

## Guardianship

### 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 Tasmanian Civil and Administrative Tribunal (Tribunal) or appointed under an Enduring Guardianship. This Fact Sheet relates to appointments by the Tribunal. For more information on Enduring Guardianship, please refer to the Enduring Guardianship Information sheet.

### What is the role of a guardian?

A Guardian appointed with the relevant powers by the Tribunal 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 their powers. 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, directions, preferences and values;
- 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;
- protect that person from neglect, abuse or exploitation; and
- take reasonable steps to ascertain whether the person under guardianship has given an advance care directive (ACD), and if so, give effect to the ACD;

### When is a Guardian appointed by the Tribunal?

The Tribunal will only appoint a Guardian after there has been proof that a person, about whom an application has been made, is: a person with a disability who is unable by reason of the disability to make reasonable judgments about their personal circumstances, and is in need of a guardian.

The Tribunal 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, directions, preferences and values 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 allied health care that they may need, engage in rehabilitation or day services, even if they are incapable of making reasonable decisions. If informal support is working well for a person with a disability, and the person is in agreement with the decision, 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 the Fact sheet about the role of a person responsible.

### 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 1995*. If there is no family member or friend who meets those criteria, the Tribunal can appoint the Public Guardian as the Guardian for the person. Note that only the Public Guardian can be appointed under an emergency guardianship order.

### What happens after a Guardian is appointed?

The Tribunal receives annual reports from the Guardian 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 Tribunal. The Tribunal can review the appointment of a Guardian and appoint an Alternative Guardian if the latter is not performing their role appropriately.

### More information?

Please refer to The Handbook for Private Guardians for more information.