

# Appointment of a guardian in child protection proceedings

## A factsheet for legal professional

### The Childrens Court's obligation to ensure parents understand the proceedings

Under section 106 of the [Child Protection Act 1999](#), the Childrens Court must ensure, as far as practicable, that the parent understands the nature, purpose and legal implications of the proceeding.

If a parent is determined to lack capacity to understand the proceedings, the parent may be assisted to take part in the proceedings by their: informal support person; safety and support network; appointed lawyer; or guardian<sup>1</sup>.

### Adults with impaired decision-making capacity

The [Guardianship and Administration Act 2000](#) (GAA), states that the right of an adult with impaired decision-making capacity should be restricted and interfered with to the least possible extent.

In addition, the [Human Rights Act 2019](#) states that every person is equal before the law and is entitled to the equal protection of the law without discrimination.

Allowing a parent to be assisted to take part in the children's court proceedings supports both legislative principles.

### How to have a guardian appointed for adults involved in child protection proceedings

The Court can refer a matter, or an interested party can apply, to the Queensland Civil and Administrative Tribunal (QCAT) to seek an appointment of a guardian for personal matters<sup>2</sup>.

A personal matter can include a legal matters, but a personal matter does not include finance or property matters. QCAT will consider the following to determine if is appropriate to appoint a guardian to assist the parent with child protection proceedings:

- does the adult have impaired decision-making capacity for child protection legal matters?
- is there a decision relating to child protection that the parent is likely to make?
- will not having a guardian expose the parent to an unreasonable risk that their decision/s may be detrimental and not align with their views and wishes?
- will not having a guardian result in the adult's interests not being adequately protected?

QCAT may appoint a guardian or as a last resort, can appoint the Public Guardian for a matter<sup>3</sup>.

### Appointment of a guardian

A guardian can be a person who is at least 18 years old, not a paid care or health provider for the adult and is willing to assist the adult with to make decisions on matters, as per the appointment.

While the Public Guardian can be appointed for matters if there is no one else in the adult's life to make decisions on behalf of the adult, the Public Guardian should only be appointed as a last resort in the least restrictive way.

When appointing a guardian, QCAT is to consider the need for an appointment and if the appointment would reduce the risk relating to the adult being adequately protected. Determining the need for an appointment may consider the following factors:

<sup>1</sup> The appointment of a guardian does not remove the court's responsibility under s106.

<sup>2</sup> Section 12 of the GAA

<sup>3</sup> Section 14 of the GAA

- Will the appointment potentially be used to determine if the adult has the ability to parent and make decisions regarding their child?
- The appointment will not determine whether a parent wishes to be involved in proceedings.
- Is there a decision relating to a child protection legal matters that the adult is likely to make?
- Is there another person in the adult's life who is able, willing and appropriate to support the adult to make decisions on an informal basis (i.e. without an appointment)?
- Does the adult have a safety support network?

#### How to apply to QCAT to be appointed as a guardian

The process for how to apply to QCAT to be appointed as an adult parent's guardian can be sourced on the [QCAT website](#).

#### The Public Guardian's structured decision making framework

Where the Public Guardian is appointed as a guardian to the parent<sup>4</sup>, the Public Guardian will make decisions by applying Human Rights and [structured decision-making](#) frameworks, to ensure that the adult's views, wishes and preferences are ascertained and considered. For more information, please see the [OPG website](#).

#### *Things to remember*

A guardianship appointment does not give the guardian authority to consent to making a child protection order on behalf of the adult.

A guardian cannot compel an adult to attend or participate in a court proceedings.

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#### Contact us

t. 1300 653 187

e. [legal@publicguardian.qld.gov.au](mailto:legal@publicguardian.qld.gov.au)

w. [www.publicguardian.qld.gov.au](http://www.publicguardian.qld.gov.au)

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