



Guardianship decision-making in child protection proceedings

A factsheet for legal professionals

Read this factsheet with the Office of the Public Guardian (OPG) factsheet '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).

The purpose of this factsheet is to clarify what an OPG delegated guardian for legal matters ("guardian") can and cannot do when appointed to make decisions for an adult with impaired decision-making capacity involved in child protection proceedings. 'Legal matter' is defined in the *Guardianship and Administration Act 2000* (GAA).¹

What a guardian can do for an adult involved in child protection proceedings

- Engage with the adult to obtain their views, wishes and preferences around decisions to be made for the adult in the child protection proceedings.
- Apply for legal representation for the adult to be legally represented in any ongoing proceedings. For example, an application for a long-term guardianship/short-term custody (amongst other types of orders sought) of the subject child/ren made in the Children's Court jurisdiction by the Director of Child Protection Litigation (DCPL), or an application for the Queensland Civil and Administrative Tribunal (QCAT) to review a decision made by the Department of Families, Seniors, Disability Services and Child Safety in relation to an adult's contact with the subject child/ren.

- Liaise with the legal representative and the adult together, including attending lawyer/client meetings, to support participation for the adult to progress child protection matters.
- Seek legal advice from the adult's legal representative in relation to any ongoing proceedings. In effect, this includes standing in the shoes of the adult to pursue an outcome in accordance with the client's views, wishes and preferences.
- Liaise with stakeholders to obtain relevant information to assist and inform the adult's legal representative.
- Advocate for the adult's rights and interests in the child protection proceedings, which may involve seeking increased contact between the adult and the subject child/ren.
- Support the adult to make their own decisions, or making a substitute decision (if appropriate), about the further conduct of the legal matters, such as consenting to the adult taking a certain course of action, or opposing the child protection order sought.

¹ *Guardianship and Administration Act 2000*, Schedule 2, Part 3, s.18



What a guardian cannot do for an adult involved in child protection proceedings

- Compel an adult to engage with the guardian, their legal representative, DCPL or the Children's Court or engage in a legal process they are unwilling to participate in.
- Provide legal advice or direct representation to the adult. This would amount to a conflict of interest and fall outside the scope of OPG's appointment.
- Attest to any facts that only the adult themselves would be aware of (i.e. what happens during contact between the parent and child).
- Accept substituted service on behalf of an adult (unless the adult has indicated their willingness to participate in the proceedings, and/or service on the guardian has been directed by the court by virtue of OPG's appointment).
- Provide support or case management services to the adult.
- Consent to any child protection order being made in lieu of an adult or in place of an adult. A guardian will simply support the decision of the adult.
- Participate in any social assessment report interviews.
- Make decisions in relation to child/ren of an adult for whom OPG is appointed (noting adults still retain parental responsibility despite the appointment of the OPG).
- Act as a litigation guardian. The Public Guardian will not act as a litigation guardian and its policy position is found at: [Policy statement - Request to act as a litigation guardian](#).



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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**.