the *Queensland Civil and Administrative Tribunal Act 2009* and the amended enabling Act. However QCAT only has the functions and powers the former tribunal had. The right of appeal from QCAT's decision are the rights set out under the *Queensland Civil and Administrative Tribunal Act 2009* and the amended enabling Act.

If the application has already started to be heard by the Guardianship and Administration Tribunal on 1 December 2009, the proceeding continues but is taken to be a proceeding before QCAT. QCAT must be constituted by the person or persons who constituted the former tribunal immediately before commencement. The procedure is that of QCAT under the *Queensland Civil and Administrative Tribunal Act 2009* and the amended enabling Act. However QCAT only has the functions and powers of the former tribunal. The rights of appeal are also those rights of appeal that applied to the former Guardianship and Administration Tribunal.

If the application has been finalised before 1 December 2009, the decision is deemed to be a decision of QCAT. Any appeal or any further dealing with the decision by QCAT can only occur in the same way it could have for the former Guardianship and Administration Tribunal.