



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 on terms considered appropriate. The Public Guardian can be appointed for an adult as a last resort where there is no one who is suitable and/or available to be appointed.ⁱ

What is a 'personal matter'?

'Personal matters' describes the types of decision a guardian can be appointed to make on behalf of the adult. The Public Guardian can be appointed for one or more personal matters categories.

Personal matters include legal matters that are not relating to the adult's property or financial matters.ⁱⁱ

What is a 'legal matter'?

A 'legal matter'ⁱⁱⁱ includes:

- use of legal services to obtain information about the adult's legal rights
- use of legal services to undertake a transaction
- use of legal services to bring or defend a proceeding before a court, tribunal or other entity
- bringing or defending a proceeding, including settling a claim, whether before or after the start of a proceeding.

Examples of a legal matter could be:

- criminal charges or applications for bail
- domestic and family violence applications
- court proceedings about the adult's children

- child safety involvement with the adult's children
- referrals to the Mental Health Court.

In practice, the guardian for legal matters ("the guardian"), as authorised delegate of the Public Guardian can:

- arrange legal advice for the adult about their legal rights
- arrange legal representation for the adult to commence or defend a proceeding that is not related to a property or financial matter before a court, tribunal or other entity.

How does the guardian make decisions?

The Public Guardian delegates decision-making functions to appropriately qualified staff who apply a structured decision-making framework that adheres to the United Nations Convention on the Rights of Persons with Disabilities and the *Human Rights Act 2019* to meet guardianship obligations.

Queensland law requires a guardian to apply:

- the General Principles in the *Guardianship and Administration Act 2000* (which provide the mandatory legislative requirements for structured decision-making) acknowledging:
 - An adult's inherent dignity and worth, and equal and inalienable rights, must be recognised and considered, and
 - The rights of all adults to the same human rights and fundamental freedoms, regardless of a particular adult's capacity, must be recognised and considered.

ⁱ *Guardianship and Administration Act 2000*, s.14(2)

ⁱⁱ *Ibid*, Schedule 2, Part 2, s.2(i)

ⁱⁱⁱ *Ibid*, Schedule 2, Part 3, s.18



- the *Human Rights Act 2019*, by making decisions in a manner that is compatible with human rights and ensuring these rights are only limited in certain circumstances, where reasonably and demonstrably justifiable.

By using structured decision-making, a guardian ensures the adult is involved in any decision to be made, to the greatest extent possible.

What a guardian can do when an adult has an active legal matter

- Engage with the adult to obtain their expressed or demonstrated views, wishes and preferences.
- Apply for legal representation.
- Liaise with the legal representative and ensuring that a client meeting between the legal representative, the guardian 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 involve the guardian consenting to the adult taking a certain course of action) or making a substitute decision (if appropriate).

What a guardian cannot do when an adult has a legal matter

- Compel the adult to engage with the guardian, 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 the facts of a matter that only the adult would know (e.g. responding to alleged facts in a QP9 or affidavit material).
- 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 and family violence matters).
- Ensure that the adult complies with any agreement, undertaking, or order (e.g. bail undertakings, consent orders in family law proceedings and undertakings relating to domestic and family violence matters)
- Consent to any 'special personal matter' as defined in Schedule 2, Part 2, s.3 of the GAA and includes unilaterally entering a plea on a criminal charge for an adult (absent the adult's views, wishes and preferences for same). In circumstances where an adult wishes to enter a guilty plea, the guardian can support this decision of the adult and provide the instruction to the adult's legal representative, but the guardian cannot enter a plea on behalf of the adult.
- unilaterally accept substituted service on behalf of the adult. e.g. Where an adult has expressed a view about participating in family court proceedings service can on that basis be accepted by a guardian in their capacity as guardian for the adult, and in accordance with the applicable court rules.
- Provide support or case management services to the adult.
- Act as a litigation guardian. See the Public Guardian's policy position: [Policy statement - Request to act as a litigation guardian.](#)

Contact us

T 1300 653 187

E publicguardian@publicguardian.qld.gov.au

www.publicguardian.qld.gov.au

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.