

Guardianship and Administration for Adults – what to do when an adult you care about has impaired capacity

If an adult loses their ability to make decisions there are two ways in which others may be appointed to ensure the adult is being looked after, namely:

- by appointing an attorney under a valid enduring power of attorney provided the impaired adult had the capacity to appoint an attorney; or
- an application can be made to the Queensland Civil and Administrative Tribunal ('QCAT') under the *Guardianship and Administration Act 2000* for the appointment of an administrator and/or guardian.

Depending on what might be required, a guardian can be appointed to look after personal matters for the impaired adult and/or an administrator can be appointed to look after their financial affairs.

QCAT's objective is to ensure that if the adult has impaired capacity, their needs will be adequately met, and their interests will be adequately protected.

Family members who are concerned that those arrangements are put in place do not need to apply to have themselves appointed as guardian or administrator, as there are other options in circumstances where a willing or suitable person is not available, e.g. by appointment of the Adult Guardian.

In a decision from May, 2014 of *CRC* [2014] QCAT 236 there were numerous conflicts between the incapacitated adult's natural family and foster family which saw the tribunal order the removal of his foster sister as guardian as a consequence of complaints from his natural family who expected to be kept better informed of his circumstances. While the Tribunal had no convincing evidence before it that the foster sister had not performed the role of guardian in a competent way the extent of the distrust amongst the natural and foster families meant the only resolution was the appointment of an independent decision maker, so the tribunal appointed the Adult Guardian in her place.

From 1 July 2014 the role of the Public Guardian replaces the Adult Guardian with the commencement of the *Public Guardian Act 2014* ('the Act') which is intended to promote and protect the rights and interests of adults with impaired capacity and children in certain circumstances.

The Public Guardian will be empowered to:

- act as guardian for impaired adults or children;
- give advice and/or impose supervision of an adult's Attorney, Guardian or Administrator
- require an attorney, guardian or administrator, who looks after the financial matters for another adult, to present a plan of management of those finances for approval.
- investigate any allegations against an attorney, guardian or administrator of inappropriate or inadequate decision making arrangements.

The decisions of the Public Guardian are not necessarily final and an adult's attorney, guardian or administrator may apply to QCAT for a review.

If you are concerned for an adult, and you don't know the best way forward, Kelly Legal has a dedicated team who can assist you with assessing your options and advise you on making an application to the QCAT to have a guardian or administrator appointed or with making applications to the Public Guardian or making application for a review of a decision of the Public Guardian.

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