

What is a guardian?

A guardian is a person who has been appointed with legal authority to make personal (non-financial) decisions on behalf of an adult who lacks capacity to make such decisions because of a disability. This is a decision making role, not a carer's role.

A guardian can have legal authority if appointed by the Board or appointed under an enduring guardianship. This Fact Sheet relates to appointments by the Board. For more information about [enduring guardianship](#), please refer to the [Enduring Guardianship Information](#) sheet.

What is the role of a guardian?

If the guardian has been appointed with the relevant powers by the Board, the guardian can make decisions about non-financial matters, such as:

- Where a person with a disability lives, temporarily or permanently, or
- What health care and support services the person with a disability will receive.

An order appointing a guardian will indicate which specific decisions the guardian has been appointed to make.

A guardian cannot make decisions about the finances or estate of a person with a disability. That is the role of an [administrator](#).

What are the responsibilities of a guardian?

A guardian must:

- Act at all times in the best interests of the person under guardianship
- Consult with that person, taking into account, as far as possible, his or her wishes
- Advocate for that person,
- Encourage that person to participate as much as possible in the life of the community

- Encourage and assist that person to become capable of caring for himself or herself and of making reasonable personal judgments and
- protect that person from neglect, abuse or exploitation.

When is a guardian appointed by the Board?

The Board will only appoint a guardian after there has been proof that a person, about whom an application has been made, is:

1. A person with a disability,
2. Incapable, because of the disability, of making reasonable judgments about their personal circumstances, and
3. In need of a guardian.

The Board must also adhere to the principles in the [Guardianship and Administration Act 1995 \(Tas\)](#) which are:

- (a) to adopt the means which is the least restrictive of a person's freedom of decision and action as is possible in the circumstances,
- (b) to promote the best interests of a person with a disability, and
- (c) to carry the wishes of a person with a disability into effect, if possible.

Most people with disabilities will not need a guardian to enter into suitable accommodation, get the health care that they need, engage in rehabilitation or day services, employment or entertainment, even if they are incapable of making reasonable decisions. If informal support is working well for a person with a disability, it is unlikely that they are 'in need of a guardian'.

If there is a competent '[person responsible](#)' available for the person with a disability, that person has authority to make decisions about medical and dental treatment without the need for appointment of a guardian. Please refer to information about the role of a [person responsible](#).

Generally a guardian is only appointed where:

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- (a) There is conflict about the future health, accommodation or welfare of the person with a disability, or
- (b) Without an order, a service provider might be at risk of acting unlawfully with respect to a person with a disability because of a lack of authority (e.g. consenting to medical treatment or confinement to a certain accommodation facility).

A guardian is generally appointed after a hearing, but in an emergency the Board can appoint the Public Guardian for up to 28 days without a hearing.

Who can be appointed as a guardian?

Before appointment as a guardian, a person must meet criteria set out in the Guardianship and Administration Act. If there is no family member or friend who meets those criteria, the Board can appoint the Public Guardian as the guardian for the person. Under an emergency guardianship order, only the [Public Guardian](#) can be appointed.

What happens after a guardian is appointed?

The Board receives annual reports and periodically reviews the appointments of guardians to ensure that the order remains necessary and that the person appointed is meeting their statutory duties.

A guardian can seek advice and direction from the Board. If a guardian is not performing the role appropriately, the Board can review the appointment and appoint an alternative guardian.

More information

Please refer to [The Handbook for Private Guardians](#) for more information. Please refer to the [application forms](#).

Other fact sheets available in this series:

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- ENDURING GUARDIANSHIP INFO SHEET

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