

Obligations of guardians and administrators

This information is general in nature and cannot be used as a substitute for appropriate professional legal advice about your particular circumstances.

What are guardians and administrators?

Guardians and administrators are appointed by the Queensland Civil and Administrative Tribunal (QCAT) to make decisions on behalf of an adult with

- » impaired capacity for a matter
- » there is a need for a decision, or the adult is likely to do something involving unreasonable risk to health, welfare, or property, and
- » their needs will be unmet or interests unprotected if the appointment is not made.

Capacity is a legal term referring to the ability to exercise the decision-making process in relation to a matter. When an adult has capacity to make a decision about a certain matter, they are able to:

- » understand the nature and effect of decisions about the matter, and
- » freely and voluntarily make and communicate those decisions.

See the [Queensland Capacity Assessment Guidelines 2020](#) for more information.

QCAT can also appoint an administrator to make financial decisions for an adult if the adult is

- » a missing person
- » they usually reside in Queensland
- » there is a need for a decision, or
- » their interests will be adversely affected if an appointment is not made.

What types of decisions can guardians and administrators make?

Guardians can be appointed to make decisions for an adult for **personal matters** (including health matters).

Personal matters relate to decisions about the adult's care and welfare, such as where and with whom they live and support services they may need. Personal matters include legal matters that do not relate to the adult's financial or property matters.

Health matters are a personal matter and relate to decisions about the adult's health care.

Health care includes most medical treatments, procedures and services to treat both physical and mental conditions. Health care also includes treatments aimed at keeping the adult alive or delaying their death (life-sustaining treatments).

There are personal matters and health matters (**called special personal matters and special health matters**) that a guardian can never make decisions for, such as donation of tissue, sterilisation, termination of pregnancy, participation in special medical research or experimental health care. Only QCAT can give consent for these matters. QCAT may later appoint a guardian with power to consent to the continuation of special health care or similar special health care.

Administrators can be appointed to make decisions for an adult for **financial matters**.



Financial matters relate to decisions about the adult's financial or property affairs, including decisions about paying expenses, making investments, selling property (including their home) or carrying on a business.

QCAT can state the terms of the appointment of a guardian or administrator, as appropriate.

How long is a guardian's or administrator's appointment?

QCAT may appoint a guardian or administrator for any period it decides is appropriate. Usually the appointment must be reviewed by QCAT at least every five years, but can be reviewed more frequently depending on the terms of the order, whether the impairment is permanent, or whether any restrictive practices apply.

A guardian or administrator can be reappointed by QCAT.

Guardians and administrators can also apply to QCAT to end their appointment.

Duties and obligations of guardians and administrators

The *Guardianship and Administration Act 2000* sets out important principles, legal obligations and duties which guardians and administrators must comply with.

Apply the general principles and the health care principles

Guardians and administrators must apply the general principles when exercising their powers, and if making health care decisions, also apply the health care principles.

The principles recognise that all adults (regardless of whether or not the adult has decision-making capacity) have the same human rights and fundamental freedoms as others in the community.

Under the general principles, a guardian or administrator must

- » presume the adult has capacity for a matter
- » support the adult to exercise their human rights
- » support the adult to maintain their supportive relationships with family, friends and others
- » support the adult to maintain their cultural and religious practices, values and beliefs and use their language
- » respect the adult's privacy and protect their personal (including health) information
- » recognise that the adult should not be deprived of their liberty unless authorised by law
- » support the adult's right to participate as much as possible in decisions affecting their life
- » make decisions in a way that safeguards the adult's rights, interests and opportunities.
- » if possible, support the adult to make their own decisions, and
- » when making decisions on behalf of the adult, recognise and take into account their views, wishes and preferences.

When making health care decisions for the adult, the guardian must

- » apply the general principles
- » respect the inherent dignity and worth, individual autonomy and independence of persons
- » ensure they are offered appropriate health care, including preventative care, without regard to the adult's capacity, and



» take into account

- information given by the adult's health provider
- any existing medical conditions of the adult and the prognosis of the adult
- any alternative health care available
- any significant risks associated with the health care
- if the health care can be postponed because a better option may become available within a reasonable time, or the adult may regain capacity to make their own decision
- the consequences for the adult if the health care is not carried out
- the benefits and burdens of the proposed health care for the adult, and
- the effect of the health care on the adult's dignity and autonomy.

See [Factsheet: General principles and health care principles under Queensland's guardianship framework](#) for more information.

Obligation to advise QCAT when a guardian or administrator becomes ineligible

A person's appointment as a guardian or administrator **automatically ends**

- » if they become a paid carer or health provider for the adult
- » if they become the service provider for a residential service where the adult is a resident
- » if the guardian or administrator and the adult were married or in a civil partnership when the appointment was made and the marriage or civil partnership ends, or
- » if the guardian or administrator or adult dies.

An **administrator's** appointment also ends

- » if the administrator becomes bankrupt or insolvent
- » if the administrator is appointed for a missing person, certain conditions are met which mean that the missing person is dead.

If any of these situations occur, the **guardian or administrator must advise QCAT in writing**.

Exercise powers according to the terms and conditions of the appointment order

It is very important for a guardian or administrator to read the terms and conditions of QCAT's appointment order. It may contain important information on how and when the guardian or administrator must exercise their powers.

Different appointments of different guardians and administrators may be made for different things. This depends on the appointment by QCAT. If the order does not state otherwise, two or more guardians or administrators must act jointly and unanimously, or apply to QCAT if they cannot.

Check whether the adult has made an advance health directive

A guardian appointed for personal (including health) matters should first check if the adult has made an advance health directive. Under most circumstances, clear directions in an advance health directive must be followed. This means a guardian cannot make a decision about health matters that is inconsistent with the adult's direction in an advance health directive. See [Form 10 – Advance Health Directive Explanatory Guide](#) for further information.



Acting honestly and with reasonable diligence

Guardians and administrators must always act in the adult's interests. They must also act honestly and diligently, which means that they must pay reasonable attention when exercising their role in making decisions so that all decisions have the best chance of being in the adult's interests.

This can include seeking all relevant information required to make decisions and getting professional opinions when necessary.

Consult with other decision-makers

Guardians and administrators must consult with other decision-makers, if there are any (such as other guardians, administrators or attorneys) to ensure that the adult's interests are not prejudiced by a breakdown of communication.

Rules for making financial decisions (for administrators)

There are some specific rules that administrators must follow when making financial decisions. It is strongly recommended that independent legal advice is sought before acting on complex financial decisions.

Gifts and donations: administrators can use the adult's money or other property to give gifts and donations. But this can only be done if the gift is a type or nature of gift that the adult would have given when they had capacity or might be expected to make.

Gifts and donations must be of a reasonable amount taking into consideration all of the circumstances, including the adult's overall finances.

Conflict transactions: a conflict transaction happens when there is a conflict between the administrator's duty to the adult and the administrator's own interests. An administrator cannot enter into a conflict transaction unless QCAT has authorised them to do so.

An example of a conflict transaction is if an adult's administrator buys the adult's car.

Maintaining the adult's dependents: an administrator can use the adult's money and property to provide for the needs of people that are dependent on the adult, such as the adult's children. This can only be done if it is reasonable in all the circumstances, including the adult's overall finances.

Investments: an administrator can only invest in **authorised investments** or continue investments that existed when the administrator's powers began. An authorised investment is an investment approved by QCAT, or an investment that would be made by a trustee under the *Trusts Act 1973*.

Keep records: administrators must keep accurate records that are reasonable in the circumstances and produce them if required by QCAT.

Keep property separate: administrators must keep their property separate from the adult's. This does not apply to property owned jointly between them already.

More information:

For more information about guardians and attorneys go to <http://www.qld.gov.au/guardianship-planahead>

<https://www.qcat.qld.gov.au/matter-types/guardianship-for-adults-matters/guardian-duties>

<https://www.publicguardian.qld.gov.au/guardianship-and-decision-making>



Queensland
Government

Office of the Public Guardian

Find information about the role of the Public Guardian at:

www.publicguardian.qld.gov.au

Tel: **1300 653 187**

The Public Trustee of Queensland (PTQ)

Find information about the role of PTQ at:

www.pt.qld.gov.au

Email: Clienteng@pt.qld.gov.au

Tel: **1300 360 044** Monday to Friday, 8:15am–5pm

Queensland Law Society

For information about finding a solicitor for legal advice:

www.qls.com.au

Tel: **1300 367 757** Monday to Friday, 8:30am–5pm.

Justice of the Peace Branch

Information on how to locate the services of a Justice of the Peace or Commissioner for Declarations can be found at:

www.qld.gov.au/findjp

Email: jp@justice.qld.gov.au

Tel: **1300 301 147** Monday to Friday 8:30am–5pm

Community Legal Centres

Call or visit your nearest community legal centre, Seniors Legal and Support Service or specialist legal centre for people with disability or mental illness. Community legal centres can provide free legal advice for your situation. You can find local legal help at: www.communitylegalqld.org.au

Queensland Civil and Administrative Tribunal (QCAT)

Applications for guardianship and administration, as well as applications regarding capacity and attorneys can be made at QCAT. Information about making an application to QCAT is available at:

www.qcat.qld.gov.au

Tel: **1300 753 228** Monday to Friday, 8:30am–3pm.

If you need an interpreter

If you have difficulty understanding this publication and need language assistance, please call **13QGOV (137468)**, ask for an interpreter and ask them to telephone any of the agencies in this section.