

Frequently Asked Questions – Representation in QCAT (*for a guardianship proceeding**)

*Please also see [Frequently Asked Questions about QCAT's guardianship jurisdiction](#)

What is representation?

Section 43 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) states that the main purpose of the section is to have parties represent themselves unless the interests of justice require otherwise. Relevantly, in respect of guardianship, s 43 provides that a party may be represented in a proceeding in circumstances where:

- (a) the party is a child or a person with impaired capacity; or
- (b) an enabling Act that is an Act, or the rules, states the person may be represented; or
- (c) the party has been given leave by the tribunal to be represented.

The tribunal may appoint a person to represent an unrepresented party (s 43(6)).

For more information about obtaining legal advice and representation generally, please see [QCAT's website](#).

What does 'impaired capacity' mean?

Relevant to QCAT's guardianship jurisdiction is the *Guardianship and Administration Act 2000* (Qld) and *Powers of Attorney Act 1998* (Qld). The *Guardianship and Administration Act 2000* (Qld) provides that 'impaired capacity', for a person for a matter, means the person does not have capacity for the matter.

For more information about QCAT's guardianship jurisdiction and decision-making for adults with impaired capacity, please see QCAT's website and the document titled [FAQs about QCAT's guardianship jurisdiction](#).

Who cannot be appointed as a party's representative under s 43 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld)?

A party cannot be represented in a proceeding by a person—

- (a) who, under rules made under s 224(3), is disqualified from being a representative of a party to a proceeding; or
- (b) who is not an Australian legal practitioner or government legal officer, unless the tribunal is satisfied the person is an appropriate person to represent the party.

How does QCAT decide whether to grant leave to a party to be represented in a proceeding?

Section 43(3) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) provides that in deciding whether to give a party leave to be represented in a proceeding, the tribunal may consider the following as circumstances supporting the giving of the leave—

- (a) the party is a State agency;
- (b) the proceeding is likely to involve complex questions of fact or law;
- (c) another party to the proceeding is represented in the proceeding;
- (d) all of the parties have agreed to the party being represented in the proceeding.

How do I apply for leave to be represented in a proceeding under the *Queensland Civil and Administrative Tribunal Act 2009* (Qld)?

A person can apply for leave to be represented in a proceeding by completing and filing a [Form 56 Application for leave to be represented](#). QCAT forms are available at qcat.qld.gov/resources/forms and information about how to apply can be found at [How do I apply for permission to be represented in QCAT proceedings](#).

How do I apply for leave to be represented in a guardianship proceeding under the *Queensland Civil and Administrative Tribunal Act 2009* (Qld)?

Section 124(1) of the *Guardianship and Administration Act 2000* (Qld) provides that an active party may, with the tribunal's leave, be represented by a lawyer or agent.

For information about who is an 'active party' including their rights as an active party, and how to apply to be appointed as an active party in a guardianship proceeding, please see the document titled [FAQs about QCAT's guardianship jurisdiction](#) that can be found on QCAT's website.

How can a person with impaired decision-making capacity for a matter ('the adult') be represented in the proceeding?

Section 125(1) of the *Guardianship and Administration Act 2000* (Qld) provides that if, in a proceeding before QCAT, the adult concerned is not represented in the proceeding; or the adult is represented by an agent the tribunal considers to be inappropriate to represent the adult's interests, the tribunal may appoint a representative to represent the adult's views, wishes and interests.

A representative appointed under s 125(1) must—

- (a) have regard to any expressed or demonstrated views, wishes and preferences of the adult; and
- (b) to the greatest extent practicable, present the adult's views, wishes and preferences to the tribunal; and

(c) promote and safeguard the adult's rights, interests and opportunities.

The appointed representative is required to apply the General Principles under the *Guardianship and Administration Act 2000* (Qld) and/or *Powers of Attorney Act 1998* (Qld).

The appointed representative may provide written information about the proceeding to QCAT before the hearing as well as attend the hearing with or without the Adult.

For more information about who is 'the Adult' and what are the General Principles, please see the document titled [*FAQs about QCAT's guardianship jurisdiction*](#) that can be found on QCAT's website.

Costs and fees

If you decide to use a lawyer or professional, you are responsible for engaging the lawyer or professional and paying any costs or fees associated with their service.

For information about costs and fees, please see the [QCAT website](#).

Who can provide legal assistance and advocacy support for the Adult?

Please see the document titled [*FAQs about QCAT's guardianship jurisdiction*](#) that can be found on QCAT's website. This document contains information about who can provide legal assistance and advocacy support for the Adult.