

# Guardianship



## What is a guardianship order and how does it work?

Guardianship is the appointment of a person known as a 'guardian' to make personal decisions for an adult, for example, the guardian may make decisions regarding where an adult lives and what services they receive.

All adults over the age of 18 years, regardless of disability, have a right to make their own decisions. There are circumstances where an adult may decide to appoint someone to manage their personal affairs under an enduring power of attorney, in which case the attorney is responsible for making decisions when the adult lacks capacity to do so. However, the adult still needs to be consulted and, to the greatest extent, their views, wishes and preferences recognised and taken into account.

Where the adult is considered to lack decision-making capacity, a guardianship order may be obtained by commencing an application with the Queensland Civil and Administrative Tribunal (**QCAT**) requesting the appointment of a guardian. QCAT will hear the matter and decide if a guardian is necessary. If the adult has family or close friends who can informally support the adult, an appointed guardian should not be necessary.



## Why is a guardianship order made?

The *Guardianship and Administration Act 2000* (Qld) (the **Act**) provides that QCAT may appoint a guardian for a personal matter for an adult if it is satisfied:

1. The adult has impaired capacity;
2. There is a need for a decision; and
3. Without an appointment –
  - a. the adult's needs will not be adequately met; or
  - b. the adult's interests will not be adequately protected.

Please see the factsheet on 'Capacity' for further information.

## Who can be a guardian?

To be appointed as guardian a person must be at least 18 years of age and not be a paid carer or health provider for the adult. (A relative who receives a carer's payment for the adult cannot be appointed as the guardian.)

QCAT can appoint an individual such as a relative, friend or an organisation such as the Public Guardian. The guardian should be able to competently manage the person's affairs and be in a relationship with the person that enables them to seek the person's views, wishes and preferences, to the extent this is possible, and act in a way that promotes and safeguards their rights, interests and opportunities. QCAT will consider the appropriateness and competence of a person appointed as a guardian.

When deciding who to appoint, QCAT must take into account the adult's wishes, so far as they can be ascertained, as well as family members and interested parties. If there is no one available or there is a significant degree of family conflict, an independent guardian, such as the Public Guardian, may be appointed.

### **What decisions can a guardian make?**

A guardian can only make decisions regarding the adult's personal affairs, for example, where the person lives and what services they receive. The guardianship order made by QCAT will provide details about the scope of the guardian's decision-making authority. For example, a guardian may be appointed to make accommodation decisions, but not decisions about what services they receive. A guardian cannot make financial decisions, such as managing the adult's banking, paying bills or selling property. A guardian's role is to ensure the adult's needs are met and their personal interests are protected.

### **What are the responsibilities of a guardian?**

In performing their duties, a guardian must apply the general principles outlined in the *Guardianship and Administration Act 2000* (Qld). This means that a guardian must: Consult the adult and/or family, close friends and supporters and take into account the adult's wishes;

- Be honest and reasonably diligent;
- Recognise and take into account the adult's human rights and fundamental freedoms;
- Respect the adult's privacy;
- Allow the adult to maintain existing supportive relationships;
- Allow the adult to maintain their culture, language, values and beliefs;
- Encourage and empower the adult to make their own decisions, whenever possible; and
- Apply the health care principles, if the particular decision is in relation to health care. The health care principles require that a guardian consider medical advice, the adult's medical conditions, any alternative health care available, risks and benefits as well as any consequences of the health care.

### **How long does a guardianship order last for?**

A guardianship order can last for a maximum of five years at which time it will need to be reviewed. An adult can request that the guardianship orders be reviewed at any time by making an application to QCAT. The order will be stopped if QCAT finds that the order is no longer needed.

### **Can a guardianship order be reviewed?**

Yes, please see the factsheet on 'Review of Administration and Guardianship Orders'.