



Appointment of a guardian in child protection proceedings

A factsheet for legal professionals

Read this factsheet with the Office of the Public Guardian (OPG) factsheets 'The Public Guardian's role as decisionmaker when appointed for legal matters', which sets out the Public Guardian's role in all legal matters (not relating to financial or property matters); and 'Guardianship decision-making in child protection proceedings'.

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. This means that the Court must be satisfied the parent can understand and take part in the proceedings either on their own or, with support i.e. informal support, or can instruct a lawyer if one has been engaged.

Adults with impaired decision-making capacity

Section 5(d) of 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, section 15 of 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 Queensland Administrative and Civil Tribunal (QCAT) to seek an appointment of a guardian for 'personal matters' as defined in the GAA.ⁱ

A personal matter can include a 'legal matter' not related to finance or property matters. Pursuant to section 12(1) of the GAA, 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 matters?
- Are there decisions relating to child protection that the parent is required to make?
- Will the absence of 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 the absence of 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 the matter.ⁱⁱ

ⁱ *Guardianship and Administration Act 2000*, Schedule 2, Part 2, section 2

ⁱⁱ *Ibid*, s.14(2)



Guardian appointment

A guardian can be a person who is at least 18 years old, not a paid carer or health provider for the adult and is willing to assist the adult to make decisions on matters, as per the appointment areas within the order made by QCAT.

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 at [Decision-making for Adults with impaired capacity](#).

The Public Guardian's structured decision-making framework

Where the Public Guardian is appointed as a guardian for the parent, a delegate of the Public Guardian (guardian) will make decisions, in alignment with the scope of the appointment, by applying the General Principles prescribed under section 11B of the GAA, and OPG's structured decision-making frameworks, to ensure that the adult's views, wishes and preferences are ascertained and considered before a decision is made. Any decisions made by the guardian must also be consistent with the *Human Rights Act 2019* (Qld).

When making decisions, the guardian will prioritise and promote the least restrictive decision-making model, underpinned by the following principles:

- Protecting and promoting human rights of adults with impaired decision-making capacity is the primary objective of decision-making, when appointed as guardian.

- Guardians do not make decisions in the 'best interests' of the adult; instead, decisions should align with the adult's views, wishes and preferences.
- Making a decision that does not align with the adult's views, wishes and preferences will only occur as last resort, where there is unreasonable risk to the adult's health or welfare.

Things to remember in relation to guardianship and child protection proceedings

1. A guardianship appointment does not give the guardian authority to consent to making a child protection order on behalf of the adult.
2. A guardian cannot compel an adult to attend or participate in a court proceeding.
3. Where views, wishes and preferences of the adult cannot be obtained, the guardian can inform the adult's legal representative that the adult's view on an application cannot be obtained, therefore the guardian cannot express a view/provide instructions. It may be the case that the presiding Magistrate be informed of this and are then empowered to determine the application on the evidence at hand and in the absence of the adult parent's view, as contemplated under the *Child Protection Act 1999* (Qld).



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Acknowledgement of Country

The Office of the Public Guardian acknowledges and pays our respects to the Traditional Custodians over the lands, seas and waterways throughout the state of Queensland in which we work and live and pay our respects to their Elders, past, present and emerging.

Translation

If you need translation services, contact the Translating and Interpreting Service on 131 450.