

Understanding Queensland's Guardianship and Administration system



public guardian

www.publicguardian.qld.gov.au

Everyone has the right to make their own decisions. However, some people don't have the capacity to make some or all of their decisions, which means that they may need help. This might be just for a short period of time, and it may only be for some decisions, or it could be a more permanent situation.

Very often a person's day to day life can be managed through informal decision making supports. This means their family and friends can help them with things like shopping, paying the bills, or social outings.



When is a formal decision maker needed?

There are, however, some circumstances where someone may be needed to help make decisions as a formal representative of an adult. These could include moving into an aged care facility, selling a house or organising access to services.

If the adult had appointed an attorney under an enduring power of attorney when they had capacity then this person will take on the role. Where there is no attorney, and where they may be at risk of harm if there was no one to make this decision, it may be necessary to have a formal decision maker appointed.

In this situation, an application can be made to the Queensland Civil and Administrative Tribunal to have a guardian and/or an administrator appointed.

What is capacity?

To be considered to have capacity to make a decision on a subject, an adult must be able to do all three of the following:

1. Understand all the factors that need to be considered before making the decision, the various choices, and the different consequences of each choice.
2. Make the decision freely and voluntarily, without being unduly influenced by another person.
3. Communicate the decision in some way. This isn't limited to just verbal communication.

Remember, the law presumes everybody has the capacity to make their own decisions, so you must be able to show that a person cannot do one or more of the above before a decision maker can be appointed. Additionally, decision making relates to specific situations, so an adult might have capacity to make decisions on some matters, but not others.

For more information on capacity, see our [Understanding Capacity](#) factsheet.



Making a QCAT application

Anyone with a personal or professional interest in a person's life can make an application to QCAT if they believe they don't have the capacity to make a decision for themselves, if there is conflict over a decision that needs making, or if they are at risk of abuse, neglect (including self-neglect) or exploitation.

Before making an application you should make sure they haven't already given someone the power to make the decision/s under an enduring power of attorney.

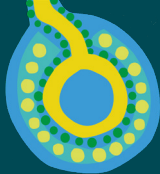
You must also tell them that you are making an application on their behalf. All applications should be made directly to QCAT, and must include the following documents:

- Form 10 - Application for Administration/ Guardianship Appointment or Review (available on the [QCAT website](#)). The form must outline what decision/s need making, and the risks to the person if no one is appointed to make these decisions.
- Medical report or cognitive assessment from the treating medical doctor or health professional showing the person lacks the capacity to make the decision/s themselves.
- Financial management plan (only needed when applying to be an administrator).

After everything has been submitted, QCAT will notify the applicant and interested parties of the hearing date.

If someone's welfare or finances are at immediate risk, you can apply for an Interim Order using the form on the [QCAT website](#).

Who can be appointed as a guardian and/or administrator?



During the hearing the QCAT member is able to hear all the evidence on the points raised in the application and talk to the relevant people in the person's life, including the person themselves.

At the end of the hearing the QCAT member will decide:

- whether a decision maker is needed
- who the most appropriate guardian and/or administrator should be
- how long they will be appointed for, and
- what decisions they can make.

When making an appointment, QCAT will appoint someone who they believe will promote and safeguard the adult's rights, interests and opportunities.

If both a guardian and administrator is needed, QCAT may appoint the same person. If they are different people they will often need to work together.

A formal decision maker can only make decisions in the specific areas that QCAT defines. So for personal matters, for example, a formal decision maker might be appointed for specific areas such as accommodation, service provision or health.

Ideally a family member or friend of the adult will be appointed. However where there is family conflict, or where there is no suitable person in the adult's life, QCAT may appoint the Public Guardian as the adult's guardian, and/or the Public Trustee as their administrator.

Responsibilities of an administrator

An administrator assists a person with impaired decision making capacity to make certain **financial and legal decisions**, such as paying bills, maintaining property, banking and investing and buying or selling property.

Importantly, an administrator's financial interests must not conflict with those of the represented adult. An administrator is accountable for the decisions they make and must provide annual accounts to QCAT. QCAT can provide general advice to an administrator if they have concerns about this.

Administrators cannot make decisions about personal and health care matters unless they are also the adult's guardian or attorney for personal matters under an enduring power of attorney and make these decisions under that role.

Generally only a professional administrator is entitled to a fee. Refer to qcat.qld.gov.au for more information about safeguards, fees, and the role and responsibilities of administrators.

The role of the Public Trustee

If the Public Trustee is appointed as an adult's administrator, a trust officer will work with the adult and their support network to make decisions on the management of their financial affairs.

Their role is to develop and implement a financial plan for the adult, which includes ensuring they have access to all benefits and income they are entitled to, developing a budget for the adult, managing any investments, and initiating and following up on matters relating to tax, social security, financial legal claims and insurance.

For more information on the Public Trustee, see pt.qld.gov.au

Responsibilities of a guardian

A guardian can help a person with impaired decision making capacity make certain **personal decisions** such as where they live, who they have contact with, and what medical treatments they receive. The order made by QCAT will specify the type of personal and lifestyle decisions a guardian can make. So for example, they cannot make decisions about where the person lives unless accommodation is an area listed by QCAT. A guardian cannot make financial or property decisions unless they are also appointed as an administrator and make these decisions under that role.

Generally guardians (other than the Public Guardian) can be reimbursed for reasonable expenses but cannot be paid for their services.

The role of the Public Guardian

If the Public Guardian is appointed by QCAT as a guardian of last resort, a delegate guardian will work with the adult and their support network to make decisions outlined in the QCAT order.

The Public Guardian doesn't take on the role of day to day support for the adult, and delegate guardians only need to be involved in the adult's life when a decision needs making.

The Public Guardian doesn't make financial decisions for a person.

The role of a guardian or administrator is to promote and protect the adult's rights, interests and opportunities. When making decisions, a guardian or administrator must ensure the adult is involved in the decision-making process and try to uphold the adult's views and wishes.

Information on making an application for a guardian and/or administrator is available from:

**Queensland Civil and
Administrative Tribunal
(QCAT)**

qcat.qld.gov.au

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