

APPOINTING A GUARDIAN OR ADMINISTRATOR

If an adult is unable to make decisions they are said to 'lack capacity' or have 'impaired capacity'. If this is the case, and a decision needs to be made or the adult is likely to do something that places them at risk, they may need a formal **guardian** or **administrator** to help them with important choices. A guardian makes decisions about personal matters, while an administrator makes decisions about financial matters.

What is capacity?

All adults are presumed to have **capacity** unless there is significant evidence to the contrary. Capacity means you can a) freely and voluntarily make decisions, b) understand the nature and effect of your decisions, and c) communicate your decisions in some way. Capacity is task specific, may vary over time and can be improved with support from others.

What does a guardian do?

A **guardian** makes decisions about **personal matters**, including: where and with whom their ward lives, if and where they work, what education, training and services they receive, what licences and permits they hold, their diet and dress, health care, and any legal action about personal matters. Guardians do NOT make decisions about **special personal matters**, such as making a will, voting and consenting to marriage or **special health matters**, such as organ donation, sterilization, pregnancy termination, and participation in medical research.

Who can be a guardian?

A **guardian** can either be the [Public Guardian](#)—a public official employed by the Queensland Government—OR a person who is at least 18 years old, and who is not a paid carer (a person receiving a carer's pension is not a paid carer) or health provider for the adult.

What does an administrator do?

An **administrator** makes decisions about **financial matters**, including paying expenses, receiving or recovering money, managing business affairs and making investments. The administrator also manages payment of rates, taxes, insurance policies and premiums, and legal action about financial matters (for instance, pursuing an insurance claim).

Who can be an administrator?

An **administrator** can either be the [Public Trustee](#)—a public official employed by the Queensland Government—OR a person who is at least 18 years old, not a paid carer (a person receiving a carer's pension is not a paid carer) or health provider for the adult and not bankrupt or taking advantage of the laws of bankruptcy as a debtor under the *Bankruptcy Act 1966* (Cth) or a similar law of a foreign jurisdiction.

When is a guardian or administrator appointed?

QCAT will only appoint a guardian and/or administrator if it is satisfied that **all** the following criteria are fulfilled:

- a. The adult has impaired **capacity**;
- b. There is a specific need for the appointment—e.g. a particular decision needs to be made or the adult is likely to do something that may involve unreasonable risk to their health, welfare or property.
- c. Without an appointment either the adult's needs will not be adequately met or their interests will not be adequately protected.

If appointed, guardians and administrators are bound by law to make sure that any decision-making assistance they provide adequately meets the needs of the adult and respects the adult's rights, will and preferences.

To find out more about appointing a guardian or administrator, call Disability Law Queensland on 3622 1250.