

Guardianship / Decision Making

Reduced decision-making capacity

Everyone has a legal right to make decisions and control their own life. If a person loses the ability to make decisions in life, legal guardians and administrators can make decisions for them.

A person has capacity to make decisions if they:

- **Understand:** An individual must be able to understand the nature and effect of a decision
- **Decide:** An individual must be able to come to a decision freely and voluntarily
- **Communicate:** An individual must be able to communicate that decision to others

Making “bad” decisions is not the same as impaired capacity. People have the right to make decisions that may result in physical, financial and psychological or other harm – it is called the “dignity of risk”. However, a consistent pattern of decisions that result in harm to the person or their quality of life may suggest that there is impaired capacity.

Guardians

A guardianship board or tribunal has the power to appoint someone to deal with the day-to-day personal decisions of an adult with impaired decision-making capacity.

These can include:

- Accommodation
- Health and dental care
- Access to services
- Social contact.

They cannot make decisions about financial matters. Guardians can be a friend or relative, as long as they are over 18 years of age.

Administrators

An administrator is appointed in the same way to make financial decisions on behalf of an adult with impaired capacity.

Office of the Public Advocate/Guardian

In each state and territory there is an Office of the Public Advocate (OPA) or Office of the Public Guardian (OPG) to protect the rights of people with disabilities. They will take responsibility for people who don't have a relative, friend or service provider to take on the role of Guardian, and have the power to investigate charges of abuse or neglect against an adult with impaired capacity.

Powers of Attorney

There are two Powers of Attorney – General and Enduring. Anyone with the capacity to make decisions can appoint a Power of Attorney to make financial decisions on their behalf.

A General Power of Attorney: is appointed in cases where a person is absent. For example, they might be travelling overseas and appoint someone for the time that they are away.

An Enduring Power of Attorney: is a way of arranging guardianship and administration in advance. Two people enter a formal agreement where one is given authority to make decisions for the other once that person is no longer able to make decisions for themselves.

Advance Care Directive

An Advance Care Directive, also known as a “living will”, is a document that explains your wishes regarding health care if you become incapacitated.

Each state and territory has its own rules around Guardianship and Administration, including the Advance Care Directive. Contact the Office of the Public Advocate/Guardian in your state for more information.