

# Information for legal professionals

## In this fact sheet

This fact sheet explains key elements of the Northern Territory's *Guardianship of Adults Act 2016*:

Legislative changes	Guardianship and Advance Personal Planning Acts
Adults who may need a guardian	Impaired decision-making capacity and cognitive impairment
Guardianship orders	Applications, legal representation, and interim and interstate orders
Health care	Authority for health care consent decisions

## How has the law changed?

### Guardianship of Adults Act

The *Guardianship of Adults Act 2016* came into effect on 28 July 2016. The Act:

- established an independent Office of the Public Guardian
- established an independent statutory officer as the Public Guardian
- introduced comprehensive guardianship principles
- transferred jurisdiction from the Local Court to the Northern Territory Civil and Administrative Tribunal (NTCAT)
- provides a contemporary decision-making framework in line with other Australian jurisdictions.

### Advance Personal Planning Act

The *Advance Personal Planning Act 2013* has been updated to align it with the *Guardianship Act*. Both Acts reference decisions for adults who have lost decision-making capacity.

- i** See our 'Advance personal plans and adult guardianship' fact sheet or visit [www.advancepersonalplanning.nt.gov.au](http://www.advancepersonalplanning.nt.gov.au).

## When is a guardian appointed?

The NTCAT may appoint a guardian if it is satisfied that the adult:

- has impaired decision-making capacity
- cannot exercise decision-making capacity for some or all personal or financial matters
- needs a guardian for these matters.

The NTCAT appoints a guardian through a guardianship order.

- i** See section 11 of the *Guardianship Act*.

### Impaired decision-making capacity

An adult may be determined to have impaired decision-making capacity if they have difficulty:

- understanding and remembering information about their personal or financial matters
- weighing up the information to make reasoned and informed decisions about those matters
- communicating those decisions in some way, such as by talking, writing or signing.

The adult's decision-making capacity may be considered to be impaired, even if:

- the impairment is episodic, varies from time to time or depends on the situation
- the adult can make decisions about some personal matters or financial matters.

An adult is presumed to have decision-making capacity until the contrary is shown.

- i** See section 5 of the *Guardianship Act*.


## Cognitive impairment

The Guardianship Act expands access to guardianship to people with cognitive impairment from any cause. This includes mental illness, dementia, intellectual disability or acquired brain injury.

## How do guardianship orders work?

### Applications


The adult or an interested person for the adult can apply for a guardianship order through the NTCAT.

-  For information on applying for, revoking or reassessing a guardianship order, visit [www.ntcat.nt.gov.au](http://www.ntcat.nt.gov.au).

### Legal representation at proceedings

For any proceedings before the NTCAT, a person is entitled to:

- appear personally
- be represented by a legal practitioner
- with the NTCAT's leave, be represented by another person.

-  See sections 104 and 130 of the *Northern Territory Civil and Administrative Tribunal Act 2014*.


### Appointing a guardian

The NTCAT may appoint one or more guardians to the adult. A guardian can be:

- the Public Guardian
- the Public Trustee (financial matters only)
- an adult who is eligible for the role.


Two or more guardians may be appointed jointly, severally, or jointly and severally.

The order will state the matters a guardian has authority for, the order's length and the reassessment date. All guardians and the adult will receive a copy.

-  See section 3 of the Guardianship Act.


### Interim (urgent) orders

The NTCAT may make an interim order while it determines an application if it reasonably believes that an adult has impaired decision-making capacity and urgently needs a guardian.

-  See section 20 of the Guardianship Act.

## Interstate orders

The NTCAT can register interstate guardianship orders. This removes the need to apply for guardianship in the Northern Territory when an order is in place in another Australian jurisdiction.

-  See sections 53–58 of the Guardianship Act.

## What about health care decisions?

### Authority for health care decisions


The definition of health care under the Guardianship Act is very broad. Guardians with authority for health care matters can generally consent to treatments that:

- involve general anaesthetic, similar sedation or a drug that affects the central nervous system
- require a doctor or dentist to do or supervise
- require prescription medication
- are ongoing, regular or part of a treatment plan.

### Restricted health care decisions

Only the NTCAT can make restricted health care consent decisions. They include:


- actions that result in sterilisation
- termination of a pregnancy
- removal of tissue that won't grow back for transplanting to another person
- health care for medical research.


-  See our 'Information for health professionals' fact sheet.

## Important documents

- *Guardianship of Adults Act 2016*
- *Advance Personal Planning Act 2013*
- *Northern Territory Civil and Administrative Tribunal Act 2014*
- *Transplantation and Anatomy Act 2011*

If you have any questions, please contact us:

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