

# 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. The Public Guardian can be appointed for an adult as a last resort.

### What is a 'personal matter'?

'Personal matters' is the term used to describe 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 (Schedule 2 Part 2 of the GAA).

### What is a 'legal matter'?

Examples of a legal matter could be:

- criminal charges;
- 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.

The Public Guardian can:

- arrange legal advice for the adult about their legal rights and
- 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. (Schedule 2 Part 3 of the GAA).

### How do legal officers make decisions?

The Public Guardian delegates decision making functions to 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. By using structured decision-making, the Public Guardian ensures the adult is involved in any decision to be made, to the greatest extent possible.

| What can a Legal Officer do when an adult has a legal matter?   | What a Legal Officer cannot do when an adult has a legal matter?   |
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| <ul style="list-style-type: none"> <li>Engage with the adult to obtain their views and wishes.</li> <li>Apply for legal representation.</li> <li>Liaise with the legal representative, which includes ensuring that a client meeting between the legal representative, the legal officer and the adult occurs.</li> <li>Seek legal advice from the adult’s legal representative.</li> <li>Liaise with stakeholders to obtain relevant information to assist and inform the adult’s legal representative.</li> <li>Support the adult to make their own decisions about the further conduct of the legal matters (which may involve the legal officer consenting to the adult taking a certain course of action) or making a substitute decision (if appropriate).</li> </ul> | <ul style="list-style-type: none"> <li>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.</li> <li>Provide legal advice or direct legal representation to the adult.</li> <li>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).</li> <li>Make decisions around legal matters relating to financial or property matters (this is a matter for an administrator).</li> <li>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).</li> <li>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).</li> <li>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.</li> <li>Accept substitute service on behalf of the adult.</li> <li>Provide support or case management services to the adult.</li> <li>Act as a litigation guardian - see <a href="#">policy statement</a>.</li> </ul> |



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