

# The role of an OPG guardian

A guardian helps and supports an adult with impaired decision-making capacity to make decisions about their personal and health matters. A guardian is appointed by the Queensland Civil and Administrative Tribunal (QCAT), who will also decide what types of decisions the guardian can make. A guardian would ideally be a family member or friend who understands the adult and their views and wishes, and is willing to take on the role. However where there is no one suitable or willing to take on this role, QCAT will appoint the Public Guardian as guardian.

## OPG guardians

Although the Public Guardian is the appointed decision maker, the Office of the Public Guardian (OPG) employs guardians to perform this role on a day-to-day basis.

A team of guardians will work with the adult under guardianship to support them to make decisions. Depending on the decision and the complexity of the decision that needs to be made, different guardians within that team may be in contact with the adult and make decisions on their behalf. When guardians make decisions it's their role to advocate for the adult and ensure the decisions they are making are in their best interests.

It is important to note that a guardian will only be involved in an adult's life when a decision needs to be made. This means that they do not provide day-to-day support – this will continue to be provided by the adult's family, friends or carers/service providers. Nor do they take on the roles and responsibilities provided by other agencies or service providers.

## What information is needed to make a decision?

It is important to notify OPG as soon as a decision needs to be made for the adult.

To make a decision the guardian needs information about:

- what is happening in the adult's life
- what choices there are
- the adult's views and wishes, and
- what the potential outcomes of the decision would be.

In addition to consulting with the adult, the guardian will also ask for information from their family and carers, their health professionals, services providers and other support agencies and seek their opinion on what would be a good decision for the individual.

Under the *Guardianship and Administration Act 2000* (section 44) a guardian has a right to all the information the adult would have been entitled to if the adult had capacity and which is necessary to make an informed decision. For this reason, any relevant documents requested must be supplied to a guardian.

## How we make decisions

Our guardians use both supported decision-making and human rights frameworks when exercising their decision-making powers, and support the adult to exercise their own decision-making capacity to the greatest extent possible. This means that they will always take the adult's views and wishes into consideration when making decisions to ensure they respect their will, preferences and rights.

Essentially, guardians will try and make the decision that the adult would have made for themselves if they could make that decision, although they must ensure the decision keeps the adult safe. Guardians will also prioritise and promote the least restrictive approach wherever possible.

The policies and frameworks that guardians must follow when they make decisions are underpinned by a number of legislative documents such as the General Principles and the Health Care Principles contained in the *Guardianship and Administration Act 2000* and the *Queensland Human Rights Act 2019*.

Guardians can only make decisions in the areas outlined in the QCAT order. A guardian may be appointed by QCAT for one area of decision-making, e.g, accommodation, or several areas, such as accommodation and health care.

### **Decision making timeframes**

There are many factors guardians take into consideration when making a decision. This means there are no mandated timeframes for decisions as it will always vary from case to case. Sometimes it may take time for a guardian to make a decision, especially when the adult has complex circumstances.

A guardian can only make decisions as outlined in the guardianship order and for the period of time specified on the guardianship order.

Our primary concern is the adult and what is best for them, and that frequently means considering a number of options and consulting a number of people. Additionally, if there is conflict between interested parties or stakeholders over a proposed course of action, a decision may be delayed further.

However we always strive to be as efficient as possible in our decision-making.

### **What a guardian cannot do**

OPG cannot make any financial decisions on behalf of a person – this is the role of an administrator, such as the Public Trustee of Queensland.

Additionally the role of a guardian is to make decisions, they don't have the power to enforce a decision. So for example we may make a decision that for their own safety and wellbeing a person needs to move to an aged care facility, but we cannot force them to move if they don't want to go. It is the role of service providers, friends and family to prepare them for this transition.

### **For more information**

Our website has a range of factsheets providing more information on how guardians make different types of decisions. You will also find links to the policies, framework and legislation that guide our decision making processes.

For more information go to [publicguardian.qld.gov.au](http://publicguardian.qld.gov.au)

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### **Contact us**

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