



# QCAT

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

## Guardianship and Administration Toolkit

A simple guide to guardianship, administration, and decision-making — for people with disabilities, their families, and the people who support them.



[www.rightsinaction.org.au](http://www.rightsinaction.org.au)



# Who is this toolkit for?

This toolkit is for people with disabilities who want to understand Queensland Civil and Administrative Tribunal (**QCAT**) and how it works when it comes to decision-making rights, **guardianship** and **administration**.

It is also useful for family members, friends, or support workers who may be helping someone through this process.

## This guide will help you:



Understand your rights under the law



Learn what QCAT does and when they get involved



Know the role of guardians and administrators



Explore options for supported decision-making







Feel confident navigating the system

# What is decision-making capacity?

Decision-making capacity means being able to make your own choices about your life. It is a basic human right, and the law says that all adults are presumed to have capacity unless there is strong evidence to show otherwise.

## A person has decision-making capacity if they can:

-  Understand what the decision is about.
-  Think about the choices and what might happen.
-  Make the decision freely without pressure.
-  Communicate their decision in any way [speaking, writing, signing, using a device etc.].








Capacity can change over time. It depends on the type of decision and when the decision is being made.



# What is impaired decision-making capacity?

Impaired capacity means a person needs more support to make a decision because of a disability, illness, or injury.

## A person may have impaired capacity if they:

-  Cannot understand the information.
-  Cannot weigh up the choices.
-  Cannot make or communicate their decisions clearly.
-  But this does **not** mean the person can't make any decisions.
-  And it does **not** mean they have lost their rights.



Making a choice that others disagree with - or even a risky decision - **does not mean** a person has impaired capacity.

# How is capacity assessed?

When someone is unsure if a person can make a decision on their own, a **capacity assessment** may be done.



**Who does the assessment?** A doctor, psychologist, or other trained professional usually does the assessment.



**When is it needed?** It is needed when there are concerns about someone's ability to make a specific decision, especially if the decision is complex, risky, or legally important.



**What will they do?** They will ask questions and have a conversation to see if the person understands the decision, knows the choices, can think about what might happen, and is able to say what they want.

# After a capacity assessment?

After a capacity assessment, the health professional will give an opinion on whether the person has capacity for a specific decision at that time.

If the opinion is **'YES'** (the person has capacity):

The person can make the decision themselves.

They may ask for support to help understand or communicate their choice, but the decision is theirs.

No further action is needed unless there are ongoing concerns.

If the opinion is **'NO'** (the person has impaired capacity):

The person cannot make the decision themselves at that time.

Someone else will need to make the decision for them - this is called substitute decision-making.

QCAT may need to be involved if the decision is about important areas like health care, living arrangements or finances.



Health professionals can give an opinion about a person's capacity, but only QCAT or a court can make the final legal decision and choose a decision-maker if needed.

# What is QCAT?

**QCAT** (Queensland Civil and Administrative Tribunal) is a government body that makes decisions about legal matters, including decision-making capacity, guardianship and administration.

## QCAT makes decisions about:



Whether a person has the capacity to make decisions about a specific matter.



Who should be appointed as **guardian** or **administrator** if needed.



What decisions a guardian or administrator can make on behalf of someone.



QCAT only gets involved when needed and aims to choose the option that protect the person's rights by choosing the least restrictive option with the right support.

# What is Guardianship ?

A guardian is someone appointed by QCAT to make decisions about personal or health matters for a person who cannot make decisions for themselves due to impaired decision-making **capacity**.

A **guardian** can make decisions about:



<b>Living Arrangements:</b> Where you live and who you live with	<b>Services and Support:</b> Support provided to you. Example: NDIS and Centrelink
<b>Licenses and Permits:</b> Whether you apply for a license or permit	<b>Daily Life:</b> Regarding your diet, dress, and daily activities
<b>Employment:</b> Whether you work, your role and where you live	<b>Legal Matters:</b> Seeking legal advice (excluding financial and property matters)
<b>Social Contacts:</b> Who you have contact with	<b>Health Care:</b> Medical treatments, for physical and mental health (e.g: consent to treatment)

# What is Administration ?

An administrator is someone appointed by QCAT to make decisions about financial or legal matters for a person who cannot make those decisions themselves due to impaired decision-making capacity.

An **administrator** can make decisions about:






<b>Everyday Expenses:</b>  Paying rent and bills such as electricity, gas and water.	<b>Banking:</b>  Managing bank accounts and transactions.
<b>Financial Records:</b>  Maintaining accurate financial records.	<b>Real Estate:</b>  Buying, selling, or renting real estate.
<b>Business Matters:</b>  Continuing business or trade.	<b>Legal Matters:</b>  Representation in financial or property matters.





# Who can be a Guardian or Administrator ?

A **guardian** and an **administrator** should ideally be someone you know and trust who will make decisions for you in your best interest as long as they meet the eligibility requirements.

## Who can be appointed? QCAT can appoint:

-  A family member, friend, or carer who knows the person well.
-  Someone who is willing, suitable, and can make decisions in the person's best interests while respecting their rights, wishes and dignity.
-  A person who is over 18 and not in a position of conflict.

## Who cannot be appointed? QCAT will not appoint someone who:

-  Has a conflict of interest (Example: Someone who may gain personally from decisions).
-  Has a history of abuse, neglect, or financial misconduct.
-  Is not willing or able to carry out the responsibilities.
-  Is under 18.



QCAT will always try to appoint someone who knows and supports the person. If no one is suitable, QCAT can appoint a Public Guardian (for personal / health decisions) or Public Trustee (for financial decisions).

# What is a Public Guardian and a Public Trustee?

Sometimes there is no suitable person who can be appointed as a **guardian** or **administrator**. In this case, **QCAT** may appoint a **Public Guardian** or **Public Trustee** (or both if needed).



The **Public Guardian** appointed for decisions about health, care, and personal matters.



The **Public Trustee** appointed for decisions about money, bills, and property.



These are independent government bodies that make decisions in the person's best interests and are only appointed as a last resort.



They do not know the person personally, but they must still respect their rights, choices, and wishes as much as possible.



# How to apply for Guardianship or Administration?

If someone needs help making important decisions - and there is no legal decision-maker already in place - you can apply to QCAT.

## Apply to QCAT if the person:

- ☒ Has impaired decision-making capacity.
- ☒ Needs help with decisions about health, care, money or housing.
- ☒ Does not have a valid Enduring Power of Attorney\*.
- ☒ May be at risk without a formal decision-maker.

## What forms are needed for an application?

Form 10	Health Professional Report	Supporting Documents (Optional)
Application for guardianship or administration appointment or review.	A report from a qualified health professional providing an opinion on the adult's capacity to make decisions.	Any additional documents like support letters or reports.

**Form 10 and Health Professional Report are available to download from the QCAT website.**



# What is an Interim Order?

An interim order is a temporary decision made by the QCAT when there is an immediate risk of harm to a person's health, welfare, or property. This order is intended to protect the person until a full hearing can be held.

**To request an interim order, you must submit the following documents to QCAT:**

<b>Form 10</b>  Application for guardianship or administration appointment or review.	<b>Form 54</b>  Application for interim order. This form details the urgency and reasons for the interim order request.
<b>Health Professional Report</b>  A report from a qualified health professional providing an opinion on the adult's capacity to make decisions.	<b>Supporting Documentation</b>  Any additional documents that support the need for an interim order.

**Form 10, 54, and Health Professional Report are available to download from the QCAT website.**



Interim orders are temporary. They last up to 3 months and are designed to address urgent concerns until a hearing can take place.



# How to submit an application to QCAT?



Applying for **guardianship** or **administration** is a serious legal step. It is best to seek advice before applying.

## You can send your forms to QCAT:

### Online

Via the QCAT website.

### By email

[enquiries.qcat.qld.gov.au](mailto:enquiries.qcat.qld.gov.au)

### By post

GPO BOX 1639, Brisbane QLD 4001

### In Person

Submit at QCAT or your local Magistrates Court



# What happens after you apply to QCAT?

Once an application is submitted, **QCAT** will start looking at the information to decide what needs to happen next.

## Step 1: QCAT reviews the application and will check that:

- The forms are complete
- The situation is something QCAT can decide on
- There is enough information to move forward

If something is missing, they may contact you to ask for more details.

## Step 1: QCAT will send a copy of the application to:

- The person the application is about.
- The family, carers or support people.
- Anyone else who might be involved (like proposed guardian or administrator).

This is to make sure everyone knows what is happening and can have a say.

## Step 1: QCAT will set a date for a hearing - a letter or email will be sent with:

- The date, time and location (in person, phone or video).
- A list of who should attend.
- What to bring with you.

# What happens at a QCAT hearing?

A hearing is where QCAT members (like a judge or tribunal member) listen to all the information and ask questions. It is usually informal and not like a courtroom.



## **QCAT will listen to:**

The person's views (if they can share them).

Family or support people.

Health professionals.

Anyone else involved.

QCAT will then make a decision about whether a guardian or administrator is needed, and who it should be.

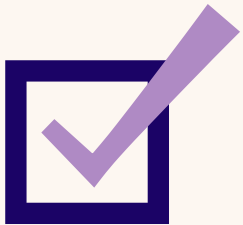
# How to get ready for a hearing?



Make sure all paperwork is complete and up to date.



Bring any extra documents or reports that may help.



Think about what you want to say and what the person needs help with.



You can ask someone to support you at the hearing [E.g.: advocate, lawyer].



The person the hearing is about has the right to be heard. QCAT must respect their rights, safety, and wishes during the hearing.

# What happens after a QCAT hearing?

**After the hearing, QCAT will decide if a guardian or administrator is needed. They might:**



Appoint a guardian.



Appoint an administrator.



Decide no appointment is needed.



Make a short-term or reviewable order.

**Applicant will get a decision letter. It will explain:**



What QCAT decided.



Who was appointed [if anyone].



What they can and cannot do.



How long the appointment lasts.

# What if decision-making capacity changes?

A person's decision-making **capacity** can change over time. It might improve, get worse, or come and go depending on their health, situation, or support.

## If capacity improves:



If you regain capacity, apply to QCAT for a review to have your **guardian** or **administrator** removed.



You will need medical evidence to support the application.

## If capacity declines:



A **guardian** or **administrator** may need to take on more responsibility.



A new application may be needed to change the type of decisions the current appointed decision-makers can make.



Everyone has the right to make their own decisions if they have capacity. QCAT decision-maker appointments should end if no longer needed.



# Can you appeal a QCAT decision?

Yes. If there is reason to believe **QCAT** made a mistake or important information was missed, an appeal of the **QCAT** decision may be possible.

## How to appeal:

You must usually apply within 28 days of the decision.

You may need to show there was a legal error or new evidence.

Not all decisions can be appealed.  
Check with QCAT or get legal advice.

## To apply for an appeal you need this form:

### Form 39

Application for leave to appeal or appeal.

\*Forms available to download from the QCAT website.



# Are there alternative options to QCAT?

Before applying to **QCAT**, consider alternatives that offer more personalised, flexible, and less restrictive support. A **guardian** or **administrator** may not be needed if the person can make decisions on their own or with support.

Informal supports	Family, friends, and advocates helping with daily tasks and decision-making.
Nominated Support Person (Qld Health)	Appoint someone to assist with treatment decisions if you become unwell. (Mental Health Act 2016)
Advance Health Directive (AHD)	Gives directions about your future health care and appoints someone to make health care decisions if you lose <b>capacity</b> .
NDIS Nominee	Appoint a nominee to make decisions regarding your NDIS plan and supports. (NDIS participants only)
Centrelink Nominee	Appoint a nominee to manage your Centrelink payments and correspondence.
Power of Attorney (POA)	Appoint someone to make decisions on your behalf for financial and personal matters while you have capacity. Becomes void if you lose <b>capacity</b> .
Enduring Power Attorney (EPOA)	Like a POA, however this continues to be effective if you lose <b>capacity</b> .

# What are the rights in this process?

People with disabilities have the same rights as everyone else. These rights must be respected throughout the QCAT process.

## Key Rights:



**To be heard:** The person can share their views and wishes at every stage.



**To make their own decisions:** If the person has capacity, their choice must be respected — even if others don't agree.



**To be supported:** Help should be given to understand and make decisions, before appointing someone else.



**To be safe:** QCAT can step in if there is a risk of harm, abuse, or neglect.



**To the least restrictive option:** QCAT must choose the option that gives the person the most freedom and independence.



**To dignity and respect:** The person must be treated fairly, spoken to respectfully, and included in decisions that affect them.



These rights are protected under Queensland's laws, including the Guardianship and Administration Act 2000 and the Human Rights Act 2019 (Qld).

# Final thoughts: What next?

## Key Reminders:

Capacity can change - informal support should always be the first step.

QCAT only gets involved when there is no safe, less restrictive option.

Guardians and administrators must always act in the person's best interest.

The person's voice, wishes and rights matter in every step of the process.



Email **QCAT** at: [enquiries@qcat.qld.gov.au](mailto:enquiries@qcat.qld.gov.au)



Visit the **QCAT** website at: [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au)



Speak to an advocate or legal service for advice.



# Key Terms

Decision-Making Capacity	The ability to understand and make decisions about personal, health, or financial matters.
Guardian	A person appointed to make personal and health decisions for someone who has impaired capacity.
Administrator	A person appointed to manage financial and legal matters for someone who has impaired capacity.
Public Guardian	A government official who can be appointed to make personal and health decisions for someone when no suitable private guardian is available.
Public Trustee	A government official who can be appointed to manage financial and legal matters for someone when no suitable private administrator is available.
QCAT	Queensland Civil and Administrative Tribunal - A tribunal that makes decisions about guardianship, administration, and other legal matters in Queensland.
Decision	A choice that you make about something after thinking about many possibilities.
Hearing	A formal meeting where QCAT listens to evidence and makes decisions about guardianship or administration.
Restrictive Practices	Actions that limit a person's freedom, used only when necessary to prevent harm, and when less restrictive options are not effective.
Decision Letter	A letter from QCAT that explains the outcome of an application and the reasons for their decision.



# Other Available Toolkits

## Inclusive Education Toolkit



[www.rightsinaction.org.au](http://www.rightsinaction.org.au)



## Disability Support Pension Toolkit



[www.rightsinaction.org.au](http://www.rightsinaction.org.au)

1800.887.688





# Upcoming Toolkits

Please scan the QR Code below if you would like to register interest in any of our upcoming resources [toolkits, webinars, workshops] on the following topics:

**NDIS Access**

**NDIS Appeals**

**Mental Health Treatment**

**Authorities**

**Child Protection**

**Human Rights Complaints**

**Navigating Provider Disputes**



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