

What is the Public Guardian's role as decision-maker when appointed for legal matters?

A factsheet for legal professionals

Section 12 of the *Guardianship and Administration Act 2000* (GAA) provides that the Queensland Civil and Administrative Tribunal (QCAT) may appoint a guardian for personal matters, if certain criteria are met. Personal matters are defined in Schedule 2 Part 2 of the GAA, and includes a legal matter not relating to an adult's financial or property matters.

What is a 'legal matter'?

The term 'legal matter' is defined under Schedule 2, Part 3 of the GAA. A legal matter not relating to financial or property matters for an adult, includes the:

- use of legal services to obtain information about the adult's legal rights
- use of legal services to bring or defend a proceeding before a court, tribunal or other entity, and
- bringing or defending a proceeding.

Who is a delegate of the Public Guardian in these matters?

Under s146 of the *Public Guardian Act* (PGA), the Public Guardian can delegate their functions and powers under the GAA and the PGA to an appropriately qualified member of staff. The Public Guardian has delegated their decision-making capacity for legal matters to legal officers employed by the Office of the Public Guardian. Legal officers, who are also admitted legal practitioners, use their legal training, professional experience and understanding of legal processes to perform the guardianship functions under s12 of the PGA.

How do legal officers make decisions?

All of the Public Guardian's decision making takes place within a human rights framework. The Public Guardian has a direct role in implementing the obligations, and protecting rights prescribed under the United Nations Convention on the Rights of Persons with Disabilities and the *Human Rights Act 2019*.

When making decisions legal officers must, pursuant to the General Principles which are outlined in s11B of the GAA:

- recognise and preserve, to the greatest extent practicable, the adult's right to make their own decision and if possible, support the adult to make a decision
- recognise and take into account any views, wishes and preferences expressed or demonstrated by the adult
- do so in a way that promotes and safeguards the adult's rights, interests and opportunities in a way that is least restrictive

In order to fulfil the obligations as outlined above, the Public Guardian uses a structured decision-making framework which involves the adult in any decision to be made, to the greatest extent possible.

What can a Legal Officer do when an adult has a legal matter?

- Engage with the adult to obtain their views and wishes.
- Apply for legal representation.
- Liaise with the legal representative, which includes ensuring that a client meeting between the legal representative, the legal officer and the adult occurs.
- Seek legal advice from the adult's legal representative.
- Liaise with stakeholders to obtain relevant information to assist and inform the adult's legal representative.
- Support the adult to make their own decisions about the further conduct of the legal matters (which may also involve the legal officer consenting to the adult taking a certain course of action) or making a substitute decision (if appropriate).

What can a Legal Officer not do when an adult has a legal matter?

- Compel the adult to engage with the legal officer, their legal representative or any other stakeholders or engage in a legal process they are unwilling to participate in.
- Provide legal advice or direct legal representation to the adult.
- Provide instructions as to facts of a matter that only the adult would know (e.g. responding to alleged facts in a QP9 or affidavit material as part of legal proceedings).
- Make decisions around legal matters relating to financial or property matters (this is a matter for an administrator).
- Sign agreements, undertakings or consent orders on behalf of the adult (e.g. bail undertakings, consent orders in family law proceedings and undertakings relating to domestic violence matters).
- Ensure that the adult complies with any agreement, undertaking or order entered into (e.g. bail undertakings, consent orders in family law proceedings and undertakings relating to domestic violence matters).
- Consent to any 'special personal matter' which is defined in Schedule 2, Part 2, Item 3 of the GAA and includes entering a plea on a criminal charge for an adult.
- Accept substitute service on behalf of the adult.
- Provide support or case management services to the adult.
- Act as a litigation guardian.

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