

Guardianship

What is a Guardian?

A guardian is a person who is appointed to make certain decisions for you where you do not have the capacity to make those decisions for yourself. A guardian can be appointed for up to three years at a time. After this time, the guardianship order must be reviewed by the ACT Civil and Administrative Tribunal (ACAT). They will then decide whether or not the order should continue.

A guardian is usually a close family member or friend, someone you trust to make decisions for you. If there is no one suitable, the Public Trustee & Guardian is usually appointed as guardian.

A Guardian Can...

- Decide where and with whom the person lives
- Choose the education or training the person receives
- Decide whether the person is to be allowed to work – and - if so, the nature of the employment and employer
- Consent to some medical procedures or other treatments (restrictions apply)
- Bring or continue legal proceedings for the person
- Make personal decisions to ensure that the person's health and welfare needs are met and they are protected from unreasonable risks related to health and welfare

A Guardian Cannot...

- Make financial decisions
- Discipline the person
- Vote in an election
- Make a will or other testamentary instrument
- Consent to the adoption of a child
- Consent to a marriage or civil union
- Consent to a prescribed medical procedure

Only an appointed financial manager can make financial decisions for the person. Even then, they can only make decisions if the person cannot make the decision for themselves.

Prescribed medical procedures

Only ACAT can authorise a prescribed medical procedure. A prescribed medical procedure is:

- An abortion
- Reproductive sterilisation
- A hysterectomy
- A medical procedure concerned with contraception
- Donation of non-regenerative tissue
- Treatment for psychiatric illness
- Electroconvulsive therapy
- Psychiatric surgery

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Decision-Making Principles

When making decisions on someone's behalf, a guardian must:

- Give effect to the person's wishes as much as possible, unless those wishes will have a significant negative impact on the person's interests
- Promote the person's interests as much as possible if their wishes cannot be given effect
- Interfere with the person's lifestyle as little as possible
- Encourage the person to look after themselves as much as possible
- Encourage the person to live in the general community and take part in community activities

Getting an Order Revoked

If you would like an order to be revoked, you need to apply to ACAT to have them review it. Even without you applying, ACAT must review a guardianship appointment at least once every three years, though they can review it more often if they want to or you apply for them to.

A guardianship appointment continues until:

- ACAT revokes the order
- The guardian resigns in writing to ACAT
- The guardian is removed by ACAT
- The person dies

Legal Aid ACT

We can help you apply to ACAT for a review of guardianship orders.

www.legalaidact.org.au

Phone: **1300 654 314**

ACT Civil and Administrative Tribunal

ACT Health Building

Level 4, 1 Moore St Canberra

Phone: **(02) 6207 1740**